

ICTR-99-52-1
(3127-3125)

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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

TRIAL CHAMBER I

Original : English

Before: Judge Navanethem Pillay, Presiding

Registry: Ms Aminatta N'gum

Decision date: 25 August 2000

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THE PROSECUTOR v. JEAN BOSCO BARAYAGAZIZA
Case No. ICTR-97-19-I

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

Office of the Prosecutor:

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

Counsel for the Accused:

Ms Carmelle Marchessault
M. David Danielson

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

SITTING AS Trial Chamber I composed of Judge Navanethem Pillay, Presiding ;

CONSIDERING the motion from the Defence to unseal a United Nations’ document regarding assassination of Rwandan and Burundian Presidents, filed on 19 July 2000;

CONSIDERING the brief in response of the Prosecutor, filed on 27 July 2000;

CONSIDERING the rejoinder of the Defence filed on 17 August 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 submitted that the accused is entitled to disclosure of the United Nations memorandum, sent to the President of the Tribunal from United Nations Headquarters, upon the same conditions as Hassan Ngeze and on the same grounds.

The Prosecutor stated that in line with the position she had adopted in the Ngeze’s motion, she was not opposing the Defence’s motion. Moreover, the two motions have the same factual basis. Prosecution underlined however that this did not mean that the said document was relevant, probative or admissible at trial. The Prosecutor further argued that although the accused’s request is legitimate in a joint trial, one cannot on one hand try to benefit from a joinder and on the other hand, challenge it, since the Defence is asking for a separate trial in another motion. The Prosecution requests the Chamber to rule that the use of the memorandum be restricted to the trial if the Trial Chamber determines at that time that it is relevant, and that no further investigations have to be conducted.

In a rejoinder to the Prosecution’s response, the Defence stated that its request is not related to the joinder which the Defence is indeed challenging in another motion. It further clarified that the request is not aiming at having the Prosecution make further investigations.

The Chamber

The Trial Chamber notes that the Defence is making the same request as the co-accused Ngeze. In the present case, the Chamber will adopt the same reasoning, as in the case *The Prosecutor v. Hassan Ngeze*, in which the same Trial Chamber stated :

‘ 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



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strategy. If the memorandum is intended to be presented as evidence, the Defence will have to prove its relevance to the Judges.”¹

The Trial Chamber further reiterates its view as expressed in *The Prosecutor v. Ignace Bagilishema*, in its decision of 8 June 2000 relating to the same matter, in which 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.»²

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

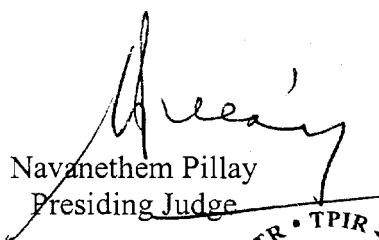
FOR THESE REASONS

THE TRIBUNAL

DIRECTS the Registry to serve a copy of the United Nations memorandum to the Defence Counsel of M. Barayagwiza and M. Nahimana.

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

Arusha, 25 August 2000


Navanethem Pillay
Presiding Judge

Seal of the Tribunal



¹ See *The Prosecutor v. Hassan Ngeze*, Case N. ICTR-97-27-I, Decision on the Request of the Defence for an order for service of an United Nations memorandum prepared by Michael Hourigan, former ICTR investigator, Decision of 7 July 2000, p. 2.

² 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, para. 13