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**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

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CRIMINAL REGISTRY
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TRIAL CHAMBER II

Original : English

Before: Judge Navanethem Pillay, Presiding
Judge William H. Sekule
Judge Mehmet Güney

Registrar: John Kiyeyeu

Decision date: 5 October 1999

**THE PROSECUTOR vs. Pauline NYIRAMASUHUKO and Arsene Shalom
NTAHOBALI Case no. ICTR-97-21-I**

**THE PROSECUTOR vs. Sylvain NSABIMANA and Alphonse NTEZIRYAYO
Case no. ICTR-97-29A and B-I**

**THE PROSECUTOR vs. Joseph KANYABASHI
Case no. ICTR-96-15-T**

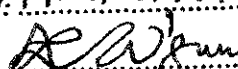
**THE PROSECUTOR vs. Elie NDAYAMBAJE
Case no. ICTR-96-8-T**

DECISION ON THE PROSECUTOR'S MOTION FOR JOINDER OF TRIALS

Office of the Prosecutor:

Mr. Frederic Ossogo, Mr. Robert Petit, Mr. Mathias Marcussen

Counsel for the Accused: Ms. F. Poitte (Counsel for A. S Nthahobali), Ms. N. Bergevin (Counsel for P. Nyiramasuhuko), Mr. C. Tchakounte Patie, (Counsel for S. Nsabimana), Mr. Titinga F. Pacere (Counsel for A. Nteziryayo), Mr. M. Boyer (Counsel for J. Kanyabashi), Ms. V. Laurent (Counsel for E. Ndayambaje).

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
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NAME / NOM:	AMINATTA L.R. N'GUM
SIGNATURE:	 DATE: 05/10/99

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

SITTING as Trial Chamber II of the International Criminal Tribunal for Rwanda (the "Tribunal") composed of Judge Navanethem Pillay, presiding, Judge William H. Sekule, and Judge Mehmet Güney;

BEING SEIZED OF a motion filed by the Prosecutor on 17 August 1998 for Joinder of the trials of the Accused in the *Prosecutor vs. Pauline Nyiramasuhuko and Arsene Shalom Ntahobali* (Case No. ICTR-97-21-I), *The Prosecutor vs. Sylvain Nsabimana and Alphonse Nteziryayo* (Case No. ICTR-97-29A and B-I), *The Prosecutor vs. Joseph Kanyabashi* (Case No. ICTR-96-15-T), and *The Prosecutor vs. Elie Ndajambaje* (Case No. ICTR-96-8-T);

CONSIDERING THAT on 18 September 1998 the Defence filed a response challenging the jurisdiction of the Chamber;

NOTING THAT on 24 September 1998 the Tribunal was seized of the Prosecutor's Motion for Amendment of the Indictment and heard the Defence objection to jurisdiction;

CONSIDERING THAT on 25 September 1998 Defence for Joseph Kanyabashi filed a notice of Appeal of the Chamber's decision on his objection based on lack of jurisdiction, whereupon the Trial Chamber suspended the hearing of the Motion for Joinder until the objection based on jurisdiction was disposed of by the Appeals Chamber.

WHEREAS on 3 June 1999, the Appeals Chamber decided that the Motion for Joinder was not subject to Rule 50, and hence that any Chamber had jurisdiction to hear the motion.

NOTING THAT the Prosecutor filed a motion seeking leave to amend the Indictment pursuant to Rule 50, this motion was supported by Annex A, the proposed Amended Indictments, and Annex B, the material in support of the motions to amend the Indictments.



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CONSIDERING THAT between 9 August 1999 and 13 August 1999, Trial Chambers I and II granted leave to amend the Indictments and all accused persons made initial appearances where they pleaded not guilty to both old and additional charges;

HAVING HEARD the Parties at the hearing on 13 August 1999 on the Motion for Joinder;

NOTING THAT the Indictments have been delivered to all Accused on 13 August 1999 and they were granted extended time, until 31 August 1999, to file additional Briefs on the matter;

CONSIDERING ALSO THAT on 25 August 1999, the Prosecutor disclosed materials from Annex B, *albeit*, in redacted form;

WHEREAS the Defence filed supplementary Briefs by 31 August 1999 and the Prosecution filed its final Brief on 7 September 1999.

ARGUMENTS BY THE PARTIES

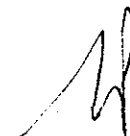
1. The Prosecution argues that:

1.1 Joinder within the Discretion of the Trial Chamber:

Joinder of the Accused in one trial is a matter within the discretion of the Trial Chamber, which should be guided by the overall interests of justice. It is in the public's interest of efficient administration of justice to join the proposed six cases, which are all in their initial stages. In fact, the Indictments have just been amended and the Accused have all pleaded not guilty to the additional charges at the Initial Appearance.

1.2 Motion for Joinder is not Premature:

The Motion for Joinder is not premature, pursuant to Rule 66(A) and Rule 72 of the Rules. Firstly, the present Motion is not predicated on Rule 66(A), which relates to the time limits for disclosure of materials to the Defence by the Prosecutor. Secondly, the



Trial Chamber will consider the Motion for Joinder only after its decisions on Amended Indictments and not on the basis of unconfirmed Indictments.

Rule 72, which defines the time limits for bringing a motion, concerns procedural issues of Preliminary Motions and not substantive issues of Joinder Motions. Thus the Defence is not entitled to time limit provisions under this Rule before a Motion for Joinder is heard. Accordingly, should the Trial Chamber grant the Motion for Joint Trial, the Defence will then have adequate opportunity to raise Preliminary Motions, pursuant to Rule 72.

1.3 Adequate Notice:

Materials disclosed by the Prosecution, pursuant to Rule 66 (A) of the Rules, provide adequate notice to the Accused of the nature of the charges against them. Such materials include copies of the amended Indictments, delivered more than a year ago, and the redaction of Annex B, disclosed on 25 August 1999.

Contrary to the argument of the Defense, the Prosecutor has submitted Annex B solely as a document to support Amendment of Indictments and not as material to substantiate the Motion for Joinder of Trials.

1.4 The Charge of Conspiracy against the Accused:

The Trial Chamber confirmed the charge of Conspiracy to Commit Genocide against all of the Accused currently appearing before the Tribunal in this motion. The Joinder of the Accused is proper because all the alleged criminal acts charged against each of the six Accused, including the Conspiracy to Commit Genocide, were undertaken in furtherance of a single, commonly charged enterprise. In support of this submission, the Prosecution cited *R. v Miller and Others*, Winchester Summer Assizes, {1995} 2 ER 667, 36 Cr App Rep 169 (See Prosecutor's 17 August 1998 Brief, Pages 9 & 10, Paragraph 20), where

Judge Devlin held that where a charge of conspiracy exists and where there is evidence to show that the alleged conspirators engaged in a common enterprise, "The cases must be rare in which fellow conspirators can properly in the interest of justice be granted separate trial."

1.5 The Same Transaction and "Connexite":

In accordance with Rule 48, which provides "Persons accused of the same or different crimes committed in the course of the same transaction may be jointly charged and tried", read in the light of the definition of "transaction" in Rule 2 (A), joinder is proper. The acts which were alleged to have been committed in the instant case are part of the same transaction or the same series of acts or transactions.

Under the rules governing the Tribunal, the French civil law notion of "connexite" does not constitute a standard for deciding whether cases can or should be joined. Rather Rule 48 of the Rules provides the basis for Joinder. Nonetheless, the Prosecution's Motion for Joinder satisfies the requirements for the test of "connexite". For example, in regard to the element of time and place, most of the crimes alleged against the accused occurred between 1 January and 31 December 1994 in the Ngoma, Ndora, and Muganza Communes in the Butare Prefecture. In regard to the element of design and agreement, the Accused, all who are charged with Conspiracy to Commit Genocide and other common offences, have a special nexus with Butare. The issue of causality is also met because the Accused allegedly acted jointly and severally in orchestrating the genocide in Butare Prefecture and throughout Rwanda.

1.6 Article 19 and Article 20(4) (c) of the Statute:

Joinder of the Accused will satisfy the statutory provisions of both Article 19, which guarantees the right to a fair and expeditious trial, and Article 20(4)(c) , which ensures the

right to be tried without undue delay. The proposed Joinder will neither infringe upon the rights of each Accused to a fair and equitable trial nor cause an appreciable delay in the court proceedings. Rather it will facilitate the expeditious management of multiple cases, promote judicial economy, conserve prosecutorial resources, and provide better protection of the victims' and witnesses' physical and mental safety by eliminating the need for them to make several journeys and to repeat the same testimony.

2. The Defence

***Limine Litis* arguments relating to the Prematurity of the Motion for Joinder :**

2.1 The Defence argues that The Motion for a Joint Trial of the six Accused is premature at this stage of the proceedings, since there are still unconfirmed proposed Amended Indictments against the Accused. To avoid confusion and impropriety, the Chamber should not consider the proposed Joinder prior to its decision granting leave to amend the Indictments.

The Defence contends that the Prosecution has breached Rule 66 of the Rules ("Disclosure of Materials by the Prosecutor") and has prejudiced the rights of the Accused, as provided in Articles 19 and 20 of the Statute, by failing to provide Annex B to the Accused at the time of filing the Motion or even during the course of the hearing. Only when the Prosecution has complied with Rule 66 (A)(i) will the Accused be able to exercise their full rights and challenge the validity of the new Indictment by showing that the supporting material does not contain evidence of conspiracy or that there has been no new evidence since the July 1997 NAKI operation.

Since preliminary motions may only be brought within 60 days following disclosure by the Prosecution to the Defence of all the material envisaged by Rule 66(A)(i) of the Rules

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(i.e., within 30 days of the initial appearance by the Accused), the Chamber lacks jurisdiction to hear the Motion for Joinder at this time.

Further, Joinder at this stage of the proceedings would constitute a violation of Rule 72 of the Rules, which provides that the Accused must be afforded an opportunity to file preliminary motions. A hearing on the proposed Motion for Joinder cannot take place before the expiration of the time limit provided under Rule 72 .

Regarding Issues on the Merits of the Motion for Joint Trials:

2.2 Violation of Article 27(2)(iii) of the Directive for the Registry and Lack of Jurisdiction:

According to the Defence for J. Kanyabashi, the Prosecution has produced no prima facie evidence to justify the Motion for a Joint Trial and has violated Article 27(2)(iii) of the Directive for the Registry, which provides that “ a party who wishes the Chamber to make any determination on a question of fact in dispute should not make unsworn assertions of fact orally before the Chamber, but should, in his or her Motion, state contentious facts under oath, in an affidavit, affirmation or other solemn declaration.” In the absence of any factual basis to support the Prosecutor’ s allegations against the Accused, the Trial Chamber lacks jurisdiction to hear the Joinder Motion.

2.3 Failure to Provide Prima Facie Evidence to Support the Charge of Conspiracy to Commit Genocide:

The Prosecution has not provided sufficient *prima facie* evidence to support the charge against the Accused of Conspiracy to Commit Genocide. There is no evidence presented that the Accused acted in concert in furtherance of a common illegal act, that the Accused knew one another, or that a common plan or strategy existed

2.4 No "Connexite":

The Prosecution has established no 'connexite' of facts between the alleged illegal transactions or series of transactions of the Accused to support the Motion for Joint Trial. Joinder cannot be justified, within the context of Rule 48 of the Rules ("Joinder of the Accused"), solely on the basis of similarities among charges included in the Indictments of the Accused. The Prosecution must therefore provide more information to show the close connections, logically and temporally, between the alleged criminal acts of the Accused.

2.5 Article 19 and Article 20(4)(c) of the Statute:

The non-disclosure of Annex B by the Prosecutor prejudices the rights of the accused as guaranteed by Articles 19 and 20 of the Statute, since they are unable to contest the joint trial motion. The right to a fair trial includes a right to be heard which is dependent upon the disclosure of materials supporting the joint trial motion. The Prosecutor is in breach of the *audi alteram partem* rule.

Joinder of the Motion at this stage in the proceedings will violate the rights of the Accused, provided under Articles 19 and 20, including the right to a fair and expeditious trial, the right to adequate notice, the right to adequate time to prepare one's defence, and the right to be tried without undue delay. The haste with which the Trial Chamber was seized with the Prosecutor's Joinder Motion places the Accused in a position of inequality in relation to the Prosecutor before the Chamber. Should the Motion for Joinder be allowed, the Accused will be denied the right to challenge the Joinder Motion, and thereby their very right to a fair trial based upon their presumption of innocence.

2.6 Inapplicability of Rule 48 bis:

The Prosecutor's Motion for Joint Trial was filed in August 1998 prior to the adoption of Rule 48 bis of the Rules on 1 July 1999. As such, Joinder of the Accused in One Trial is

improper because Rule 48 *bis* is inapplicable by virtue of its non-retroactivity. Moreover, Rule 48 of the Rules is not pertinent to Joinder of Accused. Rule 48 must be strictly interpreted, with no reference to Rule 48 *bis*, in order to preserve the rights of the Accused, including the presumption of innocence.

AFTER HAVING DELIBERATED

The Tribunal issues its decision:

With regard to non disclosure of supporting materials and prematurity of the Motion for Joinder:

3. The Prosecution maintains that the Defence received timely disclosure of supporting materials on 25 August 1999. While the Trial Chamber acknowledges the importance of timely disclosure, it notes that at this stage of the proceedings disclosure is not in issue. In fact, even if the Prosecutor had not disclosed such materials, the rights of the Accused would not have been violated, under Rule 66 (A)(i) of the Rules. This Rule refers to the disclosure of material in support of an Indictment when confirmation is sought. It does not refer to the disclosure of material in support of a Motion for Joinder.

Indeed, the current proceedings fall within the ambit of Rule 66 A)(ii), which provides that “the Prosecutor shall disclose to the Defense, no later than 60 days before the date set for trial, copies of the statements of all witnesses whom the Prosecutor intends to call to testify at trial.” In the case at bar non disclosure has neither prejudiced the rights of the Accused nor prevented them from arguing their case. All of the Accused have received the said material and may file preliminary motions, in timely manner, pursuant to Rule 72 (B) of the Rules. Furthermore, the Trial Chamber considers that at this stage of the proceedings, it

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is not necessary to rely on Annex B, since it is not a matter of evaluating evidence but of assessing whether or not there is sufficient factual and legal basis to support the joint trial. With regard to the argument that the motion for joint trial is premature and that the Trial Chamber must wait until the expiration of the 60-day time limit to hear the motion, pursuant to Rule 72(A) of the Rules, the Trial Chamber holds that a joint trial will not prejudice the Accused and that the Defense could still bring the preliminary motions, under Rule 72 (B) (iii) of the Rules, for defects in the form of the Indictment or for severance of crimes, or could even file a motion for severance of the proceedings, pursuant to Rule 82 B) of the Rules, thereby avoiding any conflict of interest that could cause prejudice to the Accused, and safeguarding the interests of justice.

With regard to the lack of *prima facie* evidence to support the joint trial and the retroactive application of Rule 48 *bis*:

4. The Trial Chamber is not called upon at this stage in the proceedings to judge the merits of the charges against the Accused. Rather the Chamber's task is only to determine whether, on the basis of legal and factual assessment, there exists a justification for holding a Joint Trial of the Accused.

5. Under Rule 48 *bis*, the "Prosecutor may join confirmed Indictments of persons accused of the same or different crimes committed in the course of the same transaction, for purposes of a joint trial, with leave granted by a Trial Chamber..." The Defence argues that Rule 48 does not provide for joinder of Accused whose indictments have already been confirmed. The Trial Chamber notes that the present Motion for Joint Trial filed on 17 August 1998 preceded the adoption of Rule 48 *bis*. In fact, it appears that the Defense has a misconception of the applicability of Rule 48 *bis* in the instant case: firstly, because the present motion is for Joinder of Trials and not for Joinder of



Indictments; secondly, this Motion has not been filed under Rule 48 *bis*. It is the view of the Chamber that Rule 48 *bis* is inapplicable to this case. As the Defence maintains, Rule 48 *bis* is inapplicable by virtue of its non-retroactivity, and it is essentially a clarification of the existing Rule 48 which covers the issue of Joint Trial. Therefore the pertinent Rule applicable to the present Motion for a Joint Trial is Rule 48.

6. Considering the provisions of Rule 48 on Joinder of Accused, the Rule states that "persons accused of the same or different crimes committed in the course of the same transaction may be jointly charged and tried." In the instant case, this Rule enables the Prosecutor to consolidate the trials of the accused into one. The procedure proposed by the Prosecutor is not prejudicial to the accused, since in "joint trials each accused shall be accorded the same rights as if he were being tried separately" pursuant to Rule 82 (A). This approach receives support from Judge Shahabudeen's obiter dictum in his dissenting opinion of 3 June 1999 in the case of *Joseph Kanyabashi vs .The Prosecutor*, Case No. ICTR-96 -15-A, which pertains to an Interlocutory Appeal on the Jurisdiction of Trial Chamber I. Here Judge Shahabudeen presented two interpretations of this Rule. One interpretation relates to joinder *stricto sensu*, that is, where the accused may be "jointly tried", if "jointly charged". The other endorses the view that Rule 48 embraces the possibility of "jointly trying" the accused even if not "jointly charged". In *Kanyabashi* the Prosecutor argues the second view. The Chamber acknowledges the reasoning of Judge Shahabudeen's interpretation of Rule 48 and agrees that people charged separately could indeed be jointly tried if facts are based on the same transaction. Further, the Chamber holds that in the instant case, joinder of the Accused in one trial is proper. It is in the interests of justice that the same verdict and the same treatment be rendered to all the Accused with respect to the offences committed in the same transaction.

With regard to the lack of *prima facie* evidence to support the requirement of “ same transaction”:

7. Contrary to the arguments of the Defence, the issue before the Chamber is not that of similar charges in the Indictments but that of the requirement that the accused were engaged in the same criminal transaction. The Trial Chamber defines “same transaction” to mean that Accused can be jointly tried with others if their acts fall within the scope of Rule 48. The Chamber recognizes earlier decisions of the Tribunal on this issue. See the Decision of Trial Chamber I, relating to three Accused in *The Prosecutor vs Clement Kayishema*, Case No. ICTR-95-1-T, *Gerard Ntakirutimana*, Case Nos. ICTR-95-1-T and ICTR-96-17-T, and *Obed Ruzindana*, Case Nos. ICTR-95-1-T and ICTR-96-10-T, which relates to the Prosecutor’s motion to sever and join the accused in a superseding Indictment as well as to Amend the superseding indictment. In response to the proposed motion, Trial Chamber I stated that, “...involvement in the same transaction must be connected to specific material elements which demonstrate on the one hand the evidence of an offence of a criminal act which is objectively punishable and specifically determined in time and space and on the other hand prove the existence of a common scheme, strategy or plan, and the accused therefore acted together in concert.”

8. Trial Chamber II interpreted Rule 48 differently in its decision of 30 September 1998 in the *Prosecutor vs. Aloys Ntabakuze and Gratien Kabiligi*, Case No. ICTR-97-34-I. In this case, Trial Chamber II observed that “Pursuant to Rule 48 of the Rules, it is permissible to join those accused who have been charged with the same or different crimes committed in the course of the same transaction.” The Chamber further proposed the following guidelines to be used for interpreting Rule 48:



1. The acts of the Accused must be connected to material elements of a criminal act. For example, the acts of the accused may be non-criminal/legal acts in furtherance of future criminal acts,
2. The criminal acts to which the acts of the accused are connected must be capable of specific determination in time and space;
3. The criminal acts to which the acts of the accused are connected must illustrate the existence of a common scheme, strategy or plan.

9. Trial Chamber II decided that in determining whether the same transaction exists for the purposes of joint trial, it would consider the totality of the facts and evidence, using the above guidelines for direction. However, the Trial Chamber stated that these guidelines are not intended as a rigid, insurmountable three-prong test.

10. The Trial Chamber agrees with the reasoning in *Kabiligi et al.* It is in conformity with Rule 2 of the Rules, which defines “transaction” as “a number of acts or omissions whether occurring as one event or a number of events, at the same or different locations and being part of a common scheme, strategy or plan.” The Trial Chamber notes that the three-prong test prescribed in *Kabiligi* more appropriately covers the scope envisaged by Rule 2 than does the interpretation of this Rule in *Kayishema, Ntakirutimana* and *Ruzindana*. The guidelines stipulated in *Kabiligi* can be applied to the instant case.

The first prong of the test is satisfied insofar as most of the Accused, according to their Indictments, held official positions in the Government. Pauline Nyiramasuhuko was a Minister in both the Agathe Uwilingimana Government and the Interim Government headed by Jean Kambanda, while Nsabimana and Nteziryayo were Prefects in the Butare

Prefecture. Kanyabashi and Ndayambaje were Bourgmestres in the Butare Communes of Ngoma and Muganza, respectively.

11. The second prong of the Kabiligi test is satisfied because the criminal acts connecting all the accused can be specifically determined both in time and space. The events in which they are alleged to have participated occurred between 1 January to 31 December 1994 in various Communes in Butare.

12. Further, the Indictments against the Accused indicate that the third prong of the test has been satisfied. In each Indictment the Prosecutor alleges that there existed a national plan to exterminate the Tutsi. It is alleged, in Paragraph 5.1 of the concise statement of facts, that from the late 1990s to July 1994, *inter alia*, members of the Government, political leaders and other personalities conspired among themselves and worked out a plan with intent to exterminate the civilian population and eliminate members of the opposition. It is further alleged that all the accused included in the joint trial motion elaborated, adhered to and executed the said plan with the aim of exterminating the Tutsi. Among the most common facts alleged are the role the accused played in the incitement of people to exterminate the Tutsi, the training of militiamen and the distribution of weapons. The third prong, namely the existence of a common strategy or plan, may be considered in light of Rule 2 of the Statute, which defines same transaction as “ a number of events, at the same or different locations and being part of a common scheme, strategy or plan”. This definition corresponds to the acts the Accused are alleged to have committed, such as Genocide and Conspiracy to Commit Genocide.

13. Regarding the conspiracy Charges, the Prosecutor has based its request for a joint trial on the Charge of Conspiracy to commit Genocide, arguing that the charge involves all accused persons who participated in a common transaction. The Prosecutor contends that the Accused acted jointly and severally in pursuit of their common scheme. In the *Bagambiki et al* case (Case No ICTR-97-36-T) of 30 September 1998, Trial Chamber II observed that “it is quite impossible to establish when and where the initial agreement was made or when or where the other conspirators were recruited” and that “participation in a conspiracy is infinitely variable as it could be active or passive.” The Trial Chamber agrees with this decision. However, in view of the present stage of the proceedings, the Chamber will not, at this time, address the issue of whether or not a conspiracy actually existed. This is a substantive issue of the forthcoming Trial on the merits.

It is the opinion of this Trial Chamber, therefore, that in the instant case, there is sufficient showing of “same transaction”. Therefore, it is the view of the Trial Chamber that there exists both factual and legal basis for the holding of a joint trial and there is no need, in our view, for an enquiry into whether there is *prima facie* evidence in support of a joint trial. On the basis of the separate Indictments, it is clear that sufficient elements of each charge have been established to show probability that the Accused participated in a common scheme, strategy or plan with one another or that they conspired to Commit Genocide.

Although the additional charge of Conspiracy has been allowed in the amended Indictment, the Prosecutor will have to convince the Trial Chamber in due course that this charge will hold in law and in fact. The Chamber has intentionally allowed the Conspiracy Charge, which provides the basis for the Joint Trial of the Accused.

For the purposes of a joinder, in the absence of evidence to the contrary, in *Prosecutor v. Aloys Ntabakuze and Gratien Kabiligi*, Trial Chamber II relied upon the Prosecutor’s factual allegations submitted in the Indictment and related documents. It held that the Joinder of two

accused in one Indictment was proper within the scope of Rule 48 and that the Defense had not shown that a joint trial would prejudice the accused or that it would not be in the interests of justice.

With regard to the Chamber's lack of jurisdiction to rule on the Joinder Motion.

14. Mr Kanyabashi's Defence has alleged non compliance of the Prosecutor with the requirement of Article 27(2)(iii) from the Directive for the Registry. The Trial Chamber holds that there is no provision in the Rules of Procedure and Evidence addressing the issue of truthfulness. This is an evidentiary issue to be determined during the course of the Trial on the Merits. Moreover, it is not the practice of the Tribunal to require Parties to make a solemn declaration of veracity in the form of an affidavit when submitting a brief. Furthermore, within the ambit of joinder, the Trial Chamber is not determining a question of fact, nor assessing the truth of the acts alleged, but is making a determination about whether or not there exists a basis for Joinder.

On the rights of the accused

15. Joinder of the Accused in one trial will not cause undue delay, since none of the trials has started or is about to start. Rather Joinder will promote efficiency and avoid delay in bringing those accused of involvement in one criminal transaction to trial. The wording and significance of Rule 82(A) are particularly relevant here. As stated by the Tribunal for the former Yugoslavia in the case of *The Prosecutor vs Delalic, Mucic, Delic and Landzo*, Case No IT-96-21-73, the intent of this Rule is "to vest in the accused in a Joint Trial all the rights of a single accused on trial before a Trial Chamber. Accordingly the accused jointly tried does not lose any of the protection under Articles 20 and 21 of the

Statute”.¹ Therefore, the proceedings will be in accordance with Articles 19 and 20 of the Statute.

The Trial Chamber acknowledges that the right of each accused to be presumed innocent will not be violated, since in any criminal proceeding, whether the accused is tried jointly or separately, it is the Prosecutor’s burden to prove guilt beyond a reasonable doubt.

On the protection of victims and witnesses

16. The Tribunal considers that the argument raised by the Prosecutor relating to the need to protect victims and witnesses is of utmost importance and particularly relevant and, as such, cannot be entirely subordinated to the rights of the accused. There must, however, be a balance between these rights and the protection of the witnesses. To this end, the Trial Chamber holds the same view as Trial Chamber I in its Decision of 6 November 1996 in the case of *The Prosecutor v. Kayishema*, Case No ICTR-95-1-T, that “the requested joinder would allow for a better administration of justice by ensuring [...] a better protection of the victims’ and witnesses’ physical and mental safety, and by eliminating the need for them to make several journeys and to repeat their testimony.”

17. The Trial Chamber reiterates its commitment to guarantee the rights of the Accused. However, on balance, the Chamber holds that a joint trial is proper in the case at bar. It is in the interest of justice that the same verdict should be rendered against all the Accused involved in the alleged criminal acts arising from the same transaction or series of transactions.

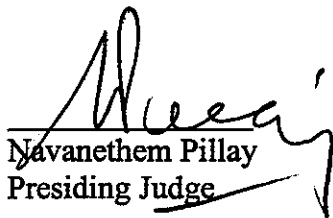
¹ Articles 20 and 21 of the ICTY Statute correspond to Articles 19 and 20 of the ICTR Statute, providing for the rights of the Accused.


FOR ALL THE ABOVE REASONS, THE TRIBUNAL

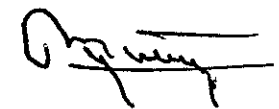
ORDERS the Joint Trial of the six accused: Pauline Nyiramasuhuko, Arsene Shalom Ntahobali, Sylvain Nsabimana, Alphonse Nteziryayo, Joseph Kanyabashi and Elie Ndayambaje;

INSTRUCTS the Registrar to notify all parties concerned of this decision.

Arusha, 5 October 1999


Navanethem Pillay
Presiding Judge


William H. Sekule
Judge


Mehmet Güney
Judge

Seal of the Tribunal

