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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR:
ENG

TRIAL CHAMBER I

Before Judges: Judge Erik Møse, presiding
Judge Sergei Alekseevich Egorov
Judge Florence Rita Arrey

Registrar: Mr Adama Dieng

Date: 7 November 2008

THE PROSECUTOR

v.

**AUGUSTIN BIZIMANA
CALLIXTE NZABONIMANA**

Case No. ICTR-98-44-I

2008 NOV - 7 A 11: 51
JUDICIAL RECORDS/ARCHIVES
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**DECISION ON PROSECUTION MOTION FOR SEVERANCE AND
AMENDMENT OF INDICTMENT**

Office of the Prosecutor
Paul Ng'arua
Memory Maposa
Kartik Murukutla

Defence Counsel
Vincent Courcelle Labrousse

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Sergei Alekseevich Egorov and Judge Florence Rita Arrey;

BEING SEIZED OF the Prosecution “Motion for Separation of Trials and Amendment of Indictment” etc., filed on 7 October 2007;

HEREBY DECIDES the Motion.

INTRODUCTION

1. The original Indictment against Augustin Bizimana, Édouard Karemera, Callixte Nzabonimana, André Rwamakuba, Mathieu Ngirumpatse, Joseph Nzirorera and Félicien Kabuga was filed on 21 November 2001. On 8 October 2003, the Prosecution was granted leave to sever Bizimana and Nzabonimana from the original Indictment, as well as to amend the Indictment against Karemera, Ngirumpatse and Nzirorera.¹ The trial of the latter is currently ongoing. Rwamakuba was acquitted by the Tribunal on 20 September 2006.²

2. Nzabonimana was arrested on 18 February 2008. He pleaded not guilty to all counts during his initial appearance on 20 February 2008.³ On 30 September 2008, the President of the Tribunal designated Trial Chamber I as the Pre-Trial Chamber in this case. A date for the commencement of trial has yet to be fixed.

3. The Prosecution now seeks to sever Nzabonimana’s case from that of Bizimana, who remains at large. It also requests leave to file an amended Indictment against Nzabonimana.⁴ The Defence has not filed any response.

DISCUSSION

(i) Severance

4. Pursuant to Rule 82 (B) of the Rules of Procedure and Evidence, 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

¹ *Prosecutor v. Bizimana et al.*, Decision on the Prosecutor’s Motion for Separate Trials and for Leave to File an Amended Indictment, etc. (TC), 8 October 2003. On 1 September 2003, the Chamber ordered the severance of the trial of Kabuga, who remains at large (*Prosecutor v. Bizimana et al.*, Decision on the Prosecutor’s Motion for Severance of Félicien Kabuga’s Trial and for Leave to Amend the Accused’s Indictment”, etc., 1 September 2003).

² *Prosecutor v. Rwamakuba*, Judgement (TC), 20 September 2006.

³ T. 20 February 2008, pp. 10-11.

⁴ “Prosecutor’s Motion for Separation of Trials and Amendment of Indictment pursuant to Rules 73, 82, 47 and 50 of the Rules of Procedure and Evidence”, 7 October 2008.

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interests of justice.⁵ The Prosecution submits that severance is in the interests of justice. No specific factual allegations link both accused. Severance would protect Nzabonimana's right to be tried without undue delay, as Bizimana remains at large, and there is currently no indication through intelligence reports as to when he might be apprehended, if at all.⁶

5. Two factors favour severance in this case. The issue of delay is especially pertinent in view of the fact that the co-accused Augustin Bizimana has not, to date, been arrested or transferred to the Tribunal's Detention Facilities in Arusha.⁷ The Prosecution submits that it is in the advanced stages of preparing the trial against Callixte Nzabonimana. The Chamber notes this and considers that to delay proceedings against him because his co-accused is at large would not be in conformity with his right to be tried without undue delay, as guaranteed by Articles 19 (1) and 20 (4)(c) of the Statute. Second, the allegations against Nzabonimana are largely distinct from those made against Bizimana. A joint trial will therefore not promote judicial economy. Under these circumstances, the Chamber finds that severance is in the interests of justice as required under Rule 82 (B).

(ii) *Amendment of the Indictment*

6. The original Indictment charged Nzabonimana and Bizimana with 11 counts of genocide, crimes against humanity and war crimes. The Prosecution proposes to withdraw six counts: complicity in genocide, rape and persecution as crimes against humanity, inhumane acts, outrages against personal dignity and violence to health and to physical and mental well-being of civilians (violations of Article 3 common to the Geneva Conventions, and Additional Protocol II). It also seeks to withdraw all charges pursuant to Article 6 (3) of the Statute. Further, it withdraws or corrects certain factual allegations, elaborates upon modes of liability charged, and provides greater clarity and precision in the case to be met. According to the Prosecution, the Accused will not be prejudiced, as the proposed Amended Indictment contains no new charges. Furthermore, many of the amendments are based on material that has been previously disclosed to the Accused.⁸

⁵ *Prosecutor v. Nizeyimana and Hategekimana*, Decision on the Prosecutor's Application for Severance and Leave to Amend the Indictment against Idelphonse Hategekimana (TC), 27 September 2007, para. 4 (the interests of justice include the right to be tried fairly and without undue delay, as guaranteed by Article 20 of the Statute); *Prosecutor v. Karemera et al.*, Decision on Severance of André Rwamakuba and for Leave to File Amended Indictment (TC), 14 February 2005, para. 26 ("Rwamakuba Severance Decision"); *Prosecutor v. Muhimana et al.*, Decision on the Prosecutor's Motion for Leave to Sever an Indictment (TC), 14 April 2003; *Prosecutor v. Kamuhanda*, Decision on the Defence Motion for Severance and Separate Trials Filed by the Accused (TC), 7 November 2000, para. 4 ("Kamuhanda Decision"); *Prosecutor v. Nyiramasuhuko et al.*, Decision on the Defence Motion Seeking a Separate Trial for the Accused Sylvain Nsabimana (TC), 8 September 2000, para. 34; *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, para. 30.

⁶ Motion, paras. 7-10.

⁷ *Kamuhanda* Decision, para. 5.

⁸ Motion, paras. 15-17.

7. Rule 50 of the Rules provides that, after the initial appearance of the Accused, an indictment may only be amended with leave of the Chamber. As established in the jurisprudence, there are three factors to be weighed in determining whether to grant leave: the ameliorating effect of the changes on the 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.⁹

8. The Chamber notes that the proposed Amended Indictment contains no new charges. The first category of proposed amendments has the effect of narrowing the case against the Accused by removing six counts, as well as all reference to superior responsibility. The second category of amendments improves the Indictment by adding further particulars to various general allegations in the original Indictment. Many of the changes better particularize the Prosecution's theory of criminal responsibility,¹⁰ remove extraneous paragraphs,¹¹ and provide greater specificity and particularity regarding the allegations.¹²

9. The removal of extraneous paragraphs and six counts streamlines the indictment and narrows the case against the Accused, whereas the other proposed amendments lend clarity to the case against him.¹³ The Prosecution should be allowed to make such amendments, which are designed to enhance trial fairness and will not cause prejudice to the Accused. This will have an ameliorating effect on the case.

10. The Chamber finds it in the interests of justice to permit the proposed amendments. The case is unlikely to commence prior to 2009. The Chamber cannot see that the amendments will prevent the commencement of trial in the first months of 2009. Consequently, the Chamber grants the Prosecution motion to amend the Indictment, as set forth above.

⁹ See generally *Prosecutor v. Kanyarukiga*, Decision on Prosecution Request to Amend the Indictment (TC), 14 November 2007, para. 4; *Prosecutor v. Ephrem Setako*, Decision on the Prosecution's Request to Amend the Indictment (TC), 18 September 2007, para. 6; *Prosecutor v. Jean Baptiste Gatete*, Decision on the Prosecution's Request for Leave to File an Amended Indictment (TC), 21 April 2005, para. 3; *Prosecutor v. Casimir Bizimungu et al.*, 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 (*Bizimungu et al.* Appeal Decision), para. 16; *Prosecutor v. Édouard 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, paras. 15, 20, 28.

¹⁰ Motion, para. 16 (referring to paras. 6.34-6.37, 6.39, 6.41, 6.44-6.45, 6.66, 6.87 and 6.89 of the original Indictment).

¹¹ See Motion, para. 15 (in relation to paragraphs 1.1-1.30 of the original Indictment).

¹² See e.g. Motion, para. 16; proposed Amended Indictment, paras. 15-34 (pertaining to killings) and 35-64 (meetings).

¹³ Cf. paragraphs 15-64 of the proposed Amended Indictment in relation to paragraphs 5.4, 5.11-5.12, 5.14-5.17, 5.46, 6.21, 6.26-6.27, 6.38, 6.40, 6.42, 6.46, 6.54, 6.88, 6.90, 6.100, 6.102-6.103 of the original Indictment.

FOR THE FOREGOING REASONS, THE CHAMBER


GRANTS the Prosecution leave to sever Callixte Nzabonimana from the original Indictment, dated 21 November 2001;

DIRECTS the Registry to designate a new number for the separate Indictment against Callixte Nzabonimana;


GRANTS the Prosecution's motion to amend the Indictment as set forth in the proposed Amended Indictment;

ORDERS the Prosecution to file the Indictment as amended in accordance with this decision in French and English within five days of the filing of this decision.

Arusha, 7 November 2008


Erik Møse
Presiding Judge


Sergei Alekseevich Egorov
Judge


Florence Rita Arrey
Judge

[Seal of the Tribunal]





TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

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Case Name:	The Prosecutor vs. Augustin Bizimana et al.		Case Number: ICTR-98-44-I	
Dates:	Transmitted: 7 NOVEMBER 2008		Document's date: 7 NOVEMBER 2008	
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