

UNITED NATIONS  NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

CHAMBER I - CHAMBRE I

ICTR
CRIMINAL REGISTRY
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1998 JUN -1 P 4: 27

OR : ENG

Before: Judge Laïty Kama, Presiding Judge
Judge Lennart Aspegren
Judge Navanethem Pillay

Registry: Mr. Lars Plum
Mr. Antoine Kesia-Mbe Mindua

Decision of: 29 May 1998

**THE PROSECUTOR
VERSUS
PAULINE NYIRAMASUHUKO
AND
ARSÈNE SHALOM NTAHOBALI**

Case No. ICTR-97-21-T

**DECISION ON A PRELIMINARY MOTION
BY THE DEFENCE COUNSEL OF ARSÈNE SHALOM NTAHOBALI
FOR SEPARATE TRIALS**


The Office of the Prosecutor:

Mr. Frédéric Ossogo

Counsel for the Accused:

Ms Nicole Bergevin for Pauline Nyiramasuhuko
Ms Frédérique Poitte for Arsène Shalom Ntahobali

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ("THE TRIBUNAL"),

SITTING as Trial Chamber I of the Tribunal, composed of Judge Laïty Kama as Presiding Judge, Judge Lennart Aspegren and Judge Navanethem Pillay;

CONSIDERING the indictment, dated 22 May 1997, charging Pauline Nyiramasuhuko and Arsène Shalom Ntahobali of genocide, crimes against humanity, and serious violations of common Article 3 of the 1949 Geneva Conventions and the 1977 Protocol II thereto;

HAVING RECEIVED from the Defence Counsel, Ms Frédérique Poitte, who is assigned to the accused Arsène Shalom Ntahobali in the present matter, a preliminary motion filed on 19 December 1997 requesting separate trials for the two accused;

CONSIDERING the response from the Prosecutor, filed on 23 February 1998, to the said motion;

HAVING HEARD the Defence Counsel and the Prosecutor during the audience held on 25 February 1998 to that end;

TAKING INTO ACCOUNT Rules 2, 48 and 82 of the Rules of Procedure and Evidence (the "Rules"), and Article 19 of the Statute of the Tribunal;

TAKING NOTE of the Tribunal's Decision dated 27 March 1997 on "The request of the Prosecutor to sever, to join in a superseding indictment and to amend the superseding indictment" in the cases of Gérard Ntakirutimana (Case Nos. ICTR-96-10-T & ICTR-96-17-T), Clément Kayishema (Case No. ICTR-95-1-T) and Obed Ruzindana (Case Nos. ICTR 95-1-T & ICTR-96-10-T) (hereinafter the "Joinder decision");

CONSIDERING THE SUBMISSIONS OF THE DEFENCE,

1. The Defence Counsel filed her preliminary motion on the basis of Rule 72 (B)(iii) of the Rules which states, *inter alia*, that preliminary motions by the accused shall include applications for separate trials under Rule 82(B) of the Rules. In accordance with Rule 82(B), the Tribunal may order that persons accused jointly under Rule 48 of the Rules be tried separately, if it considers it necessary in order to avoid a conflict of interests that might cause serious prejudice to an accused, or to protect the interests of justice.

2. In her motion, the Defence submitted that separation of trials in the present matter was necessary to avoid a conflict of interests that might cause serious prejudice to the rights of the defence of the accused. In the opinion of the Defence, the necessity for this severance is consequent upon the lack of information in the indictment pertaining to the political affiliation of the accused and his occupation at the time of the alleged events.



3. During the hearing, the Defence Counsel, in support of her motion, referred to the Joinder decision wherein the Tribunal considered that involvement in a same transaction must be connected to specific material elements which demonstrate, on the one hand, the existence of an offence, of a criminal act which is objectively punishable and specifically determined in time and space, and, on the other hand, prove that the accused acted together and in concert. The Defence felt that in the present instance, the indictment lacked specificity as regard the determination of the act in time and space, and, furthermore, that in view of the respective occupations of the accused and co-accused at the time the alleged acts took place in Rwanda, it would have been impossible for them to have acted in concert.

CONSIDERING THE SUBMISSIONS OF THE PROSECUTOR,


4. In response, the Prosecutor affirmed with respect to counts 1 - 5 of the indictment which charge the accused and co-accused jointly, that there are sufficient elements in the indictment and in the supporting material to justify a joint trial. With regard to counts 6 and 7, the Prosecutor submitted that, although these counts concerned only the accused, in the present instance, the retention of a joint trial is not prejudicial to the accused. On the contrary, she affirmed that a joint trial is in the interest of the accused so far as it would safeguard the rights of the accused to a fair and expeditious trial, in accordance with Article 19 of the Statute, and would promote good administration of Justice; hence there are no grounds for the Trial Chamber to order separate trials.

AFTER HAVING DELIBERATED,

5. The Tribunal deems it appropriate to make reference to the Joinder decision, being pertinent in the present matter inasmuch as it addresses the concept of a 'same transaction', as defined in Rule 2 of the Rules. It is held in this decision that involvement in a same transaction necessarily entails a connection to specific material elements which demonstrate namely an offence, a criminal act, which can be specifically determined in time and space. The Tribunal, moreover, recalls that, in criminal matters, pertinent laws must be interpreted in a restrictive manner, in the interest of the accused.

6. In the present matter, the Defence submitted that separate trials are necessary as the alleged acts for which the accused is charged have not been determined in time and space in the indictment. The Tribunal disagrees with the submission of the Defence. Rather the Tribunal is of the opinion that the indictment as it stands, read in conjunction with the supporting material which accompanied it at confirmation, does not lack specificity in time and space.

7. The Tribunal also finds that the Defence has failed to convince the Tribunal in what manner and to what extent the joint trial in this case would seriously prejudice the accused or be contrary to the interests of Justice, as required in Rule 82(B) of the Rules. Indeed, the Tribunal finds that mere assertion by the Defence of the disparate occupations of the two accused at the time of the alleged acts does not by itself demonstrate to the Tribunal the prejudice that may be suffered by Arsène Shalom Ntahobali if tried jointly with Pauline Nyiramasuhuko. Consequently, the request of the Defence for separate trials should be dismissed.

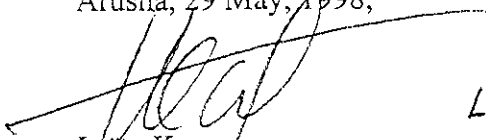


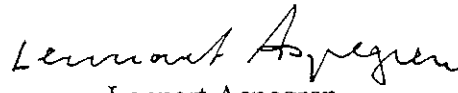
FOR THE ABOVE REASONS,

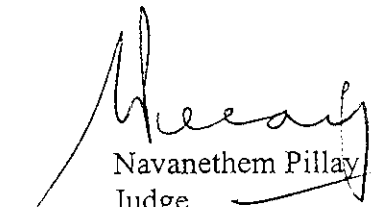
THE TRIBUNAL

DISMISSES the request of the Defence for separate trials.

Arusha, 29 May, 1998,


Laffy Kama
Presiding Judge


Lennart Aspegren
Judge


Navanethem Pillay
Judge

