

ICTR-96-14-1  
20/11/2000  
(1834-1823)

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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

002083

OR: ENG

**TRIAL CHAMBER II**

Before: Judge Laïty Kama, Presiding  
Judge William H. Sekule  
Judge Mehmet Güney

Registry: Agwu U. Okali

Date: 20 November 2000

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**THE PROSECUTOR**

v.

**Eliézer NIYTEGEKA**  
Case No. ICTR-96-14-T

**DECISION ON DEFENCE MOTION ON MATTERS ARISING FROM  
TRIAL CHAMBER DECISIONS AND  
PRELIMINARY MOTION BASED ON DEFECTS IN THE FORM OF THE  
INDICTMENT AND LACK OF JURISDICTION**

The Office of the Prosecutor:

Ken Flemming  
Ifeoma Ojemeni  
Melinda Pollard

Counsel for the Accused:

Sylvia Geraghty

  
20. 11. 2000.

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (The "Tribunal");

SITTING as Trial Chamber II, composed of Judges Laïty Kama, Presiding, William H. Sekule, and Mehmet Güney;

BEING SEIZED of the "Motion of Extreme Urgence on Matters arising from the Decisions, dated 21 and 23 June 2000, on the Amendment of the Indictment," by the Accused Eliézer Niyitegeka, filed on 29 June 2000, ("First Motion");

BEING SEIZED of the "Preliminary Motion Objecting to the Amended Indictment pursuant to Rule 72(A) on Defects in the Form of the Indictment and Lack of Jurisdiction," of the Accused Eliézer Niyitegeka, filed on 4 August 2000, ("Preliminary Motion");

CONSIDERING the "Response to the Accused's Motions of 29 June 2000 and 4 August 2000," of the Prosecutor, filed on 14 September 2000 ("Prosecutor's Response");

CONSIDERING the "Defense Reply to Prosecutor's Response to Defense Motions of 29 June and 4 August 2000," filed on 20 September 2000 ("Defense Response")

CONSIDERING the provisions of the Statute of the Tribunal ("Statute"), specifically Article 4, and the Rules of Procedure and Evidence ("Rules"), particularly Rules 47, 72(A) and (B);

NOTING that Judge Ostrovsky confirmed the Indictment against the Accused on 15 July 1996 ("Original Indictment") whereupon the Accused was arrested and served with a copy of the Original Indictment in Nairobi on 9 February 1999 pursuant to an arrest warrant issued by Judge Yakov Ostrovsky dated 16 December 1998;

NOTING the Chamber's Decision of 21 June 2000 granting the Prosecutor's Request for Leave to File an Amended Indictment and ordering the Prosecutor *inter alia* to file a new amended indictment by Friday 23 June 2000 at 9 hours (hereinafter referred to as the "New Amended Indictment");

NOTING FURTHER the Decision of 23 June 2000, where the Chamber *proprio motu* decided to extend the deadline for filing the New Amended Indictment, in English and in French on Monday 26 June 2000 so that it be served immediately on the Accused;

HAVING HEARD the parties on 25 September 2000, the Chamber now considers the Motion.

## **SUBMISSIONS OF THE DEFENSE**

### *Preliminary Matters*

1. The Defense has filed two Motions objecting to defects in the form of the New Amended Indictment on behalf of the Accused. The First Motion *inter alia* requests that the Prosecutor be ordered to file a properly modified New Amended Indictment by 30 June 2000 so that the Accused can take advice on it from his counsel before his Second Initial Appearance scheduled for 3 July 2000. The Preliminary Motion in addition to raising objections to defects in the form of the New Amended Indictment alleges the Tribunal of lacking jurisdiction.



2. At the hearing of 25 September 2000, the Defense made an oral application that, in view of the fact that the Prosecutor does not intend to pursue joinder of the Accused with the other Government Ministers, then all additional charges made in the New Amended Indictment should be struck out. The charges that should be struck out are Counts 7, 8, 9 and 10 together with the charges added to each count of liability under Article 6(3). In essence, the Accused should be charged on the basis of the First Amended Indictment, which contains only six counts. In the alternative, if the Chamber does not grant this application, the Defense stated that it would argue its two original Defense Motions.

*The Error found in the 21 and 23 June 2000 Decisions*

3. The Defense argues that there is an error in the 21 June 2000 Decision, at page 2, at Count 6, whereby the Accused is charged with violation of Article 4(a) of the Statute. In fact, the Accused pleaded not guilty to the entire Article 4 of the Statute at his initial appearance on 15 April 1999. The Defense, therefore, requests that the said error be corrected to reflect the fact that the Accused has been charged with violation of the entire Article 4.

*Responsibility under Article 6(3)*

4. The Defense alleges that the Prosecutor has breached the Orders made in the Decision of 21 June 2000 that she file a new amended indictment reflecting the involvement of the Accused pursuant to Article 6(1) and those for Article 6(3) for each count. The Defense alleges that no evidence has been produced to sustain the charge of individual responsibility pursuant to Article 6(3) of the Statute, and accordingly, all charges pertaining to individual responsibility under Article 6(3) must be deleted.

*Compliance with Rule 47(C)*

5. Rule 47(C) of the Rules specifies that the indictment set forth a concise statement of the facts of the case and of the crime with which the suspect is charged. The Chamber noted in the 21 June 2000 Decision that of the 169 paragraphs in the proposed New Amended Indictment, only 29 paragraphs refer to the Accused.

6. The Defense alleges that paragraphs 1.1 to 1.30 on Historical Context are not definitive statements on the relevant history of Rwanda, paragraphs 2.1 to 2.5 on Territorial, Temporal and Material Jurisdiction of the Tribunal are superfluous and paragraphs 3.1 to 3.19 on Power Structure relate to the Government and Government Ministers, and that paragraphs 6.9 to 6.20 over generalize actions attributed to the Accused simply because he was a member of the Interim Government. The Defense alleges that none of these paragraphs make reference to the Accused, nor do they concern or relate to him.

7. The Defense, therefore, requests the Trial Chamber to order the Prosecutor to delete these paragraphs, in line with Rule 47(C), as well as comply with the Chamber's order to decrease the overall size of the New Amended Indictment instead of increasing it as she has done. In the alternative, the Defense requests that paragraphs 6.9 to 6.20 should be specific as to dates, names and other particulars as to the Accused conduct, knowledge and specific involvement in the alleged crimes.



*As to the Factual Inaccuracies in the New Amended Indictment*

8. As to the 29 paragraphs, which do concern the Accused in the New Amended Indictment, the Defense requests a concise statement of facts, clarifications, alternatively, the deletion of those paragraphs. The Defense specifically requests that:

- (a) Paragraphs 4.1, 4.2 and 4.4 are incorrect in providing the personal and occupational details of the Accused and the Accused requests that they be corrected, and paragraph 4.4 should be deleted in its entirety.
- (b) Paragraph 6.20, states that the Accused read out a statement, which it argues was an Official Government Release and not the Accused personal statement. Because the said paragraph, clearly and directly does not relate to acts alleged against the Accused individually, it therefore, should be deleted.

*As to Paragraphs Outside of the Temporal Jurisdiction of the Tribunal*

9. The Defense alleges that paragraphs 5.1 to 5.9 on Speeches and Incitement and paragraphs 5.11, 5.14 to 5.21, 5.23 to 5.36, 6.1 to 6.8, 6.19 are outside the temporal jurisdiction of the Tribunal, as set out in Articles 1 to 7 of the Statute. The Defense, therefore, alleges that the Prosecutor has invoked acts and events in the said paragraphs as elements in support of the charges in each Count. The Defense requests that these paragraphs be deleted.

*As to the Violation of Article 5*

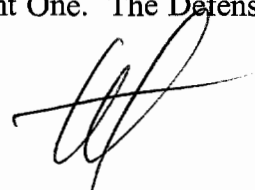
10. The Defense alleges that paragraphs 6.21 to 6.71 allege that the Interim Government perpetrated crimes under the Statute and that it should therefore, be prosecuted by the Tribunal. The Defense alleges that Article 5 of the Statute prohibits the Tribunal from prosecuting institutions, such as the Interim Government. The Defense requests that these paragraphs be deleted. Alternatively, if the Chamber decides that they should not be deleted, then paragraphs 6.26, 6.28, 6.31, 6.32, 6.36, 6.37, 6.41, 6.56, 6.57, 6.58, 6.60, 6.66, 6.67, 6.68, 6.69 and 6.70, which are vague and imprecise as to names and whereabouts of subordinates, militiamen, victims, places and times where the acts took place, dates and exact wording of the legal instruments, Statutes giving the Accused authority, the make, color and chassis number of vehicles used, and other details concerning the specific acts of the Accused or his subordinates, should be precisely made in the New Amended Indictment.

*As to the General Introductory Formulation to Each Count*

11. In accordance with the jurisprudence laid down in the *Prosecutor v Kanyabashi*, ICTR-96-15-I, Decision on Defense Preliminary Motion for Defects in the Form of the Indictment, 31 May 2000, ("Kanyabashi Decision"), the Chamber ruled that the general introductory formulation to each count should be deleted. The Defense requests the Chamber to order the Prosecutor to comply with the jurisprudence of the Tribunal and to delete a similar introductory formulation to each count in the New Amended Indictment.

*As to Cumulative Charges*

12. The Defense alleges that Count One, Count Five and Count Six are all based on the same facts and that they are all components of Genocide, which is Count One. The Defense



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makes reference to the judgment in *Prosecutor v. Kayishema & Ruzindana*, paras. 576, 625 – 649, 21 May 1999, (“Kayishema & Ruzindana Judgment”) and therefore, argues that the Accused cannot be convicted on all charges under the principle of *non bis in idem*. The Defense requests that the three Counts should be ruled inadmissible and subsequently be deleted.

*As to the Alternative Nature of the Counts of Genocide and Complicity in Genocide*

13. The Defense alleges that the Accused has been charged with both Genocide and Complicity in Genocide with identical facts. The Accused cannot be both the perpetrator as well as the Accomplice. The Defense requests that both charges be deleted or, alternatively the charge least favorable to the Accused should be deleted and the Accused be charged with the lesser crime of Complicity.

*As to the Charge of Conspiracy*

14. The Defense alleges that the supporting material show that there is lack of prima facie evidence to support the charge of conspiracy and the charge should therefore be deleted.

*As to the Crime Against Humanity of Inhumane Acts*

15. As for the Crime against Humanity of Inhumane Acts, the Defense alleges that the Prosecutor has failed to comply with the Applicable Law as set out in the former Trial Chamber II decision in *Prosecutor v. Ntakirutimana*, ICTR-96-10-T, Decision on a Preliminary Motion Filed by Defense Counsel for an Order to Quash Counts 1, 2, 3, and 6 of the Indictment, 30 June 1998 where it was stated that the Prosecutor, “either withdraw or amend the respective counts in the indictment as follows...by further specifying in count...the inhumane act or acts, the accused is alleged to have committed.” The Defense alleges that because the Prosecutor has breached the said Order the charge should be deleted.

*Defense Prayers*

16. The Defense prays that the Trial Chamber;
- (a) Rule the New Amended Indictment null and void, stay these proceedings and immediately release the Accused.
  - (b) In the alternative, amend its decision of 21 June 2000.
  - (c) Alternatively, Order the Prosecutor to delete from all counts Article 6(3) responsibility, delete all charges against the Accused for acts not within the personal and temporal jurisdiction of the Tribunal, delete Counts 1 to 8 as being *inter alia* improperly motivated. Delete Counts 9 and 10 in line with the jurisprudence of the Tribunal.
  - (d) Alternatively, Order the Prosecutor to redraft the New Amended Indictment in its entirety ensuring that factual allegations are in compliance with the Jurisprudence, Orders and Directions of the Tribunal. The Prosecutor should serve on the Accused this properly amended New Amended Indictment within 21 days.



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## SUBMISSIONS OF THE PROSECUTOR

### *Preliminary Matters*

17. The Prosecutor notes that the First Motion and the Preliminary Motion raise the same issues and have therefore, responded to both Motions in the Prosecutor's Response. The Prosecutor further notes that the Defense has three essential objections to the New Amended Indictment, which are; (a) That it contains factual inaccuracies, (b) That some matters are outside of jurisdiction or extraneous matters and (c) That it lacks particularity.

### *As to Factual Inaccuracies*

18. The Prosecutor makes reference to the 21 June 2000 Decision, wherein it was stated that any disputed matters as to facts and credibility of evidence are to be examined at trial, therefore, objections made against paragraphs 4.1, 4.2, 4.4 and 6.18 of the First Motion and paragraph 4.1, 4.2, 4.4, 5.11, 5.12 and 6.19 of the Preliminary Motion have no basis.

### *As to the Temporal Jurisdiction of the Tribunal*

19. The Prosecutor notes that the Defense alleges that the New Amended Indictment exceeds the temporal jurisdiction of the Tribunal as specified in Article 7 of the Statute. The Prosecutor makes reference to para. 38 in *Prosecutor v. Kabiligi and Ntabakuze*, ICTR-96-34-I (Decision on the Defense Motions Objecting to Lack of Jurisdiction and Seeking to Declare the Indictment Void *ab initio*) (13 April 2000) ("Kabiligi & Ntabakuze Decision") where it was stated *inter alia* that "...allegations dating before 1994 do not constitute independent crimes, but merely represent what the prosecution intends to offer as relevant and admissible evidence of crimes occurring in 1994..."


### *As to Violations of Article 5 of the Statute*

20. As to allegations that the Tribunal does not have jurisdiction over the Interim Government and that it violates Article 5 defining jurisdiction over natural persons, the Prosecutor makes reference to the *Kabiligi & Ntabakuze decision supra* at para 46 and 47 and states that as it was decided therein, the New Amended Indictment charges the Accused as an individual and not the Interim Government.

21. The Prosecutor therefore, argues that paragraphs 6.44 and 6.49 in the First Motion and paragraphs 2.1 to 2.5, 3.1 to 3.9, 5.1, 5.2, 5.3 to 5.11, 5.14 to 5.38, 6.10, 6.18 to 6.37, 6.41 to 6.49, 6.51 to 6.71 in the Preliminary Motion are without merit.

### *As to the lack of particularity*

22. The Prosecutor argues that it is difficult to give precise details in crimes such as the ones brought against the Accused, a view endorsed in the jurisprudence of the Tribunal. The alleged vagueness in the New Amended Indictment is a matter that can be determined after hearing all the witnesses at trial. The Prosecutor finally argues that failure to provide particularity does not cause the New Amended Indictment to be dismissed or paragraphs therein to be struck out and instead, the best order is for the best possible particulars to be provided.



*Prosecutor's Prayer*

23. The Prosecutor prays that the Defense Motion be denied.

**AFTER HAVING DELIBERATED**

*Preliminary Matters*

24. The Chamber, having been seized of two similar Defense Motions and one oral Defense Motion, shall decide them simultaneously. Furthermore, the Chamber reminds the Defense that it will consider the motions only to the extent of the amendments made following the Chamber's Decision of 21 June 2000 granting the Prosecutor's Request for Leave to file an Amended Indictment.

25. In its Oral Motion, the Defense seeks to strike out Counts 7, 8, 9 and 10 as well as liability of the Accused pursuant to Article 6(3) of the Statute added to each Count from the New Amended Indictment. In essence, the Defense is submitting that the Amended Indictment should only maintain the six Counts the Accused is charged with in the Original Indictment. The Defense bases its request on the Prosecutor's intention not to pursue the joinder of the Accused with the other Government Ministers. The Defense construes the non pursuit of the joinder as amounting to the Prosecutor inferring that the Accused did not conspire to commit genocide and that same transaction with other Government Ministers, as defined in Article 2(A) of the Statute, is not established. In the Preliminary Motion, the Defense alleges that the charge of direct and public incitement to commit genocide, preferred as Count 4 should be deleted as it is only included because the Accused did not cooperate with the Prosecutor and that it has no foundation. In reply, the Prosecutor *inter alia* argues that the conspiracy charge was included as Count Two in the Original Indictment, which was subsequently confirmed by a reviewing Judge.

26. The Chamber, in considering this matter, reminds the Defense that there is clear distinction between the process of confirming an indictment, pursuant to Rule 47 and, amending an indictment, under Rule 50, and raising objections on the defects in the form of an indictment, as provided in Rule 72(B)(ii). In the instant case, the conspiracy charge as well as the charge of direct and public incitement to commit genocide were preferred against the Accused and confirmed as Counts Two and Four by a reviewing Judge. Subsequently, the Trial Chamber granted the Prosecutor leave to amend the indictment, in which she added Counts 7, 8, 9 and 10 as well as liability of the Accused pursuant to Article 6(3) of the Statute. Finally, the Defense filed these Motions objecting to defects in the form of the amended indictment for the new charges added to the Amended Indictment.

27. The Defense is further reminded that its request for striking out the said charges and allegations in the New Amended Indictment would amount to a re-examination or review of the act of confirmation of the charge of conspiracy, the charge of direct and public incitement to commit genocide and the decision granting the Prosecutor leave to amend the First Amended Indictment, adding Counts 7, 8, 9 and 10 as well as liability of the Accused pursuant to Article 6(3) of the Statute. Such a request does not fall within the scope of a preliminary motion objecting to defects in the form of the indictment or any other preliminary motion under Rule 72. Accordingly, the Defense request to withdraw the charge of conspiracy, Counts 4, 7, 8, 9 and 10 and the Accused liability pursuant to Article 6(3) of the Statute is denied.



28. As to the Defense alternative allegations that the Prosecutor has breached the Orders made in the Decision of 21 June 2000 that the New Amended Indictment should reflect the involvement of the Accused pursuant to Article 6(1) as distinguished from those pursuant to Article 6(3). The Chamber notes that the New Amended Indictment, in fact, is in breach of the said Orders and directs the Prosecutor to modify the New Amended Indictment so that it identifies the alleged acts of the Accused which engage his individual criminal responsibility under Article 6(3) of the Statute from those acts which engage his individual criminal responsibility under Article 6(1) of the Statute.

*Regarding the Error found in the 21 and 23 June 2000 Decisions*

29. The Defense requests that the error in the 21 June 2000 Decision at page 2 at Count 6 therein be corrected. The Accused is charged, therein with violations of Article 4(a) of the Statute, whereas, in fact the Accused pleaded not guilty to the entire Article 4 of the Statute at his initial appearance on 15 April 1999. This error was further compounded in the 23 June 2000 Decision. Consequently, the Defense argues that, the New Amended Indictment has preferred, in Counts 9 and 10, charges against the Accused contrary to Article 4(a) and 4(e) of the Statute. Furthermore, the New Amended indictment charges the Accused with responsibility for *inter alia* "killing" contrary to Article 4(a) where there is no such crime pursuant to Article 4(a). The Defense, therefore, requests that the error in the 21 June 2000 Decision be corrected to reflect the fact that the Accused has been charged with violation of the entire Article 4 of the Statute.

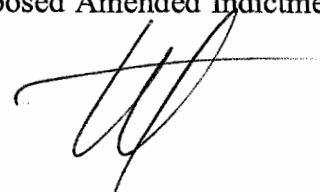
30. The Chamber, after a scrutiny of the alleged error in the 21 June 2000 Decision, has noticed that the wording of Count 6, in the Original Indictment and the First Amended Indictment is the wording of Article 4(a) of the Statute. Consequently, presuming that the Prosecutor made a typographical error in citing Count 6 as a violation of Article 4 of the Statute, instead of citing it as a violation of Article 4(a) of the Statute, and then correctly cited it in the New Amended Indictment as Article 4(a) of the Statute, the Chamber is of the opinion that it is the formulation of the Count that is controlling and not the Article number. Accordingly, the Chamber decides that the New Amended Indictment be corrected and cite Count 9 in the New Amended Indictment as a violation of Article 4(a) of the Statute, without making reference to word "killing" and Count 10 remain as it is, charging the Accused of violating Article 4(e) of the Statute.

*Regarding Compliance with Rule 47(C)*

31. As to the Defense argument that certain paragraphs do not make reference to, nor do they relate to the Accused and that they over generalize the actions attributed to the Accused simply because he was a member of the Interim Government.

32. The Chamber notes that it is a general principle of criminal law that all facts of a given offence attributed to an accused person are to be set out in the indictment against him or her and that for an indictment to be sustainable, facts alleging an offence must demonstrate the specific conduct of the accused constituting the offence, all of which are reflected in Rule 47(C) of the Rules.

33. The Chamber recalls its Decision in *Prosecutor v. Niyitegeka*, ICTR-96-14-T, at para. 33(2)(c), Decision on Prosecutor's Request for Leave to file an Amended Indictment, 21 June 2000. The Chamber observed therein that a detailed proposed Amended Indictment





that includes historical background of the offences, and other useful information in connection to the crimes charged could provide a greater degree of specificity and clarity to the allegations against an accused. The Chamber, in line with the jurisprudence in the above Decision rules that paragraphs 1.1 to 1.30, 2.1 to 2.5 and 3.1 to 3.19 do not offend the provisions of Rule 47(C) of the Rules and, accordingly they may remain in the New Amended Indictment.

34. The Chamber further notes that a number of paragraphs in the New Amended Indictment, as listed in the motion, do not mention the Accused and his role in the events alleged therein. However, it is not reasonable to expect the Prosecutor to mention the Accused in every paragraph of the New Amended Indictment. Furthermore, it is not proper for the Chamber to consider the New Amended Indictment in such a way as to disregard those paragraphs which do not describe facts and omissions for which the Prosecutor finds the Accused individually responsible under the Statute of the Tribunal. The New Amended Indictment must be considered in its totality and it would be incorrect to make conclusions as to non-compliance with Rule 47(C) upon a selective reading of only certain of its paragraphs. The jurisprudence of the Tribunal underscores this conclusion in *Prosecutor v. Nsengiyumva*, paras. 1 to 4, ICTR-96-12-I, Decision on the Defense Motion Raising Objections on Defects in the Form of the Indictment and to Personal Jurisdiction on the Amended Indictment, 12 May 2000.

35. As to the Defense request that the New Amended Indictment specify dates, names and other particulars as to the Accused conduct, knowledge and specific involvement in the alleged crimes in paragraphs 6.9 to 6.20, the Chamber considers that paragraph 6.10, which alleges "numerous" Cabinet members of having supported the plan could be more specific by mentioning whether or not the Accused was one of those Cabinet members who supported the plan or not. Nevertheless, the Chambers considers that the rest of these paragraphs are sufficiently specific as to enable the Accused to understand the charges against him, and that requests of particularity as to dates, names and other particulars are matters of evidence which should properly be addressed at trial.

*Regarding the Factual Inaccuracies in the New Amended Indictment*

36. As to the 29 paragraphs, which make direct reference to the Accused, the Defense alleges factual inaccuracies as to his date of birth, the date of his appointment as Minister and to which Ministry, and his occupation prior to his appointment as Minister. The Prosecutor responds by arguing that the Defense should note that all these facts are correctly identified in the New Amended Indictment. The Chamber recalls the Accused Second Initial Appearance on 3 July 2000 whereby all the inaccuracies pointed out in the New Amended Indictment were corrected and immediately inserted therein. The Chamber considers, therefore, the Defense allegations resolved and that if there are further allegations as to factual inaccuracies, they can be resolved at trial.

37. As to the Defense allegations made concerning paragraph 6.20 that the statement read out by the Accused was in fact an Official Government Release and not the Accused personal statement, the Chamber considers that the question as to whether the statement was a personal one or not be resolved at trial. The Chamber decides therefore, that the paragraph should remain in the New Amended Indictment.



*Regarding Alleged Lack of Jurisdiction Based on Paragraphs Outside of the Temporal Jurisdiction of the Tribunal*

38. The Defense alleges that the Tribunal lacks jurisdiction because the Prosecutor has invoked paragraphs, which are outside its temporal jurisdiction, as set out in Articles 1 to 7 of the Statute, as elements in support of the charges in each count. The Defense requests that these paragraphs be deleted. In response, the Prosecutor makes reference to the observations in *Kabiligi & Ntabakuze Decision supra* at para. 38 that, "allegations dating before 1994 do not constitute independent crimes, but merely represent what the prosecution intends to offer as relevant and admissible evidence of crimes occurring in 1994." Accordingly, in agreement with the jurisprudence laid down in the *Kabiligi & Ntabakuze Decision*, the Chamber rules that those paragraphs invoked as elements in support of the charges in each count should remain in the New Amended Indictment.

*Regarding the Alleged Lack of Jurisdiction Based on Violations of Article 5*

39. The Defense alleges that paragraphs 6.21 to 6.71 allege that the Interim Government perpetrated crimes under the Statute and that it should therefore, be prosecuted by the Tribunal. The Defense alleges that Article 5 of the Statute prohibits the Tribunal from prosecuting institutions, such as the Interim Government. The Prosecutor, in response, refers to the *Kabiligi & Ntabakuze decision, supra*, at paras. 45 and 46. In the said Decision, the parties were in dispute as to whether the indictment may allege an association to the military and whether such reference violates the Tribunal's jurisdiction over natural persons as provided for in Article 5 of the Statute. The Trial Chamber found, that all the counts charge the two accused persons individually and that it only makes reference to the Rwandan Armed Forces because the accused were members of the Rwandan Armed Forces.

40. In the instant case, the Chamber notes that the Parties agree that the Accused was a member of the Interim Government, holding the post of Minister for Information. The New Amended Indictment, in preferring the charges against the Accused, makes reference to his involvement in the Interim Government in his capacity as Minister. The Chamber notes that it is the Accused who is alleged to have committed crimes in his capacity as a member of the Interim Government. Accordingly, the Chamber finds that the Defense allegations are therefore, not founded.

41. In light of the finding at para. 42 of this Decision, the Chamber decides that the New Amended Indictment is specific enough to provide the Defense with information it needs to prepare its case for trial. The Chamber, therefore, considers that the particularity requested for by the Defense in some of the paragraphs fall within the scope of the supporting material to be provided to the Defense by the Prosecutor pursuant to Rule 66(A)(i). Nevertheless, the Chamber agrees with the particularity requested for by the Defense in the following paragraphs and orders the Prosecutor to modify the New Amended Indictment specifying the following:

- (a) That paragraph 6.31 should set forth at least some of the names of the subordinates, if known and where possible, the categories of the subordinates.
- (b) That paragraph 6.60 should set forth the name of the young girl who was allegedly raped and shot by the Accused on 20 May 1994, the names of the man and woman alleged to have been shot on or about the 28 June 1994 by the Accused after he ran their vehicle off the road, if known.



- (c) That as requested for at paragraph 6.67 in the Defense Motion, the Prosecutor should furnish a copy of the legal instrument under which it is alleged the Accused was invested with the power to control the programming of the radio programs for Radio Rwanda and RTLM, if available.

*Regarding the General Introductory Formulation to Each Count*

42. Regarding the general introductory formulation, "By the acts or omissions described in paragraphs 5.1 to 6.65 and more specifically in the paragraphs referred to below" preceding each count, the Trial Chamber concurs with the jurisprudence laid down in the *Kanyabashi decision supra*. The Trial Chamber, therein, ruled that the general introductory formulation to each count must be deleted so that each count consequently only mentions the specific paragraphs of the indictment which directly concern the allegations against the Accused. The Chamber, accordingly, rules that the said introductory formulation preceding each count be deleted.

*Regarding Cumulative Charges and the Principle of non bis in idem*

43. The Defense contends that the charges of Genocide, Murder and Extermination are in violation of the principle of *non bis in idem* because they are cumulative and based on the same facts. The Defense makes reference to the *Kayishema & Ruzindana Judgment*, wherein it stated that Article 9 stipulates *inter alia* that a person cannot be tried before a national court for acts constituting serious violations of international humanitarian law under the Statute for which he or she has already been tried by the Tribunal. In line with the jurisprudence of the Tribunal, the Chamber decides that the issue of cumulative charges can only be raised at trial and not at this stage of the proceedings.

*Regarding the Alternative Charging for Genocide and Complicity in Genocide*

44. The Defense argues that the Accused cannot be charged with both Genocide and Complicity in Genocide because he cannot be both the perpetrator and the accomplice. The Chamber notes in the 21 June 2000 Decision, the prosecutor was ordered to charge the Accused with committing Genocide and Complicity in Genocide in the alternative. The Chamber, therefore, directs the Prosecutor to comply with the said order in line with the 21 June 2000 Decision.

*Regarding the Charge of Crime Against Humanity for Inhumane Acts*

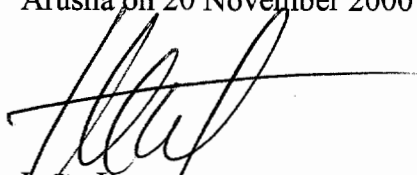
45. Regarding the Defense request for the deletion of allegations of the Crime Against Humanity of Other Inhumane Acts because the Prosecutor failed to specify the Other Inhumane Acts the Accused is alleged to have committed, the Chamber considers that the Prosecutor must specify the inhumane acts alleged to have been committed by the Accused. The Chamber is of the opinion that by specifying the specific inhumane acts, alleged to have been committed by the Accused, the Defense will be in a position to prepare its case. The Chamber recalls the Judgment in *Prosecutor v. Clément Kayishema and Obed Ruzindana*, ICTR-95-1-T, para. 583 and 584, wherein it was stated *inter alia* that, "In the opinion of the Trial Chamber, this category, (other inhumane acts) should not simply be utilized by the Prosecution as an all-encompassing, 'catch all' category." The Chamber, therefore, directs the Prosecutor to particularize, in the New Amended Indictment, the nature of the acts that she will rely upon for the charge of Other Inhumane Acts.




## 46. FOR THE FOREGOING REASONS, THE TRIBUNAL:

- (a) **DIRECTS** the Prosecutor to correct Count 9 of the New Amended Indictment as a violation of Article 4(a) of the Statute;
- (b) **DIRECTS** the Prosecutor to amend the New Amended Indictment so that it distinguishes clearly the acts of the Accused pursuant to Article 6(1) from those from which he incurs individual criminal responsibility pursuant to Article 6(3) of the Statute in line with the 21 June 2000 Decision;
- (c) **ORDERS** the Prosecutor to specify whether the Accused was one of the “numerous” Cabinet members alleged to have supported the plan in paragraph 6.10.
- (d) **ORDERS** the Prosecutor to set forth at least some of the names of the subordinates and where possible, the categories of the subordinates in paragraph 6.31, if known; the name of the young girl who was allegedly raped and shot by the Accused on 20 May 1994, if known and the names of the man and woman alleged to have been shot on or about the 28 June 1994 by the Accused after he ran their vehicle off the road, in paragraph 6.60, if known; that in support of paragraph 6.67, the Prosecutor should furnish a copy of the legal instrument under which it is alleged the Accused was invested with the power to control the programming of the radio programs for Radio Rwanda and RTL, if available.
- (d) **ORDERS** the Prosecutor to delete the introductory formulation to each Count, “By the acts or omissions described in paragraphs 5.1 to 6.65 and more specifically in the paragraphs referred to below”;
- (e) **ORDERS** the Prosecutor to charge as alternate Counts the Counts of Genocide and Complicity in Genocide;
- (f) **DIRECTS** the Prosecutor to particularize the nature of the acts that she relies upon for the charge of other inhumane acts.
- (g) **DIRECTS** the Prosecutor to file with the Registry within twenty one days from the date of this Decision, the English and French versions of the New Amended Indictment as modified pursuant to this Decision, and;
- (h) **DENIES** the Motion in all other respects.

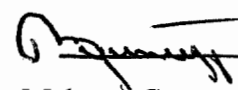
Arusha on 20 November 2000



Laity Kama  
Presiding Judge



William H. Sekule  
Judge



Mehmet Güney  
Judge



Seal of the Tribunal