



ICTR-01-76-I
14-07-2004
(2584-2580)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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S. MUSA

OR: ENG

TRIAL CHAMBER I

Before: Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov
Judge Emile Short

Registrar: Adama Dieng

Date: 14 July 2004

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THE PROSECUTOR

v.

Aloys SIMBA

Case No. ICTR-01-76-I

Decision on the Defence's Preliminary Motion Challenging the Second Amended Indictment

Office of the Prosecutor:

William T. Egbe
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Counsel for the Defence

Sadikou Ayo Alao
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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“the Tribunal”);

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

BEING SEIZED OF the “Requête de la Defense en Exception Préjudicielles et en Incompétence pour Vices de Forme Substantiels Contre l’Acte d’Accusation Modifié en Date du 10 Mai 2004 (Articles 72 et 73 du RPP)”, filed on 9 June 2004, the annex thereto filed on 15 June 2004, and the corrigendum to the motion, filed on 16 June 2004;

CONSIDERING the Prosecution’s response filed on 16 June 2004;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Indictment against Aloys Simba was confirmed on 8 January 2002. A first amended Indictment was filed on 27 January 2004, adding an allegation that the Accused participated in a joint criminal enterprise. The Defence filed a preliminary motion challenging defects in the first amended Indictment on 16 April 2004. In its decision filed on 6 May 2004, the Chamber ordered the Prosecutor to plead the *mens rea* of the Accused or his alleged partners in the joint criminal enterprise. The Chamber also ordered the Prosecutor to plead that the alleged murders in Count 4 were part of the widespread and systematic attack and that the gendarme was part of the civilian population. The Prosecution filed a second amended Indictment on 10 May 2004, which forms the basis of the present challenge. The trial is scheduled to begin on 16 August 2004.

SUBMISSIONS

2. In its motion filed on 9 June 2004, the Defence argues that, notwithstanding the Prosecutor’s amendments, the second amended Indictment still fails to adequately plead the *mens rea* element for joint criminal enterprise and also fails to adequately link the murders alleged in Count 4 (Murder as a Crime Against Humanity) to the widespread and systematic attack. On 15 June 2004, the Defence submitted the annex mentioned in its motion. This annex contained a copy of earlier pleadings submitted by the Defence on the issue, most of it irrelevant to the two narrow issues framed in the Defence’s motion. On 16 June 2004, the Defence submitted a corrigendum to its motion, largely rectifying grammatical errors in the original motion.

3. In its response, the Prosecutor asserts that the amendments made to the indictment filed on 10 May 2004 fully comply with the Chamber’s decision of 6 May 2004.

DELIBERATIONS

4. At the outset, the Chamber emphasizes its profound dissatisfaction with the Defence’s practice of submitting its motions in a piecemeal fashion, particularly where its supplementary pleadings primarily contain irrelevant material or corrections of an editorial nature, as in the present motion. This practice wastes scarce judicial time and resources by placing an

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unnecessary burden on the Chamber to review these multiple submissions and on the Registry which is tasked with filing, copying, circulating, and translating these largely superfluous documents. It further reflects a lack of diligence on the part of Lead Counsel in preparing his initial submissions. The Lead Counsel for the Defence must exercise greater care in preparing his initial pleadings. Should this practice continue, the Chamber will consider imposing an appropriate sanction, particularly if the Defence is billing these unnecessary submissions.

Joint Criminal Enterprise

5. The Appeals Chamber has explained that joint criminal enterprise is a form of "commission" within the meaning of Article 6(1) of the Statute.¹ The mode and extent of an accused's participation in an alleged crime are always material facts that must be clearly set forth in the indictment.² If the Prosecutor intends to rely on the theory of joint criminal enterprise, the indictment should plead this in an unambiguous manner and specify upon which of the three recognized forms of joint criminal enterprise the Prosecutor will rely: basic, systematic, or extended.³

6. The Chamber notes that the indictment only refers to joint criminal enterprise without specifying the particular form. In the Chamber's view, the indictment's failure to point to a particular form of joint criminal enterprise reflects the Prosecution's intention to rely on all three forms.⁴ Consequently, the indictment must plead the distinct *mens rea* for each form of joint criminal enterprise. In assessing an indictment, the Chamber is mindful that each paragraph should not be read in isolation but rather should be considered in the context of the other paragraphs in the indictment.⁵

7. In response to the Chamber's decision of 6 May 2004, the Prosecutor amended the indictment to include the following allegation at paragraph 58: "Aloys Simba intended to commit the acts above, this intent being shared by all other individuals involved in the crimes perpetrated."

8. The requisite intent for the basic form of joint criminal enterprise is the intent to perpetrate a certain crime.⁶ Paragraph 58 asserts that the Accused intended to commit the acts enumerated in the indictment.⁷ Though this is somewhat conclusory, it suffices in the context of the indictment as a whole given that an intention to participate in a crime can be reflected by an individual's words and actions or inferred from surrounding circumstances. Therefore, notice of the

¹ *Vasilejevic*, Judgement (AC), para. 95 (referring to Article 7(1) of the ICTY Statute which is identical to Article 6(1) of the ICTR Statute).

² *Ntagerura et al*, Judgement (TC), para. 31. See also *Krnojelac*, Judgement (AC), para. 138.

³ *Ntagerura et al*, Judgement (TC), para. 34. See also *Krnojelac*, Judgement (AC), para. 138; *Prosecutor v. Mejakic*, Case No. IT-02-65-PT, Decision on Zeljko Mejakic Preliminary Motion on the Form of the Indictment, 14 November 2003, p. 3. For a description of each form of joint criminal enterprise, see generally *Vasilejevic*, Judgement (AC), paras. 97-99.

⁴ This is also confirmed by the Pre-Trial Brief. See Pre-Trial Brief, para. 127. The Chamber notes that the pre-trial brief may be used as a source of information to provide additional information concerning the Prosecutor's theory of its case. See *Ntagerura et al*, Judgement (TC), para. 66; *Krnojelac*, Judgement (AC), para. 138.

⁵ *Rutaganda*, Judgement (AC), para. 304; *Ntagerura et al*, Judgement (TC), para. 30.

⁶ *Vasilejevic*, Judgement (AC), para. 101.

⁷ Paragraph 65 of the Indictment also mentions that the acts in the indictment were done intentionally.

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Accused's as well as the other participants' intention to commit the crime's enumerated in the indictment, which form the purpose of the joint criminal enterprise, is reflected not only by paragraph 58, but also by the allegations of his repeated actions in furtherance of committing the enumerated crimes and allegations detailing the circumstances in which they were committed.⁸

9. The requisite intent for the systemic form of joint criminal enterprise is personal knowledge of the system of ill-treatment, as well as the intent to further this system of ill-treatment.⁹ The Appeals Chamber has noted that personal knowledge of the system of ill-treatment can be proven by express testimony or a matter of reasonable inference from the accused's position of authority.¹⁰ The indictment does not contain a specific conclusory allegation asserting personal knowledge and the intent to further a system of ill-treatment. Nonetheless, the Chamber is satisfied that the requisite intent is adequately pleaded in the indictment's numerous allegations that the accused was in a position of authority and planned, participated in, or was present during the alleged crimes, which if proven would reflect knowledge of ill-treatment and an intent to further it.

10. The requisite intent for the extended form of joint criminal enterprise is the intent to participate in the common criminal purpose and awareness that the commission of such a crime was a possible consequence of the execution of that enterprise, and with that awareness, the accused decided to participate in that enterprise.¹¹ In the Chamber's view, given that *mens rea* can be proven by an individual's words and actions or inferred from surrounding circumstances, the indictment adequately pleads the accused's intent to participate in the extended form of joint criminal enterprise from the numerous allegations of his authority, his statements to assailants, acts of planning, participation in, and presence during numerous attacks.

11. Consequently, the Chamber does not find merit in the Defence's challenge to the indictment's pleading of *mens rea* for joint criminal enterprise.

Murder as a Crime Against Humanity

12. A crime against humanity must have been committed as part of a widespread or systematic attack against any civilian population on discriminatory grounds.¹² Although the act need not be committed at the same time and place as the attack or share all of the features of the attack, it must, by its characteristics, aims, nature, or consequence, objectively form part of the discriminatory attack.¹³

13. Responding to the Chamber's decision concerning Count 4 (Murder as a crime Against Humanity), the Prosecutor amended the indictment to add an allegation at paragraph 66 incorporating the previous 65 paragraphs of the indictment into the charge of murder. This incorporated into the murder count the general allegations of a widespread or systematic attacks

⁸ In addition, Paragraphs 23 and 24 of the Indictment plead material facts relevant to the specific intent of genocide and instigation, which are also relevant to establishing the general intent to commit the underlying crimes.

⁹ *Vasilejevic*, Judgement (AC), para. 101.

¹⁰ *Vasilejevic*, Judgement (AC), para. 101.

¹¹ *Vasilejevic*, Judgement (AC), para. 101.

¹² *Semanza*, Judgement (TC), para. 326.

¹³ *Semanza*, Judgement (TC), para. 326.

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directed against a civilian population and the specific allegations of particular massacres and preparatory acts contained in paragraphs 1 through 65 of the Indictment.

14. In the Chamber's view, having read each paragraph in the context of the other paragraphs in the indictment, the allegations contained Count 4, charging murder, are adequately connected to the widespread and systematic attack.

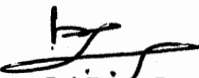
15. Paragraphs 67 and 68 of the second amended indictment refer to the killing of a Tutsi gendarme at the barracks of the Gendarmerie in Gikongoro Town. Mindful that the murder as a crime against humanity must be committed against the civilian population, the Chamber ordered the Prosecutor to plead that the gendarme was part of a civilian population. In response to the Chamber's order, the Prosecution added the following paragraph: "The Killing (*sic*) of the Tutsi gendarme was part of the campaign against Tutsi civilians." In the Chamber's view, this is a conclusory allegation that does not plead the material facts indicating how the murder of the gendarme formed part of the civilian population. Nonetheless, the Chamber notes that other paragraphs in the indictment concerning the massacres forming the widespread and systematic attack refer to the Accused's orders to identify the number of Tutsis in the gendarmerie (paragraph 37) as well as instructions to soldiers to shoot attackers who displayed cowardice during attacks (paragraph 31). As such, the Chamber will reserve its finding on whether to disregard or dismiss the allegation due to vagueness or lack of jurisdiction after hearing the evidence adduced at trial and further legal arguments of the parties.

16. Paragraphs 69 and 70 of the second amended indictment refer to the alleged murder by the Accused of Gasana, a deputy prosecutor, as well as Monique Munyana, a primary school teacher, and her child on or about 21 April 1994 near Kaduha Trading Centre. Paragraphs 27 through 34 of the second amended Indictment, which are incorporated in the Count 4, refer to multiple attacks against Tutsi civilians culminating in the massacre of thousands of civilians at Kaduha parish on or around 21 April 1994. Given the temporal and geographic proximity of the three murders to the broader attack at Kaduha parish, the alleged participation of the Accused in both events, the allegation that thousands of mostly Tutsi civilians were killed in the area, the apparent civilian status of the three murder victims, the Chamber is satisfied that the Indictment adequately pleads that these three individual murders objectively form part of the discriminatory attack.

FOR THE ABOVE REASONS, THE CHAMBER

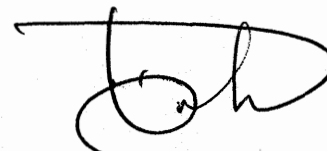
DENIES the Defence motion.

Arusha, 14 July 2004


Jai Ram Reddy
Presiding Judge


Sergei Alekseevich Egorov




Emile Short
Judge