



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
NATIONS UNIES

OR: ENG

TRIAL CHAMBER III

Before Judges: Solomy Balungi Bossa, Presiding
Bakhtiyar Tuzmukhamedov
Mparany Rajohnson

Registrar: Adama Dieng

Date: 8 April 2011

JUDICIAL RECORDS ARCHIVE
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THE PROSECUTOR

v.

Callixte NZABONIMANA
Case No. ICTR-98-44D-T

ORDER FOR PROSECUTION TO REVIEW INDICTMENT
AND TO FILE PUBLIC VERSION

Office of the Prosecutor
Paul Ng'arua
Memory Maposa
Simba Mawere
Mary Diana Karanja

Defence Counsel
Vincent Courcelle-Labrousse
Philippe Larochelle

1. The Trial Chamber, cognisant of the impending the closure of the evidence phase in the instant proceedings, deems it appropriate to address two aspects pertaining to the Prosecution Indictment at this time.

2. First, the Trial Chamber recalls that on numerous occasions throughout this trial, the Defence has asserted that the Prosecution did not adduce evidence in support of all the paragraphs contained in the Indictment.¹ Moreover, this assertion does not appear to have ever been squarely denied by the Prosecution. In light of these circumstances, the Trial Chamber recalls the pronouncement of the Appeals Chamber in *Ntakirutimana* that

[n]aturally, the Prosecution cannot intentionally seek to exhaust its opponent's resources by leaving the Defence to investigate charges that it has no intent to prosecute. The Prosecution should make every effort to ensure not only that the indictment specifically pleads the material facts that the Prosecution intends to prove but also that any facts that it does not intend to prove are removed. The same applies to other communications that give specific information regarding the Prosecution's intended case, such as the Pre-Trial Brief. It would be a serious breach of ethics for the Prosecution to draw the Defence into lengthy and expensive investigations of facts that the Prosecution does not intend to prove at trial.²

3. The Trial Chamber further recalls that the proper exercise of this ethical obligation was recently undertaken in the case of *Ngirabatware*, where the Prosecution, *proprio motu*, sought the permission of the Trial Chamber to withdraw 16 paragraphs of its indictment for which it had not led any evidence during its case-in-chief.³ Therefore, with due reference to these precedents, and in the exercise of the powers afforded the Trial Chamber under Rule 54 of the Rules of Procedure and Evidence, the Chamber concludes that it would materially serve the interests of justice and the economy of judicial resources to order the Prosecution to conduct a comprehensive review of its case-in-chief, with a view to withdrawing any paragraphs for which it has not adduced any evidence. The Chamber believes that such an exercise could prove extremely beneficial in streamlining the issues to be addressed during the course of closing briefs, closing arguments, and final deliberations.

¹ See e.g., *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Nzabonimana's Extremely Urgent Motion for Reconsideration or Certification of the "Consolidated Decision on Prosecutor's Second and Third Motions to Compel the Defence to Comply with the Trial Chamber's Decision of 3 February 2010", Rendered on 26 March 2010, 6 April 2010, para. 21; *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Nzabonimana's Motion for the Variation of its Lists of Witnesses under Rule 73ter (E) of the Rules of Procedure and Evidence ("RPE"), 20 December 2010, Annex 1.

² *Prosecutor v. Ntakirutimana and Ntakirutimana*, ICTR-96-10-A and ICTR-96-17-A, Judgement, 13 December 2004, para. 34.

³ *Prosecutor v. Ngirabatware*, ICTR-99-54-T, Decision on Defence Motion for Judgement of Acquittal, 14 October 2010, para. 9.

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4. Second, the Trial Chamber notes that the Indictment in the instant proceedings has been filed confidentially. The Chamber considers that the interests of transparency and accountability demand that a public Indictment be filed forthwith. Therefore, the Trial Chamber orders the Prosecution to file a public version of its Indictment, after having made whatever redactions may be necessary to safeguard the identities of protected witnesses who may have been named in the existing Indictment.

FOR THESE REASONS, THE TRIAL CHAMBER

ORDERS the Prosecution to conduct a comprehensive review of its case-in-chief, with a view to determining what paragraphs of the Indictment, if any, remain unsupported by Prosecution evidence;

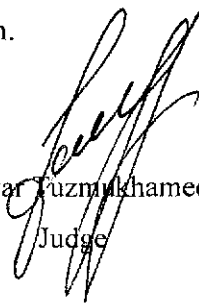
FURTHER ORDERS the Prosecution, after having conducted the said review, to file a notice to the Trial Chamber and the Defence indicating which paragraphs of the Indictment, if any, it seeks permission to withdraw due to lack of evidence, as soon as possible and in no case later than 6 May 2011; and

FURTHER ORDERS the Prosecution to file a public version of its Indictment, after having taken any necessary measures to safeguard the identity of protected witnesses possibly named therein, as soon as possible and in no case later than 6 May 2011.

Arusha, 8 April 2011, done in English.



Solomy Balungi Bossa
Presiding Judge



Bakhtiyar Fuzmukhamedov
Judge



Mparany Rajohnson
Judge

