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UNITED NATIONS  NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR
CRIMINAL REGISTRY
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CHAMBER I - CHAMBRE I

OR: FR

Before: Judge Laity Kama, Presiding
Judge Lennart Aspegren
Judge Navanethem Pillay

Registry: Mr. Lars Plum
Mr. John M. Kiyeyeu

Decision of: 9 March 1998

**THE PROSECUTOR
VERSUS
JEAN-PAUL AKAYESU**

Case No.: ICTR 96-4-T

**DECISION ON A DEFENCE MOTION FOR THE APPEARANCE
OF AN ACCUSED AS AN EXPERT WITNESS**

Office of the Prosecutor:

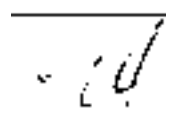
Mr. Pierre-Richard Prosper
Mr. James Stewart

Counsel for the Defence:

Mr. Nicolas Tiangaye

Counsel representing the accused Ferdinand Nahimana:

Mr. Jean-Marie Biju-Duval
Ms Diane Sénéchal



Case No.: ICTR 96-4-T

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "TRIBUNAL"),

SITTING as Trial Chamber I, composed of Judge Laity Kama, presiding, Judge Lennart Aspegren and Judge Navanethem Pillay;

HAVING RECEIVED from the Defence a motion dated 4 March 1998 (the "motion") for the appearance and protection as an expert witness for the Defence of Ferdinand Nahimana, who has been indicted by the Prosecutor before the Tribunal in Case No. ICTR-97-11-T, and is currently being held in custody at the Detention Facility of the Tribunal, awaiting trial;

HAVING HEARD the presentation by the Defence of the above-mentioned motion and the Prosecutor's response during the hearing held to that effect on 6 March 1998;

HAVING ALSO HEARD, during the said hearing, Mr. Biju-Duval, Counsel representing the accused, Ferdinand Nahimana, before the Tribunal, who objected to his client testifying as a witness in this case;

AFTER HAVING DELIBERATED,

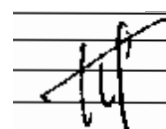
WHEREAS in support of its motion, the Defence argued that hearing Ferdinand Nahimana as an expert witness for the Defence would enlighten the Tribunal on the history of Rwanda and enable the Defence to dispute the scientific validity of the theories advanced previously in the present case by Dr. Alison Des Forges, Historian, specialist on Rwanda, called by the Prosecutor to testify as an expert;

WHEREAS the Tribunal is of the view that there is a fundamental difference between, on the one hand, a witness called to testify about the crimes with which the accused is directly charged and, on the other hand, an expert witness, whose testimony is intended to enlighten the Judges on specific issues of a technical nature, requiring special knowledge in a specific field;

WHEREAS the Tribunal is of the opinion that in order to be entitled to appear, an expert witness must not only be a recognised expert in his field, but must also be impartial in the case;

WHEREAS the Tribunal holds that, in this case, the impartiality of Ferdinand Nahimana, who is accused by the Tribunal for crimes related to those with which Jean-Paul Akayesu is charged and, under similar counts, cannot be assured;

WHEREAS, consequently, the said Ferdinand Nahimana does not fulfill the requisite conditions for appearing as an expert witness;



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WHEREAS, furthermore, as indicated in its decision of 17 February 1998, delivered in the context of the present case, the Tribunal is of the view that compelling an accused under these circumstances to appear as a witness could possibly violate his fundamental rights not to be compelled to testify against himself or to confess guilt, which rights are recognised by the provisions of Article 20(4)(g) of the Statute of the Tribunal, which are grounded in those of Article 14 (3)(g) of the International Covenant of Civil and Political Rights of 1966; therefore the Tribunal holds that to be compelled to appear as an expert witness in this case would indeed be prejudicial to the accused;

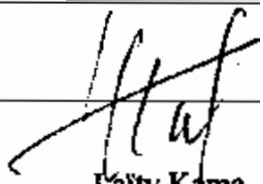
WHEREAS, consequently, the Tribunal decides to dismiss the Defence motion for the appearance of Ferdinand Nahimana as an expert witness for the Defence.

FOR THESE REASONS,

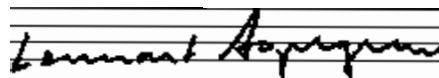
THE TRIBUNAL

DISMISSES the Defence motion for the appearance of the accused Ferdinand Nahimana as an expert witness.

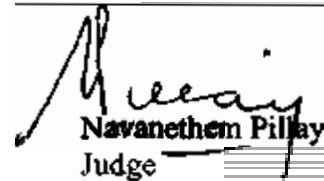
Arusha, 9 March 1998.



Faaly Kama
Presiding Judge



Lennart Aspegren
Judge



Navanethem Pillay
Judge

(Seal of the Tribunal)

