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UNITED NATIONS  NATIONS UNIES
International Criminal Tribunal for Rwanda

TRIAL CHAMBER I

OR: ENG

Before: Judge Navanethem Pillay, Presiding
Judge Erik Møse
Judge Asoka de Zoysa Gunawardana

Registry: Ms Aminatta N'Gum

Decision of: 12 July 2000

THE PROSECUTOR
versus
FERDINAND NAHIMANA

Case N^o: ICR-96-11-T

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2000 JUL 12 1 P 5: 04

DECISION ON THE DEFENCE PRELIMINARY MOTION, PURSUANT TO
RULE 72 OF THE RULES OF PROCEDURE AND EVIDENCE

Office of the Prosecutor:

Mr William Egbe
Ms Cydney Crikard

Counsel for the Defence:

Mr Jean-Marie Biju-Duval
Ms Diana Ellis

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

SITTING AS Trial Chamber I, composed of Judge Navanethem Pillay, Presiding, Judge Erik Møse and Judge Asoka de Zoysa Gunawardana;

CONSIDERING the motion filed by the Defence on 26 April 2000, raising matters of a preliminary nature (the "motion"), pursuant to Rule 72 of the Rules of Procedure and Evidence (the "Rules");

CONSIDERING the Prosecutor's response, filed on 1 June 2000;

HEREBY decides the motion on the basis of the written briefs filed by the Parties.

Background

The indictment against the accused was confirmed on 12 July 1996. The accused made his initial appearance on 19 February 1997, pursuant to Rule 62 of the Rules and pleaded not guilty to all four counts. The Defence subsequently filed a preliminary motion, raising defects in the form of this indictment and, on 24 November 1997, the Trial Chamber ordered certain amendments to this indictment. Following this decision, the Prosecutor filed an amended indictment, dated 19 December 1997. The Defence filed a preliminary motion, raising objections to this amended indictment on the basis that it did not comply with the said order of 24 November 1997. On 17 November 1998 Trial Chamber I, ordered further amendment to the indictment of 19 December 1997 and, as a consequence, the Prosecutor filed a further amended indictment, dated 26 November 1998. The Defence raised preliminary objections to this indictment and on 30 August 1999, the Trial Chamber ordered a further amendment to this indictment. Following this decision, the Prosecutor filed a further amended indictment, dated 3 September 1999.

On 5 November 1999 the Trial Chamber ordered further amendments to the indictment, after having considered a motion by the Prosecutor in terms of Rule 50. Following this ruling, the Prosecutor filed an amended indictment dated 15 November 1999, which is now in issue (the "indictment").

The Motion

On 26 April 2000, the Defence filed a motion requesting the Chamber to order the Prosecutor to withdraw a number of paragraphs contained in the indictment. The Defence submitted that twenty-eight paragraphs in the indictment fall outside the temporal jurisdiction of the Tribunal, as they refer to events which are said to have occurred in whole or in part before 1 January 1994. The Defence also requests the deletions of parts 1, 2 and 3 of the indictment as these parts are not referred to in Rule 47(C). Further, the Defence contended that the latest indictment is not in accord with the Chamber's Decision of 5 November 1999 which granted leave to amend, as it goes beyond the amendments that were ordered. Finally, the Defence submitted that it cannot prepare an effective and efficient defence as a number of the allegations in the indictment lack precision and are defective.



DELIBERATIONS

On the Tribunal's Lack of Jurisdiction in Respect of the Indictment

A. *Rule 47 formalities*

The Defence submitted that the Tribunal lacks jurisdiction in respect of the indictment against the accused because it violates the provisions of Rule 47(C). According to the Defence, an indictment must only contain three categories of information, namely, the name and particulars of the accused, a concise statement of facts, and the charges. The indictment against the accused contains information, which does not fall into any one of the aforementioned categories. This information is found in parts one, two and three of the indictment, which according to the Defence is irrelevant to the accused, and therefore should be deleted from the indictment.

In response, the Prosecutor submitted that the issues raised by the Defence in respect of the contents of the indictment concern the form of the indictment and are not matters of jurisdiction. According to the Prosecutor, the indictment complies with the provisions of Rule 47(C), in so far as it provides the name and particulars of the accused, the concise statement of the facts of the case and the crimes with which he is charged. The provisions of Rule 47(C) do not limit the Prosecutor to merely providing the elements of the crimes and the parts of the indictment which the Defence deems to be irrelevant, are essential because they provide a context for the understanding of the allegations that constitute the charges against the accused. These parts also provide the Defence with significant insight into the basis of the case for the Prosecution.

The Trial Chamber notes that Rule 47(C) does not limit the indictment to the name and particulars of the accused, the concise statement of facts and the crimes with which the accused is charged. The indictment may contain information in regard to the context in which the charges are formed so that they may be better understood by the accused. It is also noted that in its decision of 5 November 1999, this Trial Chamber accepted that, “. . . *the historical context [of the indictment] is, in principle, relevant to the alleged events. A final decision of its relevance will be made at trial . . .*”.

The Trial Chamber is not persuaded by the Defence's submission that the indictment against the accused is in violation of the provisions of Rule 47(C) and accordingly, finds no merit in the argument that the Tribunal lacks jurisdiction in respect of this indictment.

B. *Temporal Jurisdiction*

The Defence also submitted that, of the fifty-nine paragraphs of allegations in the indictment, twenty-eight allege events that fall outside the temporal jurisdiction of the Tribunal. According to the Defence, these allegations form the constitutive elements of the crimes and, therefore, should be deleted from the indictment.

The Prosecutor submitted that the indictment complies with the temporal jurisdiction requirements of the Tribunal in that each crime charged is alleged to have been committed between 1 January 1994 and 31 December 1994. The information outside the temporal jurisdiction will not go to prove

the charges but will provide the Defence with additional particulars and the Trial Chamber with a context for the crimes.

The Statute states that the temporal jurisdiction of the Tribunal “shall extend to a period beginning on 1 January 1994 and ending on 31 December 1994” (Article 7). The Chamber notes that all the seven counts refer generally to “the acts and omissions described in paragraphs 4.1 to 6.27 . . .”, and that some of these paragraphs contain information about events that occurred prior to 1 January 1994. Further, Count 1 specifically refers to paragraphs 5.3, 5.4, 5.5, 5.8, 5.9, 5.10, 5.21, 5.24, 5.26 and 6.1, which contain information about events that occurred prior to 1 January 1994. For example, paragraph 5.21 alleges that, “In 1993, Ferdinand Nahimana participated in a meeting in Nyamirambo, Kigali, where *Interahamwe* prepared lists with names of Tutsis to be killed”. Counts, 2, 6 and 7, also specifically refer to paragraph 5.21.

The Chamber is fully aware of the temporal limits placed upon it by the Statute. However, information that falls outside the temporal jurisdiction of the Tribunal may be useful in helping the accused and the Chamber to appreciate the context of the alleged crimes, particularly due to the complexity of the events that occurred in Rwanda, during 1994. Furthermore, the Chamber is of the view that the proper stage to determine the admissibility and evidential value, if any, of the paragraphs that contain information about events that occurred prior to 1 January 1994, is during the assessment of evidence. Accordingly, these are matters that the Chamber will consider at the trial of the accused.

For these reasons, the above mentioned paragraphs may remain in the indictment, and reference to these paragraphs may remain in the counts.

The Prosecutor’s (non) compliance with the Trial Chamber’s decision

The Defence submitted that the Prosecutor did not comply with the Trial Chamber’s decision of 5 November 1999, with regard to the amendment of the indictment. The Trial Chamber ordered specific amendments to the indictment and did not confirm the amended indictment proposed by the Prosecutor. However, the present indictment contains amendments that were not ordered by the Trial Chamber.

In response, the Prosecutor submitted that she had complied with the Trial Chamber’s decision of 5 November 1999. The indictment contains the additional three counts and the identities of the co-conspirators. The Prosecutor further submitted that the parts of the indictment to which the Defence has objected, do not add any additional charges to the indictment, These parts support the existing charges by providing continuity, explanation and clarity and also by placing them in context. Further, these parts provide the Defence with additional particulars, thus assisting the accused in understanding the scope and specificity of the charges against him. These parts are in accordance with both the letter and spirit of the Decision of 5 November 1999, rendered by Trial Chamber I.

The Trial Chamber notes that, although the order in its 5 November 1999 decision is silent on the Historical Context and the expanded facts of the indictment, it is implicit from the Trial Chamber’s reasoning that Exhibit “B”, which was the proposed amended indictment, was granted in its entirety,

subject to the amendments stipulated in the order. Further, once the Trial Chamber ordered the inclusion of three additional counts in the existing indictment, it is implicit that all allegations and information in support of these three counts and the expanded factual allegations in respect of the other counts, have also been ordered.

Defects in the form of the indictment

The Defence submitted that the indictment lacks factual precision which prevents the accused from preparing an effective and efficient defence. This factual imprecision may be found in the paragraphs 5.3; 5.13; 5.14; 5.16; 5.17; 5.18; 5.21; 5.23; 5.28; 6.5; 6.8; 6.9; 6.11; 6.12; 6.13; 6.15; 6.17; 6.18; 6.23; and 6.24 of the indictment. This lack of precision stems from the omission of dates, venues and the contents of the RTLM broadcasts, articles and publications referred to in the aforementioned paragraphs. Further, there is no "material" substantiating the allegation in paragraph 6.5 of the indictment. As a consequence of these defects, the accused is prevented from fully preparing his defence, particularly his defence of alibi.

The Defence further submitted that the material in support of the indictment, particularly the new counts, do not remedy the lack of precision in some of the allegations in the indictment.

In response, the Prosecutor submitted that the indictment is sufficiently precise in that it gives the accused full knowledge and understanding of the nature of the crimes with which he is charged. The precise date and time of an event is not always the necessary level of specificity that should be required by the Trial Chamber in the context of criminal charges that occurred during the Rwandan genocide. Rather, a mere time frame is sufficient.

The Prosecutor further submitted that what the Defence characterises as factual imprecision is effectively a request for the review of the evidence, which is premature at this stage of the proceedings.

The Trial Chamber notes that the lack of certain information in the allegations of the indictment does not render the indictment defective, provided the accused is in a position to understand the charges against him. The Trial Chamber is not persuaded by the Defence submission that the accused is unable to prepare his defence because of this lack of information. The accused will have the opportunity of preparing his defence when the Prosecutor has completed disclosure, in terms of Rule 66.

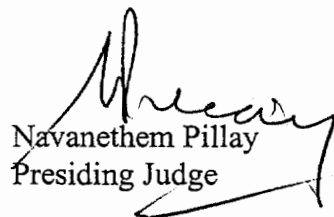
The Trial Chamber notes that disclosure, pursuant to Rule 66 (A)(ii) must be made to the Defence no later than sixty days before the date set for the commencement of the accused's trial. In this regard, the Prosecutor is still in time for compliance.

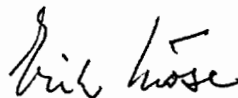


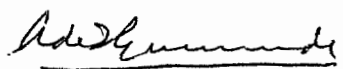
**FOR THESE REASONS,
THE TRIAL CHAMBER,**

DISMISSES the Defence motion.

Arusha, 12 July 2000


Navanethem Pillay
Presiding Judge


Erik Møse
Judge


Asoka de Zoysa Gunawardana
Judge

(Seal of the Tribunal)

