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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER III

Original: English

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

Registrar: Dr. Agwu U. Okali

Date: 11 September 2000

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THE PROSECUTOR
v.
LAURENT SEMANZA

ICTR-97-20-I

**DECISION ON THE DEFENCE MOTION FOR DISMISSAL OF THE ENTIRE
PROCEEDINGS DUE TO PERSISTENT AND CONTINUOUS VIOLATIONS OF
THE RIGHTS OF THE ACCUSED, RULES OF PROCEDURE AND EVIDENCE
AND THE STATUTE OF THE TRIBUNAL AND ABUSE OF PROCESS**

Counsel for the Accused:

Mr. Charles Acheleke Taku

Office of the Prosecutor:

Mr. Chile Eboe-Osuji
Mr. Frédéric Ossogo
Mr. Honoré Tougouri
Ms. Patricia Wildermuth

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

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

BEING SEISED of Semanza's "Defense Motion for the Orders Declaring the Entire Proceedings Null and Void and of No Effect due to Prosecutor's Persistent and Continuous Violations of the Right of Defense, Abuse of Process having regards to Rules 66, 67, 69, 71, 73 *bis*, Articles 1, 2, 3, 4, 5, 6, 7, 8, and 20 of the Statute of the Tribunal," filed on 30 June 2000 (the "Motion");

BEING SEISED of the "Prosecutor's Urgent Motion to Strike the Defence Motion Filed on 30 June 2000," filed on 5 July 2000 (the "Prosecutor's Motion to Strike Out the Motion");

CONSIDERING Semanza's "Defense Reply to the Prosecutor's Urgent Motion to Strike the Defense Motion Filed on the 30 June 2000," filed on 5 July 2000 (the "Defence Reply");

BEING SEISED of Semanza's "Defence Supplementary Motion for Dismissal of the Entire Proceedings due to Persistent and Continuing Violations of the Rules of Procedure and Evidence and the Statute of the Tribunal brought pursuant to Rules 72 and 73 of the Rules of Procedure and Evidence," filed on 14 July 2000 (the "Supplementary Motion");

CONSIDERING the "Prosecutor's Response in the Defence Motion for the Dismissal of the Entire Proceedings Filed on 30 June 2000 and 14 July 2000," filed on 10 August 2000 (the "Prosecutor's Response");

CONSIDERING the "Defence Notice to File Further Written Replies to the Prosecutor's Response in the Defence Motion for the Dismissal of the Entire Proceedings Filed on the 30 June 2000 and 14 July 2000 and Prosecutor's Revised Memorial in the Prosecutor's Motion for Judicial Notice (Rules 54 and 73)," filed on 16 August 2000 (the "Defence Notice");

CONSIDERING the "Prosecutor's Response to the Defence Notice to File Further Written Replies to the Prosecutor's Response in the Defence Motion for the Dismissal of the Entire Proceedings Filed on the 30 June 2000 and 14 July 2000 and Prosecutor's Revised Memorial in the Prosecutor's Motion for Judicial Notice (Rules 54 and 73)," filed on 22 August 2000 (the "Prosecutor's Response to the Defence Notice");

NOW CONSIDERS the matter, solely on the briefs, pursuant to Rule 73(A) of the Rules of Procedure and Evidence (the "Rules").

SUBMISSIONS OF THE DEFENCE

Alleged Violations of the Statute and Rules

1. The Defence submits that the Prosecutor filed the original Indictment with only a summary of supporting materials rather than supporting materials as envisaged by Rule 47(E). Further, the Prosecutor has not transmitted this summary to Semanza (the "Accused") in a language which he understands.

2. The Defence submits that the Prosecutor neither provided to the Chamber, nor disclosed to the Defence, supporting materials with her first motion to amend the Indictment.

3. Defence Counsel contends that the Prosecutor did not obtain the Chamber's leave to amend the Indictment for the second time and did not seek leave to amend the Indictment for the third time. Therefore, the Defence submits, the Chamber cannot try the Accused on the Second or Third Amended Indictments. Neither can the Chamber try the Accused on the First Amended Indictment because the Prosecutor filed this without any supporting materials. Further, submits the Defence, the Prosecutor did not comply with the Tribunal's order—contained in Trial Chamber II's decision of 1 September 1999 that allowed the Prosecutor to amend the Indictment—to provide greater specificity as to the facts relating to the new charges.

4. Defence Counsel submits that, pursuant to Rule 66(A), the Prosecutor must disclose a copy of the statements of all witnesses who are to testify at trial no later than sixty days before the date set for trial. In the Defence's submission, the filing of the "Prosecutor's Supplementary List of Witnesses," on 17 April 2000 violates Article 20 of the Statute and Rule 66(A) which, the Defence submits, requires the Prosecutor to show "good cause" if she intends to disclose additional witness statements. The Defence asserts that the Prosecutor did not show "good cause".

5. The Defence contends that, although seventeen of the Prosecutor's witnesses are not covered by protective measures (as ordered by the former Trial Chamber II in its "Decision on the Prosecutor's Motion for the Protection of Witnesses" of 10 December 1998 (the "Decision of 10 December 1998")), the Prosecutor disclosed redacted versions of these seventeen witnesses' statements.

6. The Defence argues that the Prosecutor has disclosed witness statements, redacted in a manner which renders them unintelligible. The statements are, the Defence submits, mere summaries which the Prosecutor reserves the right to change at will. The notice of reservation makes the summaries speculative and violates Rules 66, 67, 69, 71, and 73 *bis*, and Article 20 of the Statute.

7. The Defence submits that the "Prosecutor's Substitute Notice to Admit Facts" filed on 29 March 2000, violates the Accused's right to a fair trial, violates the presumption of innocence, shifts the burden of proof, and violates "the principles of law against self-incrimination."

Lack of Jurisdiction

8. Defence Counsel submits that the Tribunal lacks personal jurisdiction over the Accused, there being "no legal instrument to support articles 2, 3, 4, 5, 6, and 8 of the [S]tatute of the Tribunal." Further, submits the Defence, by referring "to issues and periods" outside the temporal jurisdiction of the Tribunal, for example in the Indictment's concise statement of facts, "the Prosecutor has ousted the Jurisdiction of this Tribunal from proceeding to trial [*sic*] the defendant."

9. The Defence further submits that the supporting materials for the Second and Third Amended Indictments shows that the armed conflict in Rwanda was international. In Defence Counsel's submission, the Accused cannot be criminally responsible under Article

6(3) of the Statute because he had no legal authority. The supporting materials are “vague, imprecise as to facts and in most respects deal with the wider Rwandan crises and not about the Defendant.”

10. The Defence prays that the Chamber nullify the entire proceedings and decline jurisdiction over the Accused with prejudice to the Prosecutor.

SUBMISSIONS OF THE PROSECUTOR

11. The Prosecutor submits that the Motion lacks focus and general direction; it is incomprehensible, confusing, and unintelligible.

12. In the Prosecutor’s Response, she submits that the Motion repeats the substance of an earlier Defence motion, filed on 5 November 1999. The Prosecutor submits that the Defence withdrew the earlier motion after the Prosecutor filed a well-founded response and that the Defence is employing dilatory tactics.

13. The Prosecutor submits that the Defence objections to jurisdiction are time-barred under Rule 72(A).

14. The Prosecutor contends that she disclosed to the Defence the supporting materials and not a summary of them. Additionally, even if the material was not served in a language which the Accused understands, this cannot be a reason for nullifying the proceedings.

15. The Prosecutor submits that the Second and Third Amended Indictments are not amendments under Rule 50 but minor improvements which the Chamber ordered when it granted leave to amend the Indictment.

16. The Prosecutor prays that the Chamber strike out the Motion.

DELIBERATIONS

Initial Clarification

17. The Prosecutor requests the Chamber to “strike out” the Defence Motion on the grounds that it is incomprehensible, confusing, and unintelligible. The Chamber notes that the Rules do not expressly confer on a Chamber the power to strike out a motion. Further, the Chamber finds that it would be inappropriate to strike out the Motion without consideration.

Alleged Non-Disclosure of Supporting Materials

18. The Defence objects to the disclosure of only a “summary of supporting materials.” However, Defence Counsel has failed to show that the materials which the Prosecutor disclosed were not copies of the supporting materials which accompanied the Indictment when the Prosecutor sought confirmation, as Rule 66(A)(i) requires.

19. The Defence contends that the Prosecutor has not disclosed materials in a language which the Accused understands. The Chamber notes that the Rules do not require the

Prosecutor to disclose materials in a language which an accused understands. Therefore, the Prosecutor cannot have violated the Rules in this regard.

Lack of Supporting Materials for Amended Indictments and Failure to Seek Leave to Amend the Indictment

20. On 21 October 1997, the Prosecutor filed an Indictment against the Accused. The reviewing Judge confirmed this on 23 October 1997 and on 16 February 1998 the Accused made his initial appearance before the Tribunal and entered a plea of not guilty to all counts.

21. On 31 May 1999, the Prosecutor filed a motion for leave to amend the Indictment. She attached a proposed "First Amended Indictment" as an appendix. This proposed Indictment expanded the concise statement of facts and the Prosecutor modified the Indictment's seven original counts and added seven further counts to those against the Accused. The former Trial Chamber II heard that motion on 18 June 1999 and orally granted the Prosecutor's motion to amend, on the condition that the Prosecutor clarified the concise statement of facts. *See* Transcript of 18 June 1999, at 56.

22. The Prosecutor filed a "First Amended Indictment" on 23 June 1999, which complied with the Chamber's oral instructions. On 24 June 1999, the Accused made a further appearance at which the Registrar read out the First Amended Indictment. The Accused pleaded not guilty to each of its fourteen counts.

23. Immediately after the Accused's plea, the Prosecutor sought permission from the Chamber to remedy a discrepancy between the English and French versions of the First Amended Indictment, changing "enforced prostitution" in Count 9 of the English version to "sexual abuse" to match the "*l'abus sexuel*" in the French version. The Prosecutor filed a corrected "Second Amended Indictment" on 2 July 1999. Because the Accused had pleaded to the French version of the Indictment, the Chamber did not ask him to plead again. *See* Transcript of 24 June 1999, at 43-46.

24. On 1 September 1999, the former Trial Chamber II in its written decision, memorialising its oral decision of 18 June 1999, granted the Prosecutor's motion to amend the Indictment "with the understanding that the Prosecutor will provide greater specificity as to facts relating to the new charges." On 12 October 1999, the Prosecutor filed a "Third Amended Indictment," which included amendments to the concise statement of facts, in accordance with the Chamber's "understanding". The Chamber's "understanding" was, in effect, an order to amend the Indictment so as to provide such specificity. In filing the Third Amended Indictment, the Prosecutor was complying with this order of the Chamber and did not require leave.

25. The Chamber notes that in *Prosecutor v. Nahimana*, ICTR-96-11-I, at paras. 14-15 (Decision on the Prosecutor's Request for Leave to File and Amended Indictment) (5 November 1999), the Tribunal held that it was unnecessary for a Trial Chamber to consider supporting materials when granting leave to amend an already-confirmed indictment. The Tribunal followed this decision in *Prosecutor v. Nyitigeka*, ICTR-96-14-I, at para. 45 (Decision on the Prosecutor's Request for Leave to File an Amended Indictment) (21 June 2000). The Chamber considers it appropriate to follow these decisions.

26. The Chamber, therefore, finds that the Prosecutor did not violate the Rules or Statute by amending the Indictment as she did. The second and third “amendments” were not amendments under Rule 50, but rather corrections pursuant to the Tribunal’s oral and written orders. Further, the Chamber finds that the Third Amended Indictment against Semanza is the current, valid, charging instrument. In the Third Amended Indictment, the Prosecutor remedied the defects in the specificity of factual allegations in accordance with the former Trial Chamber II’s instructions. For this reason, the Chamber finds that the Prosecutor has not failed to provide greater specificity as to factual allegations as the Defence alleges.

Disclosure of Witness Statements

27. The Prosecutor filed a list of witnesses that she intends to call to testify at trial on 17 April 2000. Rule 66(A)(i) requires the Prosecutor to disclose copies of her witnesses’ statements no later than sixty days before the date set for trial. The Prosecutor’s disclosure of copies of the statements of her witnesses is in compliance with the requirements of Rule 66(A)(i). Therefore, the Defence has no valid grounds of objection.

Non-Disclosure of Witnesses’ Identities

28. The former Trial Chamber II’s Decision of 10 December 1998—which conferred protected status upon the Prosecutor’s witnesses—prohibited the disclosure to the Defence of any identifying data which would reveal the identities of *potential* prosecution witnesses until such time as the Trial Chamber is assured that the witnesses are adequately protected. That Decision also required the Prosecutor to assign a pseudonym for each witness. In its decision of 23 August 2000, the Chamber held that this applies prospectively, covering the witnesses which the Prosecutor added to the list after 10 December 1999. *See Prosecutor v. Semanza, ICTR-97-20-I, at paras. 15-19 (Decision on the Defence Extremely Urgent Application Ex Parte for a Subpoena to Compel Consistent Disclosure, Better and Further Particulars) (23 August 2000).* Consequently, to date, the Prosecutor has rightly disclosed only redacted witness statements and provided witness pseudonyms.

Prosecutor’s Request to Admit Facts

29. Rule 73 *bis* provides a mechanism by which a party may seek to admit non-contentious matters. If asked to admit facts, an accused might quite properly decide to admit nothing and put the Prosecutor to proof on every issue and neither a Trial Chamber nor the Prosecutor can compel an accused to do otherwise. The Prosecutor does not violate an accused’s rights by requesting him to admit facts and the Defence’s objections on this ground must fail.

Lack of Jurisdiction

30. The Chamber notes that the time limit for filing a motion under Rule 72(B)(i) expired in January 2000. The Chamber therefore finds that the Defence objections on this ground are time-barred.

Frivolous Motion

31. Rule 73(E) allows the Tribunal to order the non-payment of counsel’s fees associated with a motion which is frivolous or an abuse of process.

32. The Motion requests the disclosure of witness identities. The Defence has requested this in a previous motion, filed on 13 April 2000 and does not suggest that there has been any change of circumstances.

33. Further, on 19 April 2000, the Defence withdrew its motion, filed on 5 November 1999, objecting to jurisdiction, on the Tribunal's advice that the motion was time barred. Counsel represented that he would "not bring it back." See Transcript of 19 April 2000, at 4, 7. Defence Counsel nevertheless has resurrected the same objection as part of the current Motion, knowing that it is out of time. This dilatory tactic has caused the Prosecutor to reply to two unmeritorious motions, thereby wasting the Tribunal's time and increasing the costs of the proceedings..

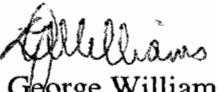
34. The Defence's objections to the filing of the successively-amended Indictments are misleading. The Motion failed to include many important details of the procedural history of the amendments, which show that the Prosecutor amended the Indictment in accordance with the Rules and the Tribunal's decisions. Defence Counsel's decision to bring the Motion permits no reasonable explanation.


35. The Chamber therefore finds, under Rule 73(E), that in bringing the Motion Defence Counsel acted frivolously and that his conduct constitutes an abuse of process.

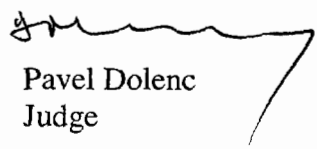
36. **FOR THE ABOVE REASONS, THE CHAMBER:**

- (a) **DENIES** the Motion;
- (b) **DENIES** the Supplementary Motion;
- (c) **DENIES** the Prosecutor's Motion to Strike Out the Motion, and;
- (d) **DIRECTS** the Registrar not to award any costs, including fees, to Defence Counsel with respect to the Motion, the Supplementary Motion and the Defence Notice, insofar as the Defence Notice concerns the Motion and Supplementary Motion.

Arusha, 11 September 2000.


Lloyd George Williams
Judge, Presiding


Yakov Ostrovsky
Judge


Pavel Dolenc
Judge

Seal of the Tribunal