

1568/H



UNITED NATIONS  
NATIONS UNIES



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before: Judge Rafael NIETO-NAVIA, Presiding  
Judge Lal Chand VOHRAH  
Judge Fausto POCAR

ICTR-97-19-AR72  
12/Sept. 2000  
(1568/H - 1563/H)

Registrar: Mr Agwu U OKALI

Decision of: 12 September 2000

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ICTR  
JUDICIAL RECORDS ARCHIVES  
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Jean Bosco BARAYAGWIZA

v.

THE PROSECUTOR

Case No: ICTR-97-19-AR72

ICTR Appeals Chamber  
Date: 12/September/2000  
Action:  
Copied To: All Judges, ALOS  
MS, KM, Judicial Archives,  
Defence Counsel, OTP, Detainees

**DECISION**

(DECISION BY A BENCH OF THE APPEALS CHAMBER ON INTERLOCUTORY APPEALS AGAINST THE DECISIONS OF THE TRIAL CHAMBER DATED 11 APRIL AND 6 JUNE 2000)

Counsel for Jean Bosco Barayagwiza

Ms Carmelle MARCHESSAULT  
Mr David DANIELSON

Counsel for the Prosecutor

Mr William EGBE  
Ms Cydney CRICKARD  
Ms Charity KAGWI  
Mr Alphonse VAN

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**THIS BENCH** of the Appeals Chamber of the 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 and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 (“the Bench” and “the International Tribunal” respectively);

**NOTING** the “Decision on the Prosecutor’s Request for Leave to File an Amended Indictment” issued by Trial Chamber I on 11 April 2000 (“the First Impugned Decision”);

**BEING SEIZED** of an appeal against the First Impugned Decision filed in French by the accused Jean-Bosco Barayagwiza (“the Appellant”) on 17 April 2000<sup>1</sup> (“the First Appeal”);

**NOTING** the “Decision on the Prosecutor’s Motion for Joinder and Decision on Barayagwiza’s Extremely Urgent Motions for Lack of Jurisdiction and for Waiver of Time Limits Under Rule 72(A) and (F) of the Rules,” issued by Trial Chamber I on 6 June 2000 (“the Second Impugned Decision”);

**BEING FURTHER SEIZED** of an appeal against the Second Impugned Decision filed in French by the Appellant on 13 June 2000<sup>2</sup> (“the Second Appeal”).

**NOTING** that the Prosecution filed a response to the First Appeal on 8 June 2000 (“the Prosecution Response”)<sup>3</sup> but that no response has been filed to the Second Appeal;

<sup>1</sup> *Appel de la Décision de la Chambre de Première Instance I (Composée des Juges Navanethem Pillay (Président de la Chambre), Erik Mose, Asoko de Zoysa Gunawardana), Rendue en Date du 11 Avril 2000 sur La Requête du Procureur pour Autorisation d’Amender l’Acte d’Accusation, Déposée le 28 Juin 1999.*

<sup>2</sup> *Appel de la Décision de la Chambre de Première Instance I (Composée des Juges Navanethem Pillay (Président de la Chambre), Asoko de Zoysa Gunawardana, Erik Mose), Rendue en Date du 6 Juin 2000 sur La Requête du Procureur en Jonction et sur la Requête en Extrême Urgence de Jean-Bosco Barayagwiza en Absence de Jurisdiction et/ou de Compétence de la Chambre de Première Instance et en Dérogation aux Délais Prévus aux Articles 72(A) et (F) du Règlement de Procédure (Déposée le 15 Mai 2000).*

<sup>3</sup> *Prosecutor’s Reply to Defence Appeal Against the Decision Rendered by Trial Chamber I, Composed of Judge Navanethem [sic] Pillay (President), Judge Erik Mose and Judge Asoka de Zoysa Gunawardana) Dated 11 April 2000 on the Prosecutor’s Motion Requesting Leave to File an Amended Indictment on 28 June 1999.*

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**NOTING** that both the First Appeal and the Second Appeal were filed within seven days of the First Impugned Decision and the Second Impugned Decision respectively, as required by Rule 72(E) of the Rules;

**NOTING** that Rule 72(D) of the Rules of Procedure and Evidence ("the Rules") provides that decisions on preliminary motions are without interlocutory appeal, save in the case of dismissal of an objection based on lack of jurisdiction;

**NOTING** that Rule 72(H) of the Rules defines an "objection based on lack of jurisdiction" as referring to a motion challenging an indictment on the ground that it does not relate specifically to the personal, subject-matter, temporal or territorial jurisdiction of the Tribunal and that such objections are therefore directed to the substantial basis on which jurisdiction is exercised;

**NOTING FURTHER** that under Rule 72(I) of the Rules an appeal brought under Rule 72(D) of the Rules may only be proceeded with if a bench of three Judges of the Appeals Chamber decides that the appeal is capable of satisfying the requirements of Rule 72(H) aforesaid and that therefore the impugned decision dismissed an objection based on lack of jurisdiction as defined;

**NOTING** that in the First Impugned Decision the Trial Chamber *inter alia* dismissed the Appellant's objections that certain of the allegations in the amended indictment fell outside the temporal jurisdiction of the International Tribunal and granted the Prosecution's application for leave to amend the indictment and file an amended indictment;

**CONSIDERING** that in the First Appeal the Appellant raises what the Bench has identified as three grounds of appeal and that he: (1) requests leave to file a brief in support of his appeal and asks that a date be fixed for an oral hearing on the First Appeal; (2) submits that Trial Chamber I did not have jurisdiction to amend the Indictment because following the Decisions of the Appeals Chamber issued on 3 November 1999<sup>4</sup> and on 31 March 2000,<sup>5</sup> ("the Decisions of the Appeals Chamber") the indictment had no legal effect and therefore

<sup>4</sup> Decision, Jean-Bosco Barayagwiza v. The Prosecutor, Case No. ICTR-97-19-AR72, 3 November 1999.

<sup>5</sup> Arrêt (*Demande du Procureur en Révision ou Réexamen*), Jean-Bosco Barayagwiza v. The Prosecutor, Case No. ICTR-97-19-AR72, 31 March 2000.

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was not valid to be amended; and (3) argues that some of the allegations contained in the amended indictment fall outside the temporal jurisdiction of the International Tribunal;

**CONSIDERING** that with regard to the second ground of appeal identified in the First Appeal, the Appellant did not raise this argument before the Trial Chamber and it was therefore not dismissed in the Impugned Decision, therefore the Bench need not determine whether the Appellant's arguments relating thereto go to jurisdiction and satisfy the requirements of Rule 72(H) of the Rules as there was no dismissal of these arguments as objections based on lack of jurisdiction in the proceedings before the Trial Chamber and therefore there can be no appeal under Rule 72(D) of the Rules;<sup>6</sup>

**CONSIDERING** with regard to the third ground of appeal identified in the First Appeal, that this issue was raised before the Trial Chamber and dismissed and that on the face of it a challenge to the temporal jurisdiction of the International Tribunal does satisfy the requirements of Rule 72(H) of the Rules;

**NOTING** that in the Second Impugned Decision the Trial Chamber found, *inter alia*, that there was sufficient basis to join the Appellant's case with that of Hassan Ngeze and Ferdinand Nahimana and that despite the Decisions of the Appeals Chamber and the argument of the Appellant that they invalidated the indictment against him, a valid indictment did exist and therefore the Trial Chamber had the authority to rule on both amendment to the indictment and joinder;

**CONSIDERING** that in the Second Appeal, the Appellant raises what the Bench has identified as three grounds of appeal and that he: (1) requests leave to file a brief in support of his appeal and asks that a date be fixed for an oral hearing on the Second Appeal; (2) argues that because of the impact of the Decisions of the Appeals Chamber, the indictment against him was invalid and as result, the Trial Chamber had no jurisdiction to join his indictment with those of Hassan Ngeze and Ferdinand Nahimana; and (3) contends that

<sup>6</sup> *Decision Rejecting Notice of Appeal, Gratién Kabiligi v. The Prosecutor*, Case No. ICTR-97-34-A, 21 January 2000, para. 18. *Decision Rejecting Notice of Appeal, Aloys Ntabakuze v. The Prosecutor*, Case No. ICTR-97-34-A, 21 January 2000, para. 18.

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some of the allegations contained in the indictment fall outside the temporal jurisdiction of the International Tribunal;

**CONSIDERING** that the second ground of appeal identified in the Second Appeal does not *prima facie* fall into one of the categories defined as "objection[s] based on lack of jurisdiction" in Rule 72(H) of the Rules;

**CONSIDERING HOWEVER** that given this is such a fundamental challenge to the very existence of the indictment against the Appellant, in that it is an allegation that the indictment does not exist and that therefore the Trial Chamber had no jurisdiction to join it to other indictments, it is within the competence of the Bench to find that this challenge to the indictment does constitute a challenge to the jurisdiction of the Trial Chamber;

**CONSIDERING** that with regard to the third ground of appeal identified in the Second Appeal, the Bench has already decided with regard to the First Appeal that this issue does satisfy the requirements of Rule 72(H) of the Rules and that although this challenge was not specifically dismissed in the Second Impugned Decision, the Appellant had raised the objection in his "Extremely Urgent Motion by the Defence Based on Lack of Jurisdiction of the Trial Chamber" dated 15 May 2000 which was decided in the Second Impugned Decision;

**CONSIDERING FURTHER** that the effect of the Second Impugned Decision was to join an indictment which contained paragraphs which the Appellant alleged breached the temporal jurisdiction of the International Tribunal;

**CONSIDERING** that with regard to the first ground of appeal identified in both the First Appeal and the Second Appeal it is not necessary for the Bench, in making a decision on the First Appeal and Second Appeal, to consider further arguments in either additional briefs filed by the Appellant or the Prosecution or at an oral hearing;

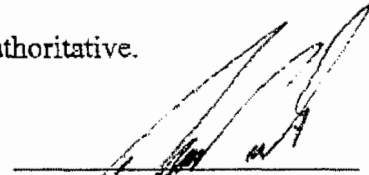
**PURSUANT TO** Rule 72(I) of the Rules;

**HEREBY ORDERS** as follows:

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1. The First Appeal is dismissed save in relation to the objection raised as to the alleged breach of the temporal jurisdiction of the International Tribunal, such issue to proceed to be considered by the Appeals Chamber;
2. The Second Appeal is dismissed save in relation to the challenge to the existence of the indictment following the Decisions of the Appeals Chamber and in respect of the alleged breach of the temporal jurisdiction of the International Tribunal, such issues to proceed to be considered by the Appeals Chamber.

Done in both English and French, the English text being authoritative.



Rafael Nieto-Navia,  
Presiding Judge

Dated this twelfth day of September 2000  
At The Hague,  
The Netherlands.

[Seal of the Tribunal]