

ICTR-96-4-A  
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(651-644)

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THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR RWANDA

Case No. ICTR-96-4-A

IN THE APPEALS CHAMBER

Before: Judge Claude Jorda, Presiding  
Judge Wang Tieya  
Judge Lal Chand Vohrah  
Judge Mohamed Shahabuddeen  
Judge Rafael Nieto-Navia

Registrar: Mr. Agwu U. Okali

Date Filed: 13 March 2000

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THE PROSECUTOR

v.

JEAN-PAUL AKAYESU

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PROSECUTOR'S ADDITIONAL RESPONSE TO THE  
DEFENCE'S *MÉMOIRE* PURSUANT TO THE APPEALS  
CHAMBER'S ORDER OF 30 DECEMBER 1999

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Co-Counsel

INTERNATIONAL CRIMINAL TRIBUNAL  
FOR RWANDA

THE PROSECUTOR

V.

JEAN-PAUL AKAYESU  
Case No. ICTR-4-96-A

PROSECUTOR'S ADDITIONAL RESPONSE TO THE DEFENCE'S  
MÉMOIRE PURSUANT TO THE APPEALS CHAMBER'S ORDER  
OF 30 DECEMBER 1999

(A) Background

1. On 24 October 1999 the Defence filed a motion entitled "*Requête concernant la violation du droit à l'avocat, en prorogation des délais d'appel et requête provisoire pour l'admission d'une nouvelle preuve en appel suivant les règles 115 et 116 du règlement de procédure et de preuve*" (the "Motion") dated 22 October 1999.
2. By "*Ordonnance portant calendrier*" of 30 November 1999 the Appeals Chamber ordered the Defence to consolidate its previous motions into one document and the Defence therefore on 9 December 1999 filed its "*Mémoire de l'appelant concernant les requêtes suivantes visées par l'ordonnance comportant calendrier du 30 novembre 1999*" (the "Mémoire").
3. On 17 December 1999 the Prosecution filed a consolidated response to the Mémoire entitled "*Prosecutor's Response to the "Mémoire de l'appelant concernant les requêtes suivantes visées par l'ordonnance comportant calendrier du 30 novembre 1999"*" (the "Response to the Mémoire"), which in paragraphs 26 – 34 included a response to the Motion.

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4. As mentioned in the Response to the Mémoire,<sup>1</sup> the Prosecution was not in a position to respond to two of the matters raised by the Motion, namely, the addition of certain annexes to the Motion to the Appeals Record and the disclosure to the Defence of a letter addressed to the former Prosecutor by Mr. Michael Karnavas, one of Mr. Akayesu's former counsel.
5. By the Appeals Chamber's "*Order (Prosecutor's Urgent Request for Extension of Time)*" of 30 December 1999 the Prosecution was granted leave to respond to these matters at a later date.
6. The present response is limited to the two remaining matters. This response completes the Prosecution's response to the Mémoire and the first nine Defence motions filed on appeal.

**(B) Supplement of the record**

7. The Prosecution initially notes that the Defence filed 76 documents in support of the Motion, but sought to admit only 63 documents (R-1 through R-63) as part of the Record on Appeal. The Defence therefore cannot in any event rely on the 13 remaining documents (R-64 through R-76) in support of the Appeal.
8. The Prosecution further notes that the Defence has failed to show the relevance of each individual document to the issues on appeal. Rather the Defence has provided very general explanations of their relevance. It is submitted that this in itself could constitute a ground to dismiss the Motion. However, in light of the numerous motions already filed by the Defence, the Prosecution fears that requesting the Appeals Chamber to reject the motion on that basis of the Defence's failure to state the relevance of the document will result in another long motion, which will further delay the appeal. The Prosecution will therefore state its position in relation to each of the 63 documents and invite the Appeals Chamber to dispose of the Motion accordingly.
9. It is submitted that a number of documents the Defence seeks to admit are already part of the file. The Prosecution submits that the Motion should be rejected in respect of all redundant documents. The redundant documents are the following:

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<sup>1</sup> Paragraphs 26 and 29.

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<i>Annex</i>	<i>Registry Pages</i>
R-3: Formal request for Defence Counsel dated 25/04/96	131bis- 0121bis.
R-22: "Defence Motion for an Expedited In-Camera Hearing"	1675 – 1669
R-26: Letter of 13 November 1996 of M. Karnavas to Registrar	1775-1773
R-28: Letter of 15 November 1996 of M. Karnavas to A. Adede	198 bis and 1777
R-36: Letter of 28 November 1996 of J.-P. Akayesu to Registrar	204 bis

10. The remaining 58 documents allegedly support Part I of the Notice of Appeal, concerning the alleged right to choose counsel. The Prosecution reserves its argument on the substance of that ground of appeal to the Prosecution's Respondent Brief. The Prosecution submits, however, that most of the documents in fact do not support the Defence claim and therefore are irrelevant to the issues on appeal.
11. R-1, a letter purportedly from Mr. Akayesu to his sister, has nothing to do with the case, and it is submitted that the request for its inclusion in the Record on Appeal be rejected.
12. R-2,<sup>2</sup> a request from Mr. Akayesu to have Mr. Scheers assigned as Counsel, was granted as shown by R-4 and R-5. These documents show that Mr. Akayesu was assigned counsel of his choice, and therefore the documents do not support the ground of appeal as submitted by the Defence. Moreover, these facts are not in dispute and the documents add nothing to the file. It is therefore respectfully submitted that the Defence's request in respect of R-2, R-3 and R-5 be rejected.

<sup>2</sup> The letter establishes the same facts as R-3, which, as noted supra, is already on file with the court.

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13. R-6 through R-12, R-14 through R-16, and R-18 and R-19 are all correspondences concerning payment of Mr. Scheers. The issue of payment of counsel is however not mentioned in the Notice of Appeal; and even if it were, these documents fail to show the Defence's contention in Part I of the Notice of Appeal, namely that Mr. Akayesu's alleged right to choose counsel was violated. It is therefore respectfully submitted that the request be rejected in respect of these documents.
14. Some of the documents may be relevant. R-13 and R-17 show that Mr. Scheers was informed that he was expected, as Counsel for Mr. Akayesu, to be present at his initial appearance on 31 October 1996. R-20 and R-21 show that when Mr. Scheers failed to be present during the initial appearance, he was replaced by Mr. Karnavas, who at Mr. Akayesu's request had served as co-counsel, and whose representation Mr. Akayesu accepted.<sup>3</sup>
15. Prosecution concedes that Annexes R-13, R-17, R-20 and R-21 should be admitted, as they elucidate circumstances surrounding the assignment of counsel to Mr. Akayesu. Specifically, they show that Mr. Scheers failed to be present at the Initial Appearance and consequently was replaced by Mr. Karnavas.
16. As shown R-23 – R-25, Mr. Scheers, however, seems to have continued to try to influence the proceedings and that Mr. Akayesu tried to maintain contact with him. Documents R-28 – R-33 further show that Mr. Scheers and Mr. Akayesu each wrote to different organs of the Tribunal and complained to the Secretary-General of the United Nations. It is respectfully submitted that these facts are clearly irrelevant to the appeal, and it is submitted that the Defence's request should be rejected in respect of these documents.
17. Documents R-26 and R-27 indicate that Mr. Scheers refused to hand over files and tried to persuade Mr. Akayesu not to co-operate with Mr. Karnavas. Again this is irrelevant to the ground of appeal, and it is submitted that the Motion should be dismissed in respect of R-26 and R-27.
18. It is submitted that R-34, R-42 and R-43 are relevant to the question of assignment of counsel raised in Part I of the Mr. Akayesu's Notice of Appeal and should be included in the Appeals Record. Mr.

<sup>3</sup> See also transcript of hearing on 31 October 1996, English version, page 3, line 22 – page 4, 18 and page 50, line 2 – 53, line 3; and French version page 4, line 10 – page 5, line 13, and page 65, line 4, – page 68, line 13.

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Akayesu complained about Mr. Karnavas, and the Trial Chamber by its *Decision on the Request of the Accused for the Replacement of Assigned Counsel*<sup>4</sup> of 20 November 1996 granted Mr. Akayesu's motion and instructed the Registrar to assign without delay new counsel to Mr. Akayesu. The Registrar appointed Mr. Tiangaye as counsel for Mr. Akayesu (R-34) and later informed Mr. Akayesu that he had been given two counsel, who would visit him in prison to discuss the case (R-42 and R-43).

19. After the appointment of Mr. Tiangaye Mr. Akayesu continued to request new counsel (Mr. Scheers, Mr. Lisulo and Mr. Marchand) as evidenced by R-35, R-36,<sup>5</sup> R-39, R-40, R-44, R-45, R-48, R-51, R-52, R-54, R-57. He also requested opportunity to interrogate witnesses and to represent himself (see R-49, R-53, R-56 and R-59) and made different complaints (see R-50). These documents show that, Mr. Akayesu consistently continued to claim different counsel, after he had twice been given counsel. These facts are, however, not relevant to the appeal, and it is submitted that the requested inclusion of these documents in the Record on Appeal should be rejected.
20. Two letters presented in as R-46 and R-58 indicate that Mr. Akayesu informed the Registrar and the President of the Trial Chamber that he was ready to co-operate with his new counsel and he later withdrew his complaints. The documents show that the Trial Chamber had reason to retain Messrs Tiangaye and Monthe as counsel for Mr. Akayesu. Prosecution submits that R-46 and R-58 are relevant to the issues raised in Part I of the Notice of Appeal, and that the Defence's request should be granted in respect of these documents.
21. The Defence is seeking to admit an affidavit labelled R-60 made part of the Record on Appeal. The Defence thereby seeks to establish that Mr. Michael Karnavas, one of Mr. Akayesu's former counsel, at some point in time prior to 31 October 1996, applied for a position in the Office of the Prosecutor and in that connection made a statement to the effect that he could not defend a "*génocidaire*".<sup>6</sup> Without prejudice, the Prosecution concedes the facts, as set out under (C) below. It is the Prosecution's submission that there is no need to include R-60 in the record, as the facts are not in dispute. It

<sup>4</sup> RP 1909 – 1907 (English) and 0211bis – 0209bis (French).

<sup>5</sup> As mentioned already on file.

<sup>6</sup> The precise formulation is unknown to the Prosecution

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is consequently submitted that the request should be rejected also in respect of R-60.

22. Finally, the Prosecution denies the relevancy of R-61, R-62 and R-63, and therefore submits that they should not be made part of the Appeals Record.

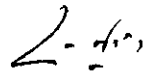
**(C) Letter by Mr. Karnavas**

23. Having exercised the utmost effort to locate the letter from Mr. Karnavas to the Prosecutor mentioned in the Motion, the Prosecution has not been able to obtain the letter written by Mr. Michael Karnavas to the former Prosecutor, from the files of the Office of the Prosecutor, from the Registry or from Mr. Michael Karnavas.
24. The Prosecution concedes that
- (1) Mr. Karnavas did write to the Prosecutor applying for a position with the Office of the Prosecutor; and
  - (2) the letter did contain a phrase stating that Mr. Karnavas could not defend a *génocidaire*.
25. However, the Prosecution submits that these facts in no way contravened Mr. Akayesu's alleged right to choose counsel.
26. It is therefore respectfully submitted that these facts should not be made part of the record and that the Motion therefore should be dismissed in this regard. Alternatively, if the Appeals Chamber finds that these facts should be made part of the Appeals Record, it is respectfully submitted that the Appeals Chamber should take cognisance of the facts mentioned under 1 and 2 in paragraph 24 above.

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**(D) Relief sought**

27. In addition to the relief sought in respect of the Motion in the Response to the Mémoire, the Prosecution, for the reasons set out in parts (B) and (C) above, respectfully requests the Appeals Chamber to
- (1) grant the Motion only with respect to R-13, R-17, R-20, R-21, R-34, R-42, R-43, R-46 and R-58 and reject the motion on all other points;
  - (2) dismiss the requested order that the Prosecution or the Registry provide a copy of the letter by Mr. Karnavas to the Defence; and
  - (3) dismiss the motion in respect of the request for an order to admit facts concerning the letter by Mr. Karnavas to the Prosecutor.



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Upawansa Yapa  
Senior Appeals Counsel

Done this thirteenth day of March 2000,  
at The Hague, The Netherlands