

Case No. :ICTR 97-32-T



**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

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Before: Judge Laïty Kama, Presiding
Judge Navanethem Pillay
Judge Tafazzal H. Khan

Original : English

Registry: Ms. Marianne Ben Salimo

Decision of: 24 May 1999

ICTR
CRIMINAL REGISTRY
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**The PROSECUTOR
vs
GEORGES HENRI YVON JOSEPH RUGGIU**

Case No. ICTR-97-32-T

**DECISION ON DEFENCE PRELIMINARY MOTION ON
DEFECTS IN THE FORM OF THE INDICTMENT**

The Office of the Prosecutor:

Mr. Leonard Asira Nguthi
Mr. William T. Egbe

Counsel for the Accused:

Mr. Mohamed Aouini
Mr. Jean-Louis Gilissen

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
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NAME / NOM: <u>MINDUA K. M. Antoine</u>	
SIGNATURE: <u>[Signature]</u>	DATE: <u>07.06.1999</u>

at

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

SITTING as Trial Chamber I, composed of Judge Laïty Kama, presiding, Judge Navanethem Pillay and Judge Tafazzal H. Khan;

CONSIDERING the indictment against Georges Henri Yvon Joseph Ruggiu dated 9 October 1997 and confirmed on the same day pursuant to Article 18 of the Statute of the Tribunal (the "Statute") and Rule 47 of the Rules of Procedure and Evidence (the 'Rules');

CONSIDERING the preliminary motion and supporting brief filed by the Defence, pursuant to Rule 72(B)(ii) of the Rules, as well as the Prosecutor's response thereto;

HAVING HEARD the parties at a hearing on 23 April 1999;

CONSIDERING the provisions of Article 17 and 20 of the Statute and Rule 47 of the Rules.

Submissions by the parties

The Defence

1. Defence Counsel submitted that the indictment against the accused is defective *inter alia* for the following reasons :

1.1 the concise statement of facts contained in the indictment does not conform to the provisions of Article 17 of the Statute and Rule 47 of Rules because it does not specify the acts the accused is alleged to have committed that form the factual ingredients of the offences for which the accused is indicted;

1.2 the concise statement of facts is vague and imprecise and it refers to phrases such as "the events referred to in this indictment" instead of identifying and explaining these events;

1.3. the period or time frame the offences were allegedly committed by the accused are vague and it lacks the minimum level of accuracy required to enable the accused to know the criminal acts alleged in the indictment;

1.4 the charges in the indictment lack the required precision because it does not provide the accused with accurate information to enable him to establish a link between the alleged acts and the charges against him. The accused is therefore unable to relate one or more of the several alleged acts to the offence of direct and public incitement to commit genocide or to the offence of a crime against humanity, as charged in Counts one and two of the indictment.

2. The Defence Counsel further submitted that a defective indictment against the accused is a violation of Article 17 of the Statute and Rule 47 of the Rules. It is also a violation of the accused's right to a fair trial, pursuant to Article 14 of the International Covenant on Civil and



Political Rights. In light of these submissions, the Defence Counsel prayed that the Tribunal declare the indictment against the accused, null and void, and further order the termination of all subsequent criminal proceedings against the accused.

The Prosecutor

3. The Prosecutor made the following submissions in response to Defence Motion :

3.1 the indictment against the accused gives him sufficient information to enable him to prepare a defence to the charges preferred against him;

3.2 the indictment sufficiently informs the accused of the nature of the offences with which he is charged and the facts supporting those charges. If further details are required by the accused, they could be found in the supporting material;

3.3 the description of the time frames and the geographical references in the counts sufficiently place in time the acts and the crimes with which the accused is charged;

4. The Prosecutor further submitted that the Defence, by way of this motion, is requesting further particulars to the allegations and charges in the indictment. This request, according to the Prosecutor, falls outside the ambit of the provisions of Rule 72 (B) (ii) of the Rules.

AFTER HAVING DELIBERATED

An interpretation of the relevant provisions of the Statute and the Rules.

5. Article 17(4) of the Statute of the Tribunal (the "Statute") states that once the Prosecutor has established that a *prima facie* case exists against the accused, she shall prepare an indictment containing a concise statement of facts and the crime or crimes with which the accused is being charged.

6. Rule 47(A) of the Rules 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.

7. The Tribunal refers to its decision of 25 November 1997, in the case of "Prosecutor versus Gérard Ntakirutimana" (ICTR -96-17-T). In this case the term "*prima facie*" as envisaged in Article 17(4) of the Statute was defined as sufficient information which justifies a reasonable suspicion that the suspect did in fact commit the crime or crimes for which he is charged and the term "sufficient evidence" in Rule 47(A) of the rules was interpreted to mean essential facts, that when supported by evidence, could result in a conviction. This did not mean conclusive evidence or evidence beyond a reasonable doubt.

8. Furthermore, 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 for which the accused is charged.

9. The Tribunal, after having considered the provisions of Articles 17(4) and 20(4)(a) of the Statute and Rules 47(A) and (B) of the Rules, finds that the indictment at the time of its confirmation, must set out a *prima facie* case against the accused and the allegations therein must constitute an offence within the jurisdiction of the Tribunal. The indictment must also identify the suspect and inform him or her in a clear and concise manner the nature of the charges against him or her and the facts on which they are based.

Two decisions rendered by the ICTY

10. The Tribunal notes two decisions by the International Criminal Tribunal for the former Yugoslavia (the "ICTY")

11. In the case of "Prosecutor versus Duško Tadić" (IT-94-I-T), the ICTY, in its decision of 14 November 1995, found that Rule 47(B) of the Rules had been complied with since the indictment identified the accused, stated paragraph by paragraph the facts of each offence and specified clearly the particular provisions of international humanitarian law that have been violated. The ICTY in this case also found that paragraph 4 of the indictment lacked the necessary degree of specificity in that it did not provide the accused with any specific or concise statement of facts of the case and of the crimes with which he is charged.

12. In the case "Prosecutor versus Zejnil Delalic and others" (IT-96-21-T), the ICTY in its decision of 26 April 1996, stated that the principal function of the indictment is to notify the accused in a summary manner as to the nature of the crimes of which he is charged and to present the factual basis for the accusations.

A review of the indictment

On the concise statement of facts

13. The Tribunal maintains that although it is prudent to read the indictment together with the supporting material, which will assist in the amplification of the allegations and charges against the accused, the indictment, when read on its own, must be able to inform the accused, with sufficient clarity, of the nature and cause of the charge or charges against him.

14. The Tribunal recognises the accused's right to be informed promptly, of the nature and cause of the charge or charges against him, as guaranteed in Article 20(4)(a) of the Statute. In most cases, the indictment is the first document served on the accused at the time of his arrest and this document must therefore satisfy this guarantee, as envisaged in Article 20(4)(a) of the Statute. The concise statement of facts in the indictment, although brief in nature, must be sufficiently detailed to assist the accused in understanding the charges against him.

15. The Tribunal notes that the concise statement of facts in the indictment must allege, with sufficient precision and clarity, the factual allegations the Prosecutor is relying on to support the count or counts with which the accused is charged in the indictment. These factual allegations, if proved beyond reasonable doubt, by evidence tendered at the trial of the accused, could result



in a conviction of the accused. It is further noted that, this concise statement of facts must consist of a body of allegations, although brief in nature, must be comprehensive, to include each and every element that constitute the offence or offences as charged.

16. Referring to the concise statement of facts and the two counts in the indictment of the accused in this case, the Tribunal notes that both Counts 1 and 2 rely on events as alleged in paragraphs 3.7 and 3.8 of the concise statement of facts. Whilst there appears to be sufficient information in these two paragraphs to enable a reasonable person to understand the allegations with respect to Count 1, that is the charge of direct and public incitement to commit genocide, as stipulated in Article 2(3)(c) of the Statute, this is not the case for Count 2, which charges the accused for a crime against humanity (persecution), pursuant to Article 3(h) of the Statute. It is necessary to allege how the accused, by way of radio broadcasts, persecuted Tutsi, certain Hutu and Belgians. The Prosecutor is therefore called upon to clarify the allegations in paragraph 3.8 of the indictment, by furnishing more information that illustrates the *nexus* between the alleged broadcasts, on the one hand and the alleged persecution on the other.

On the period or time frame

17. The Tribunal notes that the indictment does not specify with sufficient clarity and precision the temporal context in which the alleged acts were committed. Paragraph 3.1 of the indictment refers to the period between "January 1 and December 31 of 1994." Paragraph 3.6 of the indictment refers to the periods "1993", "better half of 1993", and "the end of 1994". Paragraph 3.7 refers to "between or about the month of January 1994, until in or about the month of July 1994," The Prosecutor is called upon to provide a more specific time frame of the allegations in the indictment.



FOR THESE REASONS THE TRIBUNAL,

ORDERS the Prosecutor to either withdraw the charges against the accused or, alternatively, amend the indictment by:

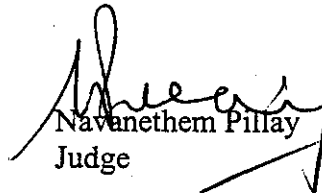
- (i) clarifying the allegations in paragraph 3.8 of the indictment, with respect to Count 2;
- (ii) furnishing sufficient details of the time periods referred to in the allegations as contained in the concise statement of facts;


INVITES the Prosecutor, in the event of her electing to amend the indictment against the accused, to effect the aforementioned amendments within 30 days from the date of this order;

DISMISSES the defence motion in every other respect.

Arusha, 24 May 1999


Judge Laity/Kama
Presiding Judge


Navanethem Pillay
Judge


Tafazzal H. Khan
Judge

(Seal of the Tribunal)

