ICTR-00-61-I
29-03-2004
(1457 - 1453)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 29 March 2004

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THE PROSECUTOR

v.

Jean-Baptiste GATETE

Case No. ICTR-00-61-I

DECISION ON DEFENCE PRELIMINARY MOTION

Office of the Prosecutor
Richard Karegyesa
Andra Mobberley

Counsel for the Defence
Richard Dubé

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

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

BEING SEIZED of the "Requête de la défense en exceptions préjudicielles en vertu de l'article 72 du RPP", filed on 14 April 2003;

CONSIDERING the Prosecutor's Response, filed on 9 May 2003, and the Defence Reply, filed on 19 May 2003;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Indictment against the Accused was confirmed on 19 December 2000. He made his initial appearance on 20 September 2002.

SUBMISSIONS

2. The Defence submits that paragraphs 5.2.1 and 5.2.2 of the Indictment contain allegations that are beyond the temporal jurisdiction of the Tribunal, in that they refer to events before 1 January 1994. Referring to other paragraphs, the Defence asserts that the Indictment should mention the dates and venues of events and the names of participants, subordinates or victims of these events. The Defence argues that some paragraphs do not link the Accused to the events alleged.

3. The Prosecution submits that the material facts are sufficiently particularized in light of the large-scale nature of the crimes charged and the motion should be dismissed. The Indictment has to be read with the disclosure of Prosecution evidence. With respect to the dates of events, the Prosecution asserts that the range of dates in the Indictment, read together with precise locations and descriptions of the Accused's conduct, provide sufficient notice of the charges against the Accused. Regarding the names of co-conspirators, the Prosecution argues that some names are provided in paragraph 7.3. Other paragraphs provide sufficient notice by giving details of their participation, and professional categories or official designations. The Prosecution submits that it is not mandatory to provide names of victims. Describing them as belonging to a target group is sufficient, but the Prosecution notes that some names are given in paragraph 7.6. According to the Prosecution, allegations outside the temporal jurisdiction are permissible to place the events within their context.

4. In its reply, the Defence reiterates its motion and, in particular, objects to the Prosecution's arguments relating to the large-scale nature of the crimes as an explanation for lack of specificity.

DELIBERATIONS

5. Article 20(4)(a) of the Statute guarantees that the Accused shall be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her. Rule 47(C) of the Rules states that the Indictment shall set forth the name and particulars of the suspect, and a concise statement of the facts of the case and of the crime with which the suspect is charged. The purpose of the Indictment is to give the Accused sufficient notice of the charges against him so that he is able to prepare his defence.

Paragraphs 5.2.1 and 5.2.2

6. The Chamber notes that the two paragraphs refer to events that took place prior to 1 January 1994, whereas the temporal jurisdiction of the Tribunal is limited to events between 1 January and 31 December 1994. In *Nahimana et al.*, the Appeals Chamber held that an accused cannot be held accountable for his crimes committed prior to 1994, and that such events would not be referred to except for historical purposes or information.[1] However, in a separate and concurring opinion, Judge Shahabuddeen suggested that evidence of events prior to 1994 could form a basis upon which to draw reasonable inferences regarding elements of crimes committed within the temporal jurisdiction, for example, intent, if it is proved that the element existed during the commission of the crime in 1994. Such evidence can also be used to establish that a conspiracy agreement made before 1994 was fulfilled or renewed in 1994. Moreover, pre-1994 evidence may be admissible to prove a pattern, design or systematic course of conduct by the accused, or to provide background evidence.[2] The guidance provided in this separate opinion has formed the basis of subsequent case law of this Chamber, which has been confirmed on appeal.[3]

7. Paragraphs 5.2.1 and 5.2.2 of the Indictment allege that the Accused persecuted Tutsi and organized military training of the *Interahamwe* in the 1980's and 1990's. These paragraphs have been cited in Count 3, the charge of conspiracy against the Accused in the Indictment (paragraph 7.3). Since the paragraphs refer to a continuing offence such as conspiracy, such pre-1994 evidence is permissible to show that a conspiracy agreement may have been fulfilled or renewed in 1994. In this regard, the Chamber notes that the other paragraphs cited in support of the count of conspiracy, for example, paragraphs 5.2.3 and 5.2.4, refer to 1994 events.

8. The Defence additionally argues that these paragraphs are vague. The Chamber recalls that in *Kupreskic et al.*, the Appeals Chamber held that the issue was "whether [the Indictment] sets out the material facts of the Prosecution case with enough detail to inform a defendant clearly of the charges against him so that he may prepare his defence".[4] Where it is pleaded that the Accused personally committed the acts, the material facts, such as the identity of the victim, the time and place of events and the means by which the acts were committed, have to be

[1] *Nahimana et al.*, Decision on the Interlocutory Appeals (AC), 5 September 2000.
[2] *Ibid.*, Separate Opinion of Judge Shahabuddeen, in particular paras. 9-11, 14, 20-21, 32.
[3] *Nahimana et al.*, Judgement (TC), 3 December 2003, paras. 100-104; *Bagosora et al.*, Decision on Admissibility of Proposed Testimony of Witness DBY (TC), 18 September 2003; *Bagosora et al.*, Oral Decision on Admissibility of Parts of Witness DP's Testimony (TC), 2 October 2003; *Bagosora et al.*, Decision on Prosecutor's Interlocutory Appeals Regarding Exclusion of Evidence (AC), 19 December 2003; *Bagosora et al.*, Decision on Prosecutor's Motion for the Admission of Written Statements Under Rule 92*bis* (TC), 9 March 2004, paras. 35-37.
[4] *Kupreskic et al.*, Judgement (AC), 23 October 2001, para. 88.

pleaded in detail. However, the Appeals Chamber noted that in some cases, the "sheer scale" of the crimes makes it impracticable to require a high degree of specificity. Nevertheless, if the Prosecution is in a position to name the victims, it should do so. In *Kupreskic*, the Accused's presence during the killing of six people was not deemed to be a case where the sheer scale of the crime prevented precision in the Indictment. In situations where the Prosecution does not have the necessary information, doubt arises as to whether it is fair to the Accused for the trial to proceed, as the Prosecution is expected to know its case before it goes to trial.[5]

9. The Chamber notes that paragraphs 5.2.1 and 5.2.2 refer to acts committed by the Accused. It is not apparent that these paragraphs refer to large-scale events, where the requirement of provision of further detail would be impracticable. Therefore, the Prosecution should provide names, places, dates and any other information it has regarding these allegations, as these constitute material facts to be pleaded in detail.

Dates and Names of Persons/Places

10. The Defence seeks more details as to dates of events and names of persons, both participants and victims, and places with respect to paragraphs 5.2.3, 5.2.4, 5.2.8, 5.2.11, 5.2.12, 5.2.15, 5.2.16, 5.3.2 and 5.3.3 of the Indictment.

11. Applying the principles in *Kupreskic* as outlined above, the Chamber notes that paragraphs 5.2.3, 5.2.4, 5.2.8, 5.2.11, 5.2.12, 5.2.16 and 5.3.3 refer to acts of the Accused, which are not large-scale in nature. Therefore, the Prosecution should provide more specific information with respect to these paragraphs.

12. Paragraph 5.2.15 refers to acts committed by the Accused during an attack on a parish when several thousand Tutsi were allegedly killed. The sheer scale of the crime alleged may make it impracticable to provide details as to names of victims, as requested by the Defence. If so, the Prosecution is not required to provide the precision requested. However, if the Prosecution has the names of any of the victims, it should provide this information to the Defence.

13. With respect to paragraph 5.3.2, which also refers to acts committed by the Accused during attacks against a parish in which many refugees were killed, the crime alleged may be in the nature of a large-scale crime as envisaged in *Kupreskic*. Whilst further precision relating to the names of the victims may not be practicable in this case, the Prosecution should provide any names if it is able to do so. With respect to the Defence request for the name of the priest and the *Interahamwe* mentioned in this paragraph, the Chamber considers that the Prosecution should provide this information, if it is in a position to do so.

14. The Defence also seeks, in respect of paragraphs 5.2.5, 5.2.10, 5.2.14, 5.2.16, 5.3.5 and 5.3.6 of the Indictment, disclosure of the names of the witnesses to the statements contained in those paragraphs, which were allegedly made by the Accused. Similarly, the Defence seeks disclosure of the lists mentioned in paragraph 5.2.8 of the Indictment. These are matters to be

[5] *Ibid.*, paras. 89-92.

resolved in connection with disclosure of witness statements and filing of the pre-trial brief, not within the framework of a motion regarding defects in the form of the Indictment.

15. The Defence submits that paragraphs 5.3.1, 5.3.2 and 5.3.9 of the Indictment do not allege any wrongdoing by the Accused. This does not relate to the form of the Indictment and is not properly raised in such a motion. In any event, it is noted that the Accused is being charged with superior responsibility and therefore with responsibility for the acts of others.

16. Finally, although this matter has not been raised in the motion, the Chamber observes that the present Indictment appears unduly long. Reference is made, for instance, to section 4 entitled "Historical and Political Context of Events", which seems largely unnecessary. The Prosecution is advised to bear this in mind in connection with its revision of the Indictment.

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the motion in part and **ORDERS** the Prosecution to amend the Indictment to provide more specific information in relation to paragraphs 5.2.3, 5.2.4, 5.2.8, 5.2.11, 5.2.12, 5.2.16 and 5.3.3 of the Indictment, except where they relate to disclosure of lists or names of witnesses;

FURTHER ORDERS the Prosecution, if it is in possession of such information, to provide the name of the priest and *Interahamwe* mentioned in paragraph 5.3.2 of the Indictment;

FURTHER ORDERS the Prosecution, if it is in possession of such information, to provide the names of victims mentioned in paragraphs 5.2.15 and 5.3.2 of the Indictment.

Arusha, 29 March 2004

Erik Møse
Presiding Judge

Jai Ram Reddy
Judge

Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]