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UNITED NATIONS  
NATIONS UNIES

**International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda**

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**TRIAL CHAMBER I**

**Original : English**

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

**Registry:** Ms Aminatta N'gum

**Decision date:** 7 July 2000

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**THE PROSECUTOR v. HASSAN NGEZE  
Case No. ICTR-97-27-I**

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**DECISION ON THE REQUEST OF THE DEFENCE FOR AN ORDER FOR SERVICE  
OF AN UNITED NATIONS MEMORANDUM PREPARED BY MICHAEL HOURIGAN,  
FORMER ICTR INVESTIGATOR**

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Office of the Prosecutor:

M. William T. Egbe  
Ms Cydney Crickard  
Ms Charity Kagwi  
M. Alphonse Van

Counsel for the Accused:

Ms Patricia Mongo  
M. John Floyd III

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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 Møse and Judge Asoka de Zoysa Gunawardana;

**CONSIDERING** the motion from the Defence to unseal a United Nations' document regarding assassination of Rwandan and Burundian Presidents, filed on 14 May 2000;

**CONSIDERING** the brief in response of the Prosecutor, filed on 27 June 2000.

**NOTING** that the motion was considered on the basis of the written briefs of the Parties, pursuant to Rule 73 of the Rules of Procedure and Evidence ("the Rules").

**The Submissions of the Parties**

The Defence submits that the accused is entitled to the disclosure of the United Nations memorandum, sent to the President of the Tribunal from United Nations Headquarters. The memorandum, according to the accused, has been written by an ICTR investigator, who found early evidence of the involvement of others in the assassination of the Presidents of Burundi and Rwanda. The existence of the memorandum was made public thanks to the efforts of the detainees of the United Nations Detention Facility, particularly Hassan Ngeze.

The Defence further argues that it is part of its strategy to prove, among other things, the identity of the person who killed President Habyarimana. The said memorandum is important in this respect. By denying the request, the Chamber would block the truth and hinder the Defence from presenting its theory of the case.

The Prosecutor states that she does not oppose the Defence's motion since previous decisions of the Trial Chambers have ordered the release of the memorandum to other accused. Reference is made, in particular, to a decision of 8 June 2000 by the same Trial Chamber in the case of *The Prosecutor v. Ignace Bagilishema*.

**The Chamber**

The Trial Chamber notes that the Defence claims that the memorandum is necessary to enable it to prepare its defence. At this pre-trial stage, the Chamber is not deciding whether the document may be relevant in the case, as it would be premature, but sees it as a part of the Defence's strategy. If the memorandum is intended to be presented as evidence, the Defence will have to prove its relevance to the Judges. The Chamber adopts the reasoning in *The Prosecutor v. Ignace Bagilishema*, in which, in a decision of 8 June 2000 relating to the same matter, it stated :

« Irrespective of whether the memorandum will in the event have a bearing on the outcome of the case, the Chamber is of the opinion that to deprive the Defence at this stage of the trial, of access to specific documentation, which is now in the possession of



the Tribunal, may affect the right of the accused in the presentation of his case fully and fairly. Reference is made to Article 20 of the Statute, which guarantees the right of the accused to a fair hearing.»<sup>1</sup>

Thus, the Chamber considers that, in the interest of justice, the United Nations memorandum should be served to the Defence.

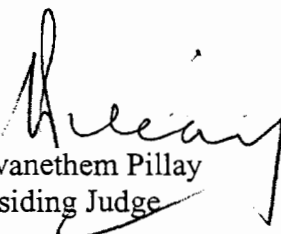
## FOR THESE REASONS


## THE TRIBUNAL

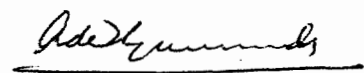
**DIRECTS** the Registry to serve a copy of the United Nations memorandum to the Defence and make available a copy of the said memorandum to the Prosecutor.

**FURTHER DIRECTS** that the Parties shall use the memorandum only for the purposes of the forthcoming trial.

Arusha 6 July 2000

  
Navanethem Pillay  
Presiding Judge

  
Erik Møse  
Judge

  
Asoka de Zoysa Gunawardana  
Judge



<sup>1</sup> See, *The Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-1A-T, Decision on the Request of the Defence for an Order for Service of an United Nations Report Prepared by Michael Hourigan, former ICTR Investigator, 8 June 2000, par. 13