ICTR-00-56-I
18. 2. 2003
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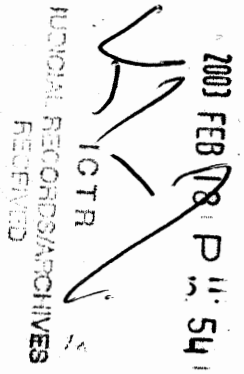
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

TRIAL CHAMBER II

Before: Judge Arlette Ramaroson, presiding
Judge William H. Sekule
Judge Winston C. Matanzima Maqutu

Registry: Adama Dieng

Decision rendered on: 12 December 2002



The Prosecutor

v.

François-Xavier Nzuwonemeye

Case No.: ICTR 00-56-I

DECISION ON DEFENCE PRELIMINARY MOTIONS

Office of the Prosecutor:
Ciré Ali Bâ
Alphonse Van

Counsel for the Defence:
André Ferran
Antoine Béraud

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (hereinafter "the Tribunal"),

SITTING as Trial Chamber II, composed of Judge Arlette Ramaroson, presiding, Judge William H. Sekule and Judge Winston C. Matanzima Maqutu,

HAVING BEEN SEIZED OF:

(1) (i) "Preliminary Motions", filed by Mr. Charvet, Defence Counsel for Nzuwonemeye, on 23 April 2001[1] ("the Initial Motion");

(ii) "Prosecutor's Response in the 'Defence Preliminary Motions'", filed on 6 March 2002; [2]

(iii) "Reply to the Prosecutor's Response in the Defence Preliminary Motions Served on the Defence in English by Fax on 7 March 2002", filed by the Defence on 8 April 2002;[3]

(iv) "Brief for Consideration of Preliminary Motions [Hearing of 7 June 2002]", filed by the Defence on 3 June 2002[4];

(v) "Reply to the Prosecutor's Response to François-Xavier Nzuwonemeye's Preliminary Motions filed on 23 April 2001", filed by the Defence on 20 June 2002;

(vi) "Summary Brief on the Entire Proceedings Regarding the Preliminary Motions Filed by François-Xavier Nzuwonemeye [Hearing of 13 September 2002]"[5];

(vii) "Prosecutor's Response to Preliminary Motions Filed by Counsel for François-Xavier Nzuwonemeye on 6 August 2002", filed by the Prosecution on 13 August 2002.[6]

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[1] This Motion had initially been filed before Trial Chamber III of the Tribunal, composed of Judges Williams, Dolenc and Ostrovsky, and was translated into English on 19 December 2001.
[2] Response translated into French on 6 June 2002.
[3] Reply translated into English on 2 August 2002.
[4] Brief translated into English on 7 August 2002.
[5] Brief translated into English on 23 September 2002.
[6] Brief translated into English on 13 September 2002

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(2) (i) "Motion for the Organization of François-Xavier Nzuwonemeye's Defence" filed by the Defence on 24 December 2001[7];

(ii) "Prosecutor's Response in the Matter of Defence *'Requête pour l'organisation de le Defence de M. François-Xavier Nzuwonemeye'* Filed on 24 December 2002'", filed by the Prosecution on 5 February 2002;[8]

(3) "Motion Seeking Deferment of the Hearing on the Preliminary Motions Until After the Decision on the Defence Motion of 24 December 2001", filed by the Defence on 8 April 2002.[9]

NOTING:

(i) The "Decision Confirming the Indictment" against François-Xavier Nzuwonemeye (and others)[10] of 28 January 2002 in which Judge Kama found, from the material tendered by the Prosecution, that there was sufficient evidence to provide reasonable grounds for believing that the five suspects committed crimes falling within the jurisdiction of the Tribunal;

(ii) The withdrawal by the Registrar of the assignment of Mr. Charvet, Counsel for Nzuwonemeye, on 12 October 2001;

(iii) The assignment by the Registrar of Mr. Ferran on 24 October 2001.

RULING based on the briefs filed by the parties and after having heard the parties on 13 September 2002,

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[7] Motion translated into English on 30 January 2002
[8] Response translated into French on 13 March 2002
[9] Motion translated into English on 8 August 2002

[10] *The Prosecutor v. Augustin Bizimungu, Augustin Ndindiliyimana, Protais Mpiranya, François-Xavier Nzuwonemeye, Innocent Sagahutu*, Case No.: ICTR 2000-56-I "Decision Confirming the Indictment", 28 January 2000

23 April 2001 admissible. For the foregoing reasons, the Defence requests the Chamber to find and rule that the prescribed time-limit for filing preliminary motions must run from 10 April 2001.

5. Moreover, the Defence submits that the Prosecutor's Response, filed in English more than one year after the filing of the initial preliminary motions, is in breach of the right of the Accused to understand the charges against him. The Defence submits that the Chamber must reject the said Response. Alternatively, the Defence specifies that it had requested an extension of the time-limit for replying to the Prosecution's Response received in French on 7 June 2002. The said request remained unanswered, but the Defence managed to file its Response only on 18 June 2002.

6. On the issue of respect of the time-limits for filing the Motion, the Prosecution had initially submitted in writing that the Defence Motion was time-barred, on the grounds that since the Defence had received the supporting materials on 16 June 2002, the Defence should have filed the preliminary motions within 30 days from the date of the said service. The Prosecution observes that Rule 72(F) stipulates that failure by the Accused to raise preliminary motions within the prescribed time-limit constitutes a waiver of rights, unless the Trial Chamber has granted relief from the waiver upon a showing of good cause.

7. The Prosecution then changed its position. It recalled that in addition to the service effected on 27 February 2001, other disclosures had been made on 21 April 2001 and 23 August 2001 and that it was not certain whether the said disclosures had not been aimed at complementing the initial disclosure done under Rule 66 (A) (i) and that the uncertainty should favour the Accused.

8. Initially, the Prosecution responded to the Motion for Organization of Nzuwonemeye's Defence by objecting to the fact that the assignment of Counsel did, in itself, constitute good cause for relief under Rule 72. The Prosecution argued that granting the relief sought would create a bad precedent and recalled that the Defence had initially reserved certain rights to file additional motions which the Chamber had not yet adjudicated upon.

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ARGUMENTS OF THE PARTIES

Admissibility of the Preliminary Motions

1. In the initial Motion, the Defence which was then represented by Mr. Charvet, recalls that the Accused made his initial appearance on 25 May 2000 and that the Prosecution did not disclose the supporting material to him until 27 February 2001, in violation of Rule 66 (A) (i) of the Rules of Procedure and Evidence ("the Rules"). The Defence contends that time-limit for filing preliminary motions starts from the disclosure of the supporting material.

2. Furthermore, the Defence emphasizes that the supporting material include some anonymous witness statements, documents with redacted passages and redacted names of the persons with whom Nzuwonemeye is jointly charged, which makes it impossible for him, as matters stand, to determine the risks of potential conflicts of interest and perchance to seek severance. Consequently, the Defence requests leave to make further reservations in respect of the redacted material in the indictment and on the anonymity of the persons with whom Nzuwonemeye is jointly charged.

3. Mr. Ferran, the Defence Counsel assigned to replace Mr. Charvet on 24 October 2001, filed a Motion for the Organization of Nzuwonemeye's Defence, seeking an extension of the time-limits, in order to supplement the preliminary motions. He submits that his assignment as well as the reservations expressed in the Initial Motion constitute good cause within the meaning of Rule 72 (F) of the Rules. The Defence also addressed a Motion to the Chamber seeking deferment of the hearing on the preliminary motion until after the hearing on the request for extended time-limit. At the hearing of 13 September 2002, the Defence submitted before the Chamber that the latter Motion had become moot following the 7 June 2002 decision to defer all the motions and to hear them jointly.

4. The Defence further submits that it was only on 27 February 2001 that the Registry sent to the Accused the documents dated 6 June 2000 which were to serve as supporting material. Other documents which should have been filed within 30 days following the initial appearance of the Accused were not filed until10 April 2001, thus rendering the preliminary motions filed on

9. Nevertheless, the Prosecution Counsel currently in charge of the case explains that since Mr. Ferran has replaced Mr. Charvet and has filed a motion to supplement the preliminary motions two weeks after receiving the client's file, the Prosecution has no reservations as to the admissibility of the preliminary motions.

On the merits

10. The Defence raises several preliminary motions and requests that all provisions of the Indictment be quashed for the following reasons:

(i) On Chapters II to IV of the Indictment concerning the statement of facts, the Defence argues that the provisions of Article 17 of the Statute and Rule 47 of the Rules have been violated due to the lack of supporting material relating to the alleged acts. The Defence submits that Nzuwonemeye's name is mentioned only five times and that none of the testimonies cited in the supporting material contain serious or specific allegations against the Accused. In response to the Prosecution's submissions on the imprecision of the Indictment, the Defence maintains that the Prosecution failed to include vital information in the Indictment and that even if some details are not indispensable, the Prosecution should have established on what grounds Nzuwonemeye was a superior and what kind of planning he was involved in;

(ii) On the Chapter IV dealing with "Charges", the Defence submits that the absence of any indication as to the dates and places of the alleged crimes is prejudicial to the rights accorded the Accused under Article 20(4)(e) of the Statute;

(iii) On the Count of conspiracy, the Defence alleges that the Indictment refers to acts committed prior to 1 January 1994, hence violating Article 1 of the Statute, and that the absence of any mention of the members of the alleged conspiracy and of their functions or their number is a violation of Article 20(4)(e) of the Statute. In response to the Prosecution's submissions, the Defence submits that it is debatable

whether Nzuwonemeye could be charged with the crime of conspiracy over a period spanning "late July 1990 until July 1994";

(iv) The Defence submits that since genocide and complicity in genocide are not provided for in the Statute as alternative counts, such mode of charging violates the right of the Accused to be informed of the specific charges against him;

(v) The Defence challenges the creation of the autonomous count of "complicity in genocide" on the grounds that it has no legal basis as it merely relates, in the instant case, to a mode of participation in a given offence;

(vi) The Defence considers that there is ideal concurrence between the crimes of genocide and crimes against humanity, with the former offence subsuming the latter, and that consequently, one count should be withdrawn.

(vii) The Defence considers that there is a second ideal concurrence between crimes against humanity (Count 5) and violations of the Geneva Conventions (Count 11) by reason of the identity of the victims (Belgian Blue Helmets) and the nature of the offences;

(viii) The Defence considers that there is a third ideal concurrence between Counts 5 and 6: crimes against humanity extermination and murder, with the first offence subsuming the second. In response to the Prosecution's submissions on this point, the Defence maintains that contrary to the Prosecution's allegation, the Tribunal ruled in *Kayishema* and *Ruzindana* that the same fact cannot be charged as both genocide and crimes against humanity before the trial has taken place.

(ix) On Counts 8 and 9, the Defence considers that there is no supporting material and that the Indictment specifies neither the nature nor the form of the offences.

The Prosecution

11. The Prosecution recalls that: (1) At the time of confirming the Indictment dated 28 January 2000, Judge Kama ordered that the names of the co-accused or any other information pertaining to their identity in the Indictment should not be disclosed either to the Accused Ndindiliyimana or to the public until such time that the Indictment would have been served on all the co-accused; (2) On 25 May, the Accused Nzuwonemeye made his initial appearance and on 6 June 2000 the supporting material relating to the Indictment was disclosed, through the Registry, to the Defence; (3) On 12 July, Judge Dolenc ordered that certain protective measures be taken in favour of Prosecution witnesses, including the disclosure of material in redacted form; (4) On 23 August 2001, 114 witness statements were served on Nzuwonemeye and his Counsel.

12. With regard to the absence of supporting material, the Prosecution submits that pursuant to Articles 17and 18 of the Statute, the Judge confirmed the indictment following a thorough review of the supporting material and upon a finding that there was a prima facie case against Nzuwonemeye and his co-accused. The Prosecution recalls that the Judge's decision is not subject to appeal and, therefore, the Defence argument must be dismissed.

13. With respect to the alleged insufficiency of the Indictment, the Prosecution recalls that the Indictment must contain a concise statement of facts pursuant to Rule 20(4) of the Statute which provides that the accused must be informed in detail of the nature of the charges against him. Given the sheer scale the alleged crimes, the Prosecution submits that it is practically impossible to give very precise information regarding the identity of the victims and the dates on which the said crimes were committed. Regarding the facts underlying the charges set out Sections 3, 4 and 5 of the Indictment, the Prosecution alleges that they are set out in greater detail than is necessary.

14. As to the insufficient information pertaining to the co-conspirators involved in the charge of conspiracy to commit genocide, the Prosecution submits that at least two co-conspirators were named: Ndindiliyimana and Sagahutu, with the precise role played by them specified in the Indictment. The Prosecution further submits that it is permissible in common law jurisdictions to plead that an Accused had conspired with "others unknown". The Prosecution rejects the

allegation that the Indictment is vitiated by the inclusion f facts relating to conspiracy which fall outside the temporal jurisdiction of the Tribunal. The Prosecution recalls that the issue has been conclusively determined in a "Decision on Interlocutory Appeals", rendered on 5 September 2000 in *The Prosecutor v. Ngeze and Nahimana*, which Decision held that proof of certain elements of a crime may be borrowed from evidence of matters occurring before the commencement of the period. Moreover, the Prosecution relies on the similar fact rule in common law to establish the purpose pursued, since conspiracy to commit genocide may constitute a continuous crime over a given period. Lastly, the Prosecution submits that by letter dated 6 August 2002 and after the lifting of the restrictions on making the indictment public imposed in a decision rendered by Judge Ramaroson on 11 July 2002, the full, unredacted Indictment was served on the parties.

15. The Prosecution recalls that the practice of charging complicity in genocide as an alternative count to the main count of genocide is a long-standing practice of both the Tribunal and ICTY.

16. Finally, with regard to the issue of cumulative charges, the Prosecution argues that the issue must be separated from that of cumulative sentences because it is not possible to determine to a certainty, before completion of the presentation of evidence, which charges brought against an accused will be proven

DELIBERATION

Admissibility of the Motion

17. The Chamber first considers the issue of admissibility of the preliminary motions in light of the time-limits prescribed under Rule 72 (A) of the Rules. The Chamber recalls that preliminary motions must be brought by the parties within 30 days following the disclosure by the Prosecution to the Defence of all the materials provided for in Rule 66 (A) (i) and that Sub-Rule 72(F) provides that failure to comply with time-limits constitutes a waiver of the rights of the Accused, unless the Chamber grants relief upon showing good cause.

18. The Chamber notes that the Defence claims to have received two sets of supporting material on 27 February and 10 April 2001, whereas the preliminary motions were filed on 23 April 2001, hence within the prescribed time-limits. Furthermore, the Chamber takes note of the change in the Prosecution's position during the hearing of 13 September 2002. It refrained from pursuing the allegation that the Defence Motion was filed out of time, since there could have been some supporting material for the Indictment among the documents disclosed on 21 April and 23 August. Consequently, the Chamber notes that the Defence was served with a series of supporting material which the Prosecution should have disclosed to it within 30 days from the date of the initial appearance of the Accused pursuant to Rule 66 (A)(i) of the Rules. If this partial disclosure was made only on 10 April 2001, the Defence had to file its preliminary motion within 30 days thereafter. Since the said Motion was filed on 23 April 2001, the Chamber ruled it admissible, pursuant to Rule 72 (A) of the Rules.

19. However, on the Defence's request for an extension of time-limits on the grounds of change of Counsel, the Chamber is not convinced by Mr. Ferran's contention that his assignment following the withdrawal of Mr. Charvet constitutes good cause within the meaning of Rule 72 (F) of the Rules to supplement and enhance some elements of the initial Motion. Accordingly, the Chamber denies the Motion for the Organization of Nzuwonemeye's Defence for lack of a legal basis. The Chamber adds that this decision does not prejudice the Accused Nzuwonemeye, since a hearing was held on 13 September 2002 to hear the parties' arguments on the motions before the Chamber.

20. Nevertheless, the Chamber notes that in its initial Motion, the Defence reserved the right to raise further preliminary motions following the Prosecution's inadequate disclosure. To the extent that the Prosecution does not admit that the subsequent disclosure on 23 August 2001 could have been intended to supplement the earlier inadequate disclosure, the Chamber grants the Defence the right to supplement the preliminary motions due to incomplete disclosure under Rule 72 (A) of the Rules. This has, indeed, been done by Mr. Nzuwonemeye's new Counsel in writing and orally.

On the merits

Imprecision or absence of supporting material (preliminary motions (i), (ii) and (ix))

21. The Chamber notes that the Defence uses the alleged defects in the supporting material that accompanied the Indictment to support the allegation of defects in the form of the Indictment pursuant to Rule 72 (B) (ii) of the Rules. The Chamber recalls that the supporting material is not an integral part of the Indictment,[11] which is the only document on which preliminary motions can be raised within the meaning of Rule 72. The Chamber notes that the disclosure of supporting material, serves, among other documents provided for under Rule 66 (A)(i) of the Rules, as the beginning of the time-limit for filing the preliminary motions provided for under Sub-Rule 72 (B).

22. In the instant case, the Chamber recalls that the supporting material was reviewed by a Judge, who based thereon, rendered a decision on 28 January 2000 confirming the Indictment.[12] On this point the Prosecution recalls that the Trial Chambers have no authority to hear appeals against decisions rendered by a single judge or by another Trial Chamber.[13]

23. At this stage of the proceedings, there can be no discussion of the innocence of an accused based on lack of evidence of the charges pleaded against him based on a review of the supporting material[14]. Consequently, the Chamber cannot consider the Defence allegations of insufficiency or even the absence of supporting material and testimonies admissible, due to lack of a legal basis.[15]

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[11] *The Prosecutor v. Jean Mpambara*, Case no. ICTR 2001-65-I, "Decision (Defence Motion for Disclosure of Documents and Objections Regarding the Legality of Procedures)," 28 February 2002, para. 7

[12] ICTY, *Prosecutor v. Brdjanin and Talic*, Case no. IT 99-36-PT, Decision on Motion to Dismiss Indictment, 5 October 1999, paras. 21 and 22

[13] *The Prosecutor v. Edouard Karemera*, Case No. ICTR 98-44-T, "Decision on the Defence Motion, Pursuant to Rule 72 of the Rules of Procedure and Evidence, Pertaining to, inter alia, Lack of Jurisdiction and Defects in the Form of the Indictment", 25 April 2001, para. 13

[14] See *The Prosecutor v. Edouard Karemera*, Case No. ICTR 98-44-T,"Decision on the Defence Motion, Pursuant to Rule 72 of the Rules of Procedure and Evidence, Pertaining to, inter alia, Lack of Jurisdiction and Defects in the Form of the Indictment", 25 April 2001, paras. 11- 13. See also *Prosecutor v. Radslav Brdjanin & Momir Talic*, Case no. IT-99-36, "Decision on Objections Raised by Momir Talic to the Form of the Amended Indictment", 20 February 2001, para. 15

[15] See for example *The Prosecutor v. Mparamba*, Case No. ICTR 2001-65-I, Decision, 28 February 2002.

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24. Similarly, the Chamber rejects the Defence allegation that Chapter 6 of the Indictment which sets out the charges does not contain any indication of dates and places which would make it possible to determine the offences committed, because each of the counts preferred against the Accused refer to specific paragraphs in the Indictment which set out the supporting facts.

25. Thus, concerning the charges in the Indictment that are contested by the Defence on the grounds of imprecision or lack of evidence (first, second and ninth preliminary motions), the Chamber finds that they are sufficiently detailed as presented or that the factual details can be inferred from the general context, given that the Indictment must be read in its entirety. On this point, the Chamber recalls the reasoning followed by the Chamber in the Decision in *Kanyabashi* where it held that even if certain paragraphs of the Indictment did not specifically mention the Accused, they must be read in conjunction with all the paragraphs in the entire Indictment and that those that "are only of general import must not be construed as supporting the counts".[16] The Chamber finds, in this regard, that the Indictment does not contain defects in the form, and that it is not appropriate to delete the paragraphs that do not mention the Accused.

On the count of conspiracy and the temporal jurisdiction of the Tribunal (third preliminary motion)

26. On the temporal jurisdiction of the Tribunal, the Chamber recalls that the Appeals Chamber decided in *Ngeze and Nahimana v. The Prosecutor* that no one can be charged for acts committed prior to 1 January 1994 but that this "*ne saurait empêcher un acte d'accusation de faire référence, en guise d'introduction, à des crimes antérieurement commis par un accusé*"[17] [cannot prevent reference being made in an indictment, by way of introduction, to previous acts committed by an accused]. Consequently, even if the Indictment mentions as a historical background or as a matter for information, acts committed prior to 1 January 1994 which cannot be relied on to support a count, such facts are not sufficient to sustain an allegation of violation of Article 1 of the Statute.[18]

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[16] Decision, *Kanyabashi*, 31 May 2000) para. 5.16

[17] *Ngeze and Nahimana v. The Prosecutor*, Appeals Chamber, *Décision sur les appels interlocutoires*, [Decision on Interlocutory Appeals], 5 September 2000

[18] See also *The Prosecutor v. Kajelijeli*, Appeals Chamber's Decision of 16 November 2001: "*dans la mesure où l'Acte d'accusation modifié se réfère à quelques actes commis avant 1994, de tels actes ne sont pas censés constituter des accusations indépendantes mais sont simplement prévus comme des éléments de*

27. With respect specifically to the crime of conspiracy to commit genocide, the Chamber recalls that the case-law of the Tribunal has tended to allow reference to events falling outside the temporal jurisdiction of the Tribunal[19] in support of this count. Also, evidence showing the existence of a conspiracy predating 1 January 1994 which relates to the crime or crimes in 1994 with which the accused is charged, has been admitted. In *Kabiligi* and *Ntabakuze*, the Chamber recalled that the crime of conspiracy is a continuous crime and that ultimately, after the Prosecution has presented its evidence and the Defence has had the opportunity to challenge the Prosecution's argument, the Chamber will deliver its Decision on the acts committed in 1994 which show the conspiracy to commit genocide.[20]

28. Furthermore the Chamber recalls the preliminary motions filed by Sagahutu, one of Nzuwonemeye's co-accused,[21]in which it decided that the count of conspiracy to commit genocide should be specified so that the Accused can understand the charges brought against him. In the instant case, the Chamber finds that requirement of specificity to be equally applicable in respect of the count of conspiracy to commit genocide preferred against Nzuwonemeye. Accordingly, in light of the afore-mentioned Decision in *Sagahutu*, the Prosecution is already duty bound to make this count more specific and elaborate on the reference "conspired with others" (Count 1) by providing the names of certain persons with whom he is alleged to have conspired, in accordance with the Tribunal's case-law to that effect.

29. Lastly, considering the disclosure by the Prosecution on 6 August 2002 of the full, unredacted Indictment, which contained information identifying all of Nzuwonemeye's co-

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preuve à être présentés au soutien de la commission de crimes commis dans le cadre temporel afférent à la compétence du Tribunal, telle qu'elle est définie aux articles 1 et 7 du Statut"[inasmuch as the amended indictment refers to some acts committed prior to 1994, such acts are not supposed to constitute autonomous charges, but are simply referred to as evidence to be presented in support of the charge of crimes committed within the temporal jurisdiction of the Tribunal as defined under Articles 1&7 of the Statute].

[19] See *The Prosecutor v. Gratien Kabiligi and Aloys Ntabakuze*, Case No. 96-34-I, "Decision on the Defence Motions Objecting to a Lack of Jurisdiction and Seeking to Declare the Indictment Void Ab Initio", 13 April 2000, para. 39:"As to the conspiracy charge, the Trial Chamber finds that the limited temporal jurisdiction of the Tribunal does not bar evidence of an alleged conspiracy of which the agreement was made before 1994. To the contrary, evidence of a pre-1994 conspiracy may be admissible and relevant in showing the commission of a conspiracy in 1994", (Decision in Kabiligi and Ntabakuze).

[20] *Idem.*, Decision *Kabiligi and Ntabakuze*

[21] *The Prosecutor v. Sagahutu*, Case no. ICTR 00-56-T, "Decision on Sagahutu's Preliminary, Provisional Release and Severance Motions", 25 September 2002

accused as well as their function, the Chamber finds that such disclosure adequately meets the Defence's expectations in this regard.

On the alternative counts of genocide and complicity in genocide (Fourth and fifth Preliminary Motions)

30. With respect to the alternative counts of genocide and complicity in genocide, the Chamber recalls that the confirming Judge had, by a decision of 28 January 2000, expressly ordered that since the two counts related to the same set of facts, the Prosecution should amend the Indictment so that "Count 3 - complicity in genocide - appears as an alternative to Count 2- Genocide".

31. Furthermore, the Chamber recalls that Article 2 of the Statute provides that the Tribunal has jurisdiction to prosecute persons responsible for any of the acts stipulated in Article 2(3) of the Statute, including punishment of complicity in genocide. The confirmation decision shows, in conformity with the practice of the Tribunal which allows an accused to be charged for modes of participation quite apart from the crime itself, that the Indictment legally charges genocide and complicity in genocide in the alternative.

Concurrence of offences (Sixth, seventh and eighth preliminary motions)

32. On the question of concurrence of offences, the Chamber recalls that the ICTY Appeals Chamber found, in general, in the *Celebici* Appeal Judgement that:

> "Cumulative charging is to be allowed in light of the fact that, prior to the presentation of all the evidence, it is not possible to determine to a certainty which of the charges brought against an accused will be proven. The Trial Chamber is better poised, after the parties' presentation of the evidence, to evaluate which of the charges may be retained, based upon the sufficiency of the evidence. In addition, cumulative charging constitutes the usual practice of both this Tribunal and the ICTR." [22]

[22] *Prosecutor v. Delalic and others*, Case No. 96-21-A, ICTY Appeals Chamber, Appeals Judgement, 20 February 2001, para. 400. It should be noted that Judges David Hunt and Mohamed Bennouna expressed dissenting and individual opinion in this regard.

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33. In the instant case, the Chamber holds that the issues on concurrence of offences raised by the Defence are premature and that consideration thereof should be deferred to the hearing on the merits of this case.

FOR THE FOREGOING REASONS,

THE TRIBUNAL,

DENIES the Motion for the Organization of François-Xavier Nzuwonemeye's Defence;

TAKES NOTE that the Motion Seeking Deferment of the Hearing on the Motion Until After the Decision on the Defence Motion of 24 December 2001" is without merit and orders that it be removed from the cause list;

DENIES the Defence request to quash the Indictment.

Arusha, 12 December 2002

(signed)	(signed)	(signed)
Judge Arlette Ramaroson	Judge William H. Sekule	Judge W. Matanzima Maqutu
Presiding		