



UNITED NATIONS
NATIONS UNIES

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

TRIAL CHAMBER I

Original : English

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

Registry: Ms Aminatta N'gum

Decision date: 26 September 2000

THE PROSECUTOR

v.

**JEAN BOSCO BARAYAGWIZA
Case No. ICTR-97-19-I**

DECISION ON THE DEFENCE MOTION FOR LACK OF JURISDICTION

Office of the Prosecutor:

M. Sankara Menon
Ms Charity Kagwi
M. Alphonse Van

Counsel for the Accused:

Ms Carmelle Marchessault
M. David Danielson

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 from the Defence for lack of jurisdiction, filed on 19 July 2000;

CONSIDERING the consolidated response of the Prosecutor to the Defence’s motions for lack of jurisdiction and for separate trial, filed on 23 August 2000;

CONSIDERING the rejoinder of the Defence to the response of the Prosecutor, filed on 5 September 2000;

CONSIDERING the Decisions of the Appeals Chamber, dated 12 and 14 September 2000, on the Interlocutory Appeals of 11 April and 6 June 2000;

HAVING HEARD the Parties at a hearing on 20 September 2000;

The Submissions of the Parties

The Defence argued that since the Appeals Chamber, by its decision of 31 March 2000, did not reinstate the indictment dismissed by the Decision of 3 November 1999, there is no indictment against the accused. The Defence further argued that it filed a Notice of Appeal against Trial Chamber I’s decision of 6 June 2000. The Defence further submitted that the amendment of the indictment of 23 October 1997 is null and void *ab initio* for several reasons. Firstly, the amendment was granted by a Trial Chamber which lacked jurisdiction, whereas Trial Chamber II was the only one entitled to permit the amendment pursuant to the Rule 50 (A) of the Rules of Procedure and Evidence, “the Rules”. Secondly, although the accused had sought the disqualification of Judge Pillay on 17 October 1999, Trial Chamber I sat with her rather than refer the matter to the Bureau. Thirdly, the Defence submitted that certain allegations refer to acts falling outside the temporal jurisdiction of the Tribunal. The offences with which the accused is charged being separate and at the same time substantive, giving rise to other crimes, cannot constitute subsidiary evidence as in the case of *The Prosecutor v. Ferdinand Nahimana* in which the Chamber considered that, as such, they “will help to prove the ingredients of the offences within the temporal jurisdiction of the Tribunal”. The Defence lastly argued that some allegations refer to institutions although the jurisdiction of the Tribunal is confined to natural persons,

pursuant to Article 5 of the Statute. The Defence has therefore raised an objection based on lack of jurisdiction under Sub-rule 72(H)(i). Accordingly, and in order to be able to prepare their case, Counsels for the accused request that the date for the commencement of the trial be postponed.

During the hearing of 20 September 2000, the Defence, following the ruling of the Appeals Chamber, reiterated its arguments relating to the violations of Rules 50(A) and 15(B) of the Rules, to the lack of jurisdiction *ratione temporis* and to the violation of Article 5 of the Statute.

Prosecution responded that the accused had already filed an extremely urgent motion for lack of jurisdiction on 15 May 2000, which was denied by Trial Chamber I on 6 June 2000. The Defence should not be allowed to bring the same issues before the same Trial Chamber since it has lodged an appeal against this decision on 13 June 2000.

At the hearing of 20 September 2000, Prosecution further contended that the Defence cannot maintain these objections based on the lack of jurisdiction *ratione temporis* as the Appeals Chamber has ruled on this issue in its decision of 12 September 2000.

The Chamber

The Trial Chamber notes that the arguments raised by the Defence in support of its motion on lack of jurisdiction have already been raised in another motion based on lack of jurisdiction, and moved by the Defence on 15 May 2000. On 6 June 2000, the same Chamber ruled on the matter in a decision granting the joinder of the accused with Nahimana and Ngeze¹ and Counsels for the Defence lodged an appeal against this decision on 13 June 2000.

On 12 September 2000, a Bench of the Appeals Chamber dismissed the appeal against the decision of 11 April 2000 granting the amendment of the indictment, save in relation to the objection raised as to the alleged breach of the temporal jurisdiction of the Tribunal. The appeal against the decision of 6 June 2000 granting the joinder was also dismissed, save in respect of the

¹ See *The Prosecutor v. Jean Bosco Barayagwiza*, Case No. ICTR-97-19-I, Decision of 6 June 2000, on the Prosecutor's Motion for Joinder and Decision on Barayagwiza's Extremely Urgent Motion For Lack of Jurisdiction and for Waiver of Time Limits under Rule 72(A) and (F) of the Rules (para. 2).

challenge to the existence of the indictment following the decisions of the Appeals Chamber and in respect of the alleged breach of the temporal jurisdiction.² The Bench then referred the two issues to the consideration of the Appeals Chamber.

On 14 September 2000, the Appeals Chamber issued its decision, whereby it rejected the interlocutory appeals, and upheld the decisions of the Trial Chamber permitting the amendment and granting the joinder. The Appeals Chamber confirmed the ruling of the Trial Chamber, namely that there is a valid indictment and held that the indictment has been reinstated by the Decision of 31 March 2000. Therefore the Trial Chamber had the jurisdiction to rule on the Prosecutor's motions to amend the indictment and to join the accused. The Appeals Chamber further stated that its decision of 31 March 2000 had explicitly replaced the decision of 3 November 1999.³ Concerning the issue of lack of jurisdiction *ratione temporis*, the Appeals Chamber, referred to its Decision of 5 September 2000 in the cases of *Hassan Ngeze and Ferdinand Nahimana v. The Prosecutor*, in which it confirmed the ruling of the Trial Chamber on the matter, namely that it is clear that the accused has been indicted for crimes committed during the mandatory years of the Tribunal and that the Chamber will not hold any accused responsible for crimes committed prior to 1994.⁴

The Trial Chamber thus considers that the arguments relied on by the Defence in the present motion have already been ruled upon by the Appeals Chamber and are therefore final.

Regarding the alleged violation of Rule 50 (A) of the Rules, the Trial Chamber holds that there is no merit in this submission, because this provision was amended in June 1999. It is to be noted that the restriction according to which only the Chamber which had conducted the initial appearance was competent to grant the amendment was deleted, and the said amendment to the indictment was granted subsequent to the change in this rule.

² See *Jean Bosco Barayagwiza v. The Prosecutor*, Case No. ICTR-97-19-AR72, Decision by a Bench of the Appeals Chamber on Interlocutory Appeals against the decisions of the Trial Chamber dated 11 April and 6 June 2000, p. 6.

³ See *Jean Bosco Barayagwiza c. Le Procureur*, Case No. ICTR 97-19-AR72, Décision du 14 septembre 2000 sur les Appels Interlocutoires datés du 11 avril et du 6 juin 2000, p. 5.

⁴ See *Hassan Ngeze et Ferdinand Nahimana c. Le Procureur*, (Cases No. ICTR 97-27-AR72 and ICTR 96-11-AR72) Décision du 5 septembre 2000 sur les Appels Interlocutoires, p. 8.

In respect of the argument that there was a violation of Rule 15 (B) of the Rules, it has to be pointed out that the presiding Judge has the discretion to refer the matter to the Bureau only if it is necessary. In this instance, the presiding Judge had deemed it not necessary to do so. The Trial Chamber therefore considers that there has been no violation of Rule 15 (B).

Defence further argued that certain allegations which refer to institutions rather than to individuals are in violation of Article 5 of the Statute, which limits jurisdiction to natural persons. The Trial Chamber notes that the paragraphs referred to by Counsel, *inter alia* 5.8 ; 5.10 ; 5.13 ; 5.20 ; 6.1 ; 6.7 ; 6.12 ; 6.15 ; 6.20 ; 6.21 and 7.5, make references to institutions in relation to their members or individuals directly cited connected with such institutions. It does not follow that references to institutions, or the accused's involvement with institutions, place the said institutions on trial before the Tribunal. It is only the accused, as an individual, who is charged. The references to institutions form part of the substantive allegations against the accused. The Prosecution has the burden of establishing the accused's association or nexus to the institutions. This is a matter of evidence.

The Chamber considers that this motion was unwarranted and without valid legal basis. The Defence had already filed a motion for lack of jurisdiction, and had lodged an appeal against the decision of the Trial Chamber denying the said motion. This appeal was still pending at the time the present motion was filed. Moreover, the Judges note that the Defence did not raise any new arguments in support of this motion.

In the circumstances, this motion is dismissed.

FOR THESE REASONS

THE TRIBUNAL

DENIES the Defence motion for lack of jurisdiction.

DENIES the payment to the Defence of all costs for this motion, pursuant to amended Rule 73 (E) of the Rules.

Arusha, 26 September 2000

Navanethem Pillay
Presiding Judge

Erik Møse
Judge

Asoka de Zoysa Gunawardana
Judge

Seal of the Tribunal