



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER III

Original: English

Before:

Judge Lloyd George Williams, Presiding
Judge Yakov Ostrovsky
Judge Pavel Dolenc

Registrar:

Agwu U. Okali

Date:

23 August 2000

THE PROSECUTOR

v.

**SAMUEL IMANISHIMWE and
EMMANUEL BAGAMBIKI**

THE PROSECUTOR

v.

ANDRÉ NTAGERURA

Case No. ICTR-99-46-I

**DECISION ON IMANISHIMWE'S MOTIONS FOR AMENDMENT OF THE
INDICTMENT AND DISCLOSURE**

Office of the Prosecutor:

Léonard Assira
Richard Karegyesa
Liliane Rasendra
Ayo Fadugba

Counsel for Samuel Imanishimwe:

Marie Louise Mbida Kanse Tah

Georges So'o

1. **THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (Tribunal),

SITTING as Trial Chamber III (Chamber), composed of Judge Lloyd George Williams, Presiding, Judge Yakov Ostrovsky, and Judge Pavel Dolenc;

BEING SEISED of Imanishimwe's "Motion for Amendment of Samuel Imanishimwe's Indictment Act [*sic*] and Evidence Disclosure" filed 10 May 2000 (Motion);

CONSIDERING the "Prosecutor's Brief in Reply to the Motion by Samuel Imanishimwe's Defence for Leave to Amend the Indictment and for Disclosure of Materials" filed 16 May 2000;

BEING SEISED of Imanishimwe's "Supplementary Request for Leave to Amend the Indictment against Samuel Imanishimwe and for Disclosure" filed 7 June 2000 (Supplementary Motion);

CONSIDERING the "Prosecutor's Supplementary Brief in Reply to the Motion by Samuel Imanishimwe's Defence for Leave to Amend the Indictment and for Disclosure of Materials" filed 20 June 2000;

HAVING HEARD the parties at a hearing on 3 July 2000;

NOW CONSIDERS the matter.

SUBMISSIONS OF THE DEFENCE

2. The Defence challenges paragraph 3.4 of the indictment's concise statement of facts. The Defence asserts that this paragraph is not sufficiently explicit and does not provide the full historical context. The Defence asks the Chamber to order the Prosecutor to amend this paragraph. The Defence submits that the legal bases for this objection are Article 20(4)(c) of the Statute of the Tribunal (Statute) and Rule 47(C) of the Rules of Procedure and Evidence (Rules).

3. The Defence, for purposes of the preparation of its case, seeks the disclosure of a "report" dated 1 August 1997 by Prosecution investigator Michael Hourgian, purportedly related to an investigation of the 6 April 1994 plane crash and death of Rwandan President Juvenal Habyarimana. The Defence also seeks a purportedly related memorandum allegedly in the possession of the Prosecutor. The Defence relies on Rules 66(B), 68, and 69(i).

SUBMISSIONS OF THE PROSECUTOR

4. The Prosecutor replies that the Defence's challenge to paragraph 3.4 is inadmissible because Article 15(2) of the Statute and Rule 50 do not authorise such a challenge. The Prosecutor also submits that the challenge amounts to an objection based on a defect in the form of the indictment, which is time barred.

5. The Prosecutor submits that the 1 August 1997 report is not in the possession of the Office of the Prosecutor, and that she is not conducting an on-going investigation.

6. The Prosecutor submits that "the memorandum accompanying the 1 August 1997 report" is an internal document and not subject to disclosure under Rule 70(A).

7. The Prosecutor prays that the Chamber dismiss the Motion and Supplementary Motion.

FINDINGS

Amendment" of Paragraph 3.4 of the Indictment

8. The Defence relies on Article 20(4)(c) of the Statute and Rule 47(C) as the legal bases for its objection seeking to "amend" paragraph 3.4 of the indictment. Article 20(4)(c) and Rule 47(C), which govern undue delay and the form of the indictment, respectively, however, do not provide a legal basis on which to amend an indictment, and do not apply here. The Chamber finds that there is no legal basis for this objection. Further, the Chamber finds that any objection based on alleged defects in the form of the indictment, under Rule 72(B)(ii), is time time-barred.

Disclosure

9. The Chamber notes that the 1 August 1997 report, which the Defence seeks, is in the possession of the President of the Tribunal, under seal. In the interests of justice and to facilitate expeditious preparations for trial in this case, the Chamber, in the particular circumstances of this case, invokes the inherent powers of the Tribunal to make the report available to the parties, in accordance with the previous decisions of the Tribunal. The Chamber stresses that it makes no finding as to the relevance of the report at this time and emphasises that this decision is not to be considered as setting any precedent.

10. Rule 70(A) provides that internal memoranda are not subject to disclosure. Further, the Chamber finds that the Defence has failed to establish that the Prosecutor is in possession of any memorandum from Hourigan related to the plane crash, nor that it is subject to disclosure. Thus, the Chamber rejects the Defence request for the disclosure of any such internal memorandum of the Prosecutor to the Defence.

11. For the above reasons, and after having deliberated, the Chamber:

(a) **GRANTS** the Defence prayer for disclosure of the 1 August 1997 report;

(b) **DIRECTS** the Registrar to make the 1 August 1997 report available to the Defence and the Prosecutor solely for use in this case;

(c) **DENIES** the Motion in all other respects, and;

(d) **DENIES** the Supplementary Motion in all other respects.

Arusha, 23 August 2000.

Lloyd George Williams

Judge, Presiding

Yakov Ostrovsky

Judge

Pavel Dolenc

Judge

Seal of the Tribunal