ICTR Co-Hosts African Dialogue II

The International Criminal Tribunal for Rwanda (ICTR) in collaboration with the Office of the High Commissioner for Human Rights (OHCHR), co-hosted from 24-26 May 2002 in Arusha, Tanzania, the African Dialogue II on the theme “Promoting Justice and Reconciliation in Africa: Challenges for Human Rights Development”.

The Dialogue brought together human rights experts and policy makers on the continent, representatives of African governments, lawyers, judges, human rights activists and international observers.

The Opening Session of the Dialogue was chaired by Honourable Bakari Harith Mwapachu, the Minister of Justice and Constitutional Affairs of the United Republic of Tanzania who thanked the OHCHR and ICTR for the timely initiative on an issue of pertinence to the Continent. He stressed the need for strengthening cooperation between national, regional and international levels regarding the issues of justice and reconciliation and urged participants to put forward concrete ideas to address the problem of impunity, and promote justice and reconciliation on the Continent.

In her Welcome Speech, Justice Navanethem Pillay, President of ICTR welcomed the opportunity to co-host this meeting at a historic moment when global response to impunity is emerging. She noted that ICTR has been able to contribute significantly to this development.

Mr. Bacre Ndiaye, Director of OHCHR, New York presented the message of High Commissioner Mary Robinson to the Dialogue. Noting that without justice and respect for human rights, peace, stability and development are difficult to achieve, if not impossible, he stated that the African Dialogues provide an important opportunity to encourage support for Africa-owned and led initiatives, such as the NEPAD and giving practical vent to the right to development.

He stated that OHCHR expects that the outcome of this Dialogue II can be used as an advocacy tool; that it would foster technical assistance at the national level; that it would encourage further national dialogues on the ways to address the past injustices; that it would facilitate the building of effective partnerships for future cooperation between UN agencies and programmes as well as with regional and sub-regional organizations and representatives of civil society; and that it would benefit the work of OHCHR’s regional and sub-regional presences in Addis Ababa, Dakar, Yaoundé and Pretoria.

(__ continued on pg. 2)
African Dialogue II (continued from pg. 1)

The Keynote Address of Prof. Amos Sawyer, former President of Liberia and Professor at the Indiana University, who was unavoidably absent, was presented by Mr. Conmany Wesseh, the Executive Director of the Centre for Democratic Empowerment. Prof. Sawyer challenged human rights advocacy on the Continent to take on the bigger task of demanding that human rights be recognised not only as outcomes of governance but as an essential element in the process of governance. This means that the struggle for human rights is essentially a struggle to transform governance from a highly centralised arrangement that makes concessions incrementally to a people-centred, democratic self-governing arrangement in which people from the levels of their communities to other levels of aggregation become the governors of their own destiny.

The Dialogue also afforded an opportunity for the OHCHR (including its field offices) and the ICTR to share its activities and experiences with participants.

At the Closing Session chaired by Honourable Amos Wako, Attorney-General of the Republic of Kenya, the creation of the Arusha Trust Fund for NEPAD Initiatives on Human Rights was formally endorsed by participants. Mr. Adama Dieng, the Registrar of the ICTR, and Prof. Shadrack Gutto of the Centre for Applied Legal Studies, University of Witwatersrand, South Africa, were mandated to formally inform the NEPAD Implementing Committee/Secretariat, draw up the required legal documents, open a bank account and provide leadership in taking the initiative forward.

Both were appointed signatories.

Mr. Bacre Ndiaye, Director, OHCHR New York in expressing gratitude to all participants, stated that African Dialogue II had demonstrated that there is no shortage of good will and competence in addressing conflicts and tensions in Africa. He assured that recommendations of the Dialogue will inform the work of the OHCHR and other institutions of the UN.

Mr. Adama Dieng noted that participants had shown again that Africans are capable of being, and willing to be responsible for their future as demonstrated by their initiation of the Trust Fund for NEPAD Initiatives on Human Rights. He enjoined that recommendations of the Dialogue should not be allowed to remain on the shelves. Requesting participants to be good ambassadors of ICTR, he committed the ICTR to seeking a cooperation agreement with the OHCHR immediately in line with the recommendation of the Dialogue.

In his Closing Statement, Hon. Amos Wako reiterated the fact that African Dialogue II had shown that Africans want to be in charge of initiatives to take the Continent forward. He, however, noted that this should not preclude the international community from taking responsibility for past and present injustices to Africa. He commended the OHCHR for making the Dialogue a truly African meeting and urged that recommendations be forwarded to intergovernmental organizations at the sub-regional, regional and international levels for endorsement.

At the end of three days of frank and engaging discussions, participants adopted several recommendations. For more details and information of the Dialogue and the recommendations, please refer to our website at www.ictr.org.

A Busy Schedule (continued from pg. 1)

Meanwhile the trial of Eliezer Niyitegeka is set to open on 17 June before Trial Chamber I. The accused, former minister of information, is charged with ten counts of Genocide or alternatively Complicity to Commit Genocide, Conspiracy to Commit Genocide, Direct and Public Incitement to Commit Genocide, Crimes Against Humanity and Serious Violations of Article 3 Common to the Geneva Conventions.

In addition, the “Media” trial, regrouping Jean Bosco Barayagwiza, Ferdinand Nahimana and Hassan Ngeze, the “Butare” trial with six accused, namely Pauline Nyiramasuhuko, Arsène Nahobali, Alphonse Nteziryayo, Sylvain Nsabimana, Elie Ndayambaje and Joseph Kanyabashi, and the “Military” trial, concerning Théoneste Bagosora, Gratien Kabili, Aloys Ntabakuze, Anatole Nsengiyumva are set to continue before Trial Chambers I, II and III respectively with the presentation of prosecution evidence in each case. Trial Chamber III will also continue hearing Defence evidence in the “Cyangugu” trial of Emmanuel Bagambiki, Samuel Imanishimwe, André Ntagerera.

Finally, in the first week of July, the Appeals Chamber will hear the appeals in the cases of Georges Rutaganda, who was sentenced to life on 6 December 1999 after having been found guilty of Genocide, and Crimes Against Humanity Murder and Extermination and Ignace Bagilishema, who was acquitted in June 2001 and is presently residing in France.

An Intern’s Experience at the ICTR

Through the Open Society Institute, it has been possible for the Centre for Civil and Human Rights at the prestigious University of Notre Dame to fund an internship programme for African lawyers at the ICTR.

Several feedback reports on experiences from some of the interns have already been published in the University publication, “Notre Dame Human Rights Advocate”. We reproduce below one of those reports from Philemon Mponezya of Tanzania, who participated in the programme last year.

“I was admitted at ICTR as a legal intern from March 1, 2001, until August 31, 2001. The first week of
March was spent on orientation and an introduction to various sections of ICTR. During the second week, I elected to continue my internship at the office of the prosecutor and I was assigned to the Butare team, which is responsible for prosecuting six individuals accused jointly from the Butare region in Rwanda where a large massacre occurred.

During the months of March and April 2001 my tasks included the following:
1. Drafting and filing various motions, such as motions for the protection of victims and witnesses, for joinder of trial, for protection of an accused’s rights in the context of joint trial, for the inspection of evidence, for the harmonization of protective measures for victims and witnesses, for judicial notice, for leave to amend an indictment, for the rights of suspects during investigation, and for the disclosure of witness statements;
2. Summarizing statements of witnesses and testimony of accused persons in other trials;
3. Researching various issues concerning international law and international human rights law in preparation of the case;
4. Attending court to observe the proceedings;
5. Studying various decisions of the ICTR and ICTY to find legal precedents;
6. Assisting attorneys in their daily activities to improve the efficient performance of the team.

It was unfortunate that the trial of our team did not commence on May 14 as scheduled due to the death of his Lordship the late Judge Laity Kama who passed away on May 6, but it was rescheduled to commence on June 11. To prepare for the trial, I drafted motions to transfer detained witnesses and to order the defense to issue statements of admitted facts and law. I also drafted replies to defense motions, such as motions for disclosure of non-redacted witness statements, supporting materials and exhibits. I prepared materials for the trial such as witness statements and exhibits. All supporting materials had to be prepared in both French and English, the languages of the Tribunal. I also prepared witnesses to testify, and reconciled witness statements. The rest of my time I spent reading and studying materials on international human rights law, the statutes of the international criminal tribunals, and decisions from different jurisdictions on human rights cases.

The trial of our team commenced on June 11 as scheduled. During the hearing of the case, I learned much about the right to a fair hearing. For example, at the commencement of the trial, defense counsel objected that some documents had not been translated into French, the language in which they were conversant. The court ruled that the right to fair hearing included the parties’ right to understand the case to enable them to prepare their defense. In accordance with the court’s ruling, I assisted the team with arranging the translation of the documents and serving them to defense counsel.

I also learned the difference between disclosure and inspection of exhibits, how examinations are carried out and the sequence of tendering documentary evidence. During the course of the hearing we had to prepare several motions, including a motion to modify the list of witnesses to be called, and a motion to expand facts in the indictment. I assisted the team with research on important issues that arose in the course of the trial. On June 27, the trial was adjourned until October.

My duties during July involved research on the admissibility of relevant and incriminating statements by deceased witnesses, as well as on testimonies of witnesses and accused in other trials at the tribunal, incriminating some of the accused in our case. Other research concerned the jurisdiction of the tribunal to consider the importance of events prior to 1994 in the administration of international criminal justice. Besides the above research, I also assisted the team in the preparation of the examination-in-chief and re-examination, the preparation of statements of the witnesses we intended to call and the preparation of the mission to Rwanda in mid-August to confirm the availability of witnesses for the forthcoming trial.

Generally, as an intern, I was involved in all activities of the team, including legal research, assisting the team in the preparation of documents and exhibits and supervising inspection of documents and exhibits by the defense counsel. I exchanged ideas and contributed opinions on the preparation of various motions filed by the team, was involved in decision-making and felt that my work was valued by the team.

During my internship, I learned how an international criminal tribunal works, the preparation of pleadings, the hearing of the case and the decision. In the process, I learned a lot about international criminal justice, increased my knowledge of international human rights law and broadened my understanding of the workings of United Nations. I also had the opportunity to attend various internal seminars and courses on human rights and information technology. For example, I learned about French criminal procedure and how to use various computer programs such as Zy-find and Lotus notes. Furthermore, I experienced working in a multi-cultural environment.

I would like to thank the administration of ICTR for accepting to admit me as a legal intern, convey a warm thank you to the University of Notre Dame for sponsoring my internship, and thank the Butare team members for their substantive and logistical assistance towards my learning. To say but a few words: “God bless them all!”
Trials in Progress  
Procès en cours  
(as at 31 May 2002)

Overview

On 31 May 2002 eight trials concerning 21 accused were in progress before the Trial Chambers of the ICTR. Several of those trials have reached an advanced stage. For example, in the Semanza and Ntakirutimana trials, the hearing of evidence has been completed and dates are fixed for closing arguments of the parties. In the Cyangugu trial, 27 defence witnesses have been heard, while in both the Kajelijeli and the Kamuhanda trials, the Prosecution has closed its case and dates are fixed for the opening of the Defence case.

For up-to-date information on the progress of trials, please consult the Judicial Calendar and the Status of Detainees on the Tribunal’s website: [www.ictr.org](http://www.ictr.org)

“Cyangugu Case” (Bagambiki, Imanishimwe, Ntagerura)  
Trial Chamber III, Judges Williams (presiding), Ostrovsky and Dolenc,  
Trial opened 18 September 2000; Prosecution case closed on 21 November after 73 days of hearings during which 40 witnesses were heard. Defence case opened on 4 March 2002 and was adjourned on 28 March 2002 until 14 May 2002. By Friday 31 May there had been a total of 96 days of hearings and 27 defence witnesses had been heard.

“The Media Case”, (Barayagwiza, Nahimana and Ngeze)  
Trial Chamber I, Judges Pillay (presiding), Møse and Gunawardana.  
Trial opened 23 October 2000, resumed on 18 February 2002. Case adjourned on 28 March 2002 and resumed on 13 May 2002. By 31 May there had been 153 days of hearings involving 45 Prosecution witnesses.

“Semanza Case” (Laurent Semanza)  
Trial Chamber III, Judges Ostrovsky (presiding), Williams and Dolenc.  
Trial opened 16 October 2000, Prosecution case closed on 29 April 2001 after 29 days of hearings during which 24 Prosecution witnesses were heard. The trial resumed with the Defence case on 1 October 2001 and closed on 28 February 2002 after hearing 27 Defence witnesses in 15 Trial days. This was followed by rebuttal evidence from the Prosecution on 15 April 2002 during which three witnesses testified. A decision by the Trial Chamber on 30 April 2002 denied a Defence motion seeking to present a rejoinder to the Prosecution’s rebuttal evidence. The Defence has appealed against the decision. In the meantime a Belgian Government representative is to address the Trial Chamber on 17 June 2002 as Amicus Curiae.

Kajelijeli  
Trial Chamber II, Judges Sekule (presiding), Maqutu and Ramaroson.

Trial opened 13 March 2001, restarted 2 July 2001. The case was adjourned on 13 December after 29 days of hearings during which 14 prosecution witnesses were heard. On 10 April 2002, (Trial Day 31) the Prosecution closed its case. A Pre-Defence conference and status conference was held on 15 April. The Devence case will open on Monday 16 September.

Kamuhanda  
Trial Chamber II, Judges Sekule (presiding), Maqutu and Ramaroson.  
Trial opened 17 April 2001. Case resumed on 28 January 2002. On 14 May 2002 the Prosecution closed its case subject to calling one additional witness before the opening of the Defence case. There had been 35 days of hearings during which 28 prosecution witnesses were heard.

“Butare Case”, (Nyiramasuhuko, Ntahobali, Nteziryayo, Nsabimana, Ndayambaje and Kanyabashi)  
Trial Chamber II, Judges Sekule (presiding), Maqutu and Ramaroson.  
Trial opened 12 June 2001, adjourned on 4 April 2002 and resumed on 20 May 2002. By 31 May there had been 59 days of hearings involving xx Prosecution witnesses.

“Ntakirutimana Case”, (Elizaphan Ntakirutimana and Gérard Ntakirutimana)  
Trial Chamber I, Judges Møse (presiding), Pillay, and Vaz.  
Trial opened 18 September 2001. Prosecution case closed on 2 November 2001 after 27 days of hearings during which 19 Prosecution witnesses were heard, including two investigators and one expert witness. Trial resumed with Defence case from 4 to 15 February 2002 and then from 10 April to 10 May 2002, a total of 30 hearing days during which 24 Defence witnesses were heard, including the two accused. In summary, the hearing of all evidence from 43 witnesses was completed in 14 trial weeks. Final written briefs are
due in June 2002 and oral arguments have been set for July 2002.

**“The Military Case”, (Bagosora, Kabiligi, Ntabakuze, Nsengiyumva)**
Trial Chamber III, Judges Williams (presiding), Dolenc and Vaz.
This case against Colonel Théoneste Bagosora, formerly Director of the Ministry of Defence and three other senior military figures opened on 2 April. The three other accused are Gratien Kabiligi, a former brigadier in the Rwandan army, Aloys Ntabakuze, commander of a Para-commando battalion and Lieutenant Colonel Anatole Nsengiyumva. All are charged with genocide, conspiracy to commit genocide, crimes against humanity and violations of the Geneva Conventions. The case was adjourned on 3 April until 28 June when a status conference will be held.

**Initial Appearance**

*Father Hormisdas Nsengimana*, a priest who was formerly Rector of Christ-Roi College in Nyanza, Nyabisindu Commune in Butare Prefecture, on 16 April 2002 pleaded not guilty to four counts charging him with genocide, conspiracy to commit genocide and crimes against humanity for murder and extermination. The plea was entered when he made his initial appearance before Judge Pavel Dolenc.

The accused is alleged to have been among the organisers of the slaughter of Tutsis in Nyanza, Butare in 1994. He is accused of playing a leading role in a group of killers called Les Dragons (The Dragons) or Escadron de la Mort (Death Squad) which played a crucial role in the killing of Tutsis in and around the Christ-Roi College and in other parts of Butare Prefecture. At one time, Nsengimana, 48, is alleged to have told soldiers involved in the killings, “Let me kill this Tutsi dog myself, since I am sick and tired of him.” Then brandishing his weapon he allegedly screamed, “Let me kill and let me be proud of it, let me stop when my weapon kills five.”

The accused was arrested in Yaounde, Cameroun on 21 March 2002 and transferred to the UN Detention Facility in Arusha on 10 April 2002. He is represented by duty counsel appointed by the Registrar until he either engages his own counsel or is assigned counsel under the Tribunal’s legal aid scheme.

**Arrest**

*Léonidas Rusatira*, former Colonel in the Rwanda Armed Forces and Commander of the “Ecole Supérieure Militaire” (ESM) was arrested on 15 May 2002 in Brussels, Belgium on charges of genocide and other crimes he is alleged to have committed in Rwanda in 1994.

The accused, who for many years was also Directeur de Cabinet of the Rwanda Ministry of Defence, was arrested at the request of the International Criminal Tribunal for Rwanda. He faces five counts of genocide, crimes against humanity for murder and extermination and violations of the Geneva Conventions.

Rusatira, who was born in Gatome Commune, Ruhengeri Prefecture in May 1944, is alleged to have played a major role in the killing of thousands of Tustis who sought refuge at the Ecole Technique Officielle (ETO) in Kigali.

It is alleged that widespread killings in and around Kigali began on 7 April 1994 and forced thousands of Tutsis and moderate Hutus to seek refuge at ETO which was under the protection of United Nations Assistance Mission to Rwanda (UNAMIR) forces. However, following the assurance by Rusatira that the Rwanda army would protect the refugees and after the killing of ten Belgian soldiers who had been guarding the Prime Minister, Agathe Uwilingiyimana, the UNAMIR forces left ETO.

Shortly after their departure, on 11 April 1994, an attack against the refugees was launched by soldiers, allegedly led by Rusatira and by Interahamwe led by George Rutaganda, resulting in the deaths of hundreds of Tutsis and moderate Hutus at ETO.

Those who survived the ETO attack were led to Nyanza where, under the supervision of Rusatira, they were attacked and killed by the soldiers and the Interahamwe. According to the indictment, some days after the massacre the accused was promoted to the rank of General in the Rwanda Armed Forces.

For his part in those attacks, George Rutaganda was convicted of genocide and crimes against humanity (murder and extermination) and sentenced to life imprisonment. His appeal is pending.
Subject: Decision on Ntagerura’s Extremely Urgent Motion for Order to Transfer an Accused from the Detention Facility in order to Testify for the Defence, Pursuant to Rules 73 and 54 of the Rules of Procedure and Evidence

Case: Ntagerura, Bagambiki, Imanishimwe
Case No.: ICTR-99-46-T
Chamber: Trial Chamber 3
Date of Decision: 16 April 2002

In his motion Ntagerura stated that the testimony of Gratien Kabiligi, an accused in the Military case, will enable him to oppose certain allegations from prosecution witnesses.

Kagiligi had expressed in writing his willingness to testify without any protection of his identity, waiving thereby the protection order earlier issue by the Chamber for the benefit of the defence witnesses. Kabiligi subjected however his testimony to the presence of his counsel to safeguard his interests.

The Prosecutor opposed the motion raising first a possible conflict of interests when the Chamber will sit in the Kabiligi's case after having heard his testimony in the Cyangugu case. The Prosecutor submitted also that, as a witness, Kabiligi has no right to counsel. Rule 90(E) provides a sufficient safeguard for a witness against self-incrimination.

Held:
With respect to the issue of conflict of interests raised by the Prosecutor, the Chamber reminded that the test to allow a testimony rests on its relevance. Since the relevance of Kabiligi's testimony was not called into question the Chamber ought not to deprive the defence of its right to call a particular witness on the hypothetical basis that the manner in which his testimony would be considered might give rise in the future to a dispute where the same person will appear again before the Judges as an accused.

As to the witness being assisted by his counsel, the Chamber held that although the assistance of a witness by counsel is not the usual practice in common law and civil law systems, the exceptional circumstances of this testimony warrant that counsel be allowed to assist Gratien Kabiligi when he will be on the witness stand. These circumstances include the fact that the potential witness is an accused facing serious charges before this Tribunal, that his testimony might be related to the charges he has to answer, and that the presence of his counsel holding a watching brief may be of great importance in advising him as to his rights set out in Article 20 of the Statute and Rule 90(E).

The Chamber granted the defence motion.

Subject: Decision on Defence Motion for Disclosure of Complete Statements of Witness DCH and for Cooperation of Rwandan Government

Case: Semanza
Case No.: ICTR-97-20-T
Chamber: Trial Chamber 3
Date of Decision: 17 April 2002

In this motion, the Defence sought (i) an order requiring the Prosecutor to disclose the unredacted cover sheets of a witness statement and (ii) an order compelling the Prosecutor to obtain and disclose documents relating to a witness's conviction in Rwanda or (iii), alternatively, an order for the cooperation of the government of Rwanda.

(i) The Chamber held that there was no legal basis on which the Prosecutor could withhold the unredacted cover sheets of the witness statements from the defence, since the redacted facts are an integral part of a witness' statement and the time frame of the witness protection order relating to nondisclosure to the defence had expired.

(ii) The Chamber held that it would not order the Prosecutor to obtain the documents in the possession of the Rwandan authorities for production to the Defence.

(iii) As the defence did not demonstrate any efforts to obtain the requested information directly from the Rwandan authorities, the Government of Rwanda cannot be said to have failed to cooperate with the Tribunal and the Chamber declined to grant an order for cooperation pursuant to Article 28.

Subject: Decision on the Prosecutor's Urgent Ex Parte Motion Requesting an Order Discharging Prosecution Witnesses GDD, GAO, GDQ & GAP from further Detention in UNDF (Rule 90 bis)

Case: Kajelijeli
Case No.: ICTR-98-44A-T
Chamber: Trial Chamber 2
Date of Decision: 29 April 2002

The Chamber considered this Motion Inter Partes and, after proper distribution of the Motion, invited further submissions from both Defence and Prosecution.
On 5 October 2001, TCII have an Oral order requiring that four detained witnesses remain temporarily detained at the UNDF until otherwise ordered by the Chamber. The Prosecutor applied to have this order discharged so that the witnesses may be transferred back to the Rwandan Authorities. The Chamber, observing that such an Order would cause no prejudice to the Defence, and noting the lengthy period of time these witnesses have spent in detention at the UNDF, DISCHARGED its previous Order requiring continued detention in Arusha.

Subject: Decision on Defence Motion for Leave to Call Rejoinder Witnesses

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The Chamber denied the Defence request for leave to call thirteen witnesses in rejoinder to contest the new testimony raised by the Prosecutor’s rebuttal witnesses and to challenge their credibility. The Chamber found no guidance in the Rules as to when rejoinder evidence should be permitted, and therefore resorted to Rule 89(B) and applied the rules of the common law. The Chamber found that rejoinder should only be permitted in relation to unanticipated issues newly raised in rebuttal. Applying this test to the witnesses proposed by the Defence, the Chamber found that none of the witnesses qualified as rejoinder witnesses since their main purpose was to buttress the alibi of the accused.

Subject: Decision on the Defence Motion Seeking Release of the Accused Person and/or any other Remedy on the Basis of Abuse of Process

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This was a decision on the Defence motion seeking the release of the accused person and/or any other remedy on the basis of abuse of process by the Prosecutor pursuant to art.19 of the Statute of the Tribunal (The Statute) and Rules 3, 5, 40, 40bis, 43 an d73 of the Rules of Evidence and Procedure (The Rules).

The Defence argued that the arrest of the Accused was in contravention of the Statute and the Rules. They submitted that the rights of the Accused had been fundamentally breached under Rule 43 of the Rules when the audio tapes containing a record of his questioning by the Prosecutor were not given to him and were unsealed in his absence. They added that the Accused’s right to the use of a language of his choice was breached when statements were given to him in English when he can only communicate in French.

In response, the Prosecutor contends that the issue of the arrest had already been disposed of at the initial appearance of the Accused and confirmed later in another decision. The Prosecutor added that, pursuant to Rule 40(A) of the Rules, the Tanzania authorities conducted the arrest and an indictment was subsequently filed within 30 days as stipulated by the Rules.

With regards to the audiotapes, the Prosecutor noted that the Accused had been availed with transcripts of the said tapes and nowhere in his affidavit supporting motion has the accused challenged the content or accuracy of the same. The Prosecutor submitted that supporting materials not already given would be provided as soon as possible.

In its ruling, the Chamber found that the motion was frivolous and covered issues already adjudicated upon and that the Defense had misrepresented the facts. The Chamber concluded that the Accused’s rights had not been violated either under Rule 43 nor under Rule 66(A)(I), and therefore there was no basis advanced for the release of the Accused.

Subject: Decision on the Defence Motion for Declaratory Relief from Administrative Measures Imposed on Hassan Ngeze at the UNDF

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In this motion in the media case, the Defence sought (i) an order requiring the package intercepted by UNDF management to either be sent or returned unopened to the Accused or deposited with the Chamber and (ii) an order allowing the Defence Assistant and the Investigator or any other duly appointed Assistant or Investigator to visit the Accused, and (iii) an order approving travel missions for the Accused’s Defence team.

(i) The Chamber held that firstly, the Accused should have followed the procedure laid down in Rules 82 and 83 of the Detention Rules, and secondly that the action taken by the Registry is authorized under Rule 59 of the Rules of Detention and Regulation 11 of the Regulations to Govern the Supervision of Visits to and Communications with Detainees, as the Commanding Officer had “reasonable grounds to suspect abuse of facility to disturb the good order of the Detention Unit”. The Chamber also contended that the Attorney/client privilege, in this instance, was waived by the accused when he communicated to persons other than his counsel, the content and nature of the documents.

(ii) The Chamber recalled the Tribunal’s Decisions in The Prosecutor v. Georges Rutaganda, ICTR-96-3-T and The Prosecutor v. Mugiraneza et al, ICTR-99-50-T where the Tribunal clearly ruled that even if the assistant is a lawyer, he does not have the same rights and privileges as Counsel.
The Chamber therefore agrees with the reasoning in those cases.

(iii) The Chamber has ascertained from the Lawyers and Detention Unit that Lead Counsel and his Assistant have received payment, and that the Defence team has also been accorded due authorizations to enable them to visit various destinations and interview witnesses, thus the Chamber is satisfied that the Accused’ Defence team has not been hampered in the preparation of their defence arising from non payment of fees and disbursements.

Subject: Decision on Motion of Bagosora, Kabiligi and Ntabakuze for the Preservation of their Rights

Case: Bagosora, Kabiligi, Ntabakuze, Nsengiyumva
Case No.: ICTR-98-41-T
Chamber: Trial Chamber 3
Date of Decision: 13 May 2002

In this Decision, TCIII dismissed a Defence motion seeking to reserve the right to object in the future to any defects of form or substance regarding the Prosecutor’s Pre-trial brief, the list of Prosecution witnesses, the summary of their statements, the summary of Kambanda’s statements and the list of exhibits, because the Accused received these documents too late to discuss the matter with their Counsels.

The Chamber found that the motion was frivolous because it did not allege any violation of the rules and does not seek any ruling or relief and therefore did not introduce any issue of substance which would require the deliberation and decision of the Chamber. Accordingly the Chamber denied fees to the Defence.

Subject: The President’s Decision on Review of the Decision of the Registrar Withdrawing Mr. Andrew McCartan as Lead Counsel of the Accused Joseph Nzirorera

Case: Nzirorera
Case No.: ICTR-98-44-T
Chamber: Trial Chamber 2
Date of Decision: 13 May 2002

In respect of jurisdiction, the Decision makes it clear that there is a power of Presidential review in respect of the Registrar’s Decisions by virtue of Rules 19 and 33 (A) of the Rules of Procedure and Evidence. Additionally, since the Review power is not expressly described in the Rules, the Decision sets out the terms on which it an be exercised.

"While the Registrar has the responsibility of ensuring that all decisions are procedurally and substantively fair, not every decision made by the Registrar can be made subject of review by the President. The Registrar must be free to conduct the business of the Registry without undue interference by Presidential review. In all systems of administrative law, there is a threshold condition that must be met before an administrative decision may be impugned by supervisory review. The reasons for this are based on sound reasons of public policy. It would be impossible to conduct day to day administration if every decision of an administrator were subject to review. The threshold condition is variously formulated in national jurisdictions, but a common theme is that the decision sought to be challenged must involve a substantive right that should be protected as a matter of human rights jurisprudence or public policy. I find that an application for the review by the President of a decision of the Registrar on the basis that it is unfair procedurally or substantively is receivable under Rules 19 and 33(A) if the applicant has a protectable right or interest or if it is otherwise in the interests of justice."

The Decision then found that Mr. McCartan had a protectable interest in his reputation requiring substantive and procedural fairness for its protection.

The Decision then reviewed the facts and found that Mr. McCartan had been accorded sufficient information to allow him to respond to the allegations against him during the Registrar's investigation, and during the Review Process itself to which he had not responded. The President's Decision confirmed the Decision of the Registrar.

Subject: Decision on the Prosecutor’s Motion for Judicial Notice and Admission of Evidence

Case: Nyiramasuhuko, Ntabali, Nsabimana, Nteziryayo, Kanyabashi, Ndayambaje
Case No.: Case No. 98-42-T
Chamber: Trial Chamber 2
Date of Decision: 15 May 2002

Judicial Notice and Judicial Economy

37. The Chamber notices that, in its submissions, the Prosecution has failed to clearly identify for each of the 80 facts listed in Annex A, whether it seeks judicial notice of those facts as “facts of common knowledge” (Rule 94(A)) or as “adjudicated facts or documentary evidence from other proceedings” (Rule 94 (B)). As indicated in the Decision of 22 November 2001 on judicial notice in the Ntukiririmana Cases (ICTR-96-10-T and ICTR-96-17-T), facts of common knowledge and adjudicated facts “constitute different, albeit possibly overlapping categories: a fact of common knowledge is not necessarily an adjudicated fact, and vice versa”. The Chamber is of the opinion that one of the purposes of judicial notice is to ensure judicial economy. However, the Prosecutor’s Motion, which requested the Chamber to assess or to reformulate 80 submissions as to their qualifications as facts of common knowledge or adjudicated facts, did not promote judicial economy.
On the Applicable Law:

39. The Chamber is of the opinion that judicial notice of facts which can be characterised either as controversial or which involve drawing legal findings from the facts sought to be admitted or from their interpretation, shall not be judicially noticed. Judicial notice shall only be taken of facts that are not subject to reasonable dispute and “that facts involving interpretation or legal characterisations of facts are not capable of admission under Rule 94”[...]. Disputable facts should not form part of the proceedings by way of judicial notice but should be determined after the Parties have submitted their evidence which will subsequently be discussed by the opposing Party following an adversarial procedure. (Our emphasis).

40. The Chamber notes that, pursuant to Rule 94(B) of the Rules, the facts that may be judicially noticed must have been adjudicated in other proceedings and must relate to matters at stake in the current proceedings. As stated in the Ntakirutimana Decision of 22 December 2001, “unlike Rule 94 (A), litra (B) therefore is discretionary. It is for the Chamber to decide whether justice is best served by its taking judicial notice of adjudicated facts.” Concurring with the Appeals Chamber Decision in the Kupreskic case, the Chamber is of the view that pursuant to Rule 94 (B), it may not take judicial notice of findings of fact from judgements that are the subject of an uncompleted appeal[...], or of judgements based on guilty pleas, or of admissions made by the accused during the trial. (Our emphasis).

Findings:

90. The Chamber finds that the Prosecution has failed to demonstrate that those background facts referring to events prior to 1959 which are not referred to in the Indictments against the Accused, are relevant to the present proceedings. Accordingly, the Chamber will not take judicial notice of items 1 to 6, as they refer to events prior to 1959, which is the earliest date mentioned in the Indictments against the Accused.

92. The Chamber finds that these “historical facts” are not facts of common knowledge pursuant to Rule 94 (A) of the Rules, and that the Chamber might therefore only take judicial notice of them, pursuant to Rule 94 (B) of the Rules, if they are indeed adjudicated facts and relate to the present proceedings. The Chamber is of the opinion that, for these facts to be admitted as forming part of the proceedings after having been judicially noticed, the Prosecution should have demonstrated their relevancy. Moreover, the Prosecution relies on various authorities and/or judgements that, more often than not, support only approximately the facts recited therein.

115. The Chamber does not find that the facts enumerated in paragraphs 52 to 57 constitute facts of common knowledge. Even if previous judgements rendered by this Tribunal may provide some support for the events recited, generalisations on “widespread or systematic attacks” against a “civilian population”, “census lists”, “roadblocks” or the number of people killed between 1 January 1994 and 17 July 1994 in Rwanda are elements specifically disputed by the Defence. The Chamber is of the opinion that these statements need to be proved by the Prosecution and will not be considered as adjudicated facts relevant to the present proceedings.

121. The Chamber notes that the legal authorities in support of the “statement of facts” on the interpretation of the functioning of the administrative structures are the documents listed in Annex B. The Chamber decides that it is not appropriate to take judicial notice of the interpretation of the application of such laws, as suggested by the Prosecution pursuant to Rule 94 (A). Accordingly, the Chamber does not take judicial notice of items 58 to 74 of Part III of Annex A.

134. [...]In the instant case, having noted the Defence’s submissions in this respect, the Chamber proprio motu takes judicial notice of the legislation in Annex B and of any subsequent modification or amendments made to it, up until 31 December 1994.

140. The Chamber finds that in order to “best favour a fair determination of the matter before it” (sub-Rule (B)), the Parties should, as a matter of principle, have an opportunity to examine the evidence presented by the opposing Party in the course of the proceedings, following the scheme for the admission and presentation of evidence established by the Rules [...] Rule 89(C) states that “a Chamber may admit any relevant evidence which it deems to have probative value”. However, the Chamber is not convinced that justice will be best served if, in the instant case by the exercise of its discretionary power, it admitted into evidence the documents listed in Annex C, insofar as their relevancy and probative value have not been demonstrated by the Prosecution. (Our emphasis).
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Contributions for consideration for inclusion in the next issue should be submitted in word format to: ictr-press@un.org marked FAO Rani Dogra no later than noon on Friday 19 July 2002.