

Case No. ICTR-95-1-T

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UNITED NATIONS



NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

ICTR  
CRIMINAL REGISTRY  
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**TRIAL CHAMBER II**

OR:ENG.

Before: Judge William H. Sekule, Presiding  
Judge Yakov A. Ostrovsky  
Judge Tafazzal Hossain Khan

Registry: John Kiyeyeu

Decision of: 29 June 1998

**THE PROSECUTOR  
VERSUS  
CLEMENT KAYISHEMA  
AND  
OBED RUZINDANA**

Case No. ICTR-95-1-T

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**DECISION ON THE PROSECUTION REQUEST  
TO RULE INADMISSIBLE THE EVIDENCE OF DEFENCE EXPERT  
WITNESS, DR. POUGET**

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The Office of the Prosecutor:  
James Stewart  
Jonah Rahetlah  
Brenda Sue Thornton  
Holo Makwaia

The Counsel for the Accused:  
Pascal Besnier  
Phillipe Moriceau

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA,**

SITTING AS Trial Chamber II, composed of Judge William H. Sekule, Presiding, Judge Yakov A. Ostrovsky and Judge Tafazzal Hossain Khan ("the Trial Chamber");

BEING SEIZED of the Prosecution motion filed on 22 June 1998, seeking for a ruling that evidence of expert witness Dr. Pouget, a psychiatrist, be ruled inadmissible pursuant to art. 19 (1) of the Statute and rule 54 and 89 of the Rules of Procedure and Evidence ("the Rules");

CONSIDERING the oral and written submissions on the subject matter made on Friday, 26 June 1998, by both the Prosecution and the Defence;

**THE ARGUMENTS:**The Position of the Prosecutor

- (i) The Prosecutor, invoking the provisions of art. 19 (1) of Statute and rules 54 and 89 of the Rules, requests this Chamber to rule that evidence of expert witness Dr. Pouget a psychiatrist be ruled inadmissible pursuant to art. 19 (1) of the Statute and rule 54 and 89 of the Rules.
- (ii) In support of both her oral and written submissions, the Prosecutor has cited a various persuasive authorities on the subject of expert testimony, including the case of *R. v Mohan* (1994) 2 R.C.S., among other Canadian case law.
- (iii) the Prosecutor essentially contend that, psychiatric evidence tendered by the Defence be rendered inadmissible on the grounds that:
  - the expert evidence is in fact character evidence of personality or disposition of the accused cloaked as scientific opinion having no bearing on the ultimate determination of guilty or innocence of the accused, thus the Trial Chamber, exercising its discretion under the provisions of art.19(1), 20(2) and 20(4)(e) of the Statute and rules 54 and 89 of the Rules should rule that the evidence is inadmissible;
  - as no specific provision is made for the inadmissibility of expert evidence, particularly psychiatric evidence, only rules of evidence that are consonant with the spirit of the Statute and general principles of law should be applied in admitting relevant evidence that the Trial Chamber deems to have probative value;
  - except for the qualification of the expert Dr. Pouget, the expert evidence is neither relevant nor is it necessary to assist triers of fact hence it should be ruled inadmissible as it has no probative value;

The Response by the Defence

(A) undisclosed evidence notwithstanding, evidence of the expert witness Dr. Pouget is crucial for



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a fair determination of this case in that, it is important to establish;

- (1) aggressiveness as an element of individual psychology,
- (2) violence,
- (3) psychology of crowds,
- (4) criminal crowds,
- (5) the fragility of testimony (notably eyewitness identification evidence)
- (6) evidence relating to the psychiatric examination of the accused) and that,

(B) these facts are important in determining the guilt or innocence of the accused by ostensibly proving that aggressiveness is an element of individual psychology and that, genocide was part of the psychology of crowds.

#### **THE ISSUE:**

The principle issue before this Chamber is not whether the report of Dr. Pouget is relevant, admissible or probative but whether this Trial Chamber, at this stage, is legally entitled to make a finding on the admissibility of the evidence of the expert witness who has not testified before the Chamber and whose report has not been tendered officially into evidence;

#### **DELIBERATIONS:**

WHEREAS the Prosecutor in paragraph 20 of her written submission, concedes that under the provisions of rule 89(C) of the Rules, in order for the Trial Chamber to determine admissibility of evidence it must first consider its *relevancy*, which is a matter of law;

WHEREAS Dr. Pouget's report has not been formally tendered before the court for consideration as to its relevancy, probative value or admissibility;

TAKING INTO ACCOUNT THAT in the circumstances of this case Dr. Pouget is the author and expert witness of the report, and thus legally required to personally tender the report before the Chamber for consideration of its admissibility, unless there are good reasons for him not to do so in person,

NOTING THAT the witness who is scheduled to appear before this Chamber, has so far not testified, legally rendering the report before the Chamber for consideration as to its admissibility or otherwise;

UNDERSTANDING THAT Dr. Pouget has been called to testify as a witness on *inter alia*, his report;

UNDERSCORING the fact that, issues of admissibility of evidence are issues that raise points of law thus condemning Dr. Pouget report without hearing him will amount to a serious breach of justice;

UNDERSCORING the importance of observing the rights of the accused to a fair trial guaranteed under the provisions of art. 20 of the Statute in particular 20(4)(e) which provides that the accused



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*shall have the right to examine, or have examined, the witnesses against him or her and to obtain the attendance of witnesses on his or her behalf under the same condition as witnesses against him or her;*

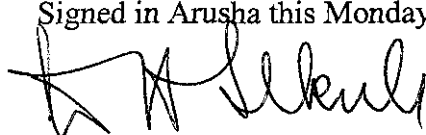
FURTHER NOTING THAT the general position of the Prosecution, with regard to the elements of admissibility of expert evidence merits consideration, but it cannot be addressed at this stage and in the interests of justice, Dr. Pouget shall be heard;

BEARING IN MIND THAT at this juncture, disposing of the main issue, as framed above, renders it unnecessary to deal with other issues arising from the report;

**NOW THEREFORE FOR THE REASONS STATED ABOVE  
THE TRIAL CHAMBER DECIDES THAT:-**

- (1) Dr. Pouget will be heard by the Trial Chamber on oath and will be permitted to refer to his report, and
- (2) Without prejudice, the Prosecutor maintains the right, as usual, to challenge the report and the oral testimony of Dr. Pouget at any stage in the course of hearing the testimony, as she deems fit.
- (3) The Trial Chamber, therefore, **DISPOSES** of the motion in the above terms.

Signed in Arusha this Monday 29 June 1998.



William H. Sekule  
Presiding Judge



Yakov A. Ostrovsky  
Judge



Tafazzal Hossain Khan  
Judge

(Seal of the Tribunal)