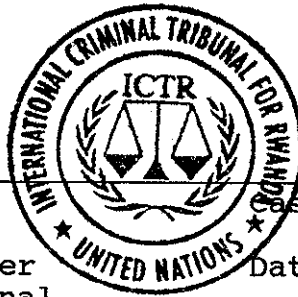


UNITED
NATIONS



ICTR.95.1.1
28 November 1995
(24.21)

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International Criminal Tribunal
for the Prosecution of Persons
Responsible for Genocide and Other
Serious Violations of International
Humanitarian Law Committed in the
Territory of Rwanda and Rwandan
Citizens Responsible for Genocide
in the Territory of the Neighbouring
States between 1 January 1994 and 31
December 1994.

Case No. ICTR 95-1-I

Date: 28 Nov 1995

Original: English

Confirming Judge: Judge Navanethem Pillay

Registrar: Dr. Andronico O. Adede

Date: 28 November 1995

THE PROSECUTOR

v.

CLEMENT KAVISHEMA
IGNACE BAGILISHEMA
CHARLES SIKUBWABO
ALOYS NDIMBATI
VINCENT RUTAGANIRA
MUHIMANA MIKA
RYANDIKAYO
OBED RUZINDANA

DECISION OF THE REVIEW OF THE INDICTMENT

The Office of the Prosecutor

Mr. H. Rakotomanana
Ms. Brenda Sue Thornton

Case No. ICTR 95-1-I

28th November 1995

UNITED NATIONS
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Reviewing Judge: N. Pillay

Decision of Reviewing Judge

Pursuant to Rule 28 of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda, I have been assigned to review the indictment in Case No. ICTR 95-1-I.

In accordance with Article 17, paragraph 4 of the Statute of the Tribunal, the Prosecutor has transmitted to me an indictment containing a concise statement of the facts and the crimes with which the accused are charged under the State.

The review procedure is determined by the provisions of Article 18 (1) of the Statute and Rule 47 (D) namely:-

Article 18 (1) "The Judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a *prima facie* case has been established by the Prosecutor, he or she shall confirm the indictment. If not so satisfied, the indictment shall be dismissed."

Rule 47 (D) "On reviewing the indictment, the Judge shall hear the Prosecutor, who may present additional material in support of any count. The Judge may confirm or dismiss each count or may adjourn the review."

In determining the standard that constitutes a "*prima facie*" case, I am not bound to follow national rules of evidence, as provided by Rule 89 (A).

Judge R. Sidhwa in a decision issued after the review of the indictment in Case IT-95-12-I of the International Criminal Tribunal for Former Yugoslavia was of the opinion that

"In the jurisprudence of international criminal law, the expression '*prima facie*' case has neither too consistent a place nor too uniform a meaning."

He concluded that the term "*prima facie*" case and "reasonable grounds" which appear in Rule 47 (A) neither raises nor lowers the standard set forth in the Statute. He defined "reasonable grounds" as pointing

"to such facts and circumstances as would justify a reasonable or ordinarily prudent man to believe that a suspect has committed a crime" at page 8.

Judge G. Kirk McDonald in a decision issued after the review of The Indictment in Case IT-95-14-I of the International Criminal Tribunal for Former Yugoslavia adhered to the definition in the Commentary accompanying the Draft Statute for an International Criminal Court adopted by the International Law Commission which states:

"a '*prima facie*' case for this purpose is understood to be a credible case which would (if not contradicted by the Defence) be a sufficient basis to convict the accused on the charge". At page 3 quoting the Report of the International Law Commission on the Work of its 46th Sess., U.N. GAOR, 49th Sess. at page 95, U.N. Doc. A/49/10 (1994).

I am required to make a preliminary assessment of the case to determine whether there is a "*prima facie*" case that can go to trial. I have carefully reviewed the indictment and all supporting documents and conclude:

Firstly, that the acts for which the accused are indicted fall within the jurisdiction of the International Criminal Tribunal for Rwanda in respect of subject matter, time mandate and territorial jurisdiction, and

Secondly, that the indictment and supporting evidence submitted to me establish the existence of a "*prima facie*" case against all of the accused on all of the counts.

ORDER

Case No. ICTR 95-1-I

For the foregoing reasons, I, Navanethem Pillay, Judge of the International Criminal Tribunal for Rwanda,

having received an indictment from the Prosecutor, pursuant to Articles 17 and 18 of the Statute, and Rule 47 of the Rules of Procedure and Evidence,

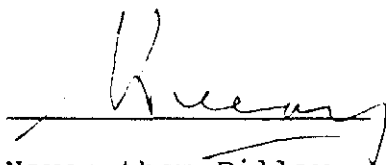
and having heard the Prosecutor, pursuant to Rule 47 (d) of the Rules of Procedure and Evidence,

and pursuant to Article 17 and 18 of the Statute, and Rules 28 and 47 of the Rules of Procedure and Evidence,

CONFIRM the Indictment submitted by the Prosecutor in respect of each and every count.

ORDER, after consultation with the Prosecutor, that there shall be no public disclosure of the identities of the accused, pursuant to Rule 53 (B) of the Rules of Procedure and Evidence, until otherwise ordered by me.

AND FURTHER ORDER that there shall be no public disclosure of all of the materials submitted in support of the indictment, pursuant to the aforementioned Rule.



Navanethem Pillay
Judge
Trial Chamber
International Criminal Tribunal for Rwanda

Dated this 28th day of November 1995,
At Arusha, Tanzania.

Registrar
International Criminal Tribunal for Rwanda
Arusha, Tanzania.
ICTR 95-1-I

