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UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER II**

**Before:** Judge William H. Sekule, Presiding  
Judge Arlette Ramaroson  
Judge Solomy Balungi Bossa

**Registrar:** Mr Adama Dieng

**Date:** 29 March 2007

**The PROSECUTOR**

**Versus**

**Hormisdas NSENGIMANA**

**Case No. ICTR-2001-69-I**

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**DECISION ON PROSECUTION MOTION FOR LEAVE TO FILE  
AN AMENDED INDICTMENT**

**Office of the Prosecutor**

Mr William Egbe  
Mr Sulaiman Khan  
Ms Veronic Wright  
Mr Patrick Gabake  
Ms Amina Ibrahim

**Defence Counsel**

Mr Altit  
Mr Remi

Handwritten signature of the Defence Counsel

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (the "Tribunal"),

**SITTING** as Trial Chamber II composed of Judge William H. Sekule, Presiding, Judge Arlette Ramaroson and Judge Solomy Balungi Bossa (the "Chamber");

**SEISED** of the Confidential "Prosecutor's Motion for Leave to File an Amended Indictment," to which is attached the proposed Amended Indictment as Annex A, and the Confidential "Brief in Support of the Prosecutor's Motion for Leave to File an Amended Indictment," filed on 2 October 2006 (the "Motion");

**CONSIDERING** the "*Mémoire en réplique à la 'Requête du Procureur demandant à pouvoir déposer un acte d'accusation modifié.'*" filed by the Defence on 25 October 2006 (the «Defence Response»);<sup>1</sup> **AND** «*Mémoire additionnel en réplique à la 'Requête du Procureur demandant à pouvoir déposer un acte d'accusation modifié.'*" filed by the Defence on 19 March 2007 (the «Defence Further Response»); **AND** the «Prosecutor's Rejoinder to the Defence Response to the Prosecutor's Motion to Amend the Indictment.» of 23 March 2007 (the «Prosecution's Rejoinder.»)

**RECALLING** the Chamber's Scheduling Order dated 21 November 2006;

**NOTING** the supporting material and table filed by the Prosecution on 28 November 2006;

**CONSIDERING** the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules"), specifically Rules 50(a) and 73 of the Rules;

**NOW DECIDES** the Motion on the basis of the written submissions of the Parties pursuant to Rule 73(A).

## **INTRODUCTION**

1. On 5 July 2001, Judge Pavel Dolenc confirmed the Indictment against the Accused Hormisdas Nsengimana (the "Accused"). He confirmed counts 1, 3, 4 and 5 with regard to Nsengimana's responsibility under Article 6 (1) of the Statute, and dismissed count 2 and all charges of superior responsibility pursuant to Article 6 (3) of the Statute.<sup>2</sup>

2. On 10 August 2001, the Prosecution filed an amended indictment dated 8 August 2001, in compliance with the modifications ordered by Judge Pavel Dolenc (the "current Indictment").

3. On 26 May 2006, during a Status Conference, the Prosecution submitted that it intended to file a Motion requesting an amendment of the current Indictment.<sup>3</sup>

4. On 2 October 2006, the Prosecution filed a Motion requesting the Chamber, pursuant to Rule 50 of the Rules, to amend the Indictment against the Accused by deleting the count of conspiracy to commit genocide, by adding the Accused's responsibility as a superior under

<sup>1</sup> To which is attached the «*Mémoire comparatif du projet d'acte d'accusation modifié et de l'acte d'accusation actuel*».

<sup>2</sup> *Prosecutor v. Nsengimana* ICTR-2001-69-I (TC) Decision on the Confirmation of the Indictment, of 5 July 2001, (the "Decision on Confirmation of the Indictment").

<sup>3</sup> T. 26 May 2006 pp 8, 9 (ICS).

Article 6 (3) for the remaining three charges, and by elaborating on the existing factual allegations in support of the charges, so as to bring the Indictment into conformity with the current charging practices of the Office of the Prosecutor.

5. On 25 October 2006, the Defence responded to the Motion and requested its denial, arguing that the Amended Indictment in Annexure A (the "proposed Amended Indictment") essentially adds new charges against the Accused, which would trigger fresh preparations and would deny the Accused his right to an expeditious trial. Moreover, the Defence argued that the proposed Amended Indictment is fraught with imprecision.

6. On 21 November 2006, the Chamber issued a Scheduling Order directing the Prosecution to *inter alia*, file any material in its possession that might be useful in supporting its Motion as well as a table indicating which material supports which allegation of the proposed Amended Indictment.

7. On 28 November 2006, the Prosecution filed the relevant supporting material and its table, which were translated and served on the Defence on 22 February 2007.

8. On 6 March 2007 the Defence requested an extension time within which to file a further response to the Motion for Amendment of Indictment. On 14 March 2007, the Chamber denied the Defence request for the reasons advanced by the Defence, but the Chamber granted *proprio motu* an extension of three days for the Defence to file its further response. On 19 March 2007, the Defence filed a Further Response. On 23 March 2007, the Prosecution filed a Rejoinder to the Defence's Response to the Motion for Amendment of Indictment.

## SUBMISSIONS OF THE PARTIES

### *The Prosecution*

9. Pursuant to Rule 50 of the Rules, the Prosecution submits that:
- i. The proposed Amended Indictment does not amount to a "substitution" of the current Indictment;
  - ii. The proposed Amended Indictment elaborates upon the factual basis of the three existing counts and that some of the Paragraphs are consolidated so that the new factual allegations are merely additional material facts, underpinning the already existing charges;
  - iii. The proposed Amended Indictment captures the nature of the Accused's culpability with greater clarity by *inter alia* specifying dates, locations, names and the number of victims, providing a more accurate picture of the case the Prosecutions intends to present at trial, as well as giving further notice to the Accused of the nature of the charges against him;
  - iv. The proposed Amended Indictment brings the current Indictment in accordance with the jurisprudence of the Tribunal and the current charging practices of the Office of the Prosecutor;
  - v. The proposed Amended Indictment advances with greater particularity the mode of criminal liability, namely, 'joint criminal enterprise', thereby eliminating ambiguity;
  - vi. The proposed Amended Indictment will not prejudice the rights of the Accused to a fair trial.

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10. Recalling the provisions of Rules 50 (a) and 73 of the Rules, and the jurisprudence of the Tribunal, the Prosecution submits that for a Chamber to grant an amendment of an Indictment, it should consider: 1) whether the proposed Amended Indictment is justified in law; 2) whether the proposed Amended Indictment is justified on the evidence; and 3) whether any resulting pre-trial delay is prejudicial to the Accused's right to be tried without undue delay pursuant to Articles 19 (1) and 20 (4) of the Statute. Relying on the jurisprudence of the Tribunal and that of the International Criminal Tribunal for the Former Yugoslavia (the "ICTY"), the Prosecution submits that all three conditions have been met. The Prosecution further submits that a substantial part of the evidence relied upon in the proposed Amended Indictment has already been disclosed to the Accused under the provisions of Rule 66(A) of the Rules and that therefore, there is no prejudice or surprise to the Accused.

11. The Prosecution recalls the jurisprudence of the Tribunal and notes that generally, an amendment of an indictment is usually granted for the purpose of: 1) adding new charges; 2) developing the factual allegations found in the confirmed indictment; and 3) making minor changes to the indictment.

12. The Prosecution submits that in the instant case, while the current Indictment is comprised of four charges consisting of 58 Paragraphs, the proposed Amended Indictment comprises three charges, consisting of 47 Paragraphs. Furthermore, since the Prosecution put the Defence on notice on 26 May 2006 that it would file a Motion for amendment of the current Indictment, the filing of the proposed Amended Indictment will not create an unfair surprise, nor will it delay the anticipated commencement of trial in the year 2007, whose precise date has yet to be set. The Prosecution submits that as a result of the revised charging, the Accused will be in a position to prepare an effective defence that will ensure an expeditious trial.

13. The Prosecution submits that it is in the interests of justice that the Chamber grants its Motion because failure to do so would force the Prosecution to proceed to trial on the existing Indictment which no longer adequately reflects the nature and totality of the criminal conduct of the Accused.

### *The Defence*

14. The Defence objects to the Motion, arguing that the proposed Amended Indictment is both not in conformity with the Statute, the Rules, international standards nor jurisprudence and it is therefore prejudicial to the Accused.<sup>4</sup>

15. The Defence argues that the reasons advanced for the requested amendments are not well-founded<sup>5</sup> and the main objective for the request is not to detail the facts upon which the charges are made as alleged, but rather to introduce the notions of superior responsibility and joint criminal enterprise.<sup>6</sup>

16. The Defence submits that the Prosecution has violated the provisions of Rules 47 and 50 of the Rules because it has failed to disclose the supporting material required for the

<sup>4</sup> Para. 3 of the Response.

<sup>5</sup> Para. 4 of the Response.

<sup>6</sup> Para. 4 of the Response.



Chamber to ascertain whether a case exists for the charges brought against the Accused.<sup>7</sup> The Defence thus requests that the Prosecution disclose all the supporting material which forms the basis for the Motion.<sup>8</sup>

17. The Defence argues that there is no evidence in support of some of the allegations in Paragraphs 3, 5, 10, 16, 17, 18, 19, 20, 28 and 29 of the proposed Amended Indictment.<sup>9</sup>

18. The Defence argues that the proposed Amended Indictment is fraught with imprecision as to the identity of the protagonists mentioned in Paragraphs 16 – 23, 26, 27, 33, 40 – 43<sup>10</sup> and therefore requests their suppression.<sup>11</sup> It argues that in many places there is reference to “other members of the joint criminal enterprise” without naming those “others.”<sup>12</sup>

19. The Defence argues that the proposed Amended Indictment contains imprecision as to the dates of specific events, in particular at Paragraphs 16, 18 – 23, 26, 27, 29, 32, 35, 36, 40, 41 and 42,<sup>13</sup> and therefore requests their suppression.<sup>14</sup>

20. The Defence argues that the proposed Amended Indictment contains imprecision as to the exact places where specific events took place, specifically at Paragraphs 21, 23, 27, 30, 36, 40 and 42,<sup>15</sup> and therefore requests their suppression.<sup>16</sup>

21. The Defence argues that the proposed Amended Indictment contains many vague and contradictory allegations, particularly at Paragraphs 16 – 23, 27, 31, 34, 35, 36, 40 and 42,<sup>17</sup> which is why the Defence requests that the Chamber order the Prosecution to remedy these contradictions. It posits that in case of the Prosecution's failure to comply, the Chamber should reject these allegations.<sup>18</sup>

22. The Defence argues that the proposed Amended Indictment contains incorrect facts, such as the Accused's alleged membership of the CDR political party found at Paragraph 3 of the proposed Amended Indictment as well as his alleged position as “chief executive” of *Christ-Roi collège* (Paragraph 4 of the proposed Amended Indictment). This also applies to the Accused's alleged power to “prevent or punish” provided at Paragraph 4 and at Paragraph 5 that “by virtue of his position as a spiritual leader, he had moral authority over citizens in Nyanza, Butare *préfecture* in the sense that if he gave an order it would be obeyed.” Therefore, the Defence requests that these factual allegations should be rejected by the Chamber.<sup>19</sup> The Defence notes that these allegations influence Paragraphs 11, 13, 16 – 23, 25 – 29, 31, 32, 34 – 39, 41 – 43, 45 and 47 of the proposed Amended Indictment which should,

<sup>7</sup> Para. 8 of the Response.

<sup>8</sup> Para. 12 of the Response.

<sup>9</sup> Para. 9 of the Response.

<sup>10</sup> Para. 13 of the Response.

<sup>11</sup> Para. 15 of the Response.

<sup>12</sup> Para. 14 of the Response.

<sup>13</sup> Para. 17 of the Response.

<sup>14</sup> Para. 18 of the Response.

<sup>15</sup> Para. 20 of the Response.

<sup>16</sup> Para. 21 of the Response.

<sup>17</sup> Paras. 22 – 36 of the Response

<sup>18</sup> Para. 36 of the Response.

<sup>19</sup> Paras. 37 – 39 of the Response.

therefore be suppressed,<sup>20</sup> particularly as the Prosecution has not provided any proof as to which legislation it relies upon to make its allegations in the aforementioned Paragraphs.<sup>21</sup> Regarding the allegation that the Accused exercised spiritual authority, the Defence draws the attention of the Chamber to the *Code de droit canonique de l'Église catholique (CEC no. 212(1), 515, 1, 519)*, that spiritual authority is entirely distinct from administrative and military authority.<sup>22</sup>

23. The Defence submits that there is imprecision with regard to the exact form of individual criminal responsibility for which the Accused is charged under Article 6 (1), as has been provided under Articles 17 (4), 20 (4) of the Statute and Rule 47 of the Rules,<sup>23</sup> and if such precision is not made, this form of responsibility ought to be rejected by the Chamber.<sup>24</sup>

24. The Defence argues that there is confusion between the notions of 'joint criminal enterprise' and 'superior criminal responsibility' found at Paragraph 9 of the proposed Amended Indictment. It argues that the Prosecution relies on Paragraphs 3, 4 and 5 to support both forms of responsibility.<sup>25</sup> Furthermore, the Prosecution relies on the same set of listed people in Paragraphs 10, 13 and 19, in support of both forms of responsibility. Accordingly, the Defence requests that the Chamber order the suppression of Paragraphs 3, 4, 5, 9, 10, 13 and 19 of the proposed Amended Indictment.<sup>26</sup>

25. The Defence argues that there is confusion between the Accused's individual and collective responsibility, particularly found at Paragraphs 10 and 11 of the proposed Amended Indictment.<sup>27</sup> The Defence further argues that there is confusion between the Accused's individual and superior responsibility at Paragraphs 8 and 13 of the proposed Amended Indictment, and that the facts in support of the Accused's individual criminal responsibility, his participation in a joint criminal enterprise, and his responsibility as a superior seem to be the same.<sup>28</sup>

26. The Defence argues that the Prosecution strategy in alleging superior responsibility is so imprecise that any crime committed by any employee or student of the College or citizen of Nyanza could be attributed to the Accused, who was an alleged superior, or because of his alleged participation in the joint criminal enterprise.<sup>29</sup> These allegations ought to be specified or simply rejected.

27. The Defence recalls that Judge Pavel Dolenc in his Decision on Confirmation of the Indictment of 5 July 2001 declined to confirm both the charge of complicity in genocide and that of the Accused's responsibility as a superior for all the remaining counts which were confirmed.<sup>30</sup> The Defence submits that in alleging the Accused's superior responsibility, the proposed Amended Indictment is not justified in law or in fact and is fraught with imprecision at Paragraphs 4, 5, 8, 13 and 19 regarding the nexus between the Accused's

<sup>20</sup> Paras. 53 and 54 of the Response.

<sup>21</sup> Para. 54 of the Response.

<sup>22</sup> Para. 55 of the Response.

<sup>23</sup> Para. 41 of the Response.

<sup>24</sup> Para 41 of the Response.

<sup>25</sup> Para 41 of the Response.

<sup>26</sup> Paras 42 and 43 of the Response.

<sup>27</sup> Para. 44 of the Response.

<sup>28</sup> Para. 45 and 46 of the Response.

<sup>29</sup> Paras. 47 – 50 of the Response.

<sup>30</sup> Para. 50 of the Response.

control over his subordinates; their criminal acts; the dates and places where the criminal acts were committed; the identities of the Accused's subordinates; and the identities of the victims.<sup>31</sup>

28. The Defence argues that the Tribunal is not competent to try a person for his responsibility under 'joint criminal enterprise' for the crime of genocide, because neither the Statute nor the Convention on Genocide gives the Tribunal such power.<sup>32</sup> In any case, in the extraordinary event the Chamber should find itself competent to try an Accused for such a form of responsibility, the Defence, relying on jurisprudence from the Tribunal and the ICTY, argues that the Prosecution has failed to satisfy the criteria upon which an Accused could be tried for his responsibility under 'joint criminal enterprise'.<sup>33</sup> Accordingly, the Defence requests the suppression of Paragraphs 9 - 11, 16 - 25, 27, and 29 - 43 from the proposed Amended Indictment, because they are the material facts underpinning the Accused's alleged responsibility under 'joint criminal enterprise'.<sup>34</sup>

29. The Defence argues that contrary to the Prosecution submission, the Motion seeks to present a completely new Indictment. Although the charge of conspiracy to commit genocide has been removed, the proposed Amended Indictment brings a host of new allegations against the Accused. It alleges the Accused's responsibility as a superior for the remaining three counts, as well as his responsibility in a 'joint criminal enterprise'.<sup>35</sup> The Defence argues that using this brand new charging document against the Accused will cause an excessive delay in the preparation of the case and the commencement of the trial proceedings.<sup>36</sup> The Defence argues that there is an unjustifiably long time lapse of five years between the current Indictment and this Motion which simply shows the Prosecution's lack of diligence in the matter.<sup>37</sup>

30. The Defence argues that the Prosecution's submission that it is in the interests of justice to withdraw the charge of conspiracy to commit genocide is untenable because the Defence has already wasted five years investigating this charge.<sup>38</sup> As a result, the Defence submits that should the Chamber grant the Motion and authorise the Prosecution to modify the current Indictment, the Accused will suffer prejudice because he will be denied his right to an equitable and expeditious process.<sup>39</sup>

31. Accordingly, the Defence prays the Chamber to:

- 1) Grant the Prosecution request to withdraw the Charge of conspiracy to commit genocide;
- 2) Declare itself incompetent to try the Accused for the charges based on a joint criminal enterprise; alternatively, as a subsidiary prayer, order that all the relevant charges be struck from the proposed Amended Indictment; alternatively, as a subsidiary prayer, reject the Motion;

<sup>31</sup> Paras. 51 and 52 of the Response.

<sup>32</sup> Para. 56 of the Response.

<sup>33</sup> Paras. 57 - 65 of the Response.

<sup>34</sup> Para. 65 of the Response.

<sup>35</sup> Para. 66 of the Response.

<sup>36</sup> Para. 68 of the Response.

<sup>37</sup> Para. 68 of the Response.

<sup>38</sup> Para. 69 of the Response.

<sup>39</sup> Para. 69 of the Response.



- 3) Deny the Motion with regard to the charges based on the superior responsibility of the Accused; alternatively, as a subsidiary prayer, reject the Motion;
- 4) Order the Prosecution to specify the accusations contained in Paragraphs 3-5, 8, 10, 16-23, 26, 27, 29 – 36, 40 – 47; alternatively, to suppress the Paragraphs; alternatively reject the Motion;
- 5) Order the Prosecution to distinguish in each charge whether it concerns genocide, murder or extermination as crimes against humanity;
- 6) Order the Prosecution to disclose all supporting material relevant to the proposed Amended Indictment.

#### ***The Defence Further Response***

32. The Defence reiterates its arguments noting that the Prosecution has not submitted any reply to the Defence's Response of 25 October 2006.<sup>40</sup> It relies on the Appeals Chamber Decision in *Bizimungu et al.* of 12 February 2004,<sup>41</sup> and argues that, through the Motion, the Prosecution is trying to acquire an unjust tactical advantage over the Defence.<sup>42</sup> The Defence argues further that the material provided in support of the Motion for Amendment of Indictment does not add anything new to the Defence's objections.<sup>43</sup>

33. The Defence submits that should the amendments be globally accepted, it would necessitate it to rethink its Defence strategy. It also posits that even granting additional time would not cure the prejudice caused the Accused because his trial will now be unduly delayed contrary to the interests of justice.<sup>44</sup>

34. The Defence further submits that the Prosecution is required to make the disclosures required under Rules 66 and 68, which it has not done thus far.<sup>45</sup>

#### ***The Prosecution Rejoinder***

35. The Prosecution maintains its arguments that the proposed Amended Indictment: gives sufficient particulars to inform the Accused of the nature and scope of the charges against him also detailed in the pre-trial disclosures; provides sufficient particularization and description of the material facts underpinning the crimes; does not contain new charges but sets out in greater detail and with more specificity the facts and modes of liability which relate to existing charges.

36. The Prosecution relies on the ICTY Trial Chamber Judgment in *Simic*<sup>46</sup> and submits that the current pleading of joint criminal enterprise liability under Article 6 (1) are in accordance with the current charging practices.

<sup>40</sup> Paras. 1 – 14, 19, 20 of the Defence Further Response.

<sup>41</sup> *Prosecutor v. Bizimungu et al.* (ICTR-99-50-AR50) (AC), Decision on the Prosecution's Interlocutory Appeal against the Trial Chamber's Decision of 6 October 2003," of 12 February 2004.

<sup>42</sup> Para. 12 of the Defence Further Response.

<sup>43</sup> Para. 15 of the Defence Further Response.

<sup>44</sup> Para. 18 of the Defence Further Response.

<sup>45</sup> Para. 21 of the Defence Further Response.

<sup>46</sup> *Simic*, Judgement (TC) Para. 145-146.



37. It argues that granting the Motion will not result in a delay of the commencement of trial because there are no new charges requiring fresh investigations.

## HAVING DELIBERATED

### *The Applicable Standard under the Rules*

38. In considering the Motion, the Chamber notes the relevant provisions of Rule 50<sup>47</sup> stating that after the initial appearance of the accused, a Trial Chamber may grant leave for the amendment of an indictment, placing the burden on the Prosecution to set out the factual and legal justifications for such amendments.<sup>48</sup> In general, "amendments pursuant to Rule 50 are granted in order to (a) add new charges; (b) develop the factual allegations found in the confirmed indictment; and (c) make minor changes to the indictment."<sup>49</sup> The Chamber also notes that requests for amendments under Rule 50 are guided by the relevant provisions of Rule 47 of the Rules.<sup>50</sup>

39. The Chamber recalls that it has the discretion to decide whether to grant leave to amend and that such a decision is to be determined on a case-by-case basis.<sup>51</sup>

40. The Chamber further recalls that in its evaluation of the requests to amend, it should analyze various non-exclusive circumstances.<sup>52</sup> Moreover, the Chamber balances potentially

<sup>47</sup> **Rule 50: (A)** (i) The Prosecutor may amend an indictment, without prior leave, at any time before its confirmation, but thereafter, until the initial appearance of the accused before a Trial Chamber pursuant to Rule 62, only with leave of the Judge who confirmed it but, in exceptional circumstances, by leave of a Judge assigned by the President. At or after such initial appearance, an amendment of an indictment may only be made by leave granted by that Trial Chamber pursuant to Rule 73. If leave to amend is granted, Rule 47 (G) and Rule 53 bis apply mutatis mutandis to the amended indictment. (ii) In deciding whether to grant leave to amend the indictment, the Trial Chamber or, where applicable, a Judge shall, mutatis mutandis, follow the procedures and apply the standards set out in Sub-Rules 47(E) and (F) in addition to considering any other relevant factors.

(B) If the amended indictment includes new charges and the accused has already appeared before a Trial Chamber in accordance with Rule 62, a further appearance shall be held as soon as practicable to enable the accused to enter a plea on the new charges.

(C) The accused shall have a further period of thirty days in which to file preliminary motions pursuant to Rule 72 in respect of the new charges and, where necessary, the date for trial may be postponed to ensure adequate time for preparation of the defence.

<sup>48</sup> *Prosecutor v. Muhimana*, Case No. ICTR-1995-1B-I, Decision on Motion to Amend Indictment, 21 January 2004, para. 4 (the "Muhimana Decision"); *Prosecutor v. Bizimungu, et al.*, Case No. ICTR-99-50-I, Decision on the Prosecutor's Request for Leave to File an Amended Indictment (TC), 06 October 2003, para. 27 (the "Bizimungu Trial Chamber Decision").

<sup>49</sup> *Bizimungu Trial Chamber Decision*, para. 26.

<sup>50</sup> **Rule 47: (E)** The reviewing judge shall examine each of the counts in the indictment, and any supporting materials the Prosecutor may provide, to determine, applying the standard set forth in Article 18 of the Statute, whether a case exists against the suspect.

(F) The reviewing Judge may: (i) Request the Prosecutor to present additional material in support of any or all counts, or to take any further measures which appear appropriate; (ii) Confirm each count; (iii) Dismiss each count; or (iv) Adjourn the review so as to give the Prosecutor the opportunity to modify the indictment.

(G) The Indictment as confirmed by the Judge shall be retained by the Registrar, who shall prepare certified copies bearing the seal of the Tribunal. If the accused does not understand either of the official languages of the Tribunal and if the language understood is known by the Registrar, a translation of the indictment in that language shall also be prepared, and a copy of the translation attached to each certified copy of the indictment.

<sup>51</sup> *Prosecutor v. Nindilyimana, et al.*, Case No. ICTR-2000-56-I, Decision on Prosecutor's Motion under Rule 50 for Leave to Amend the Indictment (TC), 26 March 2004, para. 41 (quoting *Bizimungu Appeals Chamber Decision*, para. 27).

<sup>52</sup> See *Prosecutor v. Nindilyimana, et al.*, Case No. ICTR-2000-56-I, Decision on Prosecutor's Motion under Rule 50 for Leave to Amend the Indictment (TC), 26 March 2004, para. 42 that, "1) The effect of the proposed

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competing rights of the Accused, such as the Accused's right to be informed promptly and in detail of the nature and cause of the charges against him, the right to have adequate time and facilities for the preparation of his defence, and the right to be tried without undue delay.<sup>53</sup> Finally, as stated by the Chamber in the *Renzaho* case,<sup>54</sup> the fundamental question in relation to granting leave to amend an indictment is whether the amendment will unfairly prejudice the accused.

***On the Request to Withdraw the Count of Conspiracy to Commit Genocide***

41. Generally, amendments seeking to narrow the indictment may "increase the fairness and efficiency of proceedings, and should be encouraged and usually accepted."<sup>55</sup> Such amendments may result in a more expeditious trial, particularly if there is a reduction in the number of witnesses and thus, a reduction in the number of trial days, thereby promoting judicial economy and the Accused's right to a fair trial.<sup>56</sup> The Chamber also notes that the Defence, in the end, does not object to the Prosecution request to withdraw the count of conspiracy to commit genocide.

42. Considering that the withdrawal of the count of conspiracy to commit genocide will likely result in a more expeditious trial, thereby promoting judicial economy and the rights of the Accused, the Chamber grants this Prosecution request.

***On the Request to Add the Charge of Superior Responsibility Pursuant to Article 6 (3) of the Statute***

43. The Chamber notes that the Prosecution seeks to add the charge of superior responsibility (Article 6 (3)) to the remaining three charges and that the Defence objects to this request.

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amended Indictment on the accused persons' right to an expeditious trial, to prompt notices of the charges against him/ her, and to adequate time and facilities in order to prepare his/ her defence; 2) Whether any additional time can be granted to the Accused for the preparation of his/ her defence; 3) Reasonableness of resulting delays in the scheduled start day of trial, and the length of the trial itself; 4) Effect on the time spent by the Accused in pre-trial detention; 5) Nature and scope of the proposed amendment; 6) Whether the Accused and Trial Chamber had prior notice of the Prosecutor's intention to seek leave to amend the indictment, the nature of the notice, and any improper tactical advantage gained by the Prosecution as a result of the proposed amended Indictment; 7) The evidentiary basis of the new charges, if any, and the timing of their discovery; 8) Judicial economy; and 9) Whether the proposed amended Indictment, through more specificity and accuracy, allows the Accused to better respond and prepare for trial, or shortens the length of the trial proceedings, thus protecting rather than prejudicing the accused persons' rights to a fair trial." Which cites (citing *Prosecutor v. Bizimungu, et al.*, ICTR-99-50-AR50, Decision on Prosecutor's Interlocutory Appeal Against Trial Chamber II Decision of 6 October 2003 Denying Leave to File an Amended Indictment (AC), 12 February 2004, para. 16 (the "Bizimungu Appeals Chamber Decision").

<sup>53</sup> *Bizimungu Trial Chamber Decision* at para. 27; *Muhimana Decision*, para. 5.

<sup>54</sup> *Prosecutor v. Renzaho*, case no. ICTR-97-31-I, *Décision sur la Requête du Procureur demandant l'autorisation de déposer un acte d'accusation modifié*, 18 March 2005, para. 47, which made reference to the ICTY jurisprudence in *Prosecutor v. Hudzhihasanović and Kubura*, Case no. IT-01-47-FI, *Décision relative à la forme de l'acte d'accusation*, 17 September 2003 at para. 35.

<sup>55</sup> *Prosecutor v. Ndimiyimana, et al.*, Case No. ICTR-2000-56-I, Decision on Prosecutor's Motion under Rule 50 for Leave to Amend the Indictment (TC), 26 March 2004, para. 43 (citing *Bizimungu Appeals Chamber Decision*, para. 19).

<sup>56</sup> *Prosecutor v. Karemera, et al.*, Case No. ICTR-98-44-T, Decision On The Prosecutor's Motion For Leave To Amend The Indictment - Rule 50 Of The Rules Of Procedure And Evidence, 13 February 2004, paras. 41- 45 (the "Karemera Trial Chamber Decision").

44. The Chamber further notes, contrary to the Prosecution's contention, that the addition of the Accused's responsibility under Article 6 (3) amounts to a prayer to add new charges. The Chamber notes that although "[n]ew charges do not prohibit a Chamber from granting the Prosecution leave to amend an indictment,"<sup>57</sup> the most important consideration for the Chamber is the potential prejudice to the Accused. In this respect, the Chamber recalls that the Prosecution may plead its case as it wishes, as long as it sets out the material facts supporting its allegations so that the Defence may have the opportunity to meet the case.<sup>58</sup>

45. Furthermore, pursuant to Rule 50 (A)(ii), in deciding on a request to add new charges to the indictment, the Chamber is required to follow the procedures and standards under Rule 47 (E) and (F).<sup>59</sup>

46. The Chamber recalls its Decision in *Renzaho*<sup>60</sup> where it quoted the ICTY Decision of *Mrksic*,

In a case based upon superior responsibility, pursuant to Article 7(3), the following are the minimum material facts that have to be pleaded in the indictment: (a) (i) that the accused is the superior (ii) of subordinates, sufficiently identified, (iii) over whom he had effective control – in the sense of material ability to prevent or punish criminal conduct – and (iv) for whose acts he is alleged to be responsible; (b) (i) the accused knew or had reasons to know the crimes were about to be or had been committed by others, and (ii) the related conduct of those others for whom he is alleged to be responsible. The facts relevant to the acts of those others will usually be stated with less precision, the reasons being that the detail of those acts (by whom and against whom they are done) is often unknown, and, more importantly, because the acts themselves often cannot be greatly an issue; and (c) the accused failed to take the necessary and reasonable measures to prevent such crimes or to punish the persons who committed them.<sup>61</sup>

47. The Chamber recalls that in 2001, Judge Pavel Dolenc, confirming judge, rejected the charges of superior responsibility under Article 6 (3).

48. The Chamber takes note of Paragraphs 3, 4, 5 and 19 – 43 of the proposed Amended Indictment, which the Prosecution relies upon to support its allegations of superior responsibility. The Chamber is of the view that sufficient information exists regarding the nexus between the Accused's alleged different capacities - that he was a priest, rector and chief executive of the Christ-Roi *collège* and spiritual leader of the group *Les Dragons* or *Escadron de la mort* - as a superior over his named subordinates, the places and dates of the alleged criminal acts and the names of some of the alleged victims as well as the alleged conduct of the Accused. The Chamber also notes that as pleaded at Paragraph 4, the alleged official position of the Accused, would have given him the power to prevent or punish the

<sup>57</sup> *Prosecutor v. Muvunyi*, Case No. ICTR-00-55A-AR73, Decision on Prosecution Interlocutory Appeal against Trial Chamber II Decision on 23 February 2005 (AC), 12 May 2005, para. 38.

<sup>58</sup> *Prosecutor v. Renzaho*, Case No. ICTR-97-31-1, (TC) Decision on the Prosecutor's Motion for Leave to Amend the Indictment, of 18 March 2005, para 47 (citing *Prosecutor v. Hadzihasanovic and Kubura*, para. 35).

<sup>59</sup> *Prosecutor v. Seselj* Case No. IT-03-67-PT, Decision on Prosecution's Motion for Leave to Amend the Indictment of 27 May 2005, paras. 13 - 16.

<sup>60</sup> *Prosecutor v. Renzaho*, Case No. ICTR-97-31-1, (TC) Decision on the Prosecutor's Motion for Leave to Amend the Indictment, of 18 March 2005 at para. 51.

<sup>61</sup> *Prosecutor v. Mrksic*, Case no. IT-95-13/1-PT, (TC) Decision on Defence Preliminary Motion Objecting to the Form of the Amended Indictment, of 19 June 2003, para. 10.

acts of his subordinates. Accordingly, the Chamber rejects the Defence's submissions that there is imprecision regarding the allegations of the Accused's superior responsibility under Article 6 (3).

49. Having examined the supporting material disclosed, the Chamber finds that a *prima facie* case has been sufficiently established for the Prosecution to plead the Accused's responsibility under Article 6 (3) as specified in the Indictment.

***On the Request to Specifically Plead the Accused's Responsibility under Article 6 (1) in the Context of his Involvement in a 'Joint Criminal Enterprise'***

50. The Chamber notes that the proposed Amended Indictment elaborates upon the Accused's responsibility under Article 6 (1) in the context of his involvement in a 'joint criminal enterprise.' The Defence opposes these elaborations, and challenges the Tribunal's jurisdiction to try the Accused for his responsibility in the context of the 'joint criminal enterprise.'

51. The Chamber recalls the current Indictment and notes that it alleges the Accused's responsibility under Article 6 (1) for the crimes of genocide, conspiracy to commit genocide, and murder and extermination as crimes against humanity. However, it does not specify whether the Accused is alleged to have been involved in a 'joint criminal enterprise.'

52. The Chamber finds that this form of responsibility imputed against the Accused is new. Therefore, reference to a 'joint criminal enterprise' amounts to an expansion of the charges under Article 6 (1) and thereby requires the Chamber, pursuant to Rule 50 (A), to follow the procedures and standards under Rule 47 (E) and (F).<sup>62</sup>

53. The proposed Amended Indictment, however, specifically alleges at Paragraphs 9, 10 and 11 that the Accused was involved in a 'joint criminal enterprise' which came into effect on or about 6 April 1994, with other named individuals who shared the same intent to effect the common purpose and who knew that the crimes committed were the natural and foreseeable consequence of the execution of the common purpose of the 'joint criminal enterprise.' The Chamber notes that the proposed Amended Indictment specifically pleads at Paragraph 11 that:

In addition to his participation in a joint criminal enterprise as set out in Paragraph 9 and 10 above, Hormisdas Nsengimana is responsible for the crimes of genocide, murder as a crime against humanity, extermination as a crime against humanity on the basis that these crimes were the natural and foreseeable consequences of the execution of the common purpose of the joint criminal enterprise by the persons named in Paragraph 10. Hormisdas Nsengimana intended to further the common purpose of the joint criminal enterprise. In addition, it was foreseeable that the crimes of genocide, murder as a crime against humanity, extermination as a crime against humanity might be perpetrated by one or other members of the group and Hormisdas Nsengimana willingly took that risk.

54. The specification that the crimes were the 'natural and foreseeable consequence' of the common purpose gives notice to the Accused that he is charged not only with the "basic"

<sup>62</sup> *Prosecutor v. Seselj* Case No. IT-03-67-PT, Decision on Prosecution's Motion for Leave to Amend the Indictment of 27 May 2005, paras. 13 - 16.

form of 'joint criminal enterprise,' but also with the "extended" form.<sup>63</sup> In the Chamber's opinion, this formulation allows the Parties and the Chamber to proceed on a clearer and more precise Indictment, which is beneficial to the conduct of the trial.

55. Having determined that the reference to 'joint criminal enterprise' amounts to an expansion of the charges under Article 6 (1), the Chamber has reviewed the material in support of the Motion and finds that a *prima facie* case has been sufficiently established in respect of the Accused's alleged involvement in a 'joint criminal enterprise' as per Article 6 (1).

56. Regarding the Defence's argument that the Tribunal does not have jurisdiction to try the Accused regarding his involvement in a 'joint criminal enterprise,' the Chamber recalls that the Appeals Chamber has previously held that the modes of liability identified under Article 6 (1) include participation in a joint criminal enterprise as a form of 'commission' under that Article.<sup>64</sup> Accordingly the Chamber dismisses this argument.

57. Regarding the Defence submissions that there is a confusion between the notions of 'joint criminal enterprise' and 'superior criminal responsibility' within the proposed Amended Indictment, because the perpetrators alleged to have participated in both forms of responsibility are the same, as are the material facts underpinning both forms of criminal responsibility, the Chamber recalls that jurisprudence<sup>65</sup> allows cumulative charging on the

<sup>63</sup> *Ntakirutimana* Judgment (AC), 13 December 2004, paras. 463 – 467 (the "basic" form of joint criminal enterprise [...] is represented by cases where all co-perpetrators, acting pursuant to a common purpose, possess the same criminal intention [...] The "systemic" form of joint criminal enterprise [...] is a variant of the basic form, characterized by the existence of an organized system of ill-treatment [...] The third category is an 'extended' form of joint criminal enterprise. It concerns cases involving common purpose to commit a crime where one of the perpetrators commits an act which, while outside the common purpose, is nevertheless a natural and foreseeable consequence of executing that common purpose." Also see *Prosecutor v. Nchamihigo* (FC) Decision on Request for Leave to Amend the Indictment of 14 July 2006 at para. 14

<sup>64</sup> *Ntakirutimana* Judgment (AC), 13 December 2004, para. 462 which footnotes the *Tadić* Appeal Judgement, para. 188 and para. 226, which provides that "[t]he Appeals Chamber considers that the consistency and cogency of the case law and the treaties referred to above, as well as their consonance with the general principles on criminal responsibility laid down both in the Statute and general international criminal law and in national legislation, warrant the conclusion that case law reflects customary rules of international criminal law." To reach this finding the Appeals Chamber interpreted the Statute on the basis of its purpose as set out in the report of the United Nations Secretary-General to the Security Council, Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), U.N. Doc. S/25704, 3 May 1993. It also considered the specific characteristics of many crimes perpetrated in war. In order to determine the status of customary law in this area, it studied in detail the case law relating to many war crimes cases tried after the Second World War (paras. 197 *et seq.*). It further considered the relevant provisions of two international Conventions which reflect the views of many States in legal matters (Article 2 (3)(c) of the International Convention for the Suppression of Terrorist Bombings, adopted by a consensus vote by the General Assembly in its resolution 52/164 of 15 December 1997 and opened for signature on 9 January 1998; Article 25 of the Statute of the International Criminal Court, adopted on 17 July 1998 by the Diplomatic Conference of Plenipotentiaries held in Rome) (paras. 221-222). Moreover, the Appeals Chamber referred to national legislation and case law to show that the notion of "common purpose", as it then referred to it, was recognized in many national systems, albeit not all of the countries had the same notion of common purpose (paras. 224-225). The *Tadić* Appeals Chamber used interchangeably the expressions "joint criminal enterprise", "common purpose" and "criminal enterprise", although the concept is generally referred to as "joint criminal enterprise", and this is the term used by the parties in the present appeal.

<sup>65</sup> See *Senzanza*, Judgement (AC), 20 May 2005, para. 309; *Musema*, Judgement (AC), 16 November 2001, para. 370. See also *Delalić, Mucić, Delić, and Landžo ("Celebici")*, Judgement (AC), 20 February 2001, para. 400 ("cumulative charging" is to be allowed in light of the fact that, prior to the presentation of all of the evidence, it is not possible to determine to a certainty which of the charges brought against an accused will be proven. The Trial Chamber is better poised, after the parties' presentation of the evidence, to evaluate which of the charges may be retained, based upon

basis of the same set of facts, because "prior to the presentation of evidence, it is not possible to determine to a certainty which of the charges brought against an accused will be proven."<sup>66</sup> Cumulative charging under both Articles 6 (1) and 6 (3) is therefore permissible. Accordingly, this Defence allegation is dismissed.

58. Regarding the Defence's submission that there is imprecision regarding the exact form of individual criminal responsibility under Article 6 (1) for which Accused is charged, the Chamber notes that indeed, at Paragraph 8 of the proposed Amended Indictment, the Accused is alleged to be criminally responsible for the crimes with which he is charged for "planning, instigating, ordering, committing or otherwise aiding and abetting in the planning perpetration or execution of the said crimes." The Chamber recalls the Appeals Chamber Decision in *Krnjelac* where it opined:

Since Article 7 (1) allows for several forms of direct criminal responsibility, a failure to specify in the indictment which form or forms of liability the Prosecution is pleading gives rise to ambiguity. The Appeals Chamber considers that such ambiguity should be avoided and holds therefore that, where it arises, the Prosecution must identify precisely the form or forms of liability alleged for each count as soon as possible and, in any event, before the start of the trial.<sup>67</sup>

59. After having examined the proposed Amended Indictment, the Chamber notes that there appears to be a basis for the forms of liability specified under Paragraph 8 of the proposed Amended Indictment, for example: 'Planning' may be supported by allegations that the Accused gathered weapons later used to kill Tutsis and allegations that the Accused held meetings to perpetuate the killings of Tutsis.<sup>68</sup>

60. Accordingly, the Defence's submission that there is imprecision regarding the exact form of individual criminal responsibility under Article 6 (1) for which Accused is charged is dismissed.

*On the Request to Elaborate upon the Factual Basis of the Three Existing Counts*

61. The Chamber notes that whereas the Prosecution submitted that proposed Amended Indictment essentially elaborates upon the factual basis of the three existing counts, the Defence argues that the said indictment is fraught with imprecision.

62. Having compared the current Indictment and the proposed Amended Indictment, the Chamber notes that indeed there are elaborations to the existing factual allegations laid against the Accused. For example, the Chamber notes that the proposed Amended Indictment

the sufficiency of the evidence."); See also *Prosecutor v Kupreskic et al*, Case no. IT-95-16-PT, Decision on Defence challenges to the Form of the Indictment, 15 May 1998; *Prosecutor v. Delalic et al*, Case no. IT-69-21-T, Decision on Motion by the accused Zejnil Delalic based on defects in the Form of the Indictment, 2 October 1996, para. 24, referring to *Tadic* Decision on Defence Motion on Form of Indictment, 14 November 1995 and *The Prosecutor v. Kvočka et al*, Case no IT-98-30-PT, Decision on Defence Preliminary motions on the Form of the Indictment, 12 April 1999, para 50.

<sup>66</sup> *Prosecutor v. Rajic (TC)* Decision on the Defence Motion on the Form of the Amended Indictment, 27 April 2003 at para. 12 quoting *Prosecutor v. Stanislav Galic*, Judgement, Case No. IT-89-29-T, 5 December 2003, quoting the *Celebici* Appeal Judgement, para. 400, and the *Kupreskic* Appeal Judgement, para. 385.

<sup>67</sup> *Krnjelac* Judgment (AC) of 17 September 2003 at para. 138.

<sup>68</sup> Paras. 18, 20, 21, 22, 23 of the proposed Amended Indictment; See also Paras. 20, 24, 25, 30 and 31 of the proposed Amended Indictment for the other alleged forms of participation of instigating, ordering, committing or otherwise aiding and abetting.

seems to provide more specific particulars such as the allegations found at Paragraphs 20 and 22 that "soldiers, co-perpetrators of the joint criminal enterprise" attended the meeting held in the evening of 6 April 1994; the allegations found at Paragraph 23 which mention those who were with the Accused when he allegedly handed over the young Tutsi to be killed by the *Interahamwe*; the allegations at Paragraph 29 which mention those who were with the Accused, all of whom allegedly carried "traditional weapons and firearms" when the Accused allegedly shot and killed Father Mathieu Ngrumpatse; and the allegations at Paragraph 34 which mention those who were with the Accused when he allegedly went looking for three priests who were later killed at Mpanga, to mention but a few examples.

63. In the Chamber's opinion, these elaborations are useful as they may provide a more "accurate description of the totality of the criminal conduct of the accused,"<sup>69</sup> thereby affording him an opportunity to better defend himself.

64. Having examined the material provided in support of the Indictment, the Chamber finds that a *prima facie* case has been sufficiently established for the Prosecution to plead the elaborations made to the existing factual allegations.

***On the Defence's Submission that the Proposed Amended Indictment is Imprecise***

65. The Chamber notes that the Defence requests the suppression of some of the paragraphs of the proposed Amended Indictment because they are imprecise as to *inter alia* dates, places, names of victims, and names of co-perpetrators.

66. The Chamber recalls the *Kupreskic* Appeals Chamber Judgment, that:

The Appeals Chamber must stress initially that the materiality of a particular fact cannot be decided in the abstract. It is dependent on the nature of the Prosecution case. A decisive factor in determining the degree of specificity with which the Prosecution is required to particularize the facts of its case in the indictment is the nature of the alleged criminal conduct charged to the accused. For example, in a case where the Prosecution alleges that an accused personally committed the criminal acts, the material facts, such as the identity of the victim, the time and place of the events and the means by which the acts were committed, have to be pleaded in detail. Obviously, there may be instances where the sheer scale of the alleged crimes "makes it impracticable to require a high degree of specificity in such matters as the identity of the victims and the dates for the commission of the crimes".<sup>70</sup>

67. Having examined the proposed Amended Indictment, the Chamber is of the opinion that the Indictment contains enough detail to inform the Accused clearly of the charges against him, so that he may prepare his defence.

68. However, although the new allegations at Paragraphs 41 and 42 appear to be supported by the material provided by the Prosecution, these paragraphs are imprecise as to the exact date or time period when the alleged events took place. The Chamber thus orders the Prosecution to specify the exact dates or time period when the events described in Paragraphs 41 and 42 allegedly took place.

<sup>69</sup> *Prosecutor v. Nsengiyumva*, (TC) Decision on the Prosecutor's Request for Leave to Amend the Indictment of 2 September 1999 at para. 4; *Prosecutor v. Barayagwiza*, (TC) Decision on the Prosecutor's Request for Leave to File an Amended Indictment of 11 April 2000 at para. 4.

<sup>70</sup> *Kupreskic* Judgment (AC), 23 October 2001, at para. 89.

***On the Defence's Argument that Some of the Allegations in the Proposed Amended Indictment Are Incorrect***

69. Regarding the Defence's submission that Paragraphs 3, 4 and 5 of the proposed Amended Indictment contain incorrect facts, the Chamber believes that a clear distinction must be made between the material facts upon which the Prosecution relies and the evidence by which those material facts will eventually be proven. While the material facts supporting each charge must be pleaded in the indictment, the evidence by which those facts are proven is adduced at trial and not examined at this stage of the proceedings. Accordingly, the Chamber finds, in accordance with the jurisprudence,<sup>71</sup> that submissions that certain paragraphs of the proposed Amended Indictment contain incorrect facts are not matters to be dealt with at this stage of the proceedings. As a result, all the Defence's arguments claiming that the allegations contained in Paragraphs 3, 4 and 5 of the proposed Amended Indictment are premature and thus dismissed.

70. The Chamber notes the Defence's submissions that there has been an unjustifiable and excessively long time lapse of five years between the current Indictment and the Motion, indicating a lack of diligence on the part of the Prosecution. The Defence also submitted that since the proposed Amended Indictment is a totally new document, it would have to rethink its defence strategy and that even granting additional time would not cure the prejudice it would suffer in terms of delays in the proceedings. The Chamber notes that the Prosecution has not provided any explanations as to why it has brought the Motion at this time, although it submits that it is no surprise to the Defence, since it had notified the Defence on 26 May 2006 that it would file such motion. However, the Chamber also notes that because there is no date set for the commencement of the trial, although projections have been made for it to commence in 2007, the Defence's submissions that there will be a delay in the commencement of trial are not warranted at this stage of the proceedings. In the Chamber's opinion, no prejudice will be caused to the Accused by these amendments.

71. Finally, the Chamber notes that there are various glaring typographical errors found in the proposed Amended Indictment, which the Prosecution should correct. For instance, the comma found between 'Gikongoro' and 'préfecture' at Paragraph 2; the spelling of 'collège' and other French words; the spelling of the Accused's name; the use of the word 'Section' instead of 'Article' at Paragraph 13; and other missing or misplaced punctuation marks. Accordingly, the Chamber orders the Prosecution to correct the typographical errors to the proposed Amended Indictment.

72. Given the Chamber's finding that the proposed Amended Indictment contains new charges within the meaning of Rule 50 (B) and (C) of the Rules, it orders that a further appearance of the Accused be scheduled as soon as possible so that he may plead to the new charges and thereby safeguard his rights.

**FOR THE ABOVE REASONS, THE TRIBUNAL**

**GRANTS** in part the Motion to amend the Indictment as envisaged in the proposed Amended Indictment, and in particular:

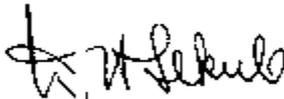
<sup>71</sup> See for instance, *Prosecutor v. Pasko Ljubicic*, Case No. IT-00-41-PT, Decision on the Defence Motion on the Form of the Indictment, 15 March 2002; *Prosecutor v. Radislav Krstic*, Case No. IT-98-33-PT, Decision on Defence Preliminary Motion on the Form of the Amended Indictment, Counts 7-8, 28 January 2000.

- I **GRANTS** the Prosecution request to withdraw count two, conspiracy to commit genocide, from the Indictment against the Accused;
- II **ORDERS** the Prosecution to specify the exact dates or time period when the events described in Paragraphs 41 and 42 of the proposed Amended Indictment took place;
- III **ORDERS** the Prosecution to correct the typographical errors to the proposed Amended Indictment;
- IV **ORDERS** the Prosecution to make the necessary amendments to the proposed Amended Indictment against the Accused and file the Amended Indictment with the Registry within one week of the filing of this Decision;

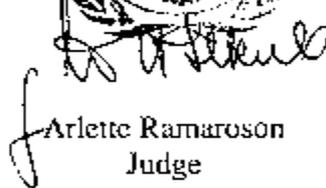
**DECIDES** that in regard to the new charges, since the Accused has already appeared before a Trial Chamber in accordance with Rule 62, a further appearance shall be held as soon as practicable to enable him to enter a plea on the new charges, pursuant to Rule 50 (B).

**DENIES** the Motion in all other respects.

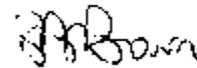
Arusha, 29 March 2007



William H. Sekule  
Presiding Judge

Arlette Ramaroson  
Judge



Solomy Balungi Bossa  
Judge

[Seal of the Tribunal]

