

684



International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda

UNITED NATIONS  
NATIONS UNIES

TRIAL CHAMBER I

Original: English

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

Registrar: Ms Aminatta N'gum

Decision date: 10 May 2000

ICTR  
COURT REGISTRY  
RECEIVED  
2000 MAY 11 P 3:42

THE PROSECUTOR vs. HASSAN NGEZE  
(Case No. ICTR-97-27-I)

**DECISION ON THE DEFENCE'S MOTION TO DISMISS THE INDICTMENT  
IN TOTO FOR LACK OF SUBJECT MATTER JURISDICTION AND FOR  
LACK OF FUNDAMENTAL FAIRNESS FOR THE ACCUSED**

Office of the Prosecutor:

William T. Egbe  
Cydney G. Crickard

Counsel for the Accused:

Patricia Mongo  
John C. Floyd, III

683

**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;

**CONSIDERING** the motion filed on 23 March 2000 by the Defence to dismiss the Indictment *in toto* for lack of subject matter jurisdiction, along with the supplementary memoranda in support of the motion filed on 11 April 2000,

**CONSIDERING** the Prosecutor's reply to the Defence's motion, filed on 11 April 2000;

**NOTING** that the motion was considered on the basis of the written briefs of the Parties, pursuant to Rule 73 of the Rules of Procedure and Evidence ("the Rules") as notified to the Parties on 28 March 2000.

**The Defence's Motion**

The Defence submitted that the Tribunal has no subject matter jurisdiction to try the accused for the free expression of his ideas. It further contended that denial of a translator has prejudiced the defence and constitutes fundamental unfairness.

The Prosecution responded that it is the accused's acts, and not his right to freedom of expression, that are the basis of the charges. The Prosecution further argued that the Defence's contention is an attempt to induce the Court to examine the merits of the case before commencement of the trial.

**The Deliberations**

*With Regard to the Issue of Lack of Subject Matter Jurisdiction*

The Trial Chamber notes that the prosecution of the accused is based on his work as a journalist and as co-founder of the *Kangura* newspaper. The Chamber is of the view that there is an important difference between the principle of freedom of speech and the media, as defined and the use of this freedom to spread messages of hatred or to incite heinous acts.

Whether the alleged activities of the accused amount to free speech or offences with which the Tribunal has jurisdiction, is a substantive issue going to the merits of the case.



682

The Chamber here reiterates its findings in a Decision of 24 November 1997, on a Defence's motion for Defects in the Form of the Indictment in the case *The Prosecutor v. Ferdinand Nahimana* (ICTR-96-11-T), in which it stated,

The Trial Chamber notes initially that there is an important distinction to be made between defects in the form and defects in the merits of the indictment. At this stage of the proceedings, the Chamber is bound to examine and dispose of defects in form only, whereas defects on the merits of the indictment may raise questions of evidence and facts which more appropriately should be considered during trial.

Consequently, the Trial Chamber will not consider this issue further. The Chamber therefore finds the motion of the Defence without merit.

*With Regard to the Issue of Fundamental Fairness to the Accused*

The Defence argued that the denial by the Registry of a translator has prejudiced the Defence case.

In its request to the Registry of the Tribunal for a kinyarwanda translator, the Defence failed to identify how many and what type of documents need to be translated from the Library of Congress. Furthermore, the Defence has not indicated the relevance of these documents to the Defence case.

The Trial Chamber is of the view that the issue is, at this stage, a matter for the Registry rather than the Court.

*Costs*

Under Rule 73(E), a Chamber may impose sanctions if a motion is frivolous or is an abuse of process. It is the view of this Chamber that this provision is applicable in the present case.

681

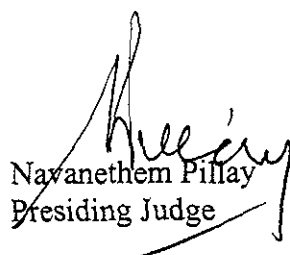
**FOR THESE REASONS,**


**THE TRIBUNAL,**

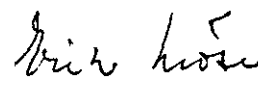
**REJECTS** the Defence's motion to dismiss the Indictment *in toto* for lack of subject matter jurisdiction and for lack of fundamental fairness for the accused;

**DENIES** the payment to the Defence of all costs for this motion pursuant to amended Rule 73 (E) of the Rules.

Arusha, 10 May 2000

  
Navanethem Pillay  
Presiding Judge

  
Asoka de Zoysa Gunawardana  
Judge

  
Erik Møse  
Judge



Seal of the Tribunal