

ICTR-01-55C-PT  
01-04-2010  
(1313-1311)

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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

UNITED NATIONS  
NATIONS UNIES

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Dennis C. M. Byron, Presiding  
Gberdao Gustave Kam  
Vagn Joensen

**Registrar:** Adama Dieng

**Date:** 1 April 2010

JUDICIAL RECORDS/ARCHIVES  
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**THE PROSECUTOR**

v.

**Ildephonse NIZEYIMANA**

**CASE NO. ICTR-2001-55C-PT**

**DECISION ON NIZEYIMANA'S MOTION FOR CERTIFICATION**

*Rule 73 of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**  
Richard Karegyesa  
Drew White  
Yasmine Chubin  
Astou Mbow

**Defence Counsel for Ildephonse Nizeyimana:**  
John Philpot  
Cainnech Lussiaà-Berdou

*Signature*

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**INTRODUCTION**

1. On 25 February 2010, the Chamber granted, in part, the Prosecution's application to amend the Indictment (the "Decision").<sup>1</sup> Ildephonse Nizeyimana has now applied for certification to appeal the Decision.<sup>2</sup> The Prosecution opposes the motion.<sup>3</sup> Nizeyimana filed a reply to the Prosecution's response on 16 March 2010.<sup>4</sup>

**DELIBERATIONS**

2. The Chamber notes that the Prosecution filed its response out of time. However, in the interests of justice the Chamber has considered the response.

3. Rule 73(B) of the Rules of Procedure and Evidence provides that certification to appeal may only be granted if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings. The Chamber notes that certification to appeal is only granted exceptionally.<sup>5</sup>

4. Ildephonse Nizeyimana submits that certification should be granted based upon two alleged errors. First, he contends that the Chamber did not sufficiently explain how it weighed the supporting materials for the motion to amend the Indictment with respect to its conclusion that a *prima facie* case exists for each of the new charges and counts.<sup>6</sup>

5. The Chamber finds that this issue would not affect the fair and expeditious conduct of the proceedings or the outcome of the trial. Pursuant to Rules 50(B), 47(E) and 47(F), the reviewing Chamber is charged with using its discretion to analyse the supporting materials for an Indictment in conjunction with Article 18 of the Statute. The Chamber has already reviewed the materials presented *ex parte* to it by the Prosecution and has found that a *prima facie* case exists for each of the new charges. No further explanation or comments on the material submitted *ex parte* is necessary. The Prosecution will still need to adduce evidence at trial seeking to prove the Accused guilty beyond reasonable doubt. The Chamber also finds

<sup>1</sup> *Prosecutor v. Nizeyimana*, Case No. ICTR-2000-55C-PT, Decision on Prosecutor's Motion for Leave to File an Amended Indictment (TC), 25 February 2010 (the "Decision").

<sup>2</sup> Nizeyimana Defence Motion for Certification, 3 March 2010 (the "Motion").

<sup>3</sup> Prosecutor's Response to Nizeyimana Defence Motion for Certification, 15 March 2010.

<sup>4</sup> Reply to Prosecutor's Response Nizeyimana [sic] Defence Motion for Certification, 16 March 2010.

<sup>5</sup> *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Application for Certification to Appeal Oral Decision on 26<sup>th</sup> Notice of Rule 66 Violation and 17<sup>th</sup> Notice of Rule 68 Violation (TC), 25 November 2009, para. 2.

<sup>6</sup> Motion, paras. 10-25.

that the Accused has not presented any relevant supporting case law or arguments which would show that the resolution of this issue would affect the fair and expeditious conduct of proceedings or the outcome of the trial.<sup>7</sup>

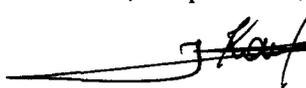
6. Second, Ildephonse Nizeyimana argues that the Chamber erred in considering unsigned will-say statements and old/third-party statements to be supporting materials for the new charges in the amended Indictment based on a finding that the concept of supporting materials is not defined and that no formal requirements have been prescribed by the Rules for determining what constitutes adequate supporting materials.<sup>8</sup> The Chamber finds that this issue would not affect either the fair and expeditious conduct of the proceedings or the outcome of the trial. The Chamber has discretion to review the supporting materials and decide, as a whole, whether they meet the *prima facie* requirement as articulated in the Rules and the Statute. As was explained in the Decision, the Chamber reviewed the materials provided to it by the Prosecution *ex parte*, accepted those materials, and was satisfied that a *prima facie* case exists against the Accused for the charges and counts in the amended Indictment.<sup>9</sup> Further, as stated above, the Prosecution will still need to adduce evidence and prove its case at trial.

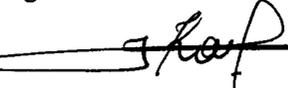
7. The Chamber considers that, since neither issue meets the first prong of Rule 73(B), there is no need to inquire as to whether an immediate resolution by the Appeals Chamber may materially advance the proceedings. Therefore, the Chamber finds that neither issue meets the Rule 73(B) requirements for certification.

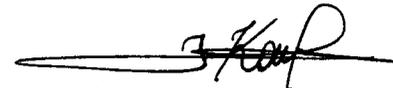
**FOR THESE REASONS, THE CHAMBER**

**DENIES** Ildephonse Nizeyimana's Application for Certification to Appeal.

Arusha, 1 April 2010, done in English.

  
P/o Dennis C. M. Byron  
Presiding Judge

  
Gberdao Gustave Kam  
Judge

  
P/o Vagn Joensen  
Judge



<sup>7</sup> The case law provided by the Accused related to Appeals Chamber final judgements, not decisions confirming indictments.

<sup>8</sup> Motion, paras. 26-36.

<sup>9</sup> Decision, para. 13.