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NATIONS UNIES

ICTR-00-56-T  
15-07-2008  
(67784-67781)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

67784  
Mushy

OR: ENG

## TRIAL CHAMBER II

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

**Registrar:** Mr. Adama Dieng

**Date:** 15 July 2008

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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 SUPPLEMENTAL MOTIONS ON ALLEGED DEFECTS IN THE FORM OF THE INDICTMENT

### Office of the Prosecutor:

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

### Counsel for the Defence:

Mr. Gilles St-Laurent 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

[Signature]

## INTRODUCTION

1. On 18 October 2007, the Defence for Nzuwonemeye filed a Motion alleging defects in the form of the Indictment.<sup>1</sup> The Chamber rendered its Decision on that motion on 29 February 2008, denying the Defence request since it had failed to show good cause for the waiver of the stipulated time limits for preliminary motions, pursuant to Rule 72(F) of the Rules of Procedure and Evidence.<sup>2</sup> The Defence then sought certification to appeal the 29 February 2008 Decision, which was denied by the Chamber on 22 May 2008.<sup>3</sup>

2. On 9 June 2008, the Defence filed two Supplemental Motions relating to defects in the form of the Indictment.<sup>4</sup> The First Supplemental Motion alleges defects in the form of Counts 7 and 8 (violations of Common Article 3 of the Geneva Conventions and Additional Protocol II for the crimes of murder and rape respectively).<sup>5</sup> The Second Supplemental Motion argues that the Indictment is defective in its pleading of the murders of the ten UNAMIR peacekeeping soldiers, Prime Minister Agathe Uwilingiyimana along with members of her entourage, and patients or refugees at CHK, which are all charged as crimes against humanity under Count 4.<sup>6</sup>

3. On 10 June 2008, the Prosecution filed a Response to the First Supplemental Motion.<sup>7</sup> Neither the Prosecution nor the Defence for the other Accused responded to the Second Supplemental Motion.

## DELIBERATIONS

### (i) Preliminary Issues:

4. As a preliminary issue, the Chamber notes that both Defence Motions deal with similar issues. It will, therefore, be in the interests of judicial economy to address these issues in one consolidated decision.

5. In the First Supplemental Motion, the Defence claims that the Chamber has not yet decided its certification request of the 29 February 2008 Decision.<sup>8</sup> The Chamber is extremely surprised by this submission, since this Decision was rendered on 22 May 2008 and was distributed through the regular channels, three weeks prior to the filing of the present Motions. The Defence's unawareness that the Chamber has rendered such a

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

<sup>2</sup> Decision on Nzuwonemeye's Motions to address Defects in the Form of the Indictment and to order the Prosecution to disclose all Exculpatory Material (TC), 29 February 2008 (Decision of 29 February 2008).

<sup>3</sup> Decision on Nzuwonemeye's Request for Certification to Appeal the Chamber's Decision of 29 February 2008 (TC), 22 May 2008 (Decision of 22 May 2008).

<sup>4</sup> Supplemental Motion to Nzuwonemeye Defence Motion on Defects in the Form of the Indictment in light of the Chamber's Decisions in respect to the Defence (sic) 98bis Motions and Pursuant to Rule 72(F) – in respect to Counts 7 and 8, filed on 9 June 2008 (First Supplemental Motion); Supplemental Nzuwonemeye Defence Motion on Defects in the Form of the Indictment in respect to the Pleading of Crimes against Humanity and Violations of Article 3 Common to the Geneva Convention, filed on 9 June 2008 (Second Supplemental Motion).

<sup>5</sup> First Supplemental Motion, paras. 7–9, 15–18.

<sup>6</sup> Second Supplemental Motion, paras. 4, 6, 7, 8.

<sup>7</sup> Prosecutor's Response to "Supplemental Motion to Nzuwonemeye Defence Motion on Defects in the Form of the Indictment in Light of the Chamber's Decision in Respect to the Defence Rule 98bis Motions and Pursuant to Rule 72(F) – In Respect to Counts 7 and 8", filed on 10 June 2008.

<sup>8</sup> First Supplemental Motion, para. 3.

Decision demonstrates neglect by the Counsel for Nzuwonemeye of their duties as officers of the Court, and towards their client. The Chamber further considers that if Counsel had exercised greater diligence in keeping track of the Chamber's decisions, there may not have been any need for the filing of these Supplementary Motions.

(ii) *Substantive Issues:*

6. The Defence bases the Supplemental Motions on a flawed understanding of the *Ntagerura* Appeals Judgement that "fair trial issues are not time barred" and that "the issue of defects in the indictment in respect to an Accused's right to a fair trial is a post-trial issue."<sup>9</sup> The Chamber does not agree with this interpretation of the cited paragraph of the Judgement. Contrary to the Defence submissions, *Ntagerura et al.* deals with the issue of the Trial Chamber's reconsideration of previously rendered pre-trial decisions on the indictment at the judgement deliberations stage, without hearing the parties on the issue.<sup>10</sup> This holding bears no relevance to the issue at hand. The Chamber notes with dismay that Counsel for Nzuwonemeye have persistently misquoted the above Judgement in all their motions on this issue. Such persistence in distorting the Appeals Chamber's ruling evinces an attempt to mislead this Chamber. The Chamber expects that Counsel will henceforth desist from misquoting and misapplying the jurisprudence of this Tribunal.

7. Regarding the substantive issues contained in the Supplemental Motions, the Chamber finds that a significant number of the arguments were previously raised by the Defence in its Motion of 18 October 2007. These include: that Count 8 of the Indictment concerning rape as a war crime provides no material allegations to support the context of a non-international armed conflict;<sup>11</sup> that there are no factual allegations provided to support that the murders of the ten UNAMIR peacekeeping troops, Prime Minister Agathe Uwilingiyimana and the three members of her entourage including her husband, and the patients or refugees at CHK were "part of a widespread or systematic attack against a civilian population" or based on discriminatory grounds, both requirements for findings of crimes against humanity.<sup>12</sup>

8. The Chamber finds that such blatant repetition of matters relating to alleged defects in the Indictment amounts to an attempt to re-litigate issues already duly considered by the Chamber in its earlier Decision of 29 February 2008. The Chamber finds that such excessive re-litigation, along with the Defence's failure to be cognisant of the Chamber's Decision on certification including its pertinence to the issues at hand, renders a significant part of the Supplemental Motions frivolous. The Chamber, therefore, finds that such filing constitutes an abuse of process pursuant to Rule 73(F). The Chamber will not, therefore, consider these issues raised at this juncture.

9. The Defence raises an additional argument pertaining to alleged defects in the Indictment on the Prosecution's failure to plead the nexus between the armed conflict and the underlying crime, as a legal element for war crimes in Counts 7 and 8 of the

<sup>9</sup> Second Supplemental Motion, para. 3; First Supplemental Motion, para. 4. The Defence relies on paragraph 55 of the *Ntagerura et al.* Appeals Judgement.

<sup>10</sup> See *Prosecutor v. Ntagerura et al.*, Case No. ICTR-99-46-A, Judgement (AC), 7 July 2006, para. 55.

<sup>11</sup> First Supplemental Motion, para. 17. Para 17 of the Motion addresses the same issue as para. 169 of the 18 October 2007 Motion (para. 119 of the Indictment).

<sup>12</sup> Second Supplemental Motion, paras. 6 – 7. Paras. 6 and 7 of the Motion address issues raised in paras. 150 and 152 of the 18 October 2007 Motion (paras. 78, 103, 105 and 108 of the Indictment).

Indictment.<sup>13</sup> The Chamber reiterates its earlier finding relating to raising alleged defects in the Indictment at this stage of the proceedings, and sees no reason to restate it here.<sup>14</sup> Counsel are expected to be in a position to advise themselves and their client on the proper course of conduct following the Chamber's ruling.

10. Finally, the Chamber notes that the Defence relies on the Prosecution's observations on the Indictment filed against another Accused, Bernard Ntuyahaga, to submit that the murders of the UNAMIR troops and the Prime Minister were isolated acts, and thus do not constitute crimes against humanity.<sup>15</sup> The Chamber will not test the allegations in this Indictment against any other indictment in a different case.<sup>16</sup> In addition, whether or not specific allegations in this Indictment constitute crimes against humanity is a matter for determination by the Chamber at the close of the case after considering all the evidence. The Defence submission therefore lacks merit and is dismissed.


#### FOR THE ABOVE REASONS, THE CHAMBER

**DENIES** the Defence Motions;

**FINDS** the Supplemental Motions sought to re-litigate previously determined issues, are frivolous and constitute an abuse of the process of the court, pursuant to Rule 73(F);

**INSTRUCTS** the Registrar to withhold payment of fees and costs associated with this Motion.

Arusha, 5 July 2008

  
Asoka de Silva  
Presiding Judge

  
Taghrid Hikmet  
Judge

  
Seon Ki Park  
Judge

[Seal of the Tribunal]

<sup>13</sup> First Supplemental Motion, paras. 9, 15 – 18.

<sup>14</sup> See Decision of 29 February 2008, para. 10 ; Decision of 22 May 2008, para. 4.

<sup>15</sup> Second Supplemental Motion, paras. 8a, 14 – 15, 21.

<sup>16</sup> See *Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Judgement (AC), 20 May 2005, para. 45.