

Vincent Courcelle Labrousse

## INTRODUCTION

1. On 7 July 2009, the Prosecution filed a motion to amend the Indictment against Callixte Nzabonimana.<sup>1</sup> The Prosecution contends that the proposed amendments should be granted because:

- the removal of 15 paragraphs of the Indictment<sup>2</sup> narrows the Indictment, reduces the number of witnesses and trial days and thus promotes judicial economy and the Accused's right to a fair trial;
- the correction of typographical errors<sup>3</sup> does not prejudice the Accused in any way, but on the contrary offers more clarity and precision in the Indictment.<sup>4</sup>

2. In an e-mail correspondence dated 10 July 2009, the Defence submits that it does not oppose the Motion and requests that a translation of the Amended Indictment into French be made available as soon as possible.<sup>5</sup>

## DELIBERATIONS

3. Rule 50 of the Rules of Procedure and Evidence ("Rules") provides that, after the initial appearance of the Accused, an indictment may only be amended with leave of the Chamber. There are three factors to be weighed in determining whether to grant leave to amend an indictment: 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.<sup>6</sup>

<sup>1</sup> Prosecutor's Motion for Amendment of the Indictment, filed on 7 July 2009.

<sup>2</sup> Namely, paragraphs 22, 25, 29, 32, 36, 37, 48, 55, 56, 57, 58, 60, 63, 64 and 72.

<sup>3</sup> At paragraph 7, replacing "The" by "He"; at paragraph 21, replacing "Nyabikenke" by "Nyarugenge"; at paragraph 50 by deleting Mubuga and adding "Trading Centre" after Kabimumbura; at paragraph 66, by replacing "Musasu" by "Musasa" and putting it as the name of a place instead of a person.

<sup>4</sup> *Idem*.

<sup>5</sup> Email correspondence from Co-Counsel to the Registry in response to the filing of the Motion, sent on 10 July 2009.

<sup>6</sup> See *The Prosecutor v. Édouard 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 Indictment (AC), 19 December 2003, paras. 15, 20, 28; *The Prosecutor v. Bizimungu et al.*, 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, para. 16; *The Prosecutor v. Ephrem Setako*, Case No. ICTR-04-81-I, Decision on the Prosecution's Request to Amend the Indictment (TC), 13 September 2007, para. 6; *the Prosecutor v. Kanyarukiga*, Case No. ICTR-02-78-I, Decision on Prosecution Request to Amend the Indictment (TC), 14 November 2007, para. 4; *Prosecutor v. Munyakazi*, Case

4. The Chamber notes that there is no new charge in the proposed Amended Indictment. On the contrary, some allegations have been removed. The Chamber further notes that the corrections at paragraphs 7, 21, 50 and 66 clarify the charges against the Accused. The Chamber considers that the proposed amendments will not prevent the trial from commencing on 14 September 2009, as scheduled, and that they do not create any prejudice to the Defence or any tactical advantage to the Prosecution.

5. However, the Chamber notes that the proposed Amended Indictment attached as Annexure B of the Motion contains a typographical error in the case number at page 1. The correct case number should read "ICTR-98-44D-1".

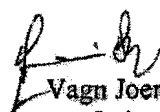
**FOR THE FOREGOING REASONS, THE CHAMBER**

- I. **GRANTS** the Prosecution Motion in its entirety; and
- II. **DIRECTS** the Prosecution to file an amended version of the Indictment with the correct case number both in English and French as soon as possible.

Arusha, 21 July 2009, done in English.

  
Dennis C. M. Byron  
Presiding Judge

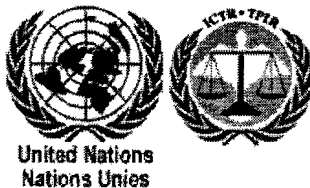
  
Gberdao Gustave Kam  
Judge

  
Vagn Joensen  
Judge

[Seal of the Tribunal]



No. ICTR-97-37A-I, Decision on Prosecution Request for leave to Amend the Indictment (TC), 30 October 2008, para. 4.



# 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)

To:	<input type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Trial Chamber III A. N'Gum
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Appeals Chamber / Arusha Chamber II F. A. Talon		<input type="checkbox"/> Appeals Chamber / The Hague K. K. A. Afande R. Muzigo-Morrison
From:	<input checked="" type="checkbox"/> Chamber III (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. Nzabonimana			Case Number: ICTR-98-44D-PT
Dates:	Transmitted: 23 July 2009		Document's date: 21 July 2009	
No. of Pages:	3	Original Language: <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda		
Title of Document:	Decision on Prosecutor's Motion for Amendment of Indictment			
Classification Level:		TRIM Document Type:		
<input type="checkbox"/> Ex Parte <input type="checkbox"/> Strictly Confidential / Under Seal <input type="checkbox"/> Confidential <input checked="" type="checkbox"/> Public		<input type="checkbox"/> Indictment <input type="checkbox"/> Warrant <input type="checkbox"/> Correspondence <input type="checkbox"/> Submission from non-parties <input checked="" type="checkbox"/> Decision <input type="checkbox"/> Affidavit <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Submission from parties <input type="checkbox"/> Disclosure <input type="checkbox"/> Order <input type="checkbox"/> Appeal Book <input type="checkbox"/> Accused particulars <input type="checkbox"/> Judgement <input type="checkbox"/> Motion <input type="checkbox"/> Book of Authorities		

## II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

CMS SHALL take necessary action regarding translation.			
<input checked="" type="checkbox"/> Filing Party hereby submits only the original, and <b>will not submit</b> any translated version. <input type="checkbox"/> Reference material is provided in annex to facilitate translation.			
Target Language(s):			
<input type="checkbox"/> English	<input checked="" type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda	
CMS SHALL NOT take any action regarding translation.			
<input type="checkbox"/> Filing Party hereby submits <b>BOTH the original and the translated version</b> for filing, as follows:			
Original	in	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda

CMS SHALL NOT take any action regarding translation.	
<input type="checkbox"/> Filing Party <b>will be submitting the translated version(s)</b> in due course in the following language(s): <input type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda	
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<input type="checkbox"/> The OTP is overseeing translation. The document is submitted for translation to: <input type="checkbox"/> The Language Services Section of the ICTR / Arusha. <input type="checkbox"/> The Language Services Section of the ICTR / The Hague. <input type="checkbox"/> An accredited service for translation; see details below: Name of contact person: Name of service: Address: E-mail / Tel. / Fax:	<input type="checkbox"/> DEFENCE is overseeing translation. The document is submitted to an accredited service for translation (fees will be submitted to DCDMS): Name of contact person: Name of service: Address: E-mail / Tel. / Fax:

## III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	COMMENTS	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: