



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

**IN THE APPEALS CHAMBER**

**Before:**

Judge Claude JORDA, Presiding  
Judge Lal Chand VOHRAH  
Judge Mohamed SHAHABUDEEN  
Judge Rafael NIETO-NAVIA  
Judge Fausto POCAR

**Registrar:**

Mr Agwu U OKALI

**Decision of:** 14 September 2000

**Jean Bosco BARAYAGWIZA**

v

**THE PROSECUTOR**

*Case No: ICTR-97-19-AR72*

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**DECISION**

**(INTERLOCUTORY APPEALS AGAINST THE DECISIONS OF THE TRIAL  
CHAMBER DATED 11 APRIL AND 6 JUNE 2000)**

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**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

**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 Appeals Chamber" 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;

**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** the decision issued by the Bench of the Appeals Chamber pursuant to Rule 72(I) of the Rules on 12 September 2000 which: (1) dismissed the First Appeal save in relation to the objection raised by the Appellant that some of the allegations contained in the amended indictment fall outside the temporal jurisdiction of the International Tribunal and found that on the face of it this objection challenges the temporal

jurisdiction of the International Tribunal, satisfying the requirements of Rule 72(H) of the Rules ("The First Issue"); and (2) dismissed the Second Appeal save in relation to the First Issue (the same argument having been repeated) and also save in relation to a challenge made by the Appellant to the existence of the indictment following the decisions of the Appeals Chamber issued on 3 November 1999<sup>[4]</sup> ("the Decision of 3 November 1999") and 31 March 2000<sup>[5]</sup> ("the Decision of 31 March 2000") ("the Second Issue");<sup>[6]</sup>

**CONSIDERING** that with regard to the First Issue, the Appellant argues that the amended indictment confirmed on 11 April 2000 includes charges that lie outside the temporal jurisdiction of the International Tribunal;

**CONSIDERING** that the issue of temporal jurisdiction was addressed in the "Decision on Interlocutory Appeals" dated 5 September 2000 in the case of *Hassan Ngeze and Ferdinand Nahimana v. The Prosecutor*, in which decision this Chamber concluded that an indictment cannot charge an accused for an offence committed prior to 1 January 1994 but that, short of so doing, an indictment can refer in an introductory way to crimes prior to 1994;

**NOTING** that the Trial Chamber in this case has agreed with the view expressed in the case of *Ferdinand Nahimana* that

the Trial Chamber [in that case] accepts the Prosecutor's submission that she intends to rely on these allegations in proving the ingredients of the offences which were allegedly committed within the temporal jurisdiction of the Tribunal. The Trial Chamber recognises the possibility that these allegations may be subsidiary or interrelated allegations to the principal allegation in issue and thus may have probative or evidentiary value. The Trial Chamber is therefore of the view that it is premature to address the relevance and admissibility of these allegations at this stage of proceedings. The appropriate stage will be at the trial of the accused.<sup>[7]</sup>

**CONSIDERING** that the Trial Chamber in this case has therefore accepted that events occurring prior to 1994 may only be referred to in an introductory or historical way and that it cannot hold an accused accountable for crimes committed prior to 1994;

**CONSIDERING** that with regard to the Second Issue, the Appellant argues that the indictment against him was invalid and that as a result the Trial Chamber had no jurisdiction to amend his indictment nor join it with those of *Hassan Ngeze* and *Ferdinand Nahimana*;

**CONSIDERING** in particular that the Appellant disputes the finding in the Second Impugned Decision that:

(1) a valid indictment did exist against the Appellant, as it was clear to the Trial Chamber that the Decision of 31 March 2000 "sought to reinstate the indictment against

[the Appellant] to its formal legal standing prior to the... Decision of 3 November 1999, but subject to" the disposition of the Decision of 31 March 2000;

(2) the disposition of the Decision of 31 March 2000 did not affect the legal status of the indictment and therefore the indictment against the Appellant was reinstated by the Decision of 31 March 2000;

(3) the Trial Chamber therefore had jurisdiction to decide the Prosecution motion to amend the Appellant's indictment and to join his indictment;[\[8\]](#)

**CONSIDERING** that the Appeals Chamber can find no error in this finding and concluding that, the disposition of the Decision of 31 March 2000 having explicitly replaced the disposition of the Decision of 3 November 1999, a valid indictment did exist against the Appellant and therefore the Trial Chamber did have jurisdiction to both amend the Appellant's indictment and join it to those of *Hassan Ngeze* and *Ferdinand Nahimana*;

**HEREBY REJECTS** the First Appeal and the Second Appeal.

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

\_\_\_\_\_s./\_\_\_\_\_

Claude Jorda,  
Presiding

Dated this fourteenth day of September 2000  
At The Hague,  
The Netherlands

[Seal of the Tribunal]

[\[1\]](#) *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.*

[\[2\]](#) *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).*

[3] *Prosecutor's Reply to Defence Appeal Against the Decision Rendered by Trial Chamber I, Composed of Judge Navanethen [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.*

[4] *Decision, Jean-Bosco Barayagwiza v. The Prosecutor, Case No. ICTR-97-19-AR72, 3 November 1999.*

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

[6] *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), issued 12 September 2000.*

[7] First Impugned Decision, p 5, citing "Decision on the Prosecutor's Request for Leave to File an Amended Indictment", *The Prosecutor v. Ferdinand Nahimana*, Case No. ICTR-96-11-T, 5 November 1999, paras. 27 and 28.

[8] Second Impugned Decision, para 2.