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International Criminal Tribunal for Rwanda
TRIAL CHAMBER II

1998 JUL 15 P 12:37

OR: ENG

Before: Judge William H. Sekule, Presiding
Judge Yakov A. Ostrovsky
Judge Lennart Aspegren

Registry: Mr. John Kiyeyeu

THE PROSECUTOR
versus
GÉRARD NTAKIRUTIMANA, et al.

Case N° ICTR-96-10-T

DECISION
ON A PRELIMINARY MOTION FILED BY DEFENCE COUNSEL
FOR AN ORDER TO QUASH COUNTS 1, 2, 3, AND 6
OF THE INDICTMENT


Office of the Prosecutor:

Ms. Brenda Sue Thornton

Counsel for the Defence:

Mr. E.N.K. Loomu-Ojare (Counsel for Gérard Ntakirutimana)
Mr. Pascal Besnier (Counsel for Obed Ruzindana)

PREL.MOTION / 72(B) (ii) / 96-10-T

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
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NAME / NOM:	PRISCA M. NJAMBE
SIGNATURE:	 DATE: 15-7-98

ICTR-96-10-T

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

SITTING AS Trial Chamber II composed of Judge William H. Sekule, presiding, Judge Yakov A. Ostrovsky, and Judge Lennart Aspegren;

CONSIDERING that the accused, Gérard Ntakirutimana, was arrested in Côte d'Ivoire on 29 October 1996 and transferred to the Tribunal's Detention Unit on 30 November 1996, pursuant to an order initially confirmed by Judge William H. Sekule on 7 September 1996, in accordance with Rule 40*bis*(B) of the Rules of Procedure and Evidence of the Tribunal, adopted on 5 July 1995 ("the Rules");

CONSIDERING that the instant indictment (ICTR-96-10) against the accused was confirmed by Judge Tafazzal H. Khan on 20 June 1996, pursuant to Rule 47 of the Rules;

CONSIDERING that the accused made his initial appearance on 2 December 1996 pursuant to Rule 62 of the Rules and pleaded not guilty to all six counts in the indictment;

CONSIDERING that Defence Counsel filed a preliminary motion on 16 April 1997, pursuant to Rule 72 of the Rules, seeking an order to quash counts 1, 2, 3, and 6 of the said indictment and that Defence Counsel also sought a waiver of the prescribed time limit as set out in Rule 72 of the Rules;

CONSIDERING that the Prosecutor opposed Defence Counsel's motion in her written response of 6 October 1997;

CONSIDERING the Tribunal's previous decision on a similar motion by the accused, with respect to a separate indictment, rendered on 23 March 1998, ("Trial Chamber I decision")

HAVING heard the parties at the audience of 29 May 1998 held to that effect;

AFTER HAVING DELIBERATED

On the waiver of the prescribed time limit:

1. At the hearing of the instant motion, the Defence Counsel requested that the prescribed time limit to file preliminary motions pursuant to Rule 72(A) of the Rules, be waived and the Tribunal condone the late filing of this motion. This Rule, as applicable before 6 June 1997, stated that preliminary motions shall be brought by the accused within sixty days from his initial appearance, as amended.
2. The Tribunal notes that at present all preliminary motions are brought pursuant to Rule 72 of the Rules. This Rule states that preliminary motions shall be brought within sixty days following disclosure by the Prosecutor to the Defence of the all the materials, as envisaged by Rule 66(A).
3. The Defence Counsel submitted that the prescribed time limit for filing preliminary motions should be waived in light of the fact that the present counsel was assigned to the case on 10 March 1997 and the instant motion was filed on 16 April 1997, constituting a period of less than thirty days from when he was served with the necessary disclosing materials. Furthermore, he reminded the Tribunal that the previously assigned Counsel had manifested her intentions to file such motions in

due time. These facts combined, the Defence Counsel argued, should be seen by the Tribunal as the continuing intent of the Defence to file preliminary motions.

4. Although Rule 72(F) clearly provides that failure to comply with the prescribed time limits constitutes a waiver of these rights, it goes on to state that a Trial Chamber may grant relief upon a showing of good cause. In light of the circumstances, the Tribunal waived the time limits and permitted the late filing of this motion. The Tribunal then proceeded to hear the substance of the parties arguments.

On the quashing of counts:

5. Article 17(4) of the Statute of the Tribunal ("the Statute") states "Upon a determination that a *prima facie* case exists, the Prosecutor shall prepare an indictment containing a concise statement of facts and of the crime or crimes with which the accused is charged under the Statute." (emphasis added.) The Tribunal notes that neither the Statute nor the Rules define the term "prima facie" however Rule 47(A) of the Rules provides some guidance in defining the term as applicable to such situations. Rule 47(A) states that if the Prosecutor is satisfied that there is sufficient evidence to provide reasonable grounds for believing that a suspect has committed a crime she shall prepare and forward an indictment for confirmation.

6. The Tribunal is of the view that the word "reasonable" is to be associated with fairness, moderation, sensibility and sound judgement. The term "reasonable grounds" can be interpreted as facts and circumstances which could justify a reasonable or ordinarily prudent person in believing that a suspect has committed a crime. There must be facts which raise a clear suspicion that the suspect is guilty of committing the offence, for reasonable grounds to exist. These facts must address the essential elements of the offence with which the suspect is charged.

7. Furthermore, the Tribunal deems that the Prosecutor must possess "sufficient evidence" to legally justify her actions in preparing and forwarding an indictment, to a judge or Trial Chamber, for confirmation. It is clear that the term "sufficient evidence" in Rule 47(A) of the Rules could not be deemed to require conclusive evidence or evidence beyond a reasonable doubt for the presentation of an indictment. A conviction could only result from essential facts, supported by conclusive evidence.

8. Consequently, the Tribunal reaffirms Trial Chamber's interpretation of the term "prima facie" in Article 17(4) of the Statute to signify a sufficient amount of evidence, justifying a reasonable suspicion that the indictee did in fact commit the crime for which he is charged.

9. Article 20(4)(a) of the Statute stipulates that the accused must be informed in detail of the nature and cause of the charge or charges against him. Rule 47(B) of the Rules states that an indictment shall contain the name and particulars of the suspect, a concise statement of the facts of the case and the crime or crimes with which the suspect is charged.

10. This Trial Chamber adopts the view expressed in the Trial Chamber I decision that the indictment, "at the time of confirmation, has two purposes, the first being to ensure that the allegations against the suspect do constitute an offence within the jurisdiction of the Tribunal, and the second being to inform the suspect in a clear and concise manner the nature of the charges against him. At that stage of the proceedings the purpose of the indictment is not to put the accused in a position to prepare his defence, since the Prosecutor's investigation against the accused may not

be complete, but rather to ensure that the accused has full knowledge and understanding of the charges against him and is able to plead to these charges at his initial appearance, in accordance with Rule 62 of the Rules. The accused will have ample opportunity and adequate means to prepare his defence once he has received supporting documentation in accordance with Rule 66(A)(i) and disclosure of witness statements in terms of Rule 66(A)(ii) of the Rules." We also are in accord by the general remarks made in that decision. (see paras. 13 and 14).

Count 1

11. Count 1 of the confirmed indictment against Gérard Ntakirutimana alleges that the accused committed genocide, in violation of Article 2(3)(a) of the Statute, in that he ". . . is responsible for the killings or causing serious bodily or mental harm to members of the Tutsi population . . ." (pg. 3 of the indictment).

12. At the hearing, the Defence Counsel reiterated its point that this count is ". . . duplex and irregular . . ." (para. 5 of defence motion) because it charges the accused with the commission of two of the specified acts as set out in Article 2(2) of the Statute (para. 5 of defence motion). In support of his submission, Defence Counsel argued that Article 2(2), under sub-articles (a), (b), (c), (d), and (e) provide for various specific acts by which a perpetrator can commit an offence of genocide and each specific act can only be charged in one count of the indictment.

13. The Prosecutor submitted that count 1 is validly drafted and is not duplex. Additionally, she stated that, the Rule against duplicity is aimed at preventing more than one offence from being charged against an accused in a single count. This rule, according to the Prosecutor, does not prevent different means of committing the same offence from being described in one count.

14. We concur with Trial Chamber I's interpretation of the word "duplex", i.e., that Defence Counsel used the word to mean duplication. Therefore, we reject his submission that count 1 of the indictment is duplicated. The Tribunal could accept the Prosecutor's submission that a description of several means of committing a single act is allowed, but this is not what she has done in count 1 of the indictment.

15. As noted above, count 1 of the indictment the Prosecutor alleges that the accused is ". . . responsible for the killing or causing of serious bodily *or* mental harm to members of the Tutsi population . . ." (pg. 3 of the indictment, emphasis added). The word "or" suggests that the acts alleged in this count are in the alternative. The Tribunal therefore finds that this count is vague and lacks legal precision. Consequently the Prosecutor should be called upon to specify whether the accused is alleged to have committed acts of genocide under Articles 2(2)(a) or 2(2)(b) or whether she is alleging that the accused committed acts of genocide under both articles.

Count 2

16. With respect to count 2 the Defence Counsel's submissions and the Prosecutor's responses were identical to those concerning count 1.

17. As a result, the Tribunal should reject the Defence Counsel's submission that count 2 of the indictment is duplicated. However, the Tribunal is of the opinion that the Prosecutor should specify, under count 2, which of the acts enumerated under Article 2(2) of the Statute, the accused is alleged to have committed that constitute genocide.



Count 3

18. In respect of count 3 the Defence Counsel's submission and the Prosecutor's responses were again identical to those concerning counts 1 and 2.

19. The Tribunal consequently rejects Defence Counsel's submission that count 3 of the indictment is duplicated. However the Tribunal is of the opinion that the Prosecutor should specify under count 3 which of the acts enumerated under Article 2(2) of the Statute the accused is alleged to have committed that constitute conspiracy to commit genocide.

20. The Prosecutor asserts in count 3, that the accused conspired ". . . with others. . ." to commit genocide ". . . during the months of April through June 1994. . ." (pg. 4 of the indictment).

21. Again, we find ourselves in agreement with Trial Chamber I's decision in its pronouncement that "The Tribunal estimates that a charge is not an accusation in the abstract but a concrete accusation of an offence alleged to have been committed by the accused. This accusation must have arisen as a result of certain facts that the Prosecutor has in her possession. The Prosecutor must be precise when formulating the counts in the indictment. It is therefore necessary that the Prosecutor, under Article 3, mentions the names or other identifying information of the person or persons the accused is alleged to have conspired with, to commit genocide." (para. 26).

Count 6

22. During the hearing of this motion, the Defence Counsel submitted that count 6 of the indictment was imprecise, dangerously speculative and did not disclose an offence. In support of this submission, Defence Counsel argued that there is no offence known as ". . . other inhumane acts . . ." (para. 7) and the Prosecutor must mention what these other inhumane acts are in order for this count to constitute an offence.

23. The Prosecutor responded that count 6 was not vague and that the accused was provided with sufficient information to enable him to understand this count. She also referred the Tribunal to consider the indictment in its entirety, including the counts and the statement of facts, which should ostensibly lead the accused to know the charges against him. The accused has had the benefit of disclosure as required under Rule 66(A)(i) and (ii) of the Rules, in redacted form and he will have the benefit of full disclosure before trial. The accused therefore, according to the Prosecutor, will have full knowledge of the case he is to meet. The Prosecutor further submitted that whether or not an act falls within the category of other inhumane acts, under Article 3(i) of the Statute, ". . . is a matter for the evaluation of the Trial Chamber . . ." (para. 19 of Prosecutor's response).

24. The Tribunal finds good grounds to reject the Prosecutor's submissions in respect of count 6 and for requesting her to specify the act or acts which the accused is alleged to be responsible for, constituting inhumane acts under Article 3(i) of the Statute.



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FOR THESE REASONS THE TRIBUNAL :

- (A) **DISMISSES** the defence motion to quash counts one, two, three, and six of the indictment;
- (B) **ORDERS** the Prosecutor to either withdraw or amend the respective counts in the indictment in the following manner :
 - (i) by specifying in counts one, two, and three which one of the two acts the accused is alleged to have committed, or alternatively whether the accused is alleged to have committed both acts;
 - (ii) by specifying in count three, the names or other identifying information of the person or persons with whom the accused is alleged to have conspired;
 - (iii) by further specifying in count six, the inhumane act or acts, the accused is alleged to have committed;
- (C) **INVITES** the Prosecutor to amend the respective counts as ordered, within 30 days from the signing of this order.

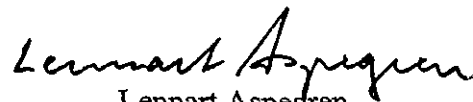
Arusha, 30 June 1998



William H. Sekule
Presiding Judge



Yakov A. Ostrovsky
Judge



Lennart Aspegren
Judge



(Seal of the Tribunal)

