

ICTR-01-72-1
5-7-2001
(794-791)

794

UNITED NATIONS  NATIONS UNIES

International Criminal Tribunal for Rwanda

TRIAL CHAMBER III

OR: ENG

Before: Judge Pavel Dolenc

Registrar: Adama Dieng

Date: July 5 2001

JUDICIAL RECORDS/ARCHIVES
ICTR
RECEIVED

2001 JUL -5 P 6: 34
Jan 5/2001

THE PROSECUTOR

v.

Simon BIKINDI

Case No. ICTR-2001-72-I

CONFIRMATION OF THE INDICTMENT

The Office of the Prosecutor:

Stephen Rapp

1. **THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (Tribunal),

Sitting as Judge Pavel Dolenc, designated by the President of the Tribunal pursuant to Rule 28 of the Tribunal's Rules of Procedure and Evidence (Rules);

HAVING RECEIVED an indictment (the indictment) Simon BIKINDI (the accused) dated 27 June 2001 and filed with the Registry on 4 July 2001 for review and confirmation pursuant to Articles 17(4) and 18(1) of the Statute of the Tribunal (Statute) and Rules 47(a)(b) and (e);

HAVING RECEIVED the supporting materials comprised of witness statements, proposed pseudonyms, and portions of expert and legal documents supporting respective parts of the indictment;

HAVING HEARD the Prosecutor during an *Ex parte* hearing on 5 July 2001 pursuant to Rule 47(D);

HAVING REVIEWED the indictment and accompanying materials;

NOW CONSIDERS THE MATTER AND FINDS:

2. Pursuant to Articles 17(4) and 18(1) of the Statute and Rule 47(A)–(F), the Prosecutor shall, if satisfied that the investigation reveals sufficient evidence to provide reasonable grounds for believing that the accused has committed a crime within the jurisdiction of the Tribunal, file an indictment together with supporting materials. The indictment shall set forth the particulars of the accused and a concise statement of facts of the crimes within jurisdiction of the Tribunal with which the accused is charged. The reviewing judge shall confirm the indictment if satisfied that the Prosecutor has established a *prima facie* case. If not so satisfied, the reviewing judge shall dismiss all or some counts, adjourn the review and request the Prosecutor to present additional supporting material or modify the indictment or take any other appropriate measures.
3. An indictment must allege all of the material facts that constitute the elements of a given crime. An indictment must contain sufficient particulars to identify, without ambiguity, in time and location, the acts or omissions of the accused which constitute the crime. The indictment must also demonstrate a causal link between the alleged conduct and criminal consequences. An indictment should allege grounds for individual responsibility of the accused as principal perpetrator, or as an accomplice or as a superior with command responsibility for acts of his subordinates. Supporting material is not permitted to fill in any gaps in the material facts pleaded in the indictment. Rather, supporting material is used to ensure that there is sufficient evidence to support the material facts as they are set out in the indictment. The joint operation of Article 18 and Rule 47 is that the reviewing judge must be satisfied that the material facts pleaded in the indictment establish a *prima facie* case and that there

is evidence available which supports these material facts. (*Decision of the ICTY on Review of Indictment against Slobodan Milosevic et al.*)

4. In the present case, the indictment charges Simon Bikindi with conspiracy to commit genocide, direct and public incitement to commit genocide and with genocide or alternatively with complicity in genocide. The accused is also charged with two crimes against humanity committed by murder and persecution.
5. The Tribunal finds that the indictment sets forth the name and attainable particulars of the accused, a concise statement of the facts of the case and of the crimes alleged. The supporting materials give sufficient grounds to establish a *prima facie* case in respect of these alleged crimes.
6. However, with respect to the alternative charges for complicity in genocide, the Tribunal finds no basis for confirmation.
7. The Rules contain no specific provisions for alternative charges. Therefore, the Tribunal must apply the test as set out in Rule 47 which requires that an indictment shall set forth a concise statement of facts "of the crime with which the suspect is charged." This statement of facts is required in order to raise a *prima facie* case for any allegations of alternative crimes. The simple recitation of a legal text or of the legal elements of alternative crimes is insufficient. This is particularly important when the alleged alternatives do not correspond to the allegations as set forth in the general statement of facts or where the alternatives contradict or mutually exclude each other. Alternative charges are appropriate where conflicting evidence shows that a crime could have occurred in essentially different ways.
8. In Counts 2 and 3 the accused is alternatively charged with genocide and with complicity in genocide. The Indictment alleges that the accused was an accomplice to the killing or causing of serious bodily or mental harm with intent to destroy the Tutsi as a racial or ethnic group. The count of complicity in genocide is founded on the same facts as are used to support the Accused's responsibility as a principal perpetrator of genocide in Count 2. The indictment merely recites Article 6(1) of the Statute, which enumerates all possible modes of involvement in a crime as an actual perpetrator or as an accomplice. In this respect the indictment is contradictory since the identical conduct of the accused cannot constitute his responsibility as principal perpetrator and as accomplice. In order to establish a *prima facie* case for complicity in genocide, the Prosecutor must amend the indictment by clearly indicating the concise facts that would support this crime.

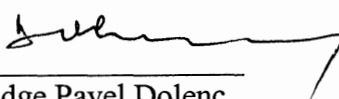
791

Prosecutor v. Simon BIKINDI, ICTR-2001-72-I

9. Consequently, for the above reasons, the Tribunal:

1. **CONFIRMS** counts 1, 2, 4, 5 and 6 of the indictment with regard to the responsibility pursuant Article 6(1) of the Statute only;
2. **DISMISSES** count 3, without prejudice.

Arusha, 5 July 2001



Judge Pavel Dolenc

Seal of the Tribunal