

ICTR-01-76-1
26-01-2004
(865 - 1863

865
Ivan



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER I

Before: Judge Erik Møse
Judge Jai Ram Reddy
Judge Sergey Alekseevich Egorov

Registrar: Adama Dieng

Date: 26 January 2004

2004 JAN 26 PM 3:30
ICTR

THE PROSECUTOR

v.

Aloys SIMBA

Case No. ICTR-2001-76-I

DECISION ON DEFENCE MOTION ALLEGING DEFECTS IN THE
FORM OF THE INDICTMENT

The Prosecutor

William T. Egbe
Sulaiman Khan
Amina Ibrahim

The Defence

Sadikou Ayo Alou
Francis Dako

fm

854

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“the Tribunal”)

SITTING as Trial Chamber I, composed of Judge Møse, presiding, Judge Jai Ram Reddy, and Judge Sergey Alekseevich Egorov (“the Chamber”);

BEING SEISED of the Defence “Preliminary Motion for Defects in the Form of the Indictment”, etc., filed on 31 October 2002;

CONSIDERING the Prosecution “Response” thereto, filed on 18 February 2003; and the Defence Reply thereto filed on 6 June 2003;

HEREBY DECIDES the Motion.

INTRODUCTION

1. The Indictment was confirmed on 8 January 2002, and the Accused pleaded not guilty to all four counts of the Indictment on 18 March 2002. The present motion was filed on 31 October 2002. On 18 February 2003, the Prosecution filed its submissions in opposition to the motion, arguing that the Indictment was not defective. However, on 28 November 2003, the Prosecution filed a motion requesting leave to amend its Indictment, conceding that it was, in part, an effort to respond to Defence requests for greater specificity in pre-trial motions. On 15 January 2004, the Defence filed a response opposing the amendments, partly because its effect was to improperly deprive the Chamber of the opportunity to decide the present motion.

SUBMISSIONS

2. The Defence asserts that all four counts in the Indictment are defective. The acts supporting the first count, genocide, are not sufficiently identified in time or place, rendering the charge impermissibly vague. The second count, complicity in genocide, is said to be defective because the names of some accomplices are redacted, depriving the Accused of the right to be informed of the nature of the charges against him. The third count, extermination as a crime against humanity, is indistinguishable, in law and in fact, from the second count and, therefore, should be treated as merged with the second count. It is also said to be unduly vague. The final count, murder as a crime against humanity, is also vague as it does not identify any victims by name, fails to allege the requisite connection to “widespread and systematic attacks”, and fails to allege the requisite discriminatory motive.

3. The Prosecution submitted a variety of arguments in opposition to the motion in its Response, but substantially changed its position when, on 28 November 2003, it filed a motion to amend the Indictment. The amendments to the Indictment are directly relevant to the defects raised by the Defence in its motion. In a separate decision filed today, the Chamber has granted leave to amend the Indictment.

DELIBERATIONS

4. A review of the Indictment, which the Prosecution has today been granted leave to file, shows that the defects raised by the Defence in respect of Counts One, Two and Four are

¹ Prosecutor’s Request for Leave to File an Amended Indictment, 28 November 2003, para. 6(i).

gk

863


significantly remedied. The particulars supporting the count of genocide are more detailed and more extensive than in the Indictment to which the Defence objected. The names of accomplices to the charge of complicity in genocide, previously redacted, have now been disclosed. The names of victims and more specific details as to time of commission have been included in support of the charge of murder. These changes substantially alter the basis of the Defence motion and render it moot in respect of these counts.

5. Count Three, charging the Accused with extermination as a crime against humanity, remains largely untouched by the amendments approved today. Nevertheless, a decision on the Defence motion on Count Three would be improper. The Chamber has no jurisdiction to decide motions on Indictments which have been superceded; nor to decide motions in respect of Indictment which did not exist at the time of filing. Should the Defence wish to maintain its objections, it must file a new preliminary motion directed at the current Indictment.


FOR THE ABOVE REASONS, THE CHAMBER

DECLARES the motion moot.

Arusha, 26 January 2004


Erik Møse
Presiding Judge


Jai Ram Reddy
Judge


Sergey Alekseevich Egorov
Judge

[Seal of the Tribunal]

