

ICTR-99-52-I

31-01-2002

(26129-26126)

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Case No. ICTR-99-52-I



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
Judge Erik Møse
Judge Asoka de Zoysa Gunawardana

Registry: Mr. Adama Dieng

Decision date: 31 January 2002

2002 JAN 31 P 5: 34
ICTR
REGISTRY

THE PROSECUTOR
v.
FERDINAND NAHIMANA
HASSAN NGEZE
JEAN BOSCO BARAYAGWIZA
Case No. ICTR-99-52-I

**DECISION ON THE DEFENCE'S REQUEST TO HAVE THE REPORT AND THE
TESTIMONY OF EXPERT WITNESS JEAN PIERRE CHRETIEN DECLARED
INADMISSIBLE**

Office of the Prosecutor:

Mr. Stephen Rapp
Mr. William Egbe
Mr. Alphonse Van
Ms Simone Monasebian
Ms Charity Kagwi
Mr. Elvis Bazawule

Counsel for the Accused:

Mr. Jean Marie Biju-Duval
Mr. John Floyd III
Mr. Giacomo Caldarera

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIEE CONFORME A L'ORIGINAL PAR NOUS
NAME / NOM: *Marianne Ben Solimo*
SIGNATURE: *[Signature]* DATE: *1/02/02*

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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;

BEING SEIZED OF a motion by the Defence for Nahimana, dated 28 December 2001, to have the reports and testimonies of expert witnesses Jean Pierre Chretien and Alison Desforges declared inadmissible;

NOTING the Prosecutor's reply filed on 9 January 2002;

NOTING the supplementary response from the Defence for Nahimana, filed on 14 January 2002;

TAKING INTO ACCOUNT the written briefs of the Parties;

HEREBY DECIDES the motion.

SUBMISSION OF THE PARTIES

The Defence for Nahimana recalled that in its decision of 21 November 2001, Trial Chamber I allowed the Prosecutor time to disclose the report of expert witness Jean-Pierre Chretien by 15 December 2001.¹ The Defence stated that the report of Chretien was disclosed on 18 December 2001 and the report of Alison Desforges has still to be disclosed and that therefore the Prosecution should be barred from calling the said witnesses, as stipulated by the Trial Chamber in its decision of 26 June 2001.²

Counsel for the Prosecution contended that they had complied with the Order of the Court as soon as possible in light of the fact that 15 December 2001 was a Saturday and Monday 17 December was a Public Holiday. The Registry was closed and the first available date for filing was Tuesday 18 December 2001. The Prosecutor further argued that the Defence was well aware of this holiday since they were in Arusha when the information circular was published on 12 December 2001. The Prosecutor also contended that as for the 15 February 2002 deadline regarding the disclosure of the English version of the Chretien report and the two versions of the Desforges report, she was still within the prescribed period of time. Lastly, the Prosecutor argued that the fact that the Trial Chamber has granted her a new deadline, implicitly means that the sanction invoked in the 26 June 2001 decision was no longer applicable. The Prosecutor therefore requests the Chamber to deny the Defence's motion as groundless and to observe that the Prosecutor is still within time concerning the 15 February 2002 deadline.

In a rebuttal, the Defence Counsel acknowledged that the Prosecution was not out of time in respect of Desforges but only in respect of expert witness Chretien. The Defence contended that the Prosecutor, knowing that the 15 December was a Saturday, ought to have arranged with

¹ See Trial Chamber I decision of 21 November 2001 "Decision on the Prosecutor's request for extension of time in which to file and disclose reports of Expert witnesses", p. 3.

² See Trial Chamber I decision of 26 June 2001 "Decision on the Prosecutor's oral motion for leave to amend the list of selected witnesses", p. 9.

Registry for filing on that day, and showed lack of diligence in failing to do so. Furthermore, the Defence added that the Prosecutor could have used other means (like fax or e-mail) to send the documents to the Defence before filing them with the Registry. There are no texts stipulating that the filing has to precede the disclosure and that the disclosure has to be made with the Registry. The Counsel further contended that the Chretien report contains analyses of the authors and many annexes to which these analyses refer. Yet these annexes have not been disclosed to the Defence or to the Registry. Therefore the Defence requests the Chamber to rule that the Prosecutor disclosed an incomplete report. Lastly the Defence contended that an extension of the deadline does not mean that the former sanction has been cancelled.

DELIBERATIONS OF THE CHAMBER

Regarding the observance of the deadline imposed by the Trial Chamber.

In a Decision dated 21 November 2001, the Trial Chamber granted the Prosecutor's request for an extension of time in which to file and disclose the French version of the report of Expert witness Jean-Pierre Chretien by 15 December 2001.

The Chamber notes that the said report was filed by the Prosecutor on 18 December 2001 and that the 15 December being a Saturday and the Monday following, that is 17 December 2001, being a public holiday were not working days. Rule 7 *ter* (B) of the Rules of Procedure and Evidence, as amended on 31 May 2001, states "Where a time limit is expressed in days, only ordinary calendar days shall be counted. Weekdays, Saturdays and public holidays shall be counted as days. However, should the time limit expire on a Saturday, Sunday or public holiday, the time limit shall automatically be extended to the subsequent working day". Moreover, the Chamber also notes that the Tribunal's confirmation to the effect that 17 December was a public holiday was dated as late as 12 December 2001. Under these circumstances, it cannot reasonably be held against the Prosecution that it did not file the report on Friday 14 December 2001.

With regard to the Defence's argument that the Prosecutor has not used "other means" to send the report to the Counsels before filing it with the Registry and that she need not have waited to file it before service on the Defence, the Chamber notes, from the Prosecutor's covering memorandum to the Chretien report, that electronic copies were being sent to the Defence.³ Furthermore, it is a well established practice of this Tribunal for documents to be filed with the Registry before disclosure to the other party and article 25 of the Directive for the Registry, in fact provides "All documents which the Parties wish to serve on a Judge or Chamber must be first submitted to the Court Management Section, which shall be responsible for the distribution of certified copies of the documents to Judges, the Parties and the Press and public Affairs Unit".

Regarding the incomplete disclosure of the report of expert witness Jean Pierre Chretien.

The Defence contended that the second part of the report, containing the annexes, was not disclosed. However, the Chamber observes that the report does not contain any annexes. The

³ Memorandum of 18 December 2001 addressed to Ms. Talon Ahouandogbo, Court Management Section, by Mr. Stephen Rapp.

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Defence is referred to Rule 66 (B) of the Rules of Procedure and Evidence, which entitles them to request the Prosecution to make documents in its custody available for inspection by the Defence.

Regarding the sanction provided by the Trial Chamber in its Decision of 26 June 2001.

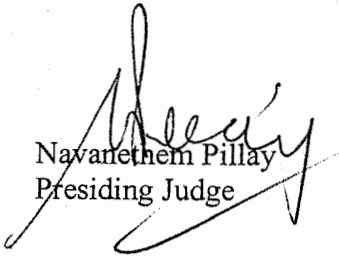
In the circumstances set out above, sanctions will not be applicable because there is no prejudice to the Defence since the Prosecution disclosed the documents on the first available day following the date fixed in the Order.

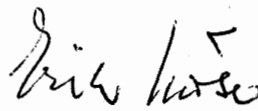
FOR THE ABOVE REASONS

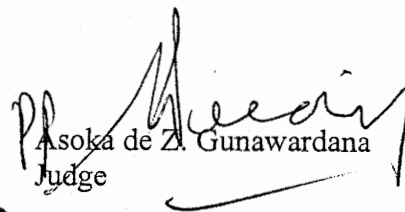
The **CHAMBER HEREBY DENIES** the Defence's motion to have the report and testimony of Expert witness Jean Pierre Chretien declared inadmissible.

The **CHAMBER** further considers the motion to be frivolous and **DENIES** Defence costs of preparation, pursuant to rule 73(E) of the Rules of Procedure and Evidence.

Done in Arusha, this 31st day of January 2002,


Navanethem Pillay
Presiding Judge


Erik Møse
Judge


Asoka de Z. Gunawardana
Judge



Seal of the Tribunal