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:

ENGLISH

Original: FRENCH

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:

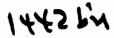
Mr. André Ferran

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 Decisions¹ 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,

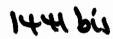
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¹ Decision on Kabiligi's Supplementary Motion for investigation and disclosure of Evidence (Prosecutor v. Gratien Kabiligi, case No. ICTR-97-34-I, 8 June 2000).

⁻ 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).



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]

Claude Jorda
Presiding Judge

The Hague (The Netherlands), 27 July 2000

[Seal of the Tribunal]

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