

UNITED NATIONS



International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law committed in the territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994

Case No. ICTR-97-20-1

Date

ENGLISH

Original: FRENCH

TRIAL CHAMBER II

Before Judges: Laity Kama, Presiding
William H. Sekule
Pavel Dolenc

Registry: Messrs Antoine Mindua
John Kiyeyeu

Decision rendered on: 2 June 2000

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ICTR
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The Prosecutor
vs.
Joseph NZIRORERA

DECISION ON THE DEFENCE MOTION SEEKING AN ORDER TO THE PROSECUTOR TO INVESTIGATE THE CIRCUMSTANCES OF THE CRASH OF PRESIDENT HABYARIMANA'S PLANE

Office of the Prosecutor:

Mr. Ken Fleming
Mr. Don Webster
Ms Ifeoma Ojemeni

Counsel for the Defence:

Mr. McCarlan

NZIR(C)00-01 (E)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: *Dr. M. Mindua* *Kec. Me. Antoine*
SIGNATURE: *[Signature]* DATE: *12.06.2000*

THE TRIBUNAL.

SITTING as Trial Chamber II composed of Judges Laity Kama, Presiding, William H. Sekule and Pavel Dolenc;

CONSIDERING the Internal Memorandum of 29 May 2000 referenced as PO-IOM/29-5-00/TCIII by which the President of the Tribunal designated Judge Pavel Dolenc to replace Judge Mehmet Güney for the purpose of considering the instant motion;

CONSIDERING that Joseph Nzirorera ("the accused") was arrested and remanded in custody on 5 June 1998, in Benin, upon a request made by the Deputy Prosecutor, Mr. Bernard Muna, pursuant to Rule 40 of the Rules of Procedure and Evidence (the Rules);

CONSIDERING the order issued on 22 June 2000 by Judge Navanethem Pillay to authorize the transfer of the accused to the seat of the Tribunal, pursuant to the provisions of Rule 40 *bis* of the Rules;

CONSIDERING that the accused was transferred on 10 July 1998 to the United Nations Detention Facility in Arusha and that at the hearing of 10 August 1998 Judge Laity Kama ordered his further detention for a period of twenty days, with effect from the date of the said hearing;

CONSIDERING that on 29 August 1998, the Tribunal, sitting as Judge Navanethem Pillay designated by the President pursuant to Rule 28 of the Rules, confirmed the indictment dated 26 August 1998, which indictment was presented by the Prosecutor against Joseph Nzirorera and seven others;

CONSIDERING the "Warrant of arrest and order for transfer and detention" issued against the accused on 29 August 1998 by Judge Navanethem Pillay, pursuant to Rule 55 of the Rules;

CONSIDERING that on 7 and 8 April 1999, the accused made his initial appearance pursuant to Rule 62 of the Rules and that he pleaded not guilty to each of the eleven charges brought against him in the indictment dated 15 March 1999, which indictment was amended by the Prosecutor pursuant to an order signed on 13 March 1999 by Judge Navanethem Pillay;

HAVING BEEN SEIZED by the Defence of a "Motion for an order to the Prosecutor to investigate the circumstances of the crash of President Habyarimana's plane", which motion was filed on 8 December 1999;

CONSIDERING the Prosecutor's response dated 22 March 2000;

HAVING HEARD the parties on 2 June 2000;

CONSIDERING the Statute and Rules of Procedure and Evidence of the Tribunal, in particular, Article 15 of the Statute and Rule 73 of the Rules;

SUBMISSIONS BY THE PARTIES

Defence Submissions

In its motion based on Rules 40 (C), 54 and 73 (A) of the Rules, the Defence makes the following general submission:

1. All the parties, including the Prosecutor, unanimously agree that the assassination of President Habyarimana was what triggered, if not caused, the events which occurred in Rwanda from April to July 1994, events which the Prosecutor defines as genocide;
2. The accused having been held responsible for these events and the said assassination having constituted a pivotal event in the occurrence of the facts on which the Prosecutor bases his charges against the accused, a fair trial and proper administration of justice require an investigation into the circumstances of the assassination;
3. Consequently, the Defence submits that the Tribunal must order the Prosecutor to open such an investigation, since the Prosecutor seems unwilling to do so *proprio motu*. Furthermore, the Defence requests that the findings of this investigation be made available within six months, effective from the date of the present decision.

Prosecutor's Response

In her response, the Prosecutor makes the following general submissions:

4. Pursuant to Article 15 of the Statute, the Prosecutor must act independently in every investigation and prosecution. This Article provides that " ... she shall not receive instructions from any government or from any other source".
5. It is not for the Trial Chamber to order the Prosecutor to carry out any specific investigation.
6. Moreover, the accused is free to carry out investigations that are material to his defence.

AFTER DELIBERATIONS

WHEREAS the Trial Chamber finds that the Defence has failed to show the legal basis for its motion for an order that the Prosecutor investigate the circumstances of President Habyarimana's airplane accident;

WHEREAS, in fact, the Chamber recalls, as did the Prosecutor, that pursuant to Article 15 of the Statute, the Prosecutor acts independently and shall not receive instructions from any government or from any other source;

WHEREAS, therefore, in the instant case and circumstances, the Chambers finds that it has no authority, under the statute or the Rules, to order the Prosecutor to open any such investigation;

FOR THE FOREGOING REASONS.

**THE TRIAL CHAMBER
DISMISSES** the instant Defence motion

Dated in Arusha, this second day of June 2000

(Signed)
Laity Kama
Presiding Judge

(Signed)
William H. Sekule

(Signed)
Pavel Dolenc

Seal of the Tribunal

