

ICTR-2001-67-I
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UNITED NATIONS
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER III

Before: Judge Lloyd G. Williams, Presiding

Original: English

Registrar: Mr. Adama Dieng

Date: 4 July 2001

THE PROSECUTOR

vs.

FULGENCE KAYISHEMA

Case No. ICTR-2001-67-I

JUDICIAL RECORDS/ARCHIVES
ICTR
2001 JUL -14 P 5: 07
[Signature]

DECISION ON THE PROSECUTOR'S *EX PARTE* REQUEST FOR SEARCH,
SEIZURE ARREST AND TRANSFER

The Office of the Prosecutor:

Ms. Silvana Arbia

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

SITTING as Judge Lloyd George Williams, designated by the President of the Tribunal pursuant to Rule 28 of the Tribunal's Rule of Procedure and Evidence (the "Rules");

HAVING RECEIVED an Indictment against one FULGENCE KAYISHEMA, filed by the Prosecutor on 20 June 2001 pursuant to Article 17 of the Tribunal's Statute (hereinafter, "Indictment");

HAVING RECEIVED and REVIEWED the supporting materials comprising, among other things, unredacted statements of twenty (20) witnesses identified by pseudonyms, Reports of the Special Rapporteurs, R. Degni-Segui and B.W. Ndiaye, reports of the expert A. Guichaoua, the Final Report of the Commission of Experts, dated 9 December 1994 and other United Nations Reports, and Legislative Acts of Rwanda on the structure of communes;

BEING SEIZED of the Prosecutor's "*Ex Parte* Request for Search Seizure, Arrest and Transfer," filed on 20 June 2001 (hereinafter, "*Ex Parte* Application"); the Prosecutor's "Confidential Supporting Materials," filed on 20 June 2001 (hereinafter, the "Supporting Materials");

HAVING HEARD the Prosecutor during an *ex parte* hearing held on 3 July 2001 pursuant to Rule 47(D) during which the Prosecutor made additional oral applications for orders of non-disclosure of the names of the witnesses identified in the Supporting Materials and of her internal working documents;

NOW CONSIDERS the matter:

FINDINGS

1. In the *Ex Parte* Application, the Prosecutor requests that the Tribunal confirm the Indictment against Fulgence Kayishema. The Judge reviewing an indictment must examine the indictment to determine whether it is consonant with the requirements of the Tribunal's Statutes and Rules. Notably, in this regard, Article 18(1) of the Tribunal's Statute provides:

1. The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that the Prosecutor has established a *prima facie case*, he or she shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.
(Emphasis added).

2. Moreover, consistent with Rule 47, the reviewing Judge must determine whether the Prosecutor has presented within the Indictment and the supporting materials allegations as would provide "reasonable grounds for believing" that the identified suspect has committed crimes falling within the jurisdiction of the Tribunal.

3. After reviewing the proposed Indictment and the Supporting Materials, including the unredacted written statements of some twenty (20) witnesses, the Tribunal finds that the Prosecutor has presented sufficient allegations to establish *prima facie* case for each of the four (4) counts in the Indictment, namely, genocide, complicity in genocide, conspiracy to commit genocide and Extermination as a Crimes Against Humanity. In the allegations of the Indictment, as further supported by the various witness statements and reports that comprise the supporting materials, the Tribunal is satisfied that the Prosecutor has demonstrated the existence of reasonable grounds for believing that the identified suspect, Fulgence Kayishema, committed crimes falling within the jurisdiction of the Tribunal. Accordingly, the Tribunal confirms the Indictment in its entirety subject to the grammatical and typographic corrections to paragraphs 2, 5, 7, 8, 11, 17, 19, 25, 28, 34, 37, 38, 39, 42, 47, and Count 4, which were introduced by the Prosecutor during the hearing of this matter.

4. In order to facilitate the review of the Indictment, the Prosecutor produced its internal notes, which provide annotated references to the Supporting Materials in relation to each count of the Indictment. In addition, the Prosecutor produced unredacted copies of the various witness statements, bearing the witnesses' identities addresses and other identifying data. Notwithstanding the disclosure of its internal notes and information likely to disclose the identity of its confidential witnesses, the Prosecutor failed to request an in the *Ex Parte* Application order of temporary non-disclosure of such information vis à vis the suspect and permanent non-disclosure vis à vis the public and the media.

5. Notwithstanding the lapse in requesting such order in the *Ex Parte* Application, the Prosecutor did during the Course of the hearing of this Indictment make an oral application for an order of non-disclosure. Pursuant to Rule 53 the Tribunal may, upon "consultation with the Prosecutor" enjoin the disclosure to the public of any documents or information, including the Indictment, if such an order is in the interests of justice or necessary to give effect to a provision of the Rules. Based on its consultation with the Prosecutor during the hearing of the *Ex Parte* Application, the Tribunal finds that non-disclosure to the public, media, and the suspect, of the names and other identifying information with respect to the twenty (20) witnesses, identified by pseudonyms is necessary at this time to facilitate the arrest and transfer of the suspect and to ensure the safety of the witnesses whose statements comprise the larger part of the supporting materials to the Indictment. In addition, the Tribunal finds that it in the interest of justice to similarly prevent the disclosure of the names and other identifying data for suspects whose names appear in the Supporting Materials and who are the subject of ongoing investigations by the Prosecutor but, who are currently at large.

6. Moreover, consistent with Rule 70, the Tribunal finds that the annotations to the Confidential Supporting Material should not be disclosed to the public or media or to the suspect, or any of his representatives as they constitute the internal work product of the Office of the Prosecutor and are as such exempted from the disclosure requirements under the rules.

For the foregoing reasons the Tribunal:

CONFIRMS the Indictment, dated 20 June 2001, brought by the Prosecutor against FULGENCE KAYISHEMA subject to the correction of the grammatical and typographical errors in paragraphs 2, 5, 7, 8, 11, 17, 19, 25, 28, 34, 37, 38, 39, 42, 47 and Count 4 of the Indictment, which the Prosecutor interposed during the hearing of the *Ex Parte* Application.

ORDERS the Registrar to translate the Indictment, including the modifications indicated above, into a language that the Accused understands and to prepare certified copies of the Indictment, bearing the seal of the Tribunal; and further

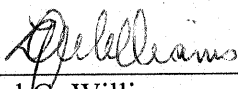
ORDERS the Prosecutor to redact from the supporting Materials the names, address, and all data that may be used to identify the twenty witnesses and suspects who are not yet apprehended; and further

ORDERS that the Indictment, the Supporting Materials, and other documents which form part of the Indictment, including this Decision, be placed under seal and kept confidential and not disclosed to public or the media, until further order of the Tribunal; and further

ORDERS that the names and other identifying information about the twenty (20) witnesses identified by pseudonyms in the Supporting Materials to the Indictment not be disclosed to the suspect or his counsel or other representatives until further order of the Tribunal; and further

ORDERS that the Prosecutor's Annotations to the Supporting Materials, which constitute the Prosecutor's internal work product in connection with her investigation and preparation of this matter shall remain confidential and exempt from the disclosure requirements under the Tribunal's Rules of Procedure and Evidence.

Arusha, 4 July 2001



Lloyd G. Williams
Judge

Seal of the Tribunal



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International Criminal Tribunal for Rwanda Tribunal Pénal International pour le Rwanda

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PROOF OF SERVICE – ARUSHA PREUVE DE NOTIFICATION – ARUSHA

Date: 9 August, 2001	Case Name / affaire: The Prosecutor v..... FULGENCE KAYISHEMA		
	Case No / no. de l'affaire: ICTR-2001-67-I		
To: A:	<input type="checkbox"/> TC1	received by / reçu par:	ALO: received by / reçu par
	<input type="checkbox"/> Judge N. Pillay, President	<i>D. K. Afande 9/8/2001</i>	<input type="checkbox"/>
	<input type="checkbox"/> Judge Møse, Vice President	<input type="checkbox"/>
	<input type="checkbox"/> Judge Andresia Vaz	<input type="checkbox"/>
	<input type="checkbox"/> E. Nahamya, Co-ordinator	<input type="checkbox"/>
	<input type="checkbox"/> TC2		
	<input type="checkbox"/> Judge W. H. Sekule	<input type="checkbox"/>
	<input type="checkbox"/> Judge W. C. M. Maqutu	<input type="checkbox"/>
	<input type="checkbox"/> Judge A. Ramarason	<input type="checkbox"/>
	<input type="checkbox"/> C. Aptel, Co-ordinator	<input type="checkbox"/>
	<input checked="" type="checkbox"/> TC3		
	<input type="checkbox"/> Judge L.G. Williams	<input type="checkbox"/>
<input type="checkbox"/> Judge Y. Ostrovsky	<input type="checkbox"/>	
<input type="checkbox"/> Judge P. Dolenc	<input type="checkbox"/>	
<input type="checkbox"/> M. Niang, Co-ordinator	<input type="checkbox"/>	
<input checked="" type="checkbox"/> OTP / BUREAU DU PROCUREUR			
<input type="checkbox"/> Trial Attorney in charge of case:.....	SILVANA ARBIA	received by <i>[Signature]</i>
<input type="checkbox"/> DEFENSE:		<i>08/09/01 GK</i>	complete / remplir "CMS4 FORM"
<input type="checkbox"/> Accused / Accusé:.....	KAYISHEMA		
<input type="checkbox"/> Lead Counsel / Conseil Principal:.....			
<input type="checkbox"/> In / à Arusha Arusha	(signature)	<input type="checkbox"/> by fax	complete / remplir "CMS3bis FORM"
<input type="checkbox"/> Co-Counsel / Conseil Adjoint:			
<input type="checkbox"/> In / à Arusha Arusha	(signature)	<input type="checkbox"/> by fax	complete / remplir "CMS3bis FORM"
All Decisions:	<input type="checkbox"/> Appeals Chamber Unit, The Hague	<input type="checkbox"/> Suzanne Chenault, Jurist Linguist	
All Decisions & Important Public Documents:	<input type="checkbox"/> Press & Public Affairs	<input type="checkbox"/> Legal Library	
From: De:	<input type="checkbox"/> JP. Fomété (OIC, CMS) <input type="checkbox"/> A. N'gum (TC 1) <input type="checkbox"/> A. Mindua (TC 2) <input checked="" type="checkbox"/> K. Afande (TC 3) <input type="checkbox"/> F. Talon (Appeals)	<i>[Signature]</i>	
Cc:	<input type="checkbox"/> A. Dieng <input type="checkbox"/> A. Miller, OLA, NY <input type="checkbox"/> P. Nyambe <input type="checkbox"/> K. Moghalu <input type="checkbox"/> S. Van Driessche		
	<input type="checkbox"/> WVSS- D <input type="checkbox"/> WVSS-P <input type="checkbox"/> E. O'Donnell <input type="checkbox"/> LDFMS <input type="checkbox"/> GLSS <input type="checkbox"/> P. Enow		
Subject Objet:	Kindly find attached the following document(s) / Veuillez trouver en annexe le(s) document(s) suivant(s):		

Documents name / titre du document
ACTE D'ACCUSATION

Date Filed / Date enregistré Pages
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