



International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

TRIAL CHAMBER III

ORIG: Eng.

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

Registrar: Dr. Agwu Ukiwe Okali

Decision of: 18 May 2000

THE PROSECUTOR
versus
GRATIEN KABILIGI

Case No. ICTR-97-34-I

ICTR
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DECISION ON DEFENCE MOTION SEEKING CLARIFICATION OF THE NEW
CHARGES
(RULE 72 OF THE RULES OF PROCEDURE AND EVIDENCE)

Counsel for the Accused:
Mr. Jean Yaovi Degli

Counsel for the Prosecutor:
Mr. Chile-Eboe Osuji
Mr. Frederic Ossogo
Ms. Holo Makwaia

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

SITTING as Trial Chamber III, composed of Presiding Judge Lloyd George Williams, Judge Yakov Ostrovsky, and Judge Pavel Dolenc (the "Trial Chamber" or the "Chamber");

BEING SEIZED of a Defence Motion Seeking Clarification of the New Charges (Rule 72 of the Rules of Procedure and Evidence), dated 2 November 1999 and filed on 2 December 1999 (the "Motion");

NOTING the Prosecutor's response to the Motion, dated and filed on 28 March 2000;

HAVING HEARD the arguments of the parties on 17 May 2000.

PLEADINGS BY THE PARTIES

Defence Submissions

1. The Defence submits that Gratién Kabiligi (the "Accused") was not informed of new charges against him during an appearance on the amended indictment against him on 13 August 1999.
2. The Defence further submits that, acting in despair because the Prosecutor could not specify the new charges, the Chamber caused the Accused to plead not only on the new charges, but on all ten counts proffered against him in the amended indictment, in violation of Rule 50(B) of the Rules of Procedure and Evidence of the Tribunal (the "Rules").
3. The Defence posits that it expected the Prosecutor to clearly specify the new charges after the hearing, and argues that because this has not happened, the Accused is not informed of the new charges against him and is unable to file preliminary motions in respect of them, as allowed under Rule 50(C) of the Rules.
4. Consequently, the Defence requests the Chamber to order the Prosecutor to specify the five new charges brought against the Accused.
5. The Defence further requests the Chamber to suspend the sixty day period provided in Rule 50(C) of the Rules for the filing of preliminary motions in respect of new charges until it receives the clarification sought in its Motion.

Prosecutor's Response

1. The Prosecutor submits that all the prescribed procedures were followed in amending the indictment and in having the Accused enter a plea on the charges and that therefore the Accused was on notice as to what constituted the new charges from the day the

Prosecutor's motion to amend the indictment was granted on 12 August 1999.

2. The Prosecutor notes that she was able to and did identify the new charges in the amended indictment during the further appearance of the Accused.
3. The Prosecutor points out that the Accused agreed with the proposition of the Chamber to enter a plea on all the counts of the amended indictment.
4. The Prosecutor further submits that Trial Chamber II delineated the granted amendments in the Decision on the Prosecutor's Motion to Amend the Indictment, dated 8 October 1999.
5. Moreover, the Prosecutor argues, the Defence was not prevented from filing preliminary motions under Rule 72 of the Rules in respect of the amended indictment as is evidenced by their motion, dated 8 October 1999, seeking to nullify the amended indictment.
6. The Prosecutor submits that she never undertook the obligation to clarify to the Defence or the Accused the new counts after the hearing, contrary to what the Defence alleges.
7. Finally, the Prosecutor argues that the sixty day time limit for filing preliminary motions in respect of the new charges should not be extended in this case because the Defence failed to show good cause, as required by Rule 72(F) of the Rules.
8. Consequently, the Prosecutor requests the Chamber to dismiss the Motion and to apply sanctions against the Defence under Rule 73(E) of the Rules.

DELIBERATIONS

1. The Chamber finds, first of all, that contrary to the position of the Defence, the subject-matter of the Motion is not within the ambit of Rule 72 of the Rules. Rule 72(B) of the Rules clearly sets out the types of motions that may be brought as preliminary motions under that Rule. Motions seeking clarification of new charges, objecting to not being informed of new charges, or about having to plead to all counts of an amended indictment, issues the Defence raises in the present Motion, are not provided for in Rule 72 of the Rules.
2. Even if the Motion were admissible under Rule 72 of the Rules, however, it would nevertheless fail for lack of merit.
3. To begin with, the Defence argument that the Accused was not informed of the new charges against him during his appearance on the amended indictment on 13 August 1999 is wholly without merit. During his appearance on 13 August 1999, after the relevant portions of the amended indictment were read to him, the Accused confirmed that he understood the charges proffered against him. (Transcript at p. 75.) The Chamber

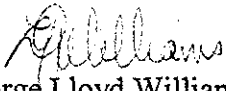
- therefore finds that the Accused was informed of all the charges against him, including the new charges.
3. There is also no merit in the Defence complaint that the Chamber caused the Accused to plead on all ten counts of the amended indictment. In making such a complaint the Defence Counsel disregards the fact that after conferring with the Accused, he informed the Chamber as follows: "I would like to say that [the Accused] is going to plead guilty or not guilty on the ten counts brought against [him] in the indictment." (Transcript at pp. 58-59.) The Defence therefore agreed to have all ten counts read to the Accused and to having him enter a plea on those counts. Moreover, the Accused stated that he was ready to enter a plea on the charges in the amended indictment (Transcript at p. 76) and he pleaded not guilty to all ten counts brought against him. (Transcript at pp. 79-86.) In any event, the Trial Chamber confirms its position expressed during the 13 August 1999 appearance and finds that entering a plea on all counts of the amended indictment did not prejudice the rights of the Accused in any way. Entering a plea on all counts of the amended indictment is a procedural matter and cannot be considered to be a violation of Rule 50(B) of the Rules.
 4. The Defence contention that the Trial Chamber acted in despair in causing the Accused to plead to all counts in the amended indictment because the Prosecutor was not able to identify the new charges is an intolerable misrepresentation of the record. The record is clear that the Prosecutor enumerated the charges in the amended indictment and that while doing so explained which of the counts were counts present in the original indictment and which were counts added in the amended indictment. (Transcript at pp. 38-39.) The Chamber requested the Accused to plead on all counts against him, whether new or pre-existing, in order to ensure that his plea be recorded as to every count, taking into account its current form and the current set of facts in support of it. (Transcript at p. 52.) Far from acting in despair, then, the Trial Chamber took this step in the interest of ensuring that the Accused understands the indictment against him and with appreciation that having the Accused plead on all counts would not prejudice his rights, as noted above, but rather that it would respect them.
 5. Finally, the Prosecutor is under no obligation to clarify to the Defence or the Accused the new charges, as the Defence argued. It is rather the duty of the Defence Counsel to explain to the Accused all the charges against him. Here, the Counsel should have been able to do so on the basis of the amended indictment which details the charges against the Accused and the alleged facts in support of those charges.
 6. The Chamber therefore cannot accept the position of the Defence that the Accused has been unable to file preliminary motions in respect of the new charges as allowed under Rule 50(C) of the Rules. Moreover, as the Prosecutor correctly points out, the filing of the Defence Motion to Quash or Amend the Indictment, dated 8 October 1999, and brought under Rule 72 of the Rules as a preliminary motion, disproves the Defence contention that it has been unable to bring preliminary motions in respect of the amended indictment.

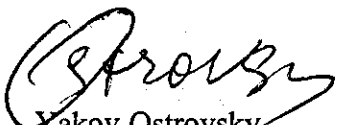
- 7. Because of this, the Chamber is unwilling to suspend the sixty day period provided in Rule 50(C) of the Rules for the filing of preliminary motions in respect of new charges. The Chamber could only suspend that time limit upon the showing of a good cause, a showing that is absent in this case.
- 8. In conclusion, the Chamber finds that the Motion is inadmissible because the Defence brought it under a Rule that does not provide for the filing of such motions and, furthermore, that the arguments underlying the Motion lack merit to such an extent that the Motion is frivolous and its filing constitutes an abuse of the process.

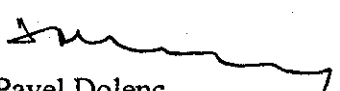
FOR THESE REASONS, THE TRIBUNAL

- 1. **DISMISSES** the Motion.
- 2. **DIRECTS** the Registrar, pursuant to Rule 73(E) of the Rules, not to pay fees and costs associated with the filing of this Motion.

Arusha, 18 May 2000.


 George Lloyd Williams
 Judge, Presiding


 Yakov Ostrovsky
 Judge


 Pavel Dolenc
 Judge

[Seal of the Tribunal]

