1070-01-69-I 27-06-2005 (1452-1449)





International Criminal Tribunal for Rwanda Tribunal Pénal International pour le Rwanda

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TRIAL CHAMBER III

Before:

Judge William SEKULE

Judge Arlette RAMAROSON

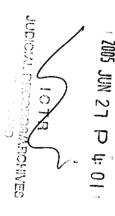
Judge Joseph ASOKA NIHAL DE SILVA

Registrar:

Adama Dieng

Filed on:

27 June 2005



THE PROSECUTOR

HOMISDAS NSENGIMANA

(Case No. ICTR-2001-69-I)

PROSECUTOR'S RESPONSE TO DEFENCE MOTION FOR THE SETTING OF A DATE FOR A PRE-TRIAL CONFERENCE A DATE FOR THE COMMENCEMENT OF TRIAL

AND

A REQUEST FOR PROVISIONAL RELEASE

Office of the Prosecutor:

William Egbe Amina Ibrahim

Defense Counsel:

Emmanual Altit

1. The Office of the Prosecutor (hereinaster, "The Prosecutor") respectfully files the present response to a Defence motion ('The Motion') dated 18 June 2005 and filed at the Registry of this Tribunal on 20 June 2005, in regard to the case *The Prosecutor v. Homisdas Nsengimana*.

Preliminary matters:

- 2. Having been notified of the Motion on 22 June 2005, at 12.18pm, pursuant to Rule 73 (E) of the Rules stipulating time limits applicable to a responding party, the Prosecutor files this response today Monday 27 June 2005, five days after receipt of the said Motion.
- 3. To the extent relevant to the present response, the Prosecution adopts and relies on the procedural history outlined in the Motion.

The issues:

- 4. The Prosecutor understands the main issues in the Motion to be the following:
- (i) that a date be set for a pre-trial conference to determine a date for the commencement of trial, and
- (ii) that the Accused be provisionally released from the Tribunal's custody.

Submissions:

On the setting of a date for the commencement of proceedings:

- 5. The Prosecutor does not oppose the motion, it being understood that the scheduling of cases for trial is a matter for the general administration of the Tribunal and its judicial calendar.
- 6. The Prosecutor notes that recently, Trial Chamber III dealt with a similar application in the case *The Prosecutor v. Emmanuel RUKUNDO¹* and this is the position taken by the Chamber:

"As regards the question of the determination of a date for the commencement of the trial, the Chamber reiterates that it is a matter for the general administration of the Tribunal and its judicial calendar. The Tribunal evaluates priorities taking into account notably the gravity of the crimes charged, the

¹ The Prosecutor v. Emmanuel Rukundo, ICTR-2001-70-PT, Trial Chamber III, Decision on the Motion of the Defence for the Setting of a Date for the Commencement of Trial Or Alternatively, the Transfer of the Case to a National Jurisdiction, 1 June 2005.



rights of all accused to have a fair trial within a reasonable delay and the availability of Tribunal facilities in setting the judicial calendar. In the current situation, the Chamber cannot therefore set a date for a pre-trial conference.²

7. The Prosecutor submits that then, as now, the prerogative remains with the Tribunal in setting its judicial calendar.

On the request for provisional release:

- 8. The Prosecutor opposes the Motion on the ground that the Accused has failed to demonstrate that if released, he will appear for trial and will not pose a danger to any victim, witness or other person.
- 9. Provisional release under the Rules is provided for in Rule 65 (B). The Rule stipulates as follows:
 - (B) Provisional release may be ordered by a Trial Chamber only after giving the host country and the country to which the accused seeks to be released the opportunity to be heard, and only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person.
- 10. The applicable Rule makes it clear that it is for the Accused to prove that if released, he will return to the Tribunal for his trial and that he will not pose a danger to any victim, witness or any other person.
- 11. The conditions in Rule 65(B) are cumulative and not alternative to the extent that the Accused must satisfy all the conditions or fail to qualify for bail.
- 12. The Prosecutor notes that the Rule does not require consideration of the length of the detention of the Accused as a measure of his eligibility for provisional release from custody.
- In support of the application for provisional release, the Defence has produced a letter dated 18 May 2005, from Congrégation Saint-Jean in France, signed by Frère Jean-Pièrre-Marie, in which the author certifies that the Congrégation will be responsible for the Accused for the entire period he will be on provisional release, until the commencement of his trial. The letter concludes however that should the Accused violate any of the conditions attached to his provisional release, the Congrégation will terminate their suretyship and hand the Accused over to Austrian or French Authorities for transfer back to Arusha to be incarcerated while awaiting the commencement of his trial.
- 14. From the above, the Prosecutor submits that the information coming through from the letter of *Frère Jean-Pièrre-Marie* does not provide the guarantees stipulated in Rule 65(B). Additionally, *Congrégation Saint-Jean* has no immigration powers

² Id paragraph 14, page 4.

- and can therefore not guarantee the stay of the Accused in French territory for any duration.
- 15. Absent a showing that French or Austrian Authorities with immigration powers are willing to accept the Accused in either national territory and are prepared to provide the guaranty that if released he will appear at this trial and will not pose a danger to any victim, witness or other person, the Motion should be dismissed.

Prayer:

16. The Prosecutor prays that the Trial Chamber dismiss the Motion.

All of which is respectfully submitted by:

Arusha, 27 June 2005

William Egde

Senior Trial Aston



TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION

(Art. 27 of the Directive for the Registry)

I - GENERAL	INFORMATION (T	o be completed by	the Chambers / Fill	ing Party)					
To:	Trial Chamber I N. M. Diallo	, _		Appeals Chamber / Arusha F. A. Talon					
	Chief, CMS JP. Fomété	Deputy Chief, CMS M. Diop	Chief, JPU, CMS M. Diop	Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afande					
From:	Chamber	Defence	Prosecutor's Office	Other:					
	(names)		William EGBE (names)	(names)					
Case Name:	The Prosecutor vs. I	HÖMISDAS NSENGIM.	IANA Case Number: ICTR-ICTR-2001- 69-I						
Dates:	Transmitted: 27/06/0)5	Document's date: 27/06/05						
No. of Pages:	5	Original Language	: English	⊠ French ☐ Kinyarwanda					
Title of PROSECUTOR'S RESPONSE TO DEFENCE MOTION FOR THE SETTING OF A DATE FOR A PRE-TRIAL CONFERENCE.A DATE FOR THE COMMENCEMENT OF TRIAL AND A REQUEST FOR PROVISIONAL RELEASE									
Classification Level: ☐ Strictly Confidential / Under Seal ☐ Indictment ☐ Warrant ☐ Correspondence ☐ Submission from non-par ☐ Confidential ☐ Decision ☐ Affidavit ☐ Notice of Appeal ☐ Submission from parties ☐ Public ☐ Disclosure ☐ Order ☐ Appeal Book ☐ Accused particulars ☐ Judgement ☑ Motion ☐ Book of Authorities									
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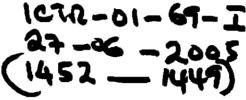
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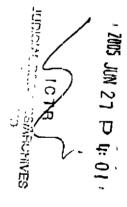
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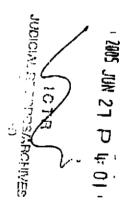
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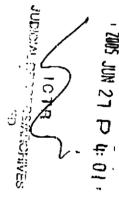
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