

UNITED NATIONS - NATIONS UNIES

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PÉNAL INTERNATIONAL POUR LE RWANDA**

Before: Trial Chamber 1 (Old)

Registrar: Dr Agwu Ukiwe OKALI

Date filed: 1 December 1999

Case Nos.: ICTR-96-3-1

THE PROSECUTOR
V
GEORGES ANDERSON NDERUBUMWE RUTAGANDA

**PROSECUTOR'S RESPONSE TO THE DEFENSE
URGENT MOTION TO STAY THE PROCEEDINGS
UNDER ARTICLE 20 AND SECURITY COUNCIL
RESOLUTION 955 (1994)**

Prosecution Counsel:

**Mr. Mohammed Othman
Ms Halo Makwaia**

Defence Counsel:

Tiphaine Dickson

This is the Prosecutor's Response to the Defense Urgent Motion to Stay the Proceedings under Article 20 of the Statute of the International Criminal Tribunal for Rwanda and Resolution 955/ 1994 of the Security Council of the United Nations as Filed on 29th November 1999.

Legal basis of the Motion

The defense has filed this motion under Article 20 of the Statute and Resolution 955/1994 of the Security, Council.

The Defense Submissions:

The defense alleges the following:

1. On the reaction of the Rwandan authorities following the decision of the Court of Appeal in the Barayagwiza case

That the rights of the accused to be tried before an independent and impartial Tribunal have been irreparably violated due to the repeated pressures by the Rwandan authorities, and the possibility the Rwandan authorities have of paralyzing the Proceedings of the Tribunal. Due to the pressure from the Rwandan Government, the defense fears that since the accused's case is in deliberation, the pressure may lead a reasonable person to fear the outcome of the case.

2. On the Secretary General of the United Nations and his spokesperson

The defense alleges that the comments made by the Spokesperson of the Secretary General of the United Nations in his capacity as spokesperson undermines the presumption of innocence as guaranteed in the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights, constitutes a disregard of the Judgement of the Appeals Chamber which had ordered the release of Jean Bosco Barayagwiza. According to the Defense, this statement presumes the guilt of Mr. Barayagwiza and insinuates that the Appeals Chamber decision occasioned a miscarriage of justice. The Defense further alleges that the Spokespersons statement has seriously tarnished the appearance of impartiality and independence of the whole Tribunal as a judicial organ (para. 24).

The defense further asserts that the judiciary should not render its decisions following the goodwill of the executive which is influenced by governments guided by political considerations (para. 26).

3. On the impartiality and independence of the judiciary

The defense also alleges that there has been no appearance of independence nor of impartiality in the Trial of the applicant, his case being in deliberation while pressure is being exerted on the Tribunal (para. 81). It contends that violation of such fundamental rights can only be redressed with the staying of the proceedings. It is also alleged that the Rwandan authorities have in a consistent and deliberate manner attempted to influence and blackmail the President of the Tribunal (ICTR) (para. 33) so that the Appeal Chamber Decision in the Barayagwiza case is not applied to other cases.

The Defence further submits that her client being the subject of a judgement immediately after the Barayagwiza Appeal decision and in the middle of a media frenzy, the temptation to convict would be quasi irresistible and that a reasonable person may be led to believe that two successive releases of accused persons would lead the Rwandan Government to paralyze the ICTR and resort to other extortion measures against the Tribunal (para. 45).

4. On the disqualification of the Trial Chamber to hear the motion

The defense alleges that given certain allegations in the Motion which concern the judges constituting the Tribunal Chamber and the statement by the Secretary General's spokesperson as well as the statements of officers of the court imputable to the President, lead the applicant to request the Tribunal to designate another Chamber to hear the motion as provided for in Article 15 of the Statute (para. 91).

As a result of the above allegations the Defense is requesting the Trial; Chamber to:

- (1) To admit the motion;
- (2) Stay the proceedings;
- (3) To order the immediate release of the applicant.

5. The Prosecutors submissions:

Legal Basis of the Motion

As a preliminary matter the Prosecutor submits that the defense Motion is inadmissible in law.

The defense has filed the Motion under Article 20 of the Statute and Resolution 955 (1994) of the Security Council. The cited provision does not provide for the admission of motions, nor the staying of proceedings.

In the event the Chamber decides to deliberate on the Defense Motion, the Prosecutor submits as follows:

6. On the reaction of the Rwandan Authorities following the Decision of the Court of Appeal in the Barayagwiza case; and on the Defense allegations on the Secretary General of the United Nations and his Spokesperson

The Prosecutor submits that the defense is relying on alleged facts *external* to the proceedings at bench, facts which did not form part of the evidence presented by the Prosecutor or the Defense during the Trial. Only those facts adduced before the Trial Chamber form the basis of the judgement to be rendered. In fact the defense seems to have noted this as a cardinal principal, when it states, "Au contraire, l'objectif de toute cour de justice est de rendre une decision *selon la preuve soumise*"(emphasis added)(para.27)

As a result of the advanced stage of the Trial Proceedings, the Prosecutor fails to see how these alleged external facts affect the rights of the accused under Article 20 in the present case. The Prosecution and the Defense submitted closing arguments on 16 and 17 June 1999. Rule 87 provides that after the presentation of the closing arguments the Presiding judge shall declare the hearing closed. The case has been in deliberation for five months now pursuant to rule 87 and a judgement is to be rendered on 6 December 1999 as provided for in rule 88.

7. On the Impartiality and Independence of the Judiciary

The defense is also alleging that the Tribunal lacks independence and impartiality, irreparably violating the rights of the accused. As a consequence the accused should be released forthwith.

The Prosecutor submits that the Defence has not submitted any relevant evidence to demonstrate that the rights of the accused have been violated during his Trial. It is not on record that any violations took place. The rights of the accused as provided for in Article 20 of the Statute were exercised fully by the accused. The defense has failed to pin point a single violation that occurred against the accused as a result of the Trial Chamber's lack of independence or impartiality in this case.

8. On the immediate release of the accused

The Prosecutor submits that there is no legal or factual basis in the Defence motion for the release of the accused person before the pronouncement of judgement. The accused has undergone a Trial on the merits from 18 March 1998 until it was put into deliberation on 17 June 1999. The Trial was conducted in accordance with the Rules of Procedure and Evidence with full respect of the rights of the accused. It is only with the pronouncement of judgement that the accused can be found guilty or not guilty

9. On the disqualification of the Trial Chamber Judges to hear the motion

Rule 15 (A) provides for the disqualification of a judge in a case if he has a persona-1 interest or concerning which he has or had any association with which might affect his impartiality. In any such circumstance he is required to, withdraw from the case. The defense has not provided any evidence to show that any of the Judges of the Trial Chamber had personal interest or other association which might affect their impartiality.

The Prosecutor submits that mere allegations by the defense can not be sufficient ground to disqualify the Trial Chamber Judges at this stage of the proceedings. It is not on record that the Judges had at any stage violated the rights of the accused by having personal interest or association which might affect their impartiality. The statement of the spokes person of the United Nations Secretary General and others are external and immaterial to the Trial proceedings at hand and have no relation to the requirements of Rule 15(A)

10. The Prosecutors Prayers:

Whereas the Prosecutor prays that:

1. The defense motion be dismissed as it is inadmissible in law.
2. In the event the Chamber admits the defense motion, the Prosecutor requests the Chamber to dispose of this motion in an urgent manner under rule 73 (A), based solely on the briefs of the Parties.
3. The date of 6 December 1999 set down for judgement be maintained, and the defense prayer for staying of proceedings be dismissed.
4. The defense prayer for the immediate release of the accused be dismissed.

DATED in ARUSHA this Wednesday 1st day of December 1999

(sé)

Mohammed Othman Chief of Prosecution

(sé)

Holo Makwaia Assistant Trial Attorney