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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
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OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Emile Short
G. Gustave Kam

Registrar: Adama Dieng

Date: 14 February 2005

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THE PROSECUTOR
v.
Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA
André RWAMAKUBA

Case No. ICTR-98-44-PT

DECISION ON SEVERANCE OF ANDRÉ RWAMAKUBA AND FOR LEAVE TO FILE AMENDED INDICTMENT

Articles 6, 11, 12* quater, *18 and 20 of the Statute; Rules 47, 50 and 82(B) of the Rules of Procedure and Evidence

Office of the Prosecutor:
Don Webster
Holo Makwaia
Dior Fall
Gregory Lombardi
Bongani Dyani
Sunkarie Ballah-Conteh
Tamara Cummings-John
Takeh Sendze

Defence Counsel
Dior Diagne Mbaye and Félix Sow,
for Édouard Karemera
Charles Roach and Frédéric Weyl,
for Mathieu Ngirumpatse
Peter Robinson,
for Joseph Nzirorera
David Hooper and Andreas O'Shea, for
André Rwamakuba

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

SITTING as Trial Chamber III, composed of Judge Dennis C. M. Byron, Presiding Judge, Judge Emile Short and Judge Gustave Kam ("Chamber");

CONSIDERING the "Prosecutor's Consolidated Motion to Sever Rwamakuba from the Joint Indictment and to Try Him Separately, For Leave to File a Separate Amended Indictment against Rwamakuba, and For Leave to File a Separate Amended Indictment Against Karemera, Ngirumpatse and Nzirorera, or alternatively, Prosecutor's Motion for Leave to Amend the Indictment against Karemera, Ngirumpatse, Nzirorera and Rwamakuba", filed on 20 December 2004 ("Prosecution Motion");

CONSIDERING Joseph Nzirorera's Response and Additional Response thereto, respectively filed on 4 and 12 January 2005;

CONSIDERING the Decision granting extension of time to Defence for Rwamakuba to respond to the Prosecution Motion, filed on 6 January 2005;

CONSIDERING André Rwamakuba's Response to the Prosecution Motion, filed on 11 January 2005;

CONSIDERING Mathieu Ngirumpatse's Response to the Prosecution Motion, filed on 14 January 2005;

CONSIDERING the Decision of 7 December 2004 authorizing the Defence to file their response within five days from the service of the translation of the Prosecution Motion, when the French version was needed;

CONSIDERING Édouard Karemera's Response to the Prosecution Motion, filed on 8 February 2005;

CONSIDERING the Decision granting the Prosecution time to file a consolidated reply to all Defence responses, filed on 25 January 2005;

CONSIDERING the Prosecution Reply to the Defence Submissions, filed on 10 February 2005;

CONSIDERING Nzirorera's Application for Leave to File Sur-Reply Re Motion for Leave to Amend Indictment, filed on 11 February 2005;

HEREBY DECIDES the Motion pursuant to Rule 73 of the Rules of Procedure and Evidence ("Rules").

INTRODUCTION

1. The Indictment against the Accused Augustin Bizimana, Félicien Kabuga, Juvénal Kajelijeli, Edouard Karemera, Mathieu Ngirumpatse, Callixte Nzabomimana, Joseph Nzirorera and André Rwamakuba was confirmed on 22 August 1998.[1] An amended version against the Accused Augustin Bizimana, Félicien Kabuga, Edouard Karemera, Mathieu Ngirumpatse, Callixte Nzabomimana, Joseph Nzirorera and André Rwamakuba was filed on 21 November 2001, pursuant to the Trial Chamber II Decision of 25 April 2001.[2] On 1st September 2003, Félicien Kabuga, who is still at large, was severed from the Indictment at the Prosecution request.[3] On 8 October 2003, Augustin Bizimana and Callixte Nzabonimana, who are also still at large, were severed from the Indictment, at the Prosecution's request.[4]

2. On 18 February 2004, the Prosecution filed a second amended version of the Indictment against the Accused Karemera, Ngirumpatse, Nzirorera and Rwamakuba, in conformity with the Chamber's Decision of 13 February 2004[5].

3. On 10 September 2004, the Prosecution filed a Motion for leave to amend the Indictment of 18 February 2004. Further, the Prosecution filed also a Motion to sever André Rwamakuba from the joint Indictment and to try him separately and a Motion for leave to file an amended separate Indictment against Karemera, Ngirumpatse and Nzirorera[6].

4. On 20 December 2004, the Prosecution filed the present Motion for leave to amend the Indictment of 21 November 2001, pursuant to the Chamber's Decision of 7 December 2004 denying the previous Prosecution Motions for leave to amend the Indictment of 18 February 2004.[7]

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[1] *Prosecutor v. Augustin Bizimana, Félicien Kabuga, Juvénal Kajelijeli, Edouard Karemera, Mathieu Ngirumpatse, Callixte Nzabomimana, Joseph Nzirorera and André Rwamakuba*, Case No. ICTR-98-44, Confirmation and Non-Disclosure of the Indictment (TC), 29 August 1998, *Report 1998*, p. 950.

[2] *Prosecutor v. Edouard Karemera*, Case No. ICTR-98-44, 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 (TC), 25 April 2001.

[3] *Prosecutor v. Augustin Bizimana, Félicien Kabuga, Edouard Karemera, Mathieu Ngirumpatse, Callixte Nzabomimana, Joseph Nzirorera and André Rwamakuba*, Case No. ICTR-98-44 (*Augustin Bizimana* et al.), Decision on the Prosecutor's Motion for severance of Félicien Kabuga's Trial and for Leave to the Accused's Indictment (TC), 1st September 2003

[4] *Augustin Bizimana* et al., Decision on the Prosecutor's Motion for Separate Trials and for Leave to File an Amended Indictment (TC), 8 October 2003.

[5] *Prosecutor v. Edouard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera and André Rwamakuba,* Case No. ICTR-98-44 *(Karemera et al.)*, Decision on the Prosecutor's Motion for Leave to Amend the Indictment (TC), 13 February 2004.

[6] Prosecutor's Motion to Sever André Rwamakuba from the Joint Indictment and to Try Him Separately and Prosecutor's Motion for Leave to File and Amended Separate Indictment against Karemera, Ngirumpatse and Nzirorera, respectively filed on 12 and 19 November 2004.

[7] See Prosecutor's Motion for Leave to Amend the Indictment of 18 February 2004, filed on 10 September 2004; Prosecutor's Motion to Sever André Rwamakuba from the Joint Indictment and to Try Him Separately and Prosecutor's Motion for Leave to File and Amended Separate Indictment against Karemera, Ngirumpatse and Nzirorera, respectively filed on 12 and 19 November 2004.

ARGUMENTS OF THE PARTIES

Prosecution Motion

5. The Prosecution seeks severance of Rwamakuba from the joint Indictment of 21 November 2001 ("current Indictment") and leave to amend that Indictment for the three Accused. Alternatively, if severance is not granted, the Prosecution moves for leave to amend the Indictment against the four Accused. Three Indictments are attached to the Prosecution Motion: one separate Amended Indictment for Rwamakuba and one Amended Indictment for Karemera, Ngirumpatse and Rwamakuba, if severance is granted; and one Amended Indictment for the four Accused if severance is not granted. The Prosecution indicates that, pursuant to Rule 50 of the Rules, it has provided all supporting materials for the proposed amendments of the three Indictments attached to its Motion.

6. The Prosecution indicates that it has re-evaluated its position on severance in view of the recent results of single-accused trials, which have been completed in a more timely and efficient manner.

7. The Prosecution argues that the requested severance is in the interests of justice, ensuring a fair trial without undue delay to the Accused. It considers that severance will shorten the trials for Rwamakuba and the three other Accused. It contends that no rule guarantees "joint defence" for Accused jointly indicted so that witnesses not called by the Prosecution in the separate trial could be called by the Accused during the presentation of their case.

8. The Prosecution alleges that the proposed Amended Indictment against Rwamakuba is narrower and more concise, as it is limited to his direct participation at two locations and reduces the number of counts from eleven to four.[8] It alleges that the severance would enable the Prosecution to restrict its case against the three other Accused to conspiracy and co-perpetration at the level of the MRND party, and their control of *Interahamwe*, rather than at the level of the government apparatus. The proposed Amended Indictment against Karemera, Ngirumpatse and Nzirorera, would reduce the counts against them from eleven to seven[9] and would plead with greater precision the basis of their individual criminal responsibility, namely joint criminal enterprise as a form of commission under Article 6(1) of the Statute of the Tribunal ("Statute"). The Prosecution alleges further that a separate trial for Rwamakuba will avoid superfluous cross-examinations of numerous witnesses. To support its Motion, the Prosecution refers to the *Kajelijeli* Decision of 6 July 2000 and the *Muhimana* Decision of 14 April 2003[10].

9. Linked to its request for severance, the Prosecution requests leave to amend the Indictment. The Prosecution contends that its request is justified because the factual

[8] Genocide, or alternatively, complicity in genocide, murder as a crime against humanity and extermination as a crime against humanity.

[9] Conspiracy to commit genocide, direct and public incitement to genocide, genocide, or alternatively, complicity in genocide, rape as crime against humanity, extermination as a crime against humanity, killing and violence to health and mental well-being as serious violation of Article 3 common to the Geneva Conventions and Additional Protocol II.

[10] *Augustin Bizimana et al.*, Decision on the Defence Motion in Opposition to Joinder and Motion for Severance and Separate Trial Filed by the Accused Juvénal Kajelijeli (TC), 6 July 2000; *Prosecutor v. Muhimana et al.*, Case No. ICTR-95-1-I, Decision on the Prosecutor's Motion for Leave to Sever an Indictment (TC), 14 April 2003.

allegations in the Amended Indictments are pleaded with greater specificity, providing greater notice to each Accused of the case against them, increasing the fairness of the trial and complying with the requirements set out in more recent jurisprudence of the International Criminal Tribunal for Rwanda ("ICTR") and International Criminal Tribunal for Former Yugoslavia ("ICTY"). In support of its request, the Prosecution relies upon the Appeals Chamber Decision of 19 December 2003 delivered in the present case[11].

10. The Prosecution claims that, in the context of the particular circumstances of the case, it has acted diligently and has made genuine efforts to notify the Defence of the allegations and charges the Accused will face at trial. It contends that the request for severance and leave to amend the Indictment is the result of long investigations and of the fact that it is only recently that Rwandan persons detained in Rwanda accepted to provide information about how they committed their crimes, allowing the Prosecution to build stronger cases against high level government and military figures. The Prosecution alleges that the proposed amendments do not prejudice the Accused unfairly and that the Accused were already informed of their content since August 2003. It recalls that it is only due to procedural reasons that it has to submit the amendments a second time and that the delay in commencing the trial is the result of the previous Defence motions challenging the composition of the bench in the present trial.

11. As an alternative, the Prosecution seeks leave to file an Amended Indictment for the four Accused, if severance is not granted. With respect to Karemera, Ngirumpatse and Nzirorera, the amendments would be identical to those proposed for the separate Indictment against these three Accused. The only difference is that this Indictment includes Rwamakuba in a joint criminal enterprise with the other three Accused.

Defence Replies

Defence for Karemera

12. The Defence for Karemera opposes the severance of Rwamakuba. It alleges that such a severance constitutes a breach of the equality principle between the Accused and is contrary to the interests of justice, as guaranteed by Rule 82 of the Rules. It claims that it is not permissible for the Prosecution to reduce the charges against one of the Accused, whereas the other Accused are jointly indicted on the basis of a joint criminal enterprise theory. It contends that it cannot understand how the reduced length of the proposed Amended Indictment may add particulars and details to the current Indictment. To support the joinder of the Accused, the Defence for Karemera relies upon ICTY decisions.[12] Concerning the request for leave to amend the Indictment, the Defence for Karemera claims that Annex F to the Prosecution Motion has not been fully translated into French and that the witness statements supporting the new charges against Karemera are only in English. Accordingly, it requests that the Chamber stays the proceedings until it is in a position to respond to the said Motion.

[11] *Karemera et al.*, Decision on Prosecutor's Interlocutory Appeal against Trial Chamber III Decision of 8 October 2003 Denying Leave to File an Amended Indictment (AC), 19 December 2003.
[12] *Prosecutor v. Radoslav Brdjanin and Momir Talic*, Case No. IT-99-36-AR72.2, Decision on Request to Appeal (AC), 16 May 2000; *Prosecutor v. Kordic and Cerkez* (citation not provided).

Defence for Ngirumpatse

13. The Defence for Ngirumpatse does not oppose the severance of Rwamakuba provided that such severance does not unduly delay the trial against Ngirumpatse. The Defence for Ngirumpatse draws to the attention of the Chamber different factors which in its view could cause delays in the trial of the Accused. It requests the Chamber to take into consideration those factors in adjudicating on the Prosecution Motion. With respect to the proposed Amended Indictment against Karemera, Ngirumpatse and Nzirorera, the Defence for Ngirumpatse has no objection but reserves its rights to challenge that indictment as to form and content following confirmation.

Defence for Nzirorera

14. As a preliminary matter, the Defence for Nzirorera requests that the Chamber does not rule on the Prosecution Motion until the issues raised by a Motion which he had filed before the President are resolved. The Defence for Nzirorera indicates that, in light of the response filed on 11 January 2005 by the Accused Rwamakuba, it no longer persists in its opposition to severance. The Defence for Nzirorera has no objection in principle to the Prosecution being granted leave to file an Amended Indictment. Nevertheless, it contends that Rule 50(A) of the Rules, as amended in 2004, requires review and confirmation of Amended Indictments. It claims that, according to Article 12 *quater* of the Statute, *ad litem* Judges are prohibited from participating in the review of an Amended Indictment. The Defence requests therefore that, if leave to amend the Indictment is granted, the review and confirmation should be done by permanent Judges. Finally, the Defence contends that there are allegations in the proposed Amended Indictment against the Accused which are not supported by any supporting material. It requests the opportunity to file a brief listing these allegations to assist the Trial Chamber in its review and confirmation function.

Defence for Rwamakuba

15. The Defence no longer opposes the severance. It changed its position in the light of the Prosecution's declared intention to base its case only on specific acts allegedly committed by Rwamakuba in Gikomero and Butare. In the Defence's view, the fact that, in the case against Rwamakuba, the Prosecution does not intend to rely on the doctrine of joint criminal enterprise is a decisive element in its decision not to oppose the requested severance. The Defence agreement to severance is predicated on the assumption that the Prosecution's list of witnesses is final and that no expert witnesses will be called by the Prosecution or that, if there are such expert witnesses, their testimony will not widen the facts in issue in the case. Pursuant to Article 20(2) of the Statute, Rules 82(B) and 54 of the Rules, the Defence for Rwamakuba requests the Chamber to make directions necessary to ensure that no prejudice is suffered by the Accused due to severance. The Defence requests the Chamber to address the timing of the commencement of the severed trial and, if possible, set a trial date not earlier than April 2005. The Defence also requests the Chamber to grant the motion for severance in the light of the Prosecution assurances, as stated above. Finally, the Defence claims that the proposed Amended Indictment for Rwamakuba still includes command responsibility. The Defence contends that that reference is unnecessary for the purpose of a case based on direct participation in specific locations and is contrary to the Prosecution's declared position. Accordingly, the Defence requests the Chamber to remove the reference to command responsibility from the proposed separate indictment.

Prosecution Reply

16. With respect to Rwamakuba's Response, the Prosecution confirms its intention to establish the individual criminal responsibility of the Accused for commission of crimes in Gikomero and Butare, and not to rely on the joint criminal enterprise doctrine. It specifies however that the question of what evidence it may adduce to establish the responsibility of the Accused is a different issue and will not necessarily be limited to events in those two locations that concern Rwamakuba. The Prosecution reiterates its commitment to call no more than twenty witnesses against Rwamakuba, including one expert witness. It alleges that references to command responsibility in the proposed separate Indictment are appropriate since it intends to argue that Rwamakuba's capacity to order or instigate killings was enhanced by his status as a member of the interim government. The Prosecution opposes Karemera's objection to severance, arguing that the reduction of the charges against one Accused, and not the others, does not violate the Accused's right to equality.

17. Concerning the request for leave to amend the Indictment, the Prosecution reiterates its acknowledgement that the proposed amendments would amount to new charges necessitating a further initial appearance and allowing further preliminary motions. It contends that Rule 50 of the Rules does not give the right to the Accused to make submissions on whether a *prima facie* case exists. It opposes therefore Karemera's request to stay the proceedings and Nzirorera's request to file a brief commenting on the supporting material. Finally, with respect to the power of *ad litem* Judges to adjudicate on the current Motion, the Prosecution contends that it is not a matter properly placed before the Chamber.

Nzirorera's Reply to Prosecution Reply

18. The Defence for Nzirorera contends that there is no reason to prohibit the filing of a brief listing the lack of supporting material as regards four allegations in the proposed Amended Indictments. It relies upon a Separate Opinion of Judge Dolenc delivered on 8 October 1999.[13] It alleges that, contrary to the Prosecution allegation, the appropriate time to file such a brief would be after the filing of a final Amended Indictment, pursuant to the Chamber's authorization. In addition, the Defence claims that it has not been permitted to travel to Arusha to consult with his client on the proposed Amended Indictment and the supporting material. Accordingly, it requests to be heard before any decision on confirmation of the Amended Indictment is given.

[13] *Prosecutor v. Gratien Kabiligi and Aloys Ntabakuze*, Case No. ICTR-97-34-I and ICTR-97-30-I, Separate and Concurring Opinion of Judge Dolenc on the Decision on the Prosecutor's Motion to Amend the Indictment (TC), 8 October 1999, *Report 1999*, pp. 556 and seq (*Gratien Kabiligi and Aloys Ntabakuze* Separate Opinion of Judge Dolenc).

DELIBERATIONS

On the Nzirorera's Application to Stay Adjudication

19. There is no provision in the Statute or in the Rules which prescribes that a pending motion before another Chamber or the President results in a staying of the proceedings. In addition, the Chamber does not consider that the Defence for Nzirorera has shown any good reason to justify a staying of the proceedings in the present situation. It is appropriate to recall that, pursuant to Article 11 of the Statute, the Chamber is independent and its decisions are not subject to the supervision of any authority. The application falls to be rejected.

On the Karemera's Application to Stay Adjudication

20. On 26 January 2005, the French version of the Prosecution Motion was sent to the parties. While the provisional translation of Annexes A, B, C and E thereto[14] were also disclosed to the parties a few days later, the revised and final French version of the said Annexes were forwarded to the parties on 31 January 2005. The parties received the Annex D French version[15] on 7 February 2005. The translation of Annex F, presenting an analysis grid of the proposed Amended Indictment for the four Accused, was delivered just after the filing of Karemera's Response. This grid only provides references to the paragraphs of the current Indictment and to witness statements on the basis of which the Prosecution pleads new charges. Contrary to Karemera's contention, it is only designed to assist the Defence and the Chamber in the analysis of the said Indictment and it does not contain further factual allegations or charges against the Accused than those alleged in the proposed Amended Indictment of which the French version was made available since 31 January 2005.

21. It is true that the five statements specifically involving the Accused Karemera, provided in the supporting material, were only disclosed in English.[16] It appears however that Witnesses AMN's and AMO's statements have been previously disclosed to the Defence, on 6 August 2004 and 25 November 2004 respectively [17] and that Witness QBG's statement contained in the supporting material and related to Karemera was disclosed in French. The Chamber notes in addition that while the Prosecution may provide the Chamber supporting material to its request to amend an Indictment,[18] Rule 66(A)(i) of the Rules prescribes that the said supporting material must only be disclosed to the parties within thirty days of the initial appearance of the Accused. Although disclosure of the supporting material in both languages would have been more appropriate in the interest of good administration of justice, the Prosecution's obligation to disclose the French version of the witness statements becomes operative after the filing of the Motion and depends on whether the Chamber grants leave to file an Amended Indictment containing new charges supported by the said witness statements. The Chamber considers that the Accused is not prejudiced by the fact that two

[14] The "Amended Indictment for Rwamakuba"; the "analysis grid for Amended Indictment for Rwamakuba"; the "Amended Indictment for Karemera, Ngirumpatse and Nzirorera"; and the "Amended Indictment for the four Accused", if severance is not granted.
[15] "Analysis grid for Amended Indictment for Karemera, Ngirumpatse and Nzirorera".
[16] See Witnesses AMM, AMN, AMO and GGX.
[17] See Prosecution Interoffice Memorandum, filed on 6 August 2004, including disclosure of Witness AMN's statement of 12 November 2003 in French (number K0828-6360-K028-6365); and Prosecution Interoffice Memorandum, filed on 25 November 2004, including disclosure of Witness AMO's statement of 11 November 2003 in French (number K028-6355-6359).
[18] See Rules 50(A)(i), 47 (E) and 47 (F) of the Rules.

witness statements supporting the charges against him were disclosed only in English since it will have the opportunity to file preliminary motions, pursuant to Rules 50(B) and 72 of the Rules, challenging the form of the Indictment. The Defence request is accordingly rejected.

On the Power of* ad litem *Judges to Grant Leave to Amend an Indictment

22. The Defence for Nzirorera challenges the right of *ad litem* Judges to adjudicate on the Prosecution Motion on the same grounds already canvassed and rejected by the Appeals Chamber.

23. Article 12 *quater* of the Statute prescribes that *ad litem* Judges enjoy the same powers as the permanent Judges of the International Tribunal, with the exception of the right to adopt Rules of Procedure and Evidence, the right to review an Indictment pursuant to Article 18 of the Statute and the right to consult with the President in relation to the assignment of Judges or in relation to a pardon or commutation of sentence. Rule 50(A)(i) of the Rules provides that at or after the initial appearance, an amendment of an Indictment may only be made by leave granted by a Trial Chamber pursuant to Rule 73 of the Rules, and that in deciding whether to grant leave, it shall follow the procedures and standards set out in Rules 47(E) and (F) of the Rules. Rule 47 regulates the exercise of the power of review of an Indictment submitted by the Prosecution for confirmation before the arrest of a suspect as mandated by Article 18 of the Statute. Rules 47(E) and (F) require the reviewing Judge to examine the counts in the Indictment, and any supporting materials the Prosecution may provide, and confer power to request the Prosecution to present additional material in support of any or all of the counts.

24. When adjudicating on a Motion seeking leave to file an Amended Indictment after the initial appearance, the Trial Chamber does not act as a confirming Judge under Article 18 of the Statute because it applies the procedure and standards set out in Rule 47(E) and (F). As the Appeals Chamber has already stated "*ad litem* Judges, sitting as members of a Trial Chamber, are [...] empowered to participate in the consideration and decision of a motion for leave to amend an indictment pursuant to Rule 50 of the Rules and, that it is independent of the question whether, in deciding to grant leave to amend an indictment, the Trial Chamber shall apply the standards set out in Sub-Rules 47(E) and (F) of the Rules." [19] Accordingly, the Chamber rejects the Defence objection.

On the Severance of Rwamakuba

25. Pursuant to Rule 82(B) of the Rules,

> "The Trial Chamber may order that persons accused jointly under Rule 48 be tried separately if it considers it necessary in order to avoid a conflict of interests that might cause serious prejudice to an accused, or to protect the interests of justice."

26. In the appreciation of the interests of justice, the right to be tried fairly and without undue delay, as guaranteed by Article 20 of the Statute, must be taken into account.[20]

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[19] *Prosecutor v. Edouard Karemera and Joseph Nzirorera*, Case No. ICTR-98-44-AR73.4, Decision on Interlocutory Appeals Regarding Participation of *Ad Litem* Judges (AC), 11 June 2004, p. 4.

[20] *Augustin Bizimana* et al., Decision on the Defence Motion in Opposition to Joinder and Motion for Severance and Separate Trials Filed by the Accused Juvénal Kajelijeli (TC), 6 July 2000, par. 30; *Prosecutor v. Sylvain Nsabimana, Alphonse Nteziriyayo, Pauline Nyiramasuhuko, Arsène Shalom Ntahobali, Joseph Kanyabashi and Elie Ndayambaje*, Case No. ICTR-97-29A-T, Decision on the Defence Motion Seeking a Separate Trial for the

27. On 12 December 2000, Trial Chamber II denied a Defence Motion seeking severance of the Accused Rwamakuba.[21] At that time, the Prosecution opposed the severance on the ground that a separate trial was not necessary to protect the interests of justice. The Chamber observes that the circumstances have changed. Presently, the Prosecution contends that it is in the interests of justice for the severance to be granted. The Accused Rwamakuba submits that the request for severance as presented by the Prosecution is in the interests of justice and supports the severance in principle. The Accused Ngirumpatse and Nzirorera do not object to the severance. The Defence for Karemera, however, opposes the severance alleging that it breaches the equality of the Accused and is contrary to the interests of justice.

28. Pursuant to Article 15 of the Statute, the Prosecutor is "responsible for the investigation and prosecution of persons responsible" for crimes within the jurisdiction of the Tribunal and acts independently. He "assess[es] the information received or obtained", "decide[s] whether there is sufficient basis to proceed" and, upon the determination of a *prima facie* case, prepares "an Indictment containing a concise statement of the facts and the crimes with which the Accused is charged under the Statute".[22] The prosecutorial functions under the Statute are presumed to be exercised regularly.[23] According to the standard articulated by the ICTY Appeals Chamber in *Delalic*, where selective prosecution is alleged, the requesting party must establish (i) an unlawful or improper (including discriminatory) motive for the prosecution against the Accused and (ii) that other similarly situated persons were not prosecuted.[24] In the present case, the Accused Karemera has not shown that the Prosecution's decision to prosecute him was based on impermissible motives. In addition, the fact that Rwamakuba will be indicted only on the basis of his direct participation in criminal acts, instead of joint criminal enterprise, is not contrary to the equality of Accused, since they will not be in a similar situation. The case against Rwamakuba will be completely different from the one to be met by the other three Accused, if severance is granted.

29. The proposed Amended Indictment against Rwamakuba incorporates only allegations that are unique and relevant to him. The charge of joint criminal enterprise, which formed the basis of the joinder and was one of the reasons why the Prosecution previously opposed the severance, has been removed. The Prosecution has indicated that the severance of Rwamakuba has allowed it to narrow the allegations of joint criminal enterprise from the large level of the government apparatus to the level of the MRND party, and to focus primarily on the control of *Interahamwe* militias.

30. The jurisprudence quoted by the Defence for Karemera does not support its Motion. On the contrary, it shows that where the Accused persons are not prosecuted on the basis of the same factual allegations, there is no reason to maintain a joinder.

Accused Sylvain Nsabimana (TC), 8 September 2000, par. 34; *Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-54-T, Decision on Defence Motion for Severance and Separate Trials Filed by the Accused (TC), 7 November 2000, par. 4; *Muhimana et al.*, Decision on the Prosecutor's Motion for Leave to Sever an Indictment (TC), 14 April 2003.

[21] *Prosecutor v. André Rwamakuba*, Case No. ICTR-98-44-T, Decision on André Rwamakuba's Motion for Severance (TC), 12 December 2000.

[22] Art.17 (1) and 17(4) of the Statute.

[23] *Prosecutor v. Delalic et al.*, Judgment (AC), 20 February 2001, par. 611 (*Delalic* Appeals Judgement)

[24] *Delalic* Appeals Judgement; see also *Prosecutor v. Elizaphan and Gérard Ntakirutimana*, Judgment (TC), 21 February 2003, par. 871; *Prosecutor v. Augustin Ndindiliyimana*, Decision on Urgent Oral Motion for a Stay of the Indictment, or In the Alternative a Reference to the Security Council (TC), 26 March 2004, par. 25-26.

31. Considering the interests of justice in the present case, the right of each Accused to be tried fairly will not be prejudiced by the severance, and it is clear that their right to be tried without undue delay will be enhanced. The proposed Amended Indictments narrow the case against each Accused and simplify their Defence. The Prosecution has submitted a witness list which indicates that about 20 witnesses will be called to testify against Rwamakuba and has also indicated its intention to reduce the evidence to be adduced at trial against the three other Accused.

32. Concerning the right of each Accused to have adequate time to prepare his Defence, it appears that most of the Prosecution witness statements have been previously disclosed to the Defence, and even for some of them in un-redacted form. The Defence for each Accused has indicated that it would be ready for trial by the month of April. The Chamber is satisfied that each Accused will have sufficient time to prepare their defence.

33. The Chamber is of the view that the requested severance is in the interests of justice, as required by Rule 82(B) of the Rules.

On the Leave to Amend the Indictment of 21 November 2001

34. Pursuant to Rule 50 of the Rules, after the initial appearance of the Accused, an amendment of an Indictment may only be made by leave granted by that Trial Chamber pursuant to a motion filed. In deciding whether to grant leave to amend the indictment, the Chamber applies the standards set out in Rules 47(E) and (F) in addition to considering any other relevant factors.[25] These Sub-Rules require examination of each count of the proposed Amended Indictment and any supporting material provided by the Prosecution. If necessary, the Prosecution may be requested to present additional material in support of its request.

35. Rule 50 of the Rules does not explicitly prescribe a time-limit within which the Prosecution may file a request to amend the Indictment, leaving open consideration of the motion in light of the circumstances of each individual case.[26] Following the jurisprudence of both *ad hoc* Tribunals, the fundamental issue in relation to granting leave to amend an Indictment is whether the amendment will unfairly prejudice the Accused.[27] In deciding whether to grant leave to amend an Indictment, the Chamber must consider the right to be tried without undue delay, guaranteed by Article 20(4)(c) of the Statute, in conjunction with other rights of the Accused, including the right to be informed in detail of the nature and cause of the charges brought.[28] The factors to be weighed in determining whether to grant leave to amend an Indictment may consist of the ameliorating effect of the changes on the

[25] Rule 50(A)(ii) of the Rules.

[26] See *Prosecutor v. Alfred Musema,* Case No. ICTR-96-13-T, Decision on the Prosecutor's Request for Leave to Amend the Indictment (TC), 6 May 1999, *Recueil 1999*, p. 1256, par. 17; *Prosecutor v. Juvénal Kajelijeli*, Case No. ICTR-98-44A-T (*Kajelijeli*), Decision on Prosecutor's Motion to Correct the Indictment dated 22 December 2000 and Motion for Leave to File an Amended Indictment Warning to the Prosecutor's Counsels Pursuant to Rule 46 (A) (TC), 25 January 2001, par. 35.

[27] *Prosecutor v. Protais Zigiranyirazo,* Case No. ICTR-2001-73-I, Decision on Prosecutor's Request for Leave to Amend the Indictment and on Defence Urgent Motion for an Order to Disclose Supporting Material in Respect of the Prosecutor's Motion for Leave to Amend the Indictment (TC), 15 October 2003, par. 19; *Prosecutor v. Aloys Simba*, Case No. ICTR-2001-76-I, Decision on Motion to Amend Indictment (TC), 26 January 2004, par. 7 (*Simba* Decision); *Prosecutor v. Brdanin and Talic*, Case No. IT-99-36, Decision on Filing Replies (TC), 7 June 2001, par. 3.

[28] See *Prosecutor v. Muhimana*, Case ICTR-1995-1B-I (*Muhimana*), Decision on Motion to Leave Indictment (TC), 21 January 2004, par. 10; *Simba* Decision, par. 8.

clarity and precision of the case to be met; the diligence of the Prosecution in making the amendment in a timely manner that avoids creating an unfair tactical advantage; and the likely delay or other possible prejudice to the Defence, if any, caused by the amendment.[29]

36. It is noted that the Accused Ngirumpatse, Nzirorera and Rwamakuba have indicated that they do not oppose, in principle, the request to file an Amended Indictment and reserve their right to challenge its form if and when leave is granted. The Chamber is of the view that, at the present stage, there is no need to grant Nzirorera's requests to be heard or to file a brief listing the allegations against him where there would be no supporting material. As Judge Dolenc noted in his Separate Opinion and contrary to Nzirorera's contention, it is up to the Chamber to decide if an *inter partes* hearing is needed, bearing in mind the right of the Accused to a fair trial.[30] If the Chamber grants the Prosecution leave to file the proposed Amended Indictment, the Accused would have ample opportunity to challenge the form of the said Indictment by filing preliminary motions, pursuant to Rule 72(A) of the Rules, if it includes new charges. This Rule guarantees full protection of his right to a fair trial.

37. Both the proposed Amended Indictments substantially modify the current Indictment. The amendments fall into two categories. The first category consists of deletion of introductive paragraphs, including pages on the "Historical Context" and "The Power Structure", which do not specifically relate to any charge against the Accused. Only four counts remain against Rwamakuba and the proposed Amended Indictment against Karemera, Ngirumpatse and Nzirorera drops four of the eleven counts of the current Indictment. In both proposed Amended Indictments, the count of complicity of genocide is pleaded as an alternative to the count of genocide. The Chamber is of the view that this first category of amendments will not cause prejudice to the Accused or have any major impact on the overall fairness of the proceedings. On the contrary, the removal of charges and general allegations that the Prosecution does not intend to prove at trial may simplify the Defence preparation.

38. The second category of amendments involves addition of particulars on the facts alleged and the Prosecution theory on commission of crimes. With respect to this second category, the Chamber addresses separately the two proposed Indictments in the light of the above-mentioned criteria and the supporting material provided by the Prosecution.

Proposed Amended Indictment against Rwamakuba

39. The amendments to the separate Indictment against Rwamakuba substantially modify the case against the Accused in conformity with the severance requested based on the direct participation of the Accused in crimes in specific locations. The criteria to be taken in consideration in granting leave to amend an Indictment include ascertaining whether the Prosecution has acted with diligence in securing the evidence and has requested the amendments in a timely manner.[31] They also include considering whether the Accused had prior notice of the Prosecution's intention to seek leave to amend the Indictment, the nature

[29] See *Kajelijeli*, Decision on Prosecutor's Motion to Correct the Indictment dated 22 December 2000 and Motion for Leave to File an Amended Indictment Warning to the Prosecutor's Counsels Pursuant to Rule 46 (A) (TC), 25 January 2001, par. 36-37; *Muhimana*, Decision on Motion to Leave Indictment (TC), 21 January 2004, par. 10; *Simba* Decision, par. 9; *Prosecutor v. Casimir Bizimungu*, Case No. ICTR-99-50-AR50, Decision on Prosecutor's Interlocutory Appeal against Trial Chamber II Decision of 6 October 2003 Denying Leave to File Amended Indictment (AC), 12 February 2004, par. 16 (*Bizimungu* Decision)

[30] *Gratien Kabiligi and Aloys Ntabakuze* Separate Opinion of Judge Dolenc, *Report 1999*, p. 578, par. 55.

[31] *Muhimana*, Decision on Motion to Leave Indictment (TC), 21 January 2004, par. 6; *Simba* Decision, par. 8.

of the notice and any improper tactical advantage gained by the Prosecution as a result of the proposed Amended Indictment.[32]

40. The Defence has not denied and the Chamber accepts that the Prosecution experienced difficulty in the investigatory process pointed out in its Motion to explain the filing of such an Amended Indictment only recently. Most of the statements on which the proposed amendments are based were taken in 2003, two of them were taken in 2004, and all were quickly disclosed to the Defence. The particular circumstances of the case, related to its rehearing,[33] have also to be taken into consideration. Since 12 November 2004, the Prosecution has notified the Defence and the Chamber of its intention to sever the Accused and to file a separate Amended Indictment.[34] The Chamber notes that following its Decision of 7 December 2004,[35] the Prosecution acted promptly by filing a new Motion seeking the severance of Rwamakuba and leave to file a separate Amended Indictment.

41. The substantial modification to the current Indictment is closely related to the severance of the Accused. As far as the proposed separate Indictment reflects the requested severance and considering the particular circumstances of the case, the Chamber is satisfied that the Prosecution acted diligently, and that there is no improper tactical advantage to be gained by the Prosecution as a result of the proposed amendments. On the contrary, they narrow and simplify the case to be met by the Defence.

42. The changes have an ameliorating effect on the clarity and precision of the case to be met by the Accused. The proposed Amended Indictment has been reduced from seventy to seven pages of factual allegations, while providing a detailed and comprehensive account of the criminal acts alleged and the Prosecution theory of the Accused's criminal liability. The factual allegations describe, in many cases, the place and date of events, the presence of other persons and, in one case, the names of the victims.

43. The Chamber observes that the proposed Amended Indictment contains expanded factual allegations that do in fact amount to new charges. In its Motion, the Prosecution recognizes explicitly the existence of new charges, particularly as regards the delivery of weapons to Kayanga *secteur* in early April and participation in attacks against the Kayanga Health Center in early-mid April 1994. These are based on allegations in witness statements reproduced in the supporting material. The vast majority of those allegations are to be found in statements previously disclosed to the Defence between 2001 and 2004. The un-redacted version of these statements has been disclosed to the Defence at the latest in November 2004. The new alleged facts provide more precise particulars as to the location of the criminal acts. Rather than changing or extending geographical scope, the effect of the proposed Amended

[32] *Muhimana*, Decision on Motion to Leave Indictment (TC), 21 January 2004, par. 6; Simba Decision, par. 8; *Bizimungu* Decision, par. 16; *Prosecutor v. Augustin Ndindiliyimana, Augustin Bizimungu, François-Xavier Nzuwonemeye, Innocent Sagahutu*, Case No. ICTR-2000-56-I, Decision on Prosecutor's Motion under Rule 50 for Leave to Amend the Indictment Issued on 20 January 2000 and Confirmed on 28 January (TC), 26 March 2004, par. 41-42 *(Ndindiliyimana* Decision).

[33] A rehearing of the proceedings has been decided pursuant to Appeals Chamber Decisions. See *Karemera et al.*, Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera's Motion for Leave to Consider New Material (AC), 28 September 2004; *Karemera et al.*, Reasons for Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera's Motion for Leave to Consider New Material (AC), 22 October 2004.

[34] See Prosecutor's Motion to Sever André Rwamakuba from the Joint Indictment and to Try Him Separately, filed on 12 November 2004.

[35] *Karemera et al.*, Decision on Severance of André Rwamakuba and Amendments of the Indictment (TC), 7 December 2004.

Indictment is to focus on specific locations within the broad area defined in the current Indictment or its supporting material. Likewise, the proposed Amended Indictment considerably narrows the charges against the Accused, giving specific details of general allegations contained in the current Indictment. The Accused is not prejudiced by the introduction of those new charges. There has been no rebuttal to the position of the Prosecution that it has provided the Accused with notice of the information on which the Amended Indictment has been prepared. The Chamber notes that the Defence indicated that it would be ready to start the trial from April 2005. It is clear that the duration of the trial would be significantly reduced due to the filing of a more narrow and specific Indictment against the Accused.

44. The Chamber is therefore of the view that the proposed Amended Indictment is required for the separate trial against the Accused and would enhance the fairness of the trial. However, it considers that the degree of specificity required to adequately inform the Accused of the charges against him should be improved in certain respects.

45. The jurisprudence of the two *ad hoc* Tribunals shows that the degree of specificity of an Indictment depends on the Prosecution case.[36] In the *Ntakuritimana* Judgement, the Appeals Chamber recently recalled that "the Prosecution's obligation to provide particulars in the indictment is at its highest when it seeks to prove that the accused killed or harmed a specific individual."[37] When alleging that the Accused personally carried out the acts underlying the crime in question, it is necessary for the Prosecution to set out the identity of the victim, the place and approximate date of the alleged criminal acts, and the means by which they were committed "with the greatest precision."[38] If the Prosecution is in a position to name the victims and locations of the alleged crimes, the Indictment should indicate those particulars. It is not acceptable for the Prosecution to omit material aspects of its main allegations in the Indictment with the aim of moulding its case in the course of the trial depending on how the evidence unfolds.[39] With respect to the nature of the responsibility incurred, the Chamber recalls that since Article 6(1) of the Statute allows for several forms of direct criminal responsibility, a failure to specify in the Indictment which form(s) of participation the Prosecution intends to plead gives rise to ambiguity that should be avoided.[40]

46. Paragraphs 15 and 16 of the proposed Amended Indictment seem similar to Paragraphs 23 and 26, while containing differences that may lead to ambiguity. In particular, Paragraph 16 refers to the death of two persons at Butare University Hospital, while Paragraph 26 quotes the name of two persons (Rukaru and Mutabazi) killed upon the premises of the Butare Hospital, in similar circumstances. As regards the allegations of

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[36] See *Prosecutor v. Georges Anderson Rutaganda,* Case No. ICTR-96-3-A, Judgement (AC), 26 May 2003, par. 301-303 (*Rutaganda* Appeals Judgment); *Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana,* Case No. ICTR-96-10-A and ICTR-96-17-A, Judgment, 13 December 2004, par. 24 et seq. (*Ntakirutimana* Appeals Judgment); *Prosecutor v. Kupreskic*, IT-95-16-A, Judgment (AC), 23 October 2001, par. 89; *Prosecutor v. Krnojelac*, Case No. IT-97-25-A, Judgement (AC), 17 September 2003, par. 131 (*Krnojelac* Appeals Judgment).

[37] *Ntakirutimana* Appeals Judgment, par. 74.

[38] *Prosecutor v. Blaskic*, Case No. IT-95-14-A, Judgment (AC), 29 July 2004, par. 213 (*Blaskic* Appeals Judgment).

[39] *Rutaganda* Appeals Judgment, par. 301-303; *Ntakirutimana* Appeals Judgment, 13 Dec 2004, par. 24 – 125, 469 and 470.

[40] See *Krnojelac* Appeals Judgment, par. 138.

killings or crimes,[41] the Prosecution must provide more details, if they are in its possession, as to the identity of the victims, or at least other identifying information, and the means by which those acts were committed. The Prosecution should also provide additional details, where they are in its possession, on the various public meetings and gatherings in Gikomero *Commune*.

47. The proposed Amended Indictment pleads the forms of participation alleged for each count on the basis of Article 6(1) of the Statute. It presents without ambiguity the case against the Accused as based on his direct participation in criminal acts in specific locations. The Chamber considers however that the phrase "command responsibility" of the Accused, at paragraph 2 of the proposed Amended Indictment, could raise ambiguity on the form of the responsibility the Prosecution intends to plead. The Chamber is of the view that the said paragraph of the proposed Amended Indictment should be reformulated without use of the phrase "command responsibility" since the Indictment pleads only the individual criminal responsibility of the Accused pursuant to Article 6(1).

48. Considering the evidence presented by the Prosecution in support of its Motion, the Chamber finds that a *prima facie* case has been established with respect to the counts contained in the proposed Amended Indictment against Rwamakuba and grants leave to file it subject to further amendments detailed in the order.

Proposed Amended Indictment against Karemera, Ngirumpatse and Nzirorera

49. With respect to the diligence of the Prosecution in seeking leave to amend the Indictment, the Defence has not denied, and the Chamber accepts, that some witnesses were more willing to provide detailed information on the Accused after their guilty pleas and convictions in 2002 and 2003 providing additional details, previously unknown to the Prosecution. Most of these statements were taken in 2003[42] and, three of them, in 2004[43] and they were quickly disclosed to the Defence. Since August 2003, the Prosecution has been seeking leave to file an Amended Indictment.[44] The Prosecution acted with dispatch when filing this motion pursuant to the Decision of 7 December 2004.[45] Considering the particular circumstances of the case, the Chamber is satisfied on the issue of diligence.

50. The changes have an ameliorating effect on the clarity and precision of the case to be met. The length of the proposed Amended Indictment is considerably reduced, while the added particulars in the proposed Amended Indictment more accurately reflect the evidence that the Prosecution seeks to present at trial and provide further notice to the Accused of the nature of the charges against them. Likewise, the specific allegation of a joint criminal enterprise and its form give the Accused notice of the theory that the Prosecution intends to

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[41] See par. 12, 13, 15, 16 and 26.

[42] See the statements of Witnesses ALC, AMB, AMM, AMN, AMO, ANP, GAV, GBC, GBU, GDC, GFA, GFF, GGX, GOB and XBM.

[43] See the statements of Witnesses AWB, BM and CB.

[44] See Prosecutor's Consolidated Motion (i) For Separate Trials Pursuant to Rules 72 and 82; and (ii) For Leave to File an Amended Indictment Pursuant to Rules 73 and 50, filed on 29 August 2003; Prosecutor's *Observations Supplémentaires* concerning the Motion to File an Amended Indictment of 29 August 2003, The Appeals Decision of 19 December 2003 and Prosecutor's Request For Leave to Include Additional Factual Allegations in the Amended Indictment Filed Pursuant to Trial Chamber III Order of 19 January 2004, filed on 23 January 2004.

[45] *Karemera et al.*, Decision on Severance of André Rwamakuba and Amendments of the Indictment (TC), 7 December 2004.

argue at trial. The additional particulars and the removal of charges and general allegations not intended to be proved at trial may facilitate the Defence preparation. This should substantially enhance the fairness of the trial.

51. The Prosecution explicitly recognizes, and the Chamber notes, that the proposed Amended Indictment includes an additional legal theory of responsibility and expanded factual allegations that amount to new charges. Joint criminal enterprise is pleaded in conformity with the recent jurisprudence of both *ad hoc* Tribunals and does not prejudice the Accused. The new facts are based on allegations in witness statements mostly recorded in 2003 and 2004 and already disclosed to the Defence, among which the un-redacted versions were disclosed at the latest in November 2004. The Chamber observes that, with respect to new charges involving specifically Karemera, two witness statements were only disclosed in English, while the Accused and his Counsel speak and understand French.[46] The Chamber considers, however, that the three other witness statements related to specific allegations against Karemera and previously disclosed in French give sufficient notice to the Accused of the new charges that the Prosecution intends to plead.[47] In addition, it is noted that the Defence for Karemera also includes a bilingual legal assistant that may assist the Accused, until the service of the official translation in French, and may provide sufficient information on the content of the said witness statements. The extensive prior disclosure by the Prosecution gave sufficient notice to the Accused of the new pleadings. The proposed amendments considerably narrow the case against the Accused by providing more details as regards the date, locations and criminal acts or omissions of the general allegations contained in the current Indictment. The Accused are not prejudiced by the introduction of the new charges; on the contrary, they may simplify the Defence preparation. The Chamber also notes that the parties have already notified that they will be ready to start the trial by April 2005.[48]

52. In the light of the previous quoted case-law, the Chamber considers that additional details should be provided. The Chamber is also of the view that in a case where superior criminal responsibility pursuant to Article 6(3) of the Statute is alleged, the material facts in the Indictment must sufficiently identify the subordinates over whom the Accused had effective control and for whose acts he is alleged to be responsible.[49]

53. At paragraphs 25.3, 31, 32.3, 62.2 and 62.7, the proposed Amended Indictment must provide more particulars on the locations and/or the dates of the alleged events, where they are in the Prosecution's possession. Likewise, paragraph 32.1 of the proposed Amended Indictment should specify if the child has been killed and, if so, the identity of the perpetrators and the means used. With respect to the allegations of killings as serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II, the Prosecution must provide more particulars at least as regards some of the victims, if this information is in its possession.[50] The Chamber notes a lack of concordance between paragraphs 24 and 32.2 of the Indictment and the related supporting material (the statement of Witnesses ALC and ANP respectively). The Prosecution should accordingly remedy this lack of concordance either by deleting the said paragraphs or by including appropriate amendments. The Chamber is not satisfied that a *prima facie* case has been established as regards paragraphs 32.4 and 49 of the proposed Amended Indictment. The Prosecution

[46] Witness AMM's and GGX's statements.
[47] See Witness AMN's, AMO's and QBG's statements.
[48] See Status Conference held on 26 November 2004.
[49] See *Blaskic* Appeals Judgment, par. 218.
[50] See par. 76.

should therefore either provide further supporting material or remove the said paragraphs. With respect to the Accused's superior responsibility under Article 6(3) of the Statute, although the proposed Amended Indictment generally states elements of the said responsibility, paragraph 33.3 does not sufficiently identify the subordinates over whom the Accused had effective control and for whose acts they are alleged to be responsible.[51] The Prosecution must accordingly provide additional particulars.

54. Considering the evidence presented by the Prosecution in support of its Motion, the Chamber finds that a *prima facie* case has been established with respect to the counts contained in proposed Amended Indictment against Karemera, Ngirumpatse and Nzirorera and grants leave to file it subject to further amendments detailed in the order.

Further Initial Appearance of the Accused

55. Considering that the introduction of the new charges substantially modifies the current Indictment as regards both Rwamakuba and Karemera, Ngirumpatse and Nzirorera, the Chamber considers that a further initial appearance must be held to enable the Accused to enter a plea on their respective proposed Amended Indictment, pursuant to Rule 50 (B) of the Rules. The Chamber recalls the Prosecution's obligation to disclose the supporting material to its Motion within thirty days of the initial appearance of the Accused, both in English and French to allow the Defence preparation, pursuant to Rule 66(A)(i) of the Rules and Article 20(4)(a) of the Statute.

FOR THE ABOVE REASONS, THE CHAMBER

1. **DENIES** Karemera's preliminary request;
2. **DENIES** Nzirorera's requests;
3. **GRANTS** the Prosecution leave to sever André Rwamakuba from the Indictment of 21 November 2001;
4. **DIRECTS** the Registry to designate a new number for the separate Indictment against André Rwamakuba;
5. **GRANTS** the Prosecution leave to file the Amended Indictment against Rwamakuba under the conditions set out below.
6. **ORDERS** the Prosecution with respect to the Indictment against Rwamakuba:
    I. At paragraphs 12, 13, 15, 16 and 26, to add, where they are in the Prosecution's possession, details as to the identity of the victims, or at least other identifying information, and the means by which those acts were committed.
    II. To provide additional details, where they are in the Prosecution's possession, on the various public meetings and gatherings in Gikomero *Commune*;
    III. To clarify the factual allegations contained in paragraphs 15, 16, 23 and 26, and specify, if possible, the links between the said paragraphs;
    IV. To reformulate paragraph 2 of the Indictment without use of the phrase "command responsibility".

[51] See, in particular, paragraph 33.3.

7. **GRANTS** the Prosecution leave to file the Amended Indictment against Karemera, Ngirumpatse and Nzirorera under the conditions set out below.

8. **ORDERS** the Prosecution with respect to the Indictment against Karemera, Ngirumpatse and Nzirorera:

   I. At paragraphs 25.3, 31, 32.3, 62.2 and 62.7, and where they are in the Prosecution's possession, to provide more particulars on the locations and/or the dates of the alleged events;

   II. At paragraph 32.1, to specify, where the information is in the Prosecution's possession, if the child has been killed and, if so, the identity of the perpetrators and the means used;

   III. With respect to count 7, to add more particulars on the alleged events at least as regards some of the victims, if the information is in the Prosecution's possession;

   IV. Either to remove paragraphs 24 and 32.2 or to amend the said paragraphs;

   V. To provide further additional supporting material as regards paragraphs 32.4 and 49 no later than two (2) days from the filing of the present decision or otherwise remove the said paragraphs;

   VI. At paragraph 33.3, to provide additional information on the subordinates over whom the Accused had effective control and for whose acts they are alleged to be responsible.

9. **INSTRUCTS** the Prosecution to file the said Indictment against Rwamakuba and the said Indictment against Karemera, Ngirumpatse and Nzirorera, as amended pursuant the current order, no later than 23 February 2005.

Arusha, 14 February 2005, done in English.

Dennis C. M. Byron	Emile Short	G. Gustave Kam
Presiding Judge	Judge	Judge

[Seal of the Tribunal]