



ICTR-99-52-T
24-01-2004
(30675-30672)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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S. Mussa

OR: ENG

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 24 January 2003

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

JUDICIAL RECORDS ARCHIVES
ICTR
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DECISION ON THE EXPERT WITNESSES FOR THE DEFENCE

Office of the Prosecutor:

Mr Stephen Rapp
Ms Simone Monasebian
Ms Charity Kagwi
Mr William Egbe

Counsel for Hassan Ngeze:

Mr John Floyd III
Mr Rene Martel

Counsel for Jean-Bosco Barayagwiza:

Mr Giacomo Barletta-Caldarera
Mr Alfred Pognon

Counsel for Ferdinand Nahimana:

Jean-Marie Biju-Duval
Diana Ellis QC

[Signature]

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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 (“the Chamber”);

BEING SEIZED of the summaries of the anticipated evidence of the Defence expert witnesses, and the “Prosecutor’s Consolidated Response To Defence Application To Call Expert Testimony”, filed on 22 January 2003 (“the response”);

CONSIDERING the Rules of Procedure and Evidence (“the Rules”), in particular Rule 94bis;

HEREBY DECIDES the motion.

DELIBERATIONS OF THE CHAMBER

1. Rule 94bis(A) states in part that “the full statement of any expert witness called by a party shall be disclosed to the opposing party as early as possible and shall be filed with the Trial Chamber not less than twenty-one days prior to the date on which the expert is expected to testify”. The Chamber notes that no such statements have yet been filed. In addition, all Defence Counsel have failed to furnish the *curricula vitae* of their proposed experts as directed by the Chamber.
2. The Chamber concurs with the definition given of expert testimony in the “Decision on a Defence Motion for the appearance of an Accused as an expert Witness” of 9 March 1998 in *Prosecutor v Akayesu*, Case No. ICTR-96-4-T, that is, “testimony intended to enlighten the Judges on specific issues of a technical nature, requiring special knowledge in a specific field.”
3. The Chamber notes that any decision made hereinafter as to the admission of such witnesses is separate and distinct from a determination of their status as ‘experts’, which falls to be considered later.

Expert witnesses for Ferdinand Nahimana

4. The Defence for Ferdinand Nahimana proposes calling four expert witnesses: Mr Peter Caddick-Adams, Mr Barrie Collins, Dr Helmut Strizek and a military expert.
5. Mr Caddick-Adams will give evidence on the role of the media and the use of propaganda during wartime. He will also testify on civil defence systems. The Prosecution does not object to his testimony provided he qualifies as an expert, furnishes a report and avoids duplicating the testimony of other witnesses.
6. The Chamber considers his evidence to be relevant and may be of assistance to the Chamber in its deliberations.

30673

7. Mr Collins will give evidence on the socio-economic and political situation in Rwanda and the Great Lakes Region from the late 80's to 1994, and will analyze the impact of the Arusha Accords. The Prosecution does not object to his testimony provided he qualifies as an expert, furnishes a report and avoids duplicating the testimony of other witnesses.
8. The Chamber notes that details concerning his expertise or qualifications in the above areas have not been adequately furnished to the Chamber. The Chamber does not require expert assistance to review the Arusha Accords. Such matters may be addressed by Counsel in oral or written arguments. However, provided that Mr Collins has sufficient expertise, the Chamber permits his evidence about the socio-economic and political factors at play in Rwanda to be led, which evidence may be relevant in relation to submissions about causality and the role of the media in 1994.
9. Dr Helmut Strizek will give evidence on the shooting down of the presidential plane and assess the evidence of a plan to commit genocide. He will also provide an historical context to the events in Rwanda in 1994 and give evidence on the ethnic/regionalist aspects of Nahimana's writings. The Prosecution does not object to his testimony provided he qualifies as an expert, furnishes a report and avoids duplicating testimony of other witnesses. In addition, the Prosecution submits that his evidence on the shooting down of the presidential plane is irrelevant.
10. The Chamber considers that his evidence, in particular that relating to the shooting down of the presidential plane, is irrelevant, and interpretations of Nahimana's writings are best provided by the Accused Nahimana himself or addressed in Counsel's Closing Brief. The documents relied upon by the Prosecution to support the allegation that the Accused were part of a prior genocidal plan can be addressed by Counsel. The Chamber also notes that the question of the plan will be dealt with by the military expert.
11. The military expert will give evidence on the role of the various military forces in Rwanda at the time to counter the allegation of a plan to commit genocide. The Prosecutor makes no submissions on this proposed witness. The Chamber considers that his evidence is relevant and could be helpful to the Chamber.

Expert witnesses for Jean-Bosco Barayagwiza

12. The Defence for Jean-Bosco Barayagwiza proposes calling two expert witnesses: Dr Fernand Goffioul and Professor Jiri Toman.
13. Dr Goffioul will give evidence on the history of Rwanda leading up to 1994 and the role of RTLM. The Prosecution does not object to his testimony provided he qualifies as an expert, furnishes a report and limits his testimony on the impact of the media to relevant issues in the present case.
14. The Chamber considers his testimony to be relevant, in particular the causal link, if any, between RTLM broadcasts and the massacres in Rwanda in 1994.

30673

15. Professor Toman will give evidence on the legal issues relating to genocide and the legal position of Barayagwiza before the Tribunal. The Prosecution objects to his testimony on the basis that it relates to legal matters previously litigated in the Appeals Chamber.
16. The Chamber notes that Professor Toman's testimony relates to legal issues, not issues of a technical nature. Furthermore, the issues included in the summary may be addressed by Counsel in oral or written arguments.

Expert witnesses for Hassan Ngeze

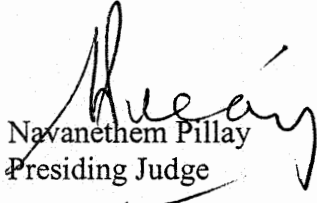
17. The Chamber notes at the outset that the Ngeze Defence has not furnished curricula vitae of its expert witnesses, nor full summaries of their anticipated evidence. The Chamber considers the factual summaries provided by the Ngeze Defence to be cursory and wholly inadequate.
18. The Ngeze Defence proposes calling three expert witnesses: Mr Roger Shuy, Professor Edwin C Baker and Mr John E Adams.
19. Mr Shuy is a sociolinguist who will counter the testimony of certain Prosecution witnesses. The Prosecution does not object to his testimony provided he qualifies as an expert and furnishes a report.
20. The Chamber notes the paucity of detail provided as to the anticipated evidence of Dr Shuy; in particular, it is not evident whether Mr Shuy has any expertise in Kinyarwanda. Based on this and the lack of detail provided in the summary, the Chamber considers his evidence to be unhelpful to the Chamber. The Chamber also notes that the Ngeze Defence may present alternative linguistic interpretations in its Closing Brief.
21. Professor Baker will give evidence on legal issues related to freedom of speech and intellectual freedom. The Prosecution objects to his testimony as it concerns matters of law, which do not require technical or scientific expertise.
22. Based on the summary provided, the Chamber notes that his evidence relates solely to legal matters, not matters of a technical nature. Furthermore, such matters may be addressed by Counsel in oral or written arguments.
23. Mr Adams will give forensic evidence as to the alleged shooting by Hassan Ngeze as testified to by Prosecution Witness AES. The Prosecution opposes the calling of this witness as the Ngeze Defence has not filed a motion pursuant to Rule 73ter to vary its witness list by including Mr Adams.
24. The Chamber considers that his evidence may be relevant and accepts him provided that he has the necessary qualifications as an expert, and provided a factual summary of the substance of his evidence is furnished.


FOR THE ABOVE REASONS, THE TRIBUNAL

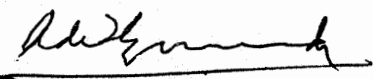
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- (1) **ALLOWS** the calling of Mr Peter Caddick-Adams, Mr Collins (on issues referred to in paragraph 8 above) and the military expert for the Nahimana Defence; Dr Fernand Goffioul for the Barayagwiza Defence; and Mr John E Adams for the Ngeze Defence; subject to further documentation about their expertise;
- (2) **INSTRUCTS** the Defence for all three Accused to submit the curricula vitae of their suggested experts by Friday 31 January 2003 as verification or in support of their expert status.

Arusha, 24 January 2003


Navanethem Pillay
Presiding Judge


Erik Møse
Judge


Asoka de Zoysa Gunawardana
Judge



[Seal of the Tribunal]