



UNITED NATIONS  
NATIONS UNIES

**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**

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OR:  
ENG

**TRIAL CHAMBER III**

**Before Judges:** Judge Khalida Rachid Khan, presiding  
Judge Lee Gacuiga Muthoga  
Judge Emile Francis Short

**Registrar:** Mr Adama Dieng

**Date:** 25 September 2007

**THE PROSECUTOR**  
v.  
**IDELPHONSE NIZEYIMANA**  
**IDELPHONSE HATEGEKIMANA**

**Case No. ICTR-00-55-I**

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**DECISION ON THE PROSECUTOR'S APPLICATION FOR SEVERANCE AND  
LEAVE TO AMEND THE INDICTMENT AGAINST IDELPHONSE  
HATEGEKIMANA**

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**Office of the Prosecutor:**  
Mr Jonathan Moses  
Ms Katya Melliush  
Mr Shamus Mangan

**Defence Counsel:**  
Mr Ahlonko Robert Dovi

## INTRODUCTION

1. The original Indictment against Tharcisse Muvunyi, Idelphonse Nizeyimana, and Ildephonse Hategekimana<sup>1</sup> was confirmed by Judge Yakov Ostrovsky on 2 February 2000 and filed in its current form on 7 November 2000.<sup>2</sup> Tharcisse Muvunyi was arrested on 7 February 2000, Ildephonse Hategekimana was arrested on 16 February 2003, and Idelphonse Nizeyimana remains at large.

2. On 11 December 2003, the Prosecution was granted leave to sever Mr Muvunyi from the original Indictment and ordered to file a separate indictment against him.<sup>3</sup> Mr Muvunyi was subsequently tried and convicted, and his appeal is pending before the Appeals Chamber.<sup>4</sup> Mr Nizeyimana and Mr Hategekimana remain indicted jointly.

3. The Prosecution now seeks to sever the cases of the remaining co-Accused, and if that request is granted, it seeks leave to amend the Indictment against Mr Hategekimana.<sup>5</sup> The Defence for Mr Hategekimana does not oppose the Prosecution's request for severance, but does take issue with some of the requested amendments to the Indictment.<sup>6</sup>

## DISCUSSION

### *The Application for Severance*

4. Pursuant to Rule 82(B) of the Rules of Procedure and Evidence (the "Rules"), a Trial Chamber may order that persons accused jointly be tried separately if it is necessary to avoid a conflict of interests that may cause serious prejudice to an accused or to protect the interests of justice. In considering 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".<sup>7</sup>

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<sup>1</sup> In Annex D of the Prosecution Application, *see infra* footnote 4, the Prosecution indicates that it now believes **Ildephonse** to be the correct spelling of Mr Hategekimana's first name. In this Decision, the Chamber refers to Mr Hategekimana or the Accused.

<sup>2</sup> *Prosecutor v. Muvunyi et al.*, Case No. ICTR-00-55-I, Decision to Confirm the Indictment (TC), 2 February 2000.

<sup>3</sup> *Muvunyi et al.*, Case No. ICTR-00-55-I, Decision Regarding the Prosecutor's Motion for Leave to Sever an Indictment and for Directions on the Trial of Tharcisse Muvunyi (TC), 11 December 2003.

<sup>4</sup> *Prosecutor v. Muvunyi*, Case No. ICTR-00-55A-T, Judgement and Sentence (TC), dated 12 September 2006.

<sup>5</sup> "Application for Severance and Amendment in the Case of the Prosecutor v. Hategekimana and Nizeyimana", filed on 9/10/2006 ("Prosecution Application").

<sup>6</sup> "Defence Observations on the Draft Amended Indictment", filed on 20 April 2007.

<sup>7</sup> *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-PT, Decision on Severance of André Rwamakuba and for Leave to File Amended Indictment (TC), 14 February 2005, para. 26 ("Rwamakuba Severance Decision"); *Prosecutor v. 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. Nyiramasuhuko et al.*, Case No. ICTR-97-29A-T, Decision on the Defence Motion Seeking a Separate Trial for the Accused Sylvain Nsabimana (TC), 8 September 2000, par. 34; *Prosecutor v. Kamuhanda*, Case No. ICTR-99-54-T, Decision on the Defence Motion for Severance and Separate Trials Filed by the Accused (TC), 7 November 2000, par. 4 ("Kamuhanda Decision"); *Prosecutor v.*

5. The Prosecution submits that severance is in the interests of justice because (i) with their superior, Mr Muvunyi, "having now been tried separately, there is little in the factual allegations connecting the co-accused Mr Nizeyimana and Mr Hategekimana";<sup>8</sup> and (ii) severance is necessary to protect Mr Hategekimana's right to be tried without undue delay, enshrined in Articles 19(1) and 20(4)(c) of the Statute, because Mr Hategekimana has been detained since February 2003 and Mr Nizeyimana remains at large with no indication as to when he might be apprehended, if at all.<sup>9</sup>

6. Two factors favour severance in this case. First, "the issue of delay is especially pertinent in view of the fact that the co-accused has not, to date, been arrested or transferred to the Tribunal's Detention Facilities in Arusha".<sup>10</sup> The Prosecution submits that it is "in the advanced stages of preparing the trial against Mr Hategekimana", and therefore severance would allow them to move forward with his trial. Second, the key allegations against Mr Hategekimana are largely distinct from those made against Mr Nizeyimana, so a joint trial is not likely to promote judicial economy. Under these circumstances, the Chamber finds that the requested severance is in the interests of justice as required under Rule 82(B).

### ***The Application for Leave to Amend the Indictment***

7. Rule 50(A)(i) of the Rules prescribes that after the initial appearance of the accused, an amendment of an Indictment may only be made by leave granted by a Trial Chamber. In deciding whether to grant leave to amend the indictment, the Chamber shall follow the procedures and apply the standards set out in Sub-Rules 47(E) and (F) in addition to considering any other relevant factors.<sup>11</sup> The Chamber shall therefore examine the proposed amendments to the Indictment, and any supporting materials the Prosecution has provided, to determine whether a *prima facie* case exists against the Accused.<sup>12</sup>

8. Pursuant to the jurisprudence of both *ad hoc* Tribunals, the fundamental issue in relation to granting leave to amend an Indictment is whether doing so will unfairly prejudice the Accused.<sup>13</sup> "Other relevant factors" include the Accused's right to be tried without undue delay, and to be promptly informed and in detail of the nature and cause of

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*Muhimana et al.*, Decision on the Prosecutor's Motion for Leave to Sever an Indictment (TC), 14 April 2003.

<sup>8</sup> Prosecution Application, paras. 10-13.

<sup>9</sup> Prosecution Application, paras. 14-17.

<sup>10</sup> *Kamuhanda Decision*, para. 5.

<sup>11</sup> Rule 50(A)(ii) of the Rules.

<sup>12</sup> Rule 47(E) of the Rules.

<sup>13</sup> *Rwamakuba Severance Decision*, para. 35; *Prosecutor v. 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. Simba*, Case No. ICTR-2001-76-I, Decision on Motion to Amend Indictment (TC), 26 January 2004, par. 7; *Prosecutor v. Brdanin and Talic*, Case No. IT-99-36, Decision on Filing Replies (TC), 7 June 2001, par. 3.

the charges against him or her.<sup>14</sup> In that respect, Chambers have taken into consideration whether the proposed changes more accurately describe the totality of the criminal conduct of the Accused,<sup>15</sup> the ameliorating effect of the changes on the clarity and precision of the case to be met,<sup>16</sup> newly discovered evidence,<sup>17</sup> and the diligence of the Prosecution in bringing the amendment in a timely manner.<sup>18</sup>

9. Consideration of these factors requires an evaluation of the scope of the proposed amendments. The proposed Amended Indictment substantially modifies the current Indictment, with amendments falling into three broad categories. The first category of amendments has the effect of narrowing the case against the Accused by removing extraneous material as well as one count. The second category of amendments improves the Indictment by providing greater detail and adding particulars to various general allegations in the current Indictment; such amendments lend clarity to and may also narrow the case against the Accused. The third category of amendments expands the Indictment by adding new allegations and an additional count.

#### *The First Category of Amendments*

10. The first category of amendments includes proposals to remove: (i) general introductory paragraphs concerning historical background, the structure of the government and military, the relationship between political parties and the militias, the existence of an armed conflict, the attack on the presidential plane, and the duties of *préfets*; (ii) paragraphs that deal only with Mr Hategekimana's former co-accused; and (iii) paragraphs that the Prosecution submits were insufficiently pleaded or not supported by the presently available evidence. The proposed Amended Indictment also drops the count of other inhumane acts as a crime against humanity.

11. The removal of extraneous paragraphs and of the count of other inhumane acts as a crime against humanity makes the indictment clearer and narrows the case against the Accused.

12. The Chamber is not convinced by the Defence submission that the removal of the general introductory paragraphs deprives it of context necessary for the Accused to receive a fair trial. Nor is it convinced by the Defence suggestion that removal of "statements of some of the witnesses" from the Indictment interferes with the rights of

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<sup>14</sup> *Prosecutor v. Bizimungu et al.*, Case No. ICTR-1999-50-I, Decision on the Prosecutor's Request for Leave to File an Amended Indictment (TC), 6 October 2003, para. 28.

<sup>15</sup> *Prosecutor v. Nsengiyumva*, Decision on the Prosecutor's Request for Leave to Amend the Indictment (TC), 2 September 1999, para. 4; *Prosecutor v. Barayagwiza*, Decision on the Prosecutor's Request for Leave to File an Amended Indictment (TC), 11 April 2000, para. 4.

<sup>16</sup> *Prosecutor v. Muhimana*, Case No. ICTR-1995-1B-I, Decision on Motion to Amend Indictment (TC), 21 January 2004, para. 6.

<sup>17</sup> *Prosecutor v. Ndindabahizi*, Case No. ICTR-2001-71-I, Decision on Prosecution Motion for Leave to Amend Indictment, 20 August 2003, para. 4.

<sup>18</sup> *Prosecutor v. Ndindiliyimana et al*, 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 2000, 26 March 2004, paras. 40-44.

the Defence. These submissions suggest a fundamental misunderstanding of the nature of Indictments and the roles of the Prosecution and Defence at this Tribunal.

13. Article 17 of the Statute empowers the Prosecution to prepare indictments which, pursuant to Rule 47 (C) of the Rules “shall set forth the name and particulars of the suspect, and a concise statement of the facts of the case and of the crime with which the suspect is charged.” The Prosecution’s obligation to set out concisely the facts of its case must be interpreted in conjunction with Articles 20 (2) and (4)(a) and (b) of the Statute, which “state that in the determination of any charges against him, an accused is entitled to a fair hearing and, more particularly, to be informed of the nature and cause of the charges against him and to have adequate time and facilities for the preparation of his defence.”<sup>19</sup>

14. According to the Appeals Chamber, this “translates into an obligation on the part of the Prosecution to state the material facts underpinning the charges in the indictment, but not the evidence by which such material facts are to be proven. Whether certain ‘facts’ are ‘material’ depends on the nature of the case.”<sup>20</sup> In other words, the degree of specificity required depends on the nature of the Prosecution’s case against an accused. Material facts have been defined as those “necessary to determine an issue.”<sup>21</sup> For example, the Appeals Chamber has noted, “where the Prosecution alleges that an accused personally committed the criminal acts, the material facts, such as the identity of the victim, the time and place of the events and the means by which the acts were committed, have to be pleaded in detail”, though “there may be instances where the sheer scale of the alleged crimes “makes it impracticable to require a high degree of specificity in such matters as the identity of the victims and the dates for the commission of the crimes.”<sup>22</sup>

15. The general introductory paragraphs that the Prosecution proposes to remove from the Indictment concern tangential matters including a broad historical background, the structure of the government and military, the relationship between political parties and the militias, the existence of an armed conflict, the attack on President Habyarimana’s plane, and the duties of *préfets*. These facts cannot reasonably be described as necessary to determine whether the Accused is responsible for any of the charges against him, and therefore are not “material” to the current or the proposed Amended Indictment. Nor are they necessary to inform the Accused of the nature and cause of the charges against him.

16. Conversely, introductory paragraphs 3 through 5 of the proposed Amended Indictment allege, respectively, the existence of Tutsi minority and Hutu majority ethnic or racial groups in Rwanda, the existence of widespread and/or systematic attacks against Tutsi civilians on the basis of ethnicity or race during the relevant time period, and that

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<sup>19</sup> *Prosecutor v. Elizaphan and Gérard Ntakirutimana*, Case Nos. ICTR-96-10 & ICTR-96-17-T, Judgement and Sentence (TC), 24 February 2003, para. 42 (citing *Prosecutor v. Zoran Kupreškić et al.*, Case No. IT-95-16-A, Judgement (AC), 23 October 2001).

<sup>20</sup> *Prosecutor v. Elizaphan and Gérard Ntakirutimana*, Case Nos. ICTR-96-10-A & ICTR-96-17-A, Judgement (AC), 13 December 2004, para. 25 (citing *Kupreškić et al.*, Judgement (AC), paras. 88-89).

<sup>21</sup> Black’s Law Dictionary, p. 977 (6th Ed. West, 1990).

<sup>22</sup> *Kupreškić et al.*, Judgement (AC), para. 89.

genocide against the Tutsi occurred during the relevant time period. These allegations are material, as they allege that the so-called *chapeau* elements of the crimes charged are met.

17. The Accused is not prejudiced by the removal of these introductory paragraphs; to the extent it can show relevance pursuant to Rule 89 (C) of the Rules, the Accused may adduce evidence of any of the non-material facts the Prosecution seeks to remove from the current Indictment when he presents his case.

18. Regarding the Defence submission that witness statements have been removed from the Indictment, the Chamber reiterates that the Prosecution is not obliged to include in the Indictment the evidence by which material facts are to be proven.<sup>23</sup> To the extent the Prosecution is in possession of witness statements or any other evidence pertinent to the Defence, this is generally a matter for disclosure at a later stage pursuant to the Rules.<sup>24</sup>

19. The Chamber concludes that the first category of proposed amendments will streamline and enhance the fairness of the proceedings and will not cause prejudice to the Accused. They are therefore allowed.

#### *The Second Category of Amendments*

20. Many of the proposed amendments add specific allegations of fact to the general allegations in the current Indictment, such as dates, places, other additional details regarding events alleged in the current Indictment, and the names of individuals present during and/or involved in the alleged crimes, including individuals with whom the Accused was allegedly involved in a joint criminal enterprise and subordinates of the Accused.<sup>25</sup> The Defence does not specifically oppose any of these proposed amendments.

21. The Prosecution has provided very little information regarding its diligence in investigating the facts underlying the proposed Amended Indictment. With specific regard to the second category of amendments, the Chamber notes that the majority of the supporting materials pre-date the current Indictment. Indeed, the Prosecution disclosed many of the supporting statements to the Accused in March 2003. At the same time, there is nothing to suggest that the Prosecution has sought leave to file the proposed Amended Indictment in order to gain a strategic advantage over the Accused. As such, the Prosecution's failure to show that the Amendments were brought forward in a timely manner must be "measured within the framework of the overall requirement of the fairness of the proceedings."<sup>26</sup>

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<sup>23</sup> *Prosecutor v. Elizaphan and Gérard Ntakirutimana*, Judgement (AC), para. 42 (citations omitted).

<sup>24</sup> *See generally*, Rules 66 and 68 of the Rules of Procedure and Evidence (governing disclosure of exculpatory and other material relevant to the Defence).

<sup>25</sup> In particular, see paragraphs 14-16, 18-20, and 26-31 of the proposed Amended Indictment, which describe in detail the general allegations of paragraph 3.46 of the current Indictment.

<sup>26</sup> *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-AR73, Decision on Prosecutor's Interlocutory Appeal against Trial Chamber III Decision of 8 October 2003 Denying Leave to File an Amended

22. Although these amendments may cause short term delay in the form of further investigations, consideration of whether any such delay is undue must also be measured within the framework of the overall requirement of the fairness of the proceedings.<sup>27</sup> The Trial Chamber must therefore consider the effect the Amended Indictment will have on the Accused's other rights designed to guarantee a fair trial, for example, his right to be informed in detail of the nature and cause of the charges against him.<sup>28</sup> As explained by the Appeals Chamber:

[A] Trial Chamber must also examine the effect that the Amended Indictment would have on the overall proceedings. Although amending an indictment frequently causes delay in the short term, the Appeals Chamber takes the view that this procedure can also have the overall effect of simplifying proceedings by narrowing the scope of allegations, by improving the Accused's and the Tribunal's understanding of the Prosecution's case, or by averting possible challenges to the indictment or the evidence presented at trial. The Appeals Chamber finds that a clearer and more specific indictment benefits the accused, not only because a streamlined indictment may result in shorter proceedings, but also because the accused can tailor their preparations to an indictment that more accurately reflects the case they will meet, thus resulting in a more effective defence.<sup>29</sup>

23. To the extent that the second category of amendments will require further investigations by the Defence, granting the Prosecution leave to amend may have the result of extending the Accused's period of pre-trial detention. Nonetheless, the Chamber reiterates that the added particulars provide further notice to the Accused of the case against him and will allow the Accused to tailor his investigations and enhance his ability to prepare his defence. As such, these amendments may result in shortened proceedings overall. Moreover, no date has been set for trial in this matter. Thus, any discussion of the possible extension of the pre-trial detention period is speculative at this time, and, if necessary, the Chamber may grant the Defence more time to investigate without the need to postpone the trial.

24. For the reasons discussed above, the Chamber concludes that the second category of amendments will enhance the fairness of the proceedings and will not cause prejudice to the Accused. They are therefore allowed.

### *The Third Category of Amendments*

25. The third category of amendments consists of new allegations and the addition of a new Count of murder as a crime against humanity. The proposed Amended Indictment contains the following new allegations: (i) throughout the proposed Amended Indictment, the Prosecution now refers to Mr Hategekimana as "Ildephonse Hategekimana alias Bikomago"; (ii) there are several new allegations of material fact supporting existing counts, including, *inter alia*, new rape allegations in support of the existing genocide

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Indictment (AC), 19 December 2003, para. 22 (quoting *Prosecutor v. Kovačević* Case No. IT-97-24-AR73, Decision Stating Reasons for Appeals Chamber's Order of 29 May 1998, 2 July 1998).

<sup>27</sup> *Id.*, para. 13.

<sup>28</sup> Article 20 (4)(a) of the ICTR Statute.

<sup>29</sup> *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), para. 15.

count (paragraphs 7, 8 and 17) and new allegations supporting liability pursuant to Article 6(1) of the Statute for the extant count of rape as a crime against humanity (paragraphs 42 through 45), for which the current Indictment charges only command responsibility pursuant to Article 6(3) of the Statute; and (iii) paragraphs 34 through 41 of the proposed Amended Indictment allege a new count of murder as a crime against humanity.

26. As mentioned in footnote 1, the Prosecution alleges that it now believes "Ildephonse", and not "Idelphonse", is the correct spelling of the Accused's first name. Moreover, the proposed Amended Indictment repeatedly refers to the Accused as "Ildephonse Hategekimana alias Bikomago". Statements dating back to 1998 and disclosed to the Defence in 2003 refer to the Accused by the nickname "Bikomago". The Defence argues that references to the Accused as "Bikomago" are intended to associate him with a notorious individual who allegedly committed many crimes and are therefore prejudicial. The Chamber rejects this argument. It is clear from the supporting materials that the proposed Amended Indictment seeks to introduce the use of the nickname "Bikomago" to assist in identifying Mr Hategekimana as well as his alleged crimes, and not to confuse or associate the Accused with any such person named Bikomago who may have committed crimes in Burundi or elsewhere.

27. The proposed Amended Indictment includes new allegations of material fact in support of several of the counts in the current Indictment. In the current Indictment, the count of rape as a crime against humanity is supported by paragraph 3.47 and subparagraph 3.47(i), which generally allege that rapes were committed by soldiers under the command of the Accused, and seek to hold the Accused accountable as a superior pursuant to Article 6(3) of the Statute for failing to prevent or punish these acts. The proposed Amended Indictment contains more detailed allegations of the Accused's responsibility for rape and, in addition to seeking Article 6(3) responsibility, seeks to hold him responsible pursuant to Article 6(1) for planning, ordering, instigating, committing or otherwise aiding and abetting in the planning, preparation and or execution of these crimes, as well as for participating in a joint criminal enterprise involving the rape of Tutsi women. Some of these new allegations of material fact are supported by newly obtained evidence. In addition, the proposed Amended Indictment includes the allegations of material fact involving rape as part of the genocide counts. The Defence does not expressly oppose these amendments.

28. The new allegations involving rape contained in paragraphs 7 and 8 of the proposed Amended Indictment under the genocide counts and paragraphs 43 and 44 under the count of rape as a crime against humanity are supported by newly obtained evidence not available to the Prosecution until 2006. Other new allegations, specifically the allegations contained in paragraphs 17 under the genocide counts and paragraphs 45 and 49 under the count of rape as a crime against humanity come from statements previously disclosed to the Accused. While the Prosecution has not offered any explanation regarding its diligence in adding these allegations, there is no suggestion that the Prosecution was trying to obtain unfair advantage by seeking to add them at this time. Moreover, while the additional details are significant, the allegations contained in these paragraphs are consistent with the more general allegations in paragraphs 3.47 and 3.47(i)



of the current Indictment. Like the second category of proposed amendments discussed above, these new allegations will provide the Accused with better notice of the case against him and will allow the Defence to better focus its investigation and case.

29. The Prosecution also seeks to add a new count of murder as a crime against humanity, which it argues is wholly supported by material facts alleged in support of the existing genocide counts, with the addition of the particulars and specific details the Prosecution seeks to add to the proposed Amended Indictment as a whole. The Defence does not oppose the addition of this count. While the Prosecution offers no explanation for its failure to include this count in the current Indictment, the Chamber finds that, as the new count is not opposed by the Defence and is supported by material facts alleged in the current Indictment, the addition of the new count will not unfairly prejudice the Accused and will not require significant additional investigations or preparation for the Defence.

30. Having considered the proposed new allegations in the context of the overall fairness of the proceedings, the Chamber finds that, as with the second category of amendments, these amendments will not cause undue delay and will not unfairly prejudice the Accused. As there is currently no date set for trial, the Chamber may authorise additional time for the Defence to investigate these allegations, as well as to schedule a further initial appearance as discussed below. The third category of amendments is therefore allowed.

#### *Other Defence Objections*

31. In addition to the objections discussed above, the Defence raises other objections related to the specificity of the proposed Amended Indictment. The Chamber notes that, where permission to amend is granted, Rule 50 (C) authorizes a further thirty day period for the Defence to file preliminary motions pursuant to Rule 72, which includes challenges to the form of the Indictment, at least with respect to new charges. The Chamber has nevertheless considered the Defence objections at this stage in the interests of justice and to promote judicial economy. The Chamber recalls its discussion of specificity in paragraphs 13 and 14 above, and considers these Defence objections in light of those principles.

32. The Defence challenges paragraph 6 of the proposed Amended Indictment for failing to add clarity and to simplify the facts and failing to explain the relationship between the Accused and all named co-participants in the alleged joint criminal enterprise. The Chamber notes that paragraph 6 is an introductory paragraph, which alleges that the Accused is responsible for genocide or, alternatively, complicity in genocide pursuant to Article 6 (1) of the Statute. As explained at the end of that paragraph, the particulars relevant to these counts, including the details that the Defence alleges are lacking, follow in paragraphs 7 through 20 of the proposed Amended Indictment. Thus, the Defence's argument is rejected.

33. The Defence submits that in a criminal case, it is necessary to provide exact dates, and objects to the use of any approximate dates in the proposed Amended Indictment.

The Chamber agrees that specificity regarding dates is preferable, but notes that if a precise date cannot be specified, a reasonable range of dates may be provided.<sup>30</sup> Where possible, the Prosecution should provide exact or more specific dates throughout the proposed Amended Indictment, but the Chamber does not find that the dates or date ranges included therein are unreasonable given the nature of the allegations against the Accused.

34. Finally, in addition to the objections based on specificity, the Defence suggests that “it is inadmissible for the Prosecution to take advantage of the amendment procedure to try to rid the Indictment of its inadequacies and contradictions.” This argument is unfounded and must be rejected. Neither Rule 50 of the Rules, which governs the amendment process, nor the substantial body of jurisprudence of the *ad hoc* Tribunals regarding amendments, places such a limitation on the Prosecution. On the contrary, amendments that provide better notice to the accused of the nature and cause of the case against him are to be allowed as long as the benefits of better notice are not outweighed by other concerns regarding the rights of, and possible prejudice to, the accused.<sup>31</sup> This is so because, by ridding the Indictment of such inadequacies, amendments that provide better notice to the accused of the nature and cause of the case against him have an overall ameliorative effect on the fairness of the proceedings.

#### *Conclusion*

35. The Chamber has considered the materials submitted by the Prosecution in support of its Motion, and finds that a prima facie case has been established with respect to the counts contained in the proposed Amended Indictment against the Accused. The Chamber therefore grants the Prosecution leave to file the proposed Amended Indictment subject to the minor changes detailed in the order, below.

36. The Chamber considers that a further initial appearance is necessary to enable the Accused to enter a plea, pursuant to Rule 50 (B), on the new count of murder as a crime against humanity, the addition of Article 6(1) responsibility for rape as a crime against humanity, and for the new rape allegations in support of the genocide counts.

37. The Chamber notes that second sentence of paragraph 37 of the proposed Amended Indictment repeats the following clause: “After gaining entry to the Maison Généralice”. This typographical error should be corrected.

#### **FOR THE ABOVE REASONS, THE CHAMBER**

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<sup>30</sup> *Prosecutor v. Nchamihigo*, Case No. ICTR-2001-63-I, Decision on Defence Motion on Defects in the Form of the Indictment, 27 September 2006, para. 17 (citing *Prosecutor v. Brdjanin*, Case No. IT-99-36-PT, Decision on Objections to the Form of Amended Indictment (TC), 20 February 2001, at para. 22).

<sup>31</sup> See e.g., *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), para. 15.

- I. GRANTS** the Prosecution leave to sever Mr Ildephonse Hategekimana from the original Indictment, dated 7 November 2000;
- II. DIRECTS** the Registry to designate a new number for the separate Indictment against Mr Hategekimana;
- III. GRANTS** the Prosecution leave to file the Amended Indictment, subject to the above-mentioned directions;
- IV. ORDERS** the Prosecution to file the Amended Indictment with the Registry and the Chamber, within 10 days from the service of this Decision; and
- V. ORDERS** that a further appearance shall be held as soon as practicable, and, accordingly, requests that the Registrar make further arrangements.

Arusha, 25 September 2007

Khalida Rachid Khan  
Presiding Judge

Lee Gacuiga Muthoga  
Judge

Emile Francis Short  
Judge

[Seal of the Tribunal]