



International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

UNITED NATIONS
NATIONS UNIES

TRIAL CHAMBER I

Original: English

Before: Judge Navanethem Pillay, Presiding
Judge Erik Møse
Judge Asoka de Zoysa Gunawardana

Registrar: Ms Marianne Ben Salimo

Decision date: 16 March 2000

THE PROSECUTOR v. HASSAN NGEZE
(ICTR-97-27-I)

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DECISION ON THE DEFENCE'S MOTION TO COMPEL COMPLETE DISCOVERY

Office of the Prosecutor:

Mr William T. Egbe
Ms Cydney G. Crickard
Ms Charity R. Kagwi
Mr Alphonse Van

Counsel for the Accused:

Ms Patricia Mongo
Mr John C. Floyd III

<p>International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda</p> <p>CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME COPIE CERTIFIÉE CONFORME A L'ORIGINAL PAR NOUS</p> <p>NAME / NOM: <i>Dr. MINDUA K. M. Antoinette</i></p> <p>SIGNATURE: <i>[Signature]</i> DATE: <i>16.03.2000</i></p>

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“the Tribunal”)

SITTING AS Trial Chamber I composed of Judge Navanethem Pillay, presiding, Judge Erik Mose and Judge Asoka de Zoysa Gunawardana;

CONSIDERING the Defence’s motion to compel complete discovery, filed on 19 January 2000, in which he requested the Trial Chamber to order the Prosecutor to produce all evidence against the accused;

CONSIDERING the Prosecution’s reply to the said motion dated 3 March 2000;

CONSIDERING that on 5 November 1999, the Trial Chamber granted leave to the Prosecutor to amend the Indictment by re-introducing the former charge of genocide and adding the charges of conspiracy to commit genocide, complicity in genocide and crimes against humanity (extermination);

CONSIDERING that on 30 November 1999, the Trial Chamber granted leave to the Prosecutor to join the accused with Ferdinand Nahimana, pursuant to Rule 48 of the Rules of Procedure and Evidence (“the Rules”);

CONSIDERING that on 25 November 1999, after the accused refused to enter a plea on the new charges, the Trial Chamber entered a plea of not guilty on his behalf, pursuant to Rule 66 (iii) of the Rules;

CONSIDERING Rules 66(A)(i) and 66(A)(ii) of the Rules;

NOTING that the motion was considered on the basis of the briefs of the Parties, pursuant to Rule 73 of the Rules.

Arguments by the Parties

The Defence argued *inter alia* that:

1. The Prosecutor be ordered to produce all possible evidence against the accused.
2. This evidence includes notably witnesses’ statements, transcripts and copies of newspapers and various forms of reports.
3. Criminal and background records of any prosecution witnesses, as well as any advantages offered to them, should also be submitted.
4. The Prosecutor should also produce the evidence that tends to exculpate the accused and any recording.

The Prosecutor argued *inter alia* that:

5. The said motion is premature. The Prosecutor has not violated any provisions of the Rules regarding disclosure, the said disclosure having been done on 24 February 2000.
6. The Defence is not entitled to all the evidence in the possession of the Prosecutor. Reference is made to Rules 66 and 70 of the Rules.
7. There are no provisions in the Rules enabling the Defence to raise such a motion. The Chamber should disregard the motion without addressing the question as to whether there is a factual basis to it.
8. All the requests are overbroad, vague, unclear or inappropriate.
9. If the Defence considers that the accused has suffered a prejudice, he could submit preliminary motions pursuant to Rule 72 of the Rules and regarding disclosure.
10. If the Trial Chamber grants the Defence's request, a reciprocal order will have to be made to compel the Defence to provide the Prosecutor with all the evidence which is in her possession.

AFTER HAVING DELIBERATED

11. The Defence does not specify a provision in support of its motion. The Chamber holds that there is no specific provision in the Rules enabling the Defence to request a Trial Chamber to order complete discovery. The appropriate provision on disclosure of evidence is Rule 66 of the Rules. According to Rule 66 (A)(i), the Prosecutor shall disclose to the Defence within 30 days of the initial appearance of the accused, copies of the supporting material which accompanied the indictment when confirmation was sought as well as all prior statements obtained by the Prosecutor from the accused. Rule 66 (A)(ii) states that no later than 60 days before the date set for trial, the Prosecutor shall disclose copies of the statements of all witnesses whom the Prosecutor intends to call to testify at trial; upon good cause shown a Trial Chamber may order that copies of the statements of additional prosecution witnesses be made available to the Defence within a prescribed time.
13. Under the Rules, the Defence is not entitled to *all* the evidence regarding the accused, which is in the possession of the Prosecutor. The Defence may only receive, from the Prosecutor, evidence that is likely to be used in the case against the accused as well as past statements by the accused and any exculpatory evidence which may support the Defence case, pursuant to Rule 68 of the Rules.

The Prosecutor has stated her intention to comply fully with Rule 68 and the Chamber has no basis to find that it has been violated, to date. Furthermore, the Chamber finds no basis to grant the request for information concerning inducement to testify, if any, at the present stage. If it deems it necessary, the Defence may make a request to inspect the documents in the custody of the Prosecution, in terms of Rule 66(B).

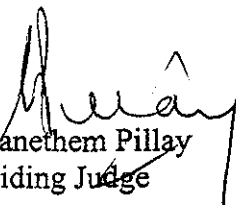
14. In any event, the Chamber considers the request for witness statements is premature, since the Prosecution has up to 60 days prior to the date set for trial, to furnish the Defence with copies of the statements of the witnesses whom the Prosecutor intends to call at trial. That deadline has not yet passed. Moreover, on February 24 2000, the Prosecution filed with the Registry, materials to be disclosed to the Defence.


FOR ALL THE ABOVE REASONS,


THE TRIBUNAL

DENIES the Defence's motion to compel complete discovery.

Arusha, 16 March 2000


Navanethem Pillay
Presiding Judge


Erik Møse
Judge


Asoka de Zoysa Gunawardana
Judge

Seal of the Tribunal

