

ICTR-99-52-T
(32648 - 32645)
05-06-2003

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 5 June 2003

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

DECISION ON THE DEFENCE REQUEST FOR DISCLOSURE OF
INFORMATION WHICH COULD SHOW BIAS IN RESPECT OF A
PROSECUTION EXPERT WITNESS

Counsel for Ferdinand Nahimana:

Jean-Marie Biju-Duval
Diana Ellis QC

Counsel for Hassan Ngeze:

Mr John Floyd III
Mr Rene Martel

Counsel for Jean-Bosco Barayagwiza:

Mr Giacomo Barletta-Caldarera

Office of the Prosecutor:

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

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 a Request from the Nahimana Defence for disclosure of information which could show bias in respect of a Prosecution expert witness, filed on 15 May 2003;

CONSIDERING the Prosecutor’s response (“the Response”), filed on 16 May 2003, in which the Prosecution, inter alia, argues that the request is frivolous and without merit and should be dismissed with costs;

CONSIDERING ALSO the Defence Reply to Prosecutor’s Response, received by the Chamber on 21 May 2003 via e-mail, faxed to the ICTR Central Registry on 22 May 2003 and filed on 26 May 2003, in which the Defence contends that the Prosecutor has failed to disclose potentially relevant information to the Defence concerning a Prosecution expert witness;

HEREBY DECIDES THE MOTION UPON BRIEFS

SUBMISSION BY THE PARTIES

The Defence

The Defence submitted that it had requested the Prosecution but had not been provided with, information concerning the ethnicity and organizational affiliations of the partner of Mr Dupaquier, who had collaborated with Jean-Pierre Chrétien, Joseph Ngarambe and Marcel Kabanda in writing a book, ‘Rwanda Les Medias du Genocide,’ and assisted in the preparation of the expert report submitted by the expert witness Jean-Pierre Chrétien (“the Chrétien report”), on which the Prosecutor had relied at trial.

Specifically, the Defence seeks information as to whether Mr. Jean-Francois Dupaquier is, or was, married to or is in a relationship with a Burundian woman of Tutsi origin, and whether his partner is, or has been, involved in groups linked to the “Tutsi or RPF cause”. The Defence argues that if indeed Dupaquier’s partner is a member of the Tutsi ethnic group, or if she has links with any organisations associated with the Tutsi or RPF cause, these are matters which can go to show bias. Further, that had Mr. Dupaquier been called to testify, this information would have been the subject of cross-examination. However, since he was not called, this information should be placed before the Trial Chamber.

The Prosecution

The Prosecution submitted that in regard to disclosure on matters relating to the Prosecution experts, it has not violated any disclosure obligations of relevant information

or material that would assist the Defence in their preparation as stipulated under Rules 66 and 68 of the Rules of Evidence and Procedure.

Furthermore, the Prosecution notes that two of the persons who prepared the Chrétien Report, testified at the trial as expert witnesses and contends that during the 12 days that the experts were on the stand giving evidence in this trial, the Trial Chamber afforded the Defence every opportunity with no limitations and with no objection from the Prosecution, to cross-examine both experts on any area of bias including bias regarding affiliations to any particular ethnic group. The Defence exercised this right and vigorously cross-examined both expert witnesses on areas relating to bias.

The Prosecution submits that the information requested at this time from the Prosecution will have no probative value to the trier of fact, and does not contribute to a fair and efficient conduct of the trial.

Reply by the Defence to the Prosecution's Response

The Defence stated that it approached the Prosecutor on 9 May to inquire about the ethnic identity of the partner of Mr Dupaquier and that it raised the matter at this point as a result of information that had been received by the Defence. The Defence was informed that she was a Burundian. Further information was requested and the Prosecutor stated that inquiries would be made but no information has been received. Thus the request has been put into writing.

The Defence contends that it is the duty of the Prosecutor to disclose to the Defence and to the Trial Chamber any information, inter alia, which could show bias or partiality on the part of any witness in the proceedings, and this includes an expert witness. Furthermore, if the partner of Mr Dupaquier is a member of the Tutsi ethnic group, or an associated group, and/or is a member of one of the organizations associated with the current regime in Rwanda, this is relevant information which should be placed before the Trial Chamber as it is capable of having an impact on his evidence.

Jean-Francois Dupaquier is one of the experts relied upon by the Prosecutor in presenting the evidence in her case. He was cited extensively by Mr Chrétien and the documents and information he had obtained during visits to Rwanda were used by the Prosecutor.

DELIBERATIONS

The Chamber notes that Mr. Jean-Pierre Dupaquier, who co-authored the book 'Rwanda Les Medias du Genocide' with Mr. Joseph Ngarambe, Jean-Pierre Chrétien and Marcel Kabanda and assisted in the preparation of the Chrétien report, was not called by the Prosecution to testify. Nevertheless, the information sought by the Defence should have been specifically solicited during cross-examination from other authors, who appeared

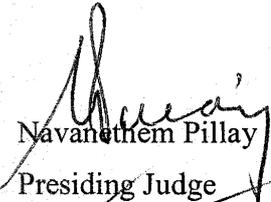
before the Trial Chamber as expert witnesses.¹ The Chamber notes that ethnicity per se would not be probative of any bias and that any organizational affiliations of a person, who is the partner of an author who assisted them in the preparation of an expert report would not in itself be probative of bias. The Defence would have to establish that the author knew about and was influenced by the organisational affiliations of his partner, which the Defence is in no position, at this stage, to establish.

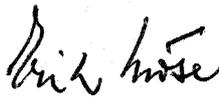
Consequently, the Chamber does not find any purpose in directing the provision of the requested information from the Prosecution. Moreover, there is no basis for assuming that the Prosecution is in possession of this information.

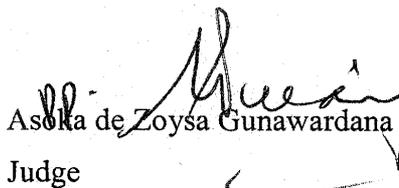
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

1. **DENIES** the Defence request.
2. **DIRECTS** the Registry, pursuant to Rule 73(E), not to pay the fees or costs associated with this Motion.

Arusha, 5 June 2003


 Navanethem Pillay
 Presiding Judge


 Erik Møse
 Judge


 Asoka de Zoysa Gunawardana
 Judge

[Seal of the Tribunal]

¹ Transcript 13 May 2002; Transcript 1-5 July 2002; 10-12 July 2002 (cross-examinations of expert witness Marcel Kabanda by Counsel Biju-Duval and expert witness Jean-Pierre Chrétien.)