



UNITED NATIONS  
NATIONS UNIES

ICTR-00-56-T  
(29-02-2008)  
(64697-64694)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

64697  
mump

OR: ENG

**TRIAL CHAMBER II**

**Before:** Judge Asoka de Silva, Presiding  
Judge Taghrid Hikmet  
Judge Seon Ki Park

**Registrar:** Mr. Adama Dieng

**Date:** 29 February 2008

JUDICIAL RECORDS ARCHIVES  
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**The PROSECUTOR**  
v.  
**Augustin NDINDILYIMANA**  
**Augustin BIZIMUNGU**  
**François-Xavier NZUWONEMEYE**  
**Innocent SAGAHUTU**  
*Case No. ICTR-00-56-T*

**DECISION ON NZUWONEMEYE'S MOTIONS TO ADDRESS DEFECTS IN THE  
FORM OF THE INDICTMENT AND TO ORDER THE PROSECUTION TO  
DISCLOSE ALL EXCULPATORY MATERIAL**

**Office of the Prosecutor:**

Mr. Alphonse Van  
Mr. Moussa Sefon  
Mr. Segun Jegede  
Mr. Lloyd Strickland  
Mr. Abubacarr Tambadou  
Ms. Felista Mushi  
Ms. Faria Rekkas  
Ms. Marlize Keefer

**Counsel for the Defence:**

Mr. Gilles St-Laurent and Mr. Ronnie MacDonald for Augustin Bizimungu  
Mr. Christopher Black and Mr. Vincent Lurquin for Augustin Ndindiliyimana  
Mr. Charles Taku and Ms. Beth Lyons for François-Xavier Nzuwonemeye  
Mr. Fabien Segatwa and Mr. Seydou Doumbia for Innocent Sagahutu

5. On 28 February 2008, the Defence for Nzuwonemeye filed a further motion requesting the Chamber to make a ruling on its motion for defects in the form of the indictment or in the alternative, to order the Prosecution to fulfil its Rule 68 obligations to the Defence.<sup>10</sup> On the same date, the Defence for Nzuwonemeye filed a second motion requesting the disclosure of all exculpatory material.<sup>11</sup>

### DELIBERATIONS

6. As a preliminary issue, since the motions filed in this instance relate to the issue of defects in the indictment, the Chamber finds that it is in the interests of judicial economy to deal with all the motions in one consolidated decision.

#### *(i) Defects in the Form of the Indictment*

7. The Chamber notes that, issues relating to alleged defects in the form of an indictment should have been raised, in principle, in a preliminary motion pursuant to Rule 72(A)(ii). The Trial Chamber notes that the Defence application falls within the category of a preliminary motion, pursuant to Rule 72(B)(iii). The Trial Chamber observes that Rule 72(A) requires that all preliminary motions must be filed within thirty (30) days following disclosure by the Prosecutor to the Defence of all materials envisaged by Rule 66(A)(i). Rule 72(F) further provides that failure to comply with the time limits prescribed in this Rule shall constitute a waiver of the rights unless the Trial Chamber grants relief from such a waiver upon showing good cause.

8. In the Second Nzuwonemeye Motion, the Defence makes no attempt to show good cause to warrant a waiver of the time limits.

9. In the First Nzuwonemeye Motion, the Defence submits that the nature of the defects in the form of the indictment are such that they eviscerate the right of the accused to a fair trial and therefore the Chamber should consider the motion in the interests of justice.<sup>12</sup> The Defence further argues that the reason that precluded Lead Counsel for Nzuwonemeye from objecting to the defects in the indictment is that he did not want to interrupt the proceedings. The Defence avers that a decision on the issue at this stage of the proceedings will help it to reduce its witness list and spare the court's time.<sup>13</sup>

10. The Chamber finds that the Defence submissions do not amount to a showing of good cause pursuant to Rule 72(F). The Chamber notes that Defence for Nzuwonemeye has had ample time to object to the defects in the indictment. Instead, he elected not to exercise his right on the misplaced notion of saving the court's time. The Chamber further notes that the purpose of Rule 72 is to ensure that all fundamental issues, including defects in the form of the indictment, are dealt with before the commencement of the trial on its merits. The Chamber finds that the submission of the Defence for Nzuwonemeye to the effect that the

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of Her Entourage, and for Murders of Nzamurambaho, Ndasingwa, and Kavaruganda, Or, In the Alternative, Pursuant to Rule 54, To Order the Prosecution to Fulfill Its Rule 68 Obligations to the Defence In Respect to These Allegations", filed on 11 February 2008 (Sagahutu Defence Motion).

<sup>10</sup> See Nzuwonemeye Defence Motion on Pending Trial Chamber Decisions on its Motions, filed on the 28 February 2008.

<sup>11</sup> See Nzuwonemeye Defence Motion in Response to Notice of Exculpatory Evidence and Potentially False Testimony, Filed 22 February 2008, by the Bicanumpaka Defence. Dated 28 February 2008

<sup>12</sup> First Nzuwonemeye Motion, para. 24.

<sup>13</sup> First Nzuwonemeye Motion, paras. 26, 28.



## INTRODUCTION

1. On 18 October 2007, the Defence for Nzuwonemeye filed a motion, alleging defects in the form of the Amended Indictment of 23 August 2005.<sup>1</sup> These alleged defects relate to the pleading of joint criminal enterprise, the pleading of forms of criminal responsibility pursuant to Articles 6(1) and 6(3) of the Statute of the Tribunal and the substantive counts of conspiracy to commit genocide, crimes against humanity (rape and murder) and violations of Article 3 Common to the Geneva Conventions and Additional Protocol II (murder, rape and humiliating and degrading treatment).<sup>2</sup>

2. In its response of 23 October 2007, the Prosecution requests the Chamber to dismiss the motion, since the Defence has not shown good cause pursuant to Rule 72(F) of the Rules of Procedure and Evidence.<sup>3</sup> The other Defence teams did not respond to the motion. On 25 October 2007, the Defence for Nzuwonemeye filed a further reply.<sup>4</sup>

3. On 6 February 2008, the Defence for Nzuwonemeye filed a second motion requesting the dismissal of the allegations against the Accused Nzuwonemeye and the RECCE battalion, relating to the murders of Prime Minister Agathe Uwilingiyimana and three members of her entourage, and for the murders of Frederic Nzamurambaho, Landould Ndasigwa, and Joseph Kavaruganda.<sup>5</sup> The Nzuwonemeye Defence requests the dismissal of these allegations on the ground that such crimes are attributed solely to the Presidential Guard in the various indictments in *Prosecutor v. Karemera et al.* (Karemera Indictments).<sup>6</sup> The Nzuwonemeye Defence requests, in the alternative, that the Prosecution be ordered to disclose exculpatory material on the issue, pursuant to Rule 68.<sup>7</sup> On 11 February 2008, the Nzuwonemeye Defence filed a Corrigendum to its original motion.<sup>8</sup>

4. On 11 February 2008, the Defence for Sagahutu filed a response in support of the Second Nzuwonemeye Motion.<sup>9</sup> The Prosecution and the other Defence teams did not file a response.

<sup>1</sup> Nzuwonemeye Defence Motion on Defects in the Form of the Indictment in light of the Chamber's Decisions in respect to the Defence 98bis Motions and Pursuant to Rule 72(F), filed on 18 October 2007 ("First Nzuwonemeye Motion").

<sup>2</sup> First Nzuwonemeye Motion, paras. 64, 67, 70, 71, 72, 82, 90, 109, 110, 115, 125, 150, 152-156, 158-163, 164-166, 173-174.

<sup>3</sup> Prosecutor's Response to "Nzuwonemeye Defence Motion on Defects in the Form of the Indictment in light of the Chamber's Decisions in respect to the Defence 98bis Motions and Pursuant to Rule 72(F)", filed on 23 October 2007, para. 12.

<sup>4</sup> Nzuwonemeye Defence Reply to Prosecutor's Response to Nzuwonemeye Defence Motion on Defects in the Form of the Indictment in light of the Chamber's Decisions in respect to the Defence 98bis Motions and Pursuant to Rule 72(F), filed on 25 October 2007.

<sup>5</sup> Motion to Dismiss Allegation in respect to Accused Nzuwonemeye's Responsibility for Murders of Agathe Uwilingiyimana and Three Members of Her Entourage, and for Murders of Nzamurambaho, Ndasigwa, and Kavaruganda, Or, In the Alternative, Pursuant to Rule 54, To Order the Prosecution to Fulfill Its Rule 68 Obligations to the Defence In Respect to These Allegations, filed by the Defence for Nzuwonemeye on 6 February 2008 ("Second Nzuwonemeye Motion").

<sup>6</sup> Second Nzuwonemeye Motion, paras. 3, 9, 12.

<sup>7</sup> Nzuwonemeye Defence Motion, paras. 12, 14.

<sup>8</sup> Corrigendum on Motion to Dismiss Allegation in respect to Accused Nzuwonemeye's Responsibility for Murders of Agathe Uwilingiyimana and Three Members of Her Entourage, and for Murders of Nzamurambaho, Ndasigwa, and Kavaruganda, Or, In the Alternative, Pursuant to Rule 54, To Order the Prosecution to Fulfill Its Rule 68 Obligations to the Defence In Respect to These Allegations, filed by Defence for Nzuwonemeye on 11 February 2008.

<sup>9</sup> Réponse de la Défense du Capitaine Innocent Sagahutu en soutien de la "Motion to Dismiss Allegation in respect to Accused Nzuwonemeye's Responsibility for Murders of Agathe Uwilingiyimana and Three Members

filing of a preliminary motion at an early stage of the case would have interrupted the proceedings misconstrues the purpose of a preliminary motion. Finally, the Chamber notes that the filing of a motion of this nature at this late stage of the case will not expedite the proceedings. However, the Chamber notes that this determination does not preclude the Defence for Nzuwonemeye from traversing the issue of defects in the form of the indictment in their Closing Brief.

11. The Chamber observes that the Defence for Nzuwonemeye filed a notice in order to reserve the right of the Accused to contest the jurisdiction and competence of the Tribunal in respect to the allegations in the indictment. The Chamber notes that the mere serving of a notice does not relieve a party from complying with the time strictures in relation preliminary motions prescribed in Rule 72.


*(ii) Disclosure of Exculpatory Materials*

12. The Chamber recalls that it has already ordered the Prosecution, on two occasions, to disclose to the Defence all exculpatory material in its custody or control by 29 February 2008.<sup>14</sup> The Chamber, therefore, finds that it does not need to make any further order in this regard at this stage given the fact that its order encompasses the disclosure of all exculpatory material at the disposal of the Prosecution.

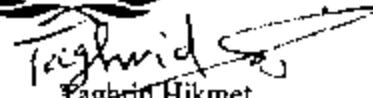
**FOR THE ABOVE REASONS, THE CHAMBER**

**DISMISSES** the Defence motions.

Arusha, 29 February 2008

  
Asoka de Silva  
Presiding Judge



  
Yaghi Hikmet  
Judge  
[Seal of the Tribunal]

  
Seon Ki Park  
Judge

<sup>14</sup> T. 4 February 2008, pp.11-12 (French); T. 11 February 2008, p.1 (French).