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UNITED NATIONS  NATIONS UNIES

International Criminal Tribunal for Rwanda

TRIAL CHAMBER III

OR: ENG

Before: Judge Lloyd George Williams, Presiding
Judge Yakov Ostrovsky
Judge Pavel Dolenc

Registrar: Dr. Agwu U. Okali

Decision of: 15 May 2000

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ICTR
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THE PROSECUTOR
v.
ANATOLE NSENGIYUMVA

Case No. ICTR-96-12-1

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

The Office of the Prosecutor:

Chile Eboe-Osuji
Frédéric Ossogo

Defence Counsel for the Accused:

Kennedy Ogetto
Gershom Otachi B'Omanwa

INTRODUCTION

1. The International Criminal Tribunal for Rwanda (the "Tribunal"), sits today as Trial Chamber III, composed of Judges Lloyd George Williams, Presiding, Yakov Ostrovsky, and Pavel Dolenc (the "Trial Chamber").
2. On 12 August 1999, Trial Chamber II granted the Prosecution's motion to amend the indictment against Anatole Nsengiyumva ("Nsengiyumva"). The same day, the Prosecution filed the amended indictment (the "Indictment").
3. On 11 October 1999, Counsel for Nsengiyumva filed the "Defence Motion on Defects in the Form of the Indictment" (the "Motion").
4. The Prosecutor did not file a written response to the Motion.
5. On 8 May 2000, the Trial Chamber heard the parties at the hearing of the Motion.

SUBMISSIONS OF THE DEFENCE

6. The Motion relates to two types of alleged defects in the Indictment: imprecision as regards the period of commission of the offence; and vagueness and imprecision of the facts in the Indictment.
7. Counsel for Nsengiyumva submits that in a number of paragraphs in the Indictment the time frame of the commission of the offence is either very long or vague.
8. Counsel also argues that the Indictment sets out numerous general allegations concerning the history of Rwanda and persons other than the accused, however, the allegations against the accused are vague and imprecise.
9. Counsel refers the Trial Chamber to the decision in *Prosecutor v. Nahimana*, Case ICTR-96-11-T (Decision on the Preliminary Motion Filed by the Defence Based on Defects in the Form of the Indictment) (24 November 1997) as support for the position that further specificity is required in the Indictment.

SUBMISSIONS OF THE PROSECUTION

10. The Prosecutor argues that the Indictment contains the necessary degree of specificity and that there is no need for further clarification or detail with respect to the allegations in the Indictment.
11. The Prosecutor refers to a number of authorities with respect to the amount of detail required in an Indictment.
12. In the alternative to its first argument, the Prosecutor argues that if the Trial Chamber finds the Indictment to be lacking in detail, the Trial Chamber

should make an order for particulars rather than strike the impugned paragraphs from the Indictment or order amendment of the Indictment.

DELIBERATION

13. The Trial Chamber notes that it is a general principle of criminal law that all the facts of a given offence attributed to an accused person are to be set out in the indictment against him or her. Therefore, for an indictment to be sustainable, facts alleging an offence must demonstrate the specific conduct of the accused constituting the offence. Rule 47 (C) of the Rules of Evidence and Procedure (the "Rules") reflects this principle when it prescribes that "The indictment shall set forth the name and particulars of the suspect, and a concise statement of the facts of the case and of the crime with which the suspect is charged."
14. The Trial Chamber also notes that it does not read the paragraphs of the Indictment in isolation. It reads them in conjunction with and in the context of the other paragraphs relating to the crimes. (See this Trial Chamber's "Decision on the Defence Motions Objecting to the Jurisdiction of the Trial Chamber on the Amended Indictment" dated 13 April 2000, in the present case.)
15. At the same time, it should be recognized that there is imprecision and vagueness, along with broad general provisions in the Indictment. Attention should be focused on the specific conduct of the accused alleged in the Indictment. It is necessary to avoid imprecision and vagueness when setting out that conduct. We bring to the attention of the Prosecutor that a greater effort ought to be made to draft indictments in a more precise and concise manner, so as to clearly set out the specific conduct of the accused, and that the facts contained in the indictments should specifically relate to the respective charges. We trust that this will be borne in mind with regard to future cases.
16. The allegations set out in paragraph 5.1 of the Indictment, "From late 1990 until July 1994 Anatole Nsengiyumva ... conspired amongst themselves" are imprecise due to the length of the time period mentioned and the generality of the allegations. However, the Trial Chamber finds that the facts demonstrating the specific conduct of the accused with respect to these allegations are set out in the remaining paragraphs of the Indictment.
17. Paragraph 5.9 of the Indictment refers to several meetings of army officers held at the time of the negotiation of the Arusha Accords, without specifying when those meetings took place. The Defence is entitled to have information about the dates and venues of these meetings if known to the Prosecutor, or alternatively, at the very least an approximation of the same.
18. In paragraph 5.15 of the Indictment, Nsengiyumva is alleged to have supervised the training of the Interahamwe "As from 1993, and even before that date...." Paragraph 5.16 appears to specify the time period and the

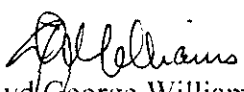
location of the supervision of the training, with respect to Nsengiyumva. If the Prosecutor intends to establish that Nsengiyumva supervised the training continuously from June 1993 to July 1994, then she must say so. Otherwise she must specify the dates on which this supervision took place, if known, or if they are not known, then the approximate dates. Furthermore, in order for the Defence to prepare its case, the Prosecutor must state where such supervision of training took place and specify Nsengiyumva's conduct in that supervision.

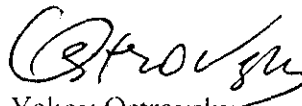
19. In paragraph 5.21 of the Indictment, the Prosecutor alleges that "Before and during the events referred to in this indictment" Nsengiyumva took part in the distribution of weapons. Paragraph 5.23 narrows Nsengiyumva's involvement in this activity to the period between June 1993 and July 1994. Once again the Prosecutor should specify whether the distribution was continuous and ongoing, or the dates on which it took place if known, or alternatively, the approximate dates. Furthermore, in order for the Defence to prepare its case, the Prosecutor must state where such distribution took place and the names of the subordinates, if available, who participated in the distribution.
20. Paragraph 5.26 of the Indictment refers to a meeting that took place in 1992. The Prosecutor must specify the date of that meeting, if it is known, or if it is not known, then she must give an approximate date.
21. In paragraph 6.5 of the Indictment, the Prosecutor alleges that Bagosora remained in contact with Nsengiyumva after 7 April 1994. This is a general allegation and does not need to be further specified.
22. Paragraph 6.20 of the Indictment alleges repeated attacks on refugees at the Nyundo parish between 8 April and June 1994 on the orders of Nsengiyumva. This allegation is sufficiently specific with respect to the attacks. However, the specifics of Nsengiyumva's alleged orders should be given as they form the basis of the conduct amounting to an offence. The paragraph also states that on at least one occasion, Nsengiyumva was present. That date should be specified, if known, or an approximate date should be given if the exact date is not known.
23. In paragraph 6.22 of the Indictment, Nsengiyumva is alleged to have ordered militiamen and soldiers, between 8 April and mid July-1994, to exterminate Tutsis. The Prosecutor must specify the occasions, if known, or approximate dates on which these orders were given if the exact dates are not known.
24. Paragraph 6.28 of the Indictment refers to a meeting held by Nsengiyumva and others sometime between May and June 1994. The Prosecutor should specify the date of the meeting if known, or the approximate date, if the date is not known.
25. Paragraph 6.30 of the Indictment refers to meetings chaired by Nsengiyumva at Umuganda stadium in Gisenyi between April and June 1994. The dates of the alleged meetings should be specified if known, or the approximate dates should be given, if the exact dates are not known.

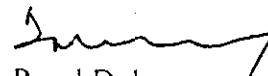
- 26. Paragraph 6.37 of the Indictment is a general paragraph, the details of which are set out in the remainder of the Indictment. It does not require further specification.
- 27. The Trial Chamber is not of the opinion that the above paragraphs should be struck from the Indictment for vagueness or imprecision. However, the Trial Chamber finds that the Defence is entitled to the information set out above in order to properly prepare its defence. Thus the Trial Chamber finds that the Prosecutor must provide the information to the Defence in the form of particulars, to the extent that such information is available to the Prosecutor.
- 28. For the above reasons, the Trial Chamber:

ORDERS the Prosecutor to provide the particulars set out above to the Defence within fourteen (14) days.

Arusha, 15 May 2000.


Lloyd George Williams
Judge, Presiding


Yakov Ostrovsky
Judge


Pavel Dolenc
Judge

Seal of the Tribunal

