

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-95-AR72

Date : 1443bis

ENGLISH

Original: FRENCH

ICTR-95-1-A  
27th Sept 2000  
(1443bis - 1441bis)  
JUDICIAL RECORDS/ARCHIVES  
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2000 SEP 12 A 10:37  
Hourigan

APPEALS CHAMBER

Before Judges: Claude Jorda, Presiding Judge  
Lal Chand Vohrah  
Mohamed Shahabuddeen  
Rafael Nieto-Navia  
Fausto Pocar  
Registry: Mr. Agwu U. Okali  
Decision of: 27 July 2000

CLÉMENT KAYISHEMA

vs.

PROSECUTOR

DECISION  
(MOTION FOR DISCLOSURE OF THE UNITED NATIONS MEMORANDUM PREPARED BY MR. HOURIGAN ON THE 1994 GENOCIDE IN RWANDA)

Counsel for the Defence:

Mr. André Ferran

Office of the Prosecutor:

Mr. Solomon Loh

KAYI(A)00-16(E)

Translation certified by the LCSS, ICTR

**The Appeals Chamber** of the International Criminal Tribunal for Rwanda 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 (hereinafter referred to as the “Appeals Chamber” and the “Tribunal” respectively),

**Considering** the Judgement of Trial Chamber II of the Tribunal dated 21 May 1999 by which Clément Kayishema, the Appellant, and Obed Ruzindana were found guilty of genocide and sentenced to life imprisonment and twenty-five years’ imprisonment respectively,

**Considering** the three Notices of Appeal against the said Judgement filed on 18 June 1999 by Clément Kayishema, Obed Ruzindana and the Prosecutor,

**Considering** the “Motion for Disclosure of the United Nations Memorandum prepared by Mr. Hourigan on the 1994 Genocide in Rwanda (the “Motion”), filed on 29 May 2000 in which the Appellant, Clément Kayishema seeks an order directing the Prosecutor to disclose to him a copy of the said memorandum in the Prosecutor’s possession, on the basis of which the Prosecutor prepared the indictment and charges against him,

**Considering** the “Prosecution’s Response to the Defence Motion for an Order to disclose a Memorandum prepared by Michael Hourigan to the Appellant” (the “Response”) filed on 26 June 2000 in which the Prosecutor seeks dismissal of the Appellant’s motion for being vague and inaccurate as to its purpose, and for being irrelevant to the Appellant’s case,

**Considering** the “Reply to the Prosecutor’s Response to the Motion for Disclosure of the United Nations Memorandum prepared by Mr. Hourigan on the 1994 Genocide in Rwanda” (the “Reply”), filed on 29 June 2000, in which the Appellant reiterates his request for disclosure of the memorandum,

**Considering** the Decisions<sup>1</sup> the Trial Chambers of the Tribunal held that the interests of justice required that the memorandum be disclosed to the parties which had so requested, for the sole purpose of preparing their respective cases,

**Considering** that it is possible that the *Report*, even though its content has not been revealed, concerns the perpetrators and the circumstances of the plane crash in which the President of Rwanda lost his life in April 1994 and that this major event is viewed in various ways by the parties,

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<sup>1</sup> Decision on Kabiligi’s *Supplementary Motion for investigation and disclosure of Evidence* (*Prosecutor v. Gratién Kabiligi*, case No. ICTR-97-34-I, 8 June 2000).

- Decision on *Ntabakuze’s Motion for disclosure of material*, 8 June 2000, case No. ICTR-97-34-I.

- Decision on *Defence Motion for disclosure of Evidence pursuant to Rule 66 et al and Rule 73 ...* (*Prosecutor v. André Ntagerura*, case No. ICTR-96-10A-I, 26 June 2000).

1441 bis

**Considering** that some accused persons who are being prosecuted for the same crimes have the said *Report* at their disposal pursuant to the decisions of the Trial Chambers,

**Considering** that all the parties must have equal access to the *Report*,

**Considering** therefore that the Prosecutor must provide the Appellant with a copy of the document in her possession, for the sole purpose of his case on appeal, provided that the said document remain confidential,

**Considering** also that such disclosure does not mean that the memorandum has been admitted in evidence, since no motion to file additional evidence has been brought pursuant to the Rules of Procedure and Evidence,

**Exercising** its inherent powers and taking into account the special circumstances of the case,

**ORDERS THAT** the Prosecutor disclose to the Appellant a copy of the Michael Hourigan *Report of 1 August 1997*.

Done in English and French, the French text being authoritative.

[Signed]

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Claude Jorda  
Presiding Judge

The Hague (The Netherlands), 27 July 2000

[Seal of the Tribunal]



KAYI(A)00-16(E)

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