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NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

ICTR-98-44-T  
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OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Andréia Vaz, Presiding  
Flavia Lattanzi  
Florence Rita Arrey

**Registrar:** Adama Dieng

**Date:** 7 April 2004

**THE PROSECUTOR**

v.

Édouard KAREMERA  
Mathieu NGIRUMPATSE  
Joseph NZIRORERA  
André RWAMAKUBA

*Case No. ICTR--98-44-T*

JUDICIAL RECORDS SECTION  
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ICTR

**DECISION ON THE PRELIMINARY DEFENCE MOTION TO DISMISS THE  
AMENDED INDICTMENT FOR DEFECTS IN FORM**

*Rule 72 of the Rules of Procedure and Evidence*

**Defence Counsel:**  
Peter Robinson

**Defence Counsel of the Co-Accused:**  
Dior Diagne and Félix Sow  
Charles Roach and Frédéric Weyl  
David Hooper and Andreas O'Shea

**Office of the Prosecutor:**  
Don Webster  
Dior Sow Fall  
Holo Makwaia  
Gregory Lombardi  
Bongani Dyani  
Tamara Cummings-John  
Ayo Fadugba  
Sunkarie Ballah-Conteh

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**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (“Tribunal”),

**SITTING** as Trial Chamber III, composed of Judges Andrésia Vaz, Presiding, Flavia Lattanzi and Florence Rita Arrey (“Chamber”);

**BEING SEIZED** of the “Preliminary Motion to Dismiss for Defects in Form of the Amended Indictment” submitted by the Defence for Joseph Nzirorera (“Defence”) on 24 March 2004 (“Motion”);

**CONSIDERING** the Prosecutor’s Response to the Motion filed on 29 March 2004 (“Response”);

**CONSIDERING** the Statute of the Tribunal (“Statute”) and the Rules of Procedure and Evidence (“Rules”);

**NOW DECIDES**, pursuant to Rule 72 (A) of the Rules, solely on the basis of the written briefs filed by the parties.

**I. Parties’ submissions**

*Defence*

1. The Defence for Joseph Nzirorera moves the Chamber, pursuant to Rules 72 (A) (ii) and 73 of the Rules, to dismiss the Amended Indictment on the grounds that it fails to allege the essential elements of the crimes charged and to provide adequate specificity to give fair notice to the Accused of the case he has to meet.

2. The Defence submits numerous detailed objections to the Amended Indictment:

(i) The Defence essentially submits that the Prosecutor failed to allege all elements of the crime in view of Count 1 (paragraphs 5 ff. of the Motion), Count 2 (par. 10 ff.), Count 4 (par. 23 ff.), Count 5 (par. 30 ff.), Count 6 (par. 35 f.) and Count 7 (par. 39 ff.).

(ii) The Defence submits that the Prosecutor did not establish the means upon which he intends to base the responsibility of the Accused according to Article 6 (1) and (3) of the Statute in view of all Counts.

(iii) The Defence further alleges over 100 instances in which it perceives a “lack of specificity” and requests redress for these alleged shortcomings (see par. 58, 60, 62, 64, 66, 68, 70, 72, 74, 76, 78, 80, 82, 84, 86, 88, 90, 92, 94, 96, 98, 100, 102, 104, 106, 108, 110, 112, 114, 116, 118, 120, 122, 124, 126, 128, 130, 132, 134, 136, 138, 140, 142, 144, 146, 148, 150, 152, 154, 156, 158, 160, 162, 164, 166, 168, 170, 172, 174, 176, 178, 180 of the Motion).

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**Prosecution**

3. The Prosecutor demands the dismissal of the Defence application for being unfounded.
4. In his reply, the Prosecutor essentially submits:
  - (i) The language of the current pleadings is legally sufficient. The essential elements of the crimes are charged. The Defence ignores the context of single paragraphs and objects to the indictment's language only due to this omission.
  - (ii) The Defence confuses the Prosecutor's burden of specificity at trial with his obligation to plead all material facts to support the alleged crimes.
  - (iii) The nature of many issues raised by the Defence is evidentiary.
  - (iv) The allegations of "lack of specificity" are without merits.

**II. Deliberations**

5. As a preliminary observation, the Chamber notes that it will review the allegations raised by Defence only in so far as they refer to new charges. In this regard, the Chamber recalls that the right to file further preliminary motions after the amendment of an indictment, as contained in Rule 50 (C) of the Rules, does not pertain to objections against the indictment in its entirety, but only to motions "in respect of the new charges". In the present case, the Defence raises various objections against specific allegations that were already contained in the Indictment of 21 November 2001.

6. In view of the Defence allegations that the Amended Indictment fails in mentioning all elements of the crimes that the Accused is charged with, the Chamber is satisfied that the requirements of Rule 47 (C) of the Rules<sup>1</sup> have been met. The Chamber observes that the Prosecutor's obligation to cite the legal provisions of the Statute which

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<sup>1</sup> For the interpretation of Rule 47 (C) see *Prosecutor v. Kupreskic et al*, Case No. IT-95-16-A, Judgement, 23 October 2001, par. 88: "[...] Rule 47(C) of the Rules provides that an indictment, apart from the name and particulars of the suspect, shall set forth "a concise statement of the facts of the case". The Prosecution's obligation to set out concisely the facts of its case in the indictment must be interpreted in conjunction with Articles 21 (2) and (4)(a) and (b) of the Statute. These provisions state that, in the determination of any charges against him, an accused is entitled to a fair hearing and, more particularly, to be informed of the nature and cause of the charges against him and to have adequate time and facilities for the preparation of his defence. In the jurisprudence of the Tribunal, this translates into an obligation on the part of the Prosecution to state the material facts underpinning the charges in the indictment, but not the evidence by which such material facts are to be proven. Hence, the question whether an indictment is pleaded with sufficient particularity is dependent upon whether it 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."

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support his charges<sup>2</sup> is complied with. The pertinent legal provisions are precisely and unequivocally referred to. It is not necessary that the Amended Indictment incorporates their wording, as the Defence seems to suggest.<sup>3</sup> In the present case, the Prosecutor's references to the pertinent Articles of the Statute are instantly recognizable and clear enough to provide the Accused with sufficient notice of the legal basis of the charges against him. The Chamber is therefore satisfied that the Amended Indictment portrays that the Accused is charged with:

- (i) personally having the specific intent to destroy an ethnical group as such and fulfilling all elements of the crimes in view of Counts 1, 2 and 4;
- (ii) personally having the *mens rea* in respect of all factual and mental elements of the Crimes against Humanity (Rape and Extermination) in view of Counts 5 and 6; and
- (iii) personally having the *mens rea* to commit crimes in the sense of Article 4 of the Statute as detailed in Count 7.

Consequently, the Chamber perceives in this regard no defect in the form of the Amended Indictment in the light of the requirements established by Rule 47 (C) of the Rules.

7. In view of the Defence assertion that the Amended Indictment is deficient for failure to substantiate that the Accused has substantially contributed to the crime of genocide, the Chamber recalls the ruling of Trial Chamber II in the present case that the indictment

“... must be considered in its totality and it would be incorrect to make a conclusion as to any defect in it upon a selective reading of only certain of its paragraphs”.<sup>4</sup>

The Chamber observes that it clearly results from the Amended Indictment's context, and especially from its paragraph 41<sup>5</sup>, that the Prosecutor imputes to the Accused having substantially contributed to the crime of genocide. The Chamber therefore considers the allegations of the Defence in view of Count 4 to be without merit.

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<sup>2</sup> Cf. *Prosecutor v. Delalic*, Case No. IT-96-21, Decision on Motion by the Accused Zejnil Delalic Based on Defects in the Form of the Indictment, 2 October 1996, par. 15.

<sup>3</sup> See also *Prosecutor v. Kvočka*, Case No. IT-98-30/1, Decision on Defence Preliminary Motions on the Form of the Indictment, 12 April 1999, par. 36.

<sup>4</sup> See *Prosecutor v. Karemera*, Case No. ICTR-98-44-T, Decision on the Defence Motion, Pursuant to Rule 72 of Rules of Procedure and Evidence, Pertaining to, *Inter Alia*, Lack of Jurisdiction and Defects in the Form of the Indictment, 25 April 2001, par. 19.

<sup>5</sup> Par. 41 of the Amended Indictment reads: “The allegations contained in paragraphs 22 through 39, above, are reiterated and incorporated herein by reference as a concise statement of facts to support the charges under this specific count of the Indictment.”

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8. The Chamber observes that the assertions of the Defence in view of lacking allegations in respect of Article 6 (1) and (3) of the Statute pertain to the substance of the Amended Indictment, rather than to its form. The means under Article 6 (1) of the Statute to commit the alleged crimes and the elements of superior responsibility in the sense of Article 6 (3) of the Statute concern questions which are to be determined at trial<sup>6</sup>. The corresponding objections by the Defence cannot be entertained under Rule 72 (A) (ii) of the Rules, and can only be raised at a later stage.

9. In view of the numerous instances where the Defence alleges that the Amended Indictment lacks specificity, the Chamber observes that an indictment must describe the facts it refers to with sufficient detail in order to give the Accused notice of the charges he will be facing at trial<sup>7</sup>. The Chamber is satisfied that the acts, omissions, events, locations, dates and other circumstances that paragraphs 58, 60 (C), 62 (C), 64 (B), 64 (F), 76 (D), 76 (E), 76 (F), 78 (B), 80 (A), 82 (A), 82 (B), 82 (C), 90, 92, 94, 96, 98 (A), 100, 102 (A), 102 (C), 104 (A), 104 (B), 106 (B), 108 (A), 108 (B), 110 (A), 112 (A), 116 (A), 116 (B), 118, 120 (B), 120 (C), 124, 126, 132, 136 (C), 136 (D), 138, 140, 142, 144 (C), 146, 148 (second objection), 150, 152 (B), 154 (A), 154 (B) (second objection), 154 (D), 158 (C), 160 (A), 160 (B), 160 (E), 162 (A), 164 (B), 166 (C), 168 (C), 170, 172 (A), 174 (A), 174 (C), 178, 180 (A) and 180 (B) refer to are described in a sufficiently precise and detailed way to enable the Accused to prepare his defence<sup>8</sup> and to avoid prejudicial surprise. The Prosecutor's allegations are specific enough to give the Accused due notice of the charges he will be facing at trial. In this respect, there are no shortcomings in the Amended Indictment that the Chamber would need to redress.

10. With regard to the allegations contained in paragraphs 60 (B), 62 (B), 66 (A), 68, 74, 76 (A), 78 (A), 84, 86, 88, 96, 98 (B), 102 (B), 106 (A), 108 (A) (first and second objection), 110 (B), 112 (B), 114, 116 (C), 122, 128 (B), 130 (B), 130 (C), 136 (A), 136 (B), 144 (A), 144 (B), 144 (C) (first objection), 154 (B) (first objection), 156, 158 (B), 160 (B), 172 (B), 174 (B), 176 (A), 178 (second and third objection), 180 (A) (second and third objection) and 180 (B), the Chamber considers that the degree of precision requested by the Defence is excessive. Given the nature and the extent of the Prosecutor's charges and the enormity of the events which occurred in Rwanda in 1994<sup>9</sup>,

<sup>6</sup> Cf. *Prosecutor v. Bikindi*, Case No. ICTR-2001-72-I, Decision on the Defence Motion Challenging the Temporal Jurisdiction of the Tribunal and Objecting to the Form of the Indictment and on the Prosecutor's Motion Seeking Leave to File an Amended Indictment, 22 September 2003, par. 24: "It is settled law that matters of proof of intent are inferences to be made from the evidence. It is open to a Chamber to make any number of inferences from the evidence. One inference may be that the evidence suggests a lack of any criminal intent. Another inference may be that there is intent sufficient to prove one crime but not another. Such inferences ought to be made by the Chamber at trial. The Prosecutor is not required to predict with certainty what inferences the Chamber might make on the set of alleged facts. That is why charges may properly be made in the alternative."

<sup>7</sup> Cf. *Prosecutor v. Delalic*, loc. cit., *passim*.

<sup>8</sup> This criterion has been well established in the Tribunal's jurisprudence; see only *Prosecutor v. Rukundo*, Case No. ICTR-2001-70-I, Decision on Preliminary Motion, 26 February 2003, par. 22.

<sup>9</sup> Cf. *Prosecutor v. Nahimana*, Case No. ICTR-96-11, Decision on the Preliminary Motion Filed by the Defence Based on Defects in the Form of the Indictment, 24 November 1997, par. 30: "... The Chamber acknowledges that, given the particular circumstances of the conflict in Rwanda and the alleged crimes, it could be difficult to determine the exact times and places of the acts with which the accused is charged."

the Defence exaggerates the burden of specificity that it seeks to impose on the Prosecutor at the current stage. The Defence requests a degree of detail which is not necessary for the preparation of the defence of the Accused against the charges he will be facing at trial and, furthermore, interferes with the right of the Accused to be tried without undue delay. The Chamber is therefore satisfied that, in this regard, the Amended Indictment does not suffer from any defects in form.

11. With regard to the Defence objections contained in paragraphs 72, 128 (A), 128 (B), 128 (C) and 168 (A), the Chamber considers that paragraphs of an introductory or summarizing nature do not require the same degree of precision as concrete allegations in so far as they are to be read in the light of the latter<sup>10</sup>. The Chamber has already made this observation in a previous Decision with respect to a summarizing paragraph in the Amended Indictment<sup>11</sup>. It is therefore satisfied that the contested paragraphs of the Amended Indictment are not affected with formal defects.

12. The Defence objection contained in paragraph 70 alleges an editorial flaw of the Amended Indictment, submitting that the paragraph refers to all counts while it figures under the headline of "Count 1". However, the Chamber observes that the contested paragraph is indicating a precise time frame. Furthermore, throughout the Amended Indictment, the Prosecutor specifies the dates of acts and omissions that the Accused is charged with. The Chamber is satisfied that the Prosecutor gives these indications in good faith and to the best of his knowledge. Hence, the Chamber perceives, in this regard, no defect in the form of the Indictment in the sense of Rule 72 (A) (ii) of the Rules.

13. Numerous objections raised by the Defence, such as the allegations contained in paragraphs 60 (A), 62 (A), 64 (C), 64 (D), 64 (E), 66 (B), 76 (B), 76 (C), 84, 100, 120 (A), 122, 126, 128 (C), 130 (A), 134, 136 (C), 136 (D), 144 (C), 144 (D), 148 (first objection), 150, 152 (A), 154 (C), 158 (A), 160 (C), 160 (D), 162 (B), 164 (B), 166 (B), 166 (C), 168 (B), 172 (C), 174 (A), 178 (first objection) and 180 (A) (first objection), refer rather to factual issues than to defects in form. In any given indictment, the alleged facts are outlined, albeit not buttressed by evidence. Factual issues will be dealt with at trial during the presentation of evidence. At the current stage of proceedings, the Chamber perceives no necessity to accommodate the Defence request for additional particulars.

14. The Defence objections contained in paragraphs 64 (A)<sup>12</sup>, 164 (A) and 166 (A) refer rather to the content than to the form of the Amended Indictment and can therefore not be reviewed under Rule 72 (A) (ii). In addition, the Chamber holds that the Defence's assertions that the Prosecutor's allegations are irrelevant or unnecessary - see paragraphs

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<sup>10</sup> Cf. *Prosecutor v. Delalic*, loc. cit., par. 8.

<sup>11</sup> Decision of 13 February 2004, par. 49, reads: « La Chambre est d'avis que le paragraphe 66 de l'acte proposé constitue une conclusion générale relative aux allégations contenues dans les paragraphes précédents et qu'il n'ajoute pas de nouvelles charges à l'encontre des Accusés. Ce paragraphe, qui est contesté par la Défense, ne porte aucun préjudice aux Accusés. »

<sup>12</sup> Moreover, the Chamber recalls in respect to this objection par. 48 of its Decision of 13 February 2004.

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164 (A) and 166 (A) - do not concern defects in the form of the Amended Indictment in the sense of Rule-72 (A) (ii) of the Rules.

**FOR THE ABOVE REASONS,**

**THE CHAMBER**

**DISMISSES THE MOTION.**

Arusha, 7 April 2004



Andréia Vaz  
Presiding Judge



Flavia Lattanzi  
Judge



Florence Rita Arrey  
Judge

