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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Flavia Lattanzi
Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 11 May 2005

THE PROSECUTOR

v.

Simon BIKINDI

Case No. ICTR-2001-72-PT

JUDICIAL RECORDS/ARCHIVES
ICTR
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**DECISION ON THE AMENDED INDICTMENT AND THE TAKING
OF A PLEA BASED ON THE SAID INDICTMENT**

Article 19 of the Statute, Rule 50 of the Rules of Procedure and Evidence

Office of the Prosecutor:
William Egbe
Amina Ibrahim

Defence Counsel
Wilfred Ngunjiri Nderitu

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ("Tribunal"),

SITTING as Trial Chamber III composed of Judge Dennis C. M. Byron, Presiding, Judge Flavia Lattanzi and Judge Gberdao Gustave Kam ("Chamber");

BEING SEIZED of the "Defence Motion Challenging the Legality of the Taking of a Plea Based on the Amended Indictment Dated the 22nd October 2003 and Objecting to the Form of the Said Indictment", filed on 5 April 2004;

CONSIDERING the "Prosecution Response to Defence Motion Challenging the Legality of the Taking of a Plea Based on the Amended Indictment Dated the 22nd October 2003 and Objecting to the Form of the Said Indictment", filed on 7 May 2004; the Defence "Reply to Prosecutor's Response to Defence Challenging the Legality of the Taking of a Plea Based on the Amended Indictment Dated the 22nd October 2003 and Objecting to the Form of the Said Indictment", filed on 14 May 2004; the "Prosecution Further Response to Defence Motion Challenging the Legality of A Plea Based on the Amended Indictment Dated the 22nd October 2003 and Objecting to the Form of the Said Indictment", filed on 31 August 2004; the Defence "Reply to Prosecutor's Further Response to Defence Motion Challenging the Legality of a Plea Based on the Amended Indictment Dated the 22nd October 2003 and Objecting to the Form of the Said Indictment", filed on 8 September 2004;

NOTING that the Prosecutor has filed two Submissions of Particulars respectively on 22 October 2003, and 1 February 2005;

RECALLING the Decision on the Defence "Urgent Application for Stay of Proceedings and for Suspension of the 30-Day Period Pursuant to Rule 50(C) of the Rules of Procedure and Evidence", filed on 24 March 2004;

RECALLING the 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 delivered on 22 September 2003 ("Decision of 22 September 2003");

CONSIDERING the Statute of the Tribunal ("Statute") and the Rules of Procedure and Evidence ("Rules");

NOW DECIDES the matter on the basis of the briefs of the parties, pursuant to Rule 73(A) of the Rules.

INTRODUCTION

1. Simon Bikindi has been indicted for Conspiracy to commit genocide, Genocide or alternatively Complicity in genocide, Direct and public incitement to commit genocide, and Murder and Persecution as Crimes against humanity. On those six counts, he pleaded not guilty at his initial appearance on 4 April 2002. On 22 September 2003, the Chamber granted leave to amend the Indictment and partly granted a Defence Motion by requiring the Prosecutor to provide particulars. Pursuant to that Decision, the Prosecutor has filed an Amended Indictment and two Submissions of Particulars. In the meantime, the Accused had

entered a not guilty plea to the Amended Indictment at a Further Initial Appearance on 8 March 2004. The Defence now moves to have the Amended Indictment declared invalid on the ground that it was never confirmed. Alternatively, the Defence alleges that there were an abuse of process and some defects in the Amended Indictment. However, as a preliminary matter, the Defence requests the Chamber not to consider the Prosecutor's Response.

DISCUSSIONS

Lateness of the Prosecutor's Response

2. The Defence complains that the Prosecutor's Response has not been filed within the time prescribed by the rules, and requests the Chamber not to consider it. The Prosecutor justifies the lateness in filing his response by stating that his arguments were already before the Chamber and that the issues raised by the Defence have already been decided upon by the Trial Chamber. In the interests of justice and because of the nature of the Defence Motion, the Chamber has considered the Prosecutor's response.

Confirmation of the Amended Indictment

3. This is the third occasion on which the Defence has argued that the Amended Indictment and the pleas based on it are invalid because the Amended Indictment was not confirmed. The Chamber recalls its two Decisions¹ denying both arguments, taken at the Further Initial Appearance and in its written Decision of 24 March 2004. Those two issues are raised again, while they are already *res judicata*. The Motion and its ancillary applications in that regard falls therefore to be dismissed.

Abuse of Process

4. The Defence alleges that there is a wilful misrepresentation and an abuse of process by the Prosecutor, because four of the six statements in support of the new allegations were interviews conducted before 4 July 2001 when the original Indictment was filed. The Accused also submits that the witness statements of AHZ, AJJ and AJK were not disclosed in due time, pursuant to Rule 66(A)(i) of the Rules, and that the statement of ALQ is not valid because it was signed after the Decision granting leave to amend the Indictment.

5. The Chamber notes that some of the interviews disclosed to the Defence were recorded before the original Indictment was filed. However, the Chamber accepts the Prosecutor's assertion that the statements of AHZ, AJJ and AJK were not filed in support of the new charges and finds that those statements came in as additional elements in support of paragraphs of the Indictment which are based on other statements previously disclosed. No rules have been violated and the contention that the process has been abused should be rejected. The additional filings should enable the Defence to better prepare its case. The Defence request for exclusion of the statements of Witnesses AHZ, AJJ and AJK based on the alleged violation of Rule 66(A)(i) of the Rules is therefore dismissed. The Defence complaint that the Prosecutor constructed the statement of witness ALQ after the Decision

¹ See: Oral Decision at the Further Initial Appearance, T. 8 March 2004, pp. 2-3; and "Decision on the Defence Urgent Application for Stay of Proceedings and for Suspension of the 30-Day Period Pursuant to rule 50(C) of the Rules of Procedure and Evidence", 24 March 2004, para. 3.

granting him leave to amend the Indictment is not supported by any evidence and is rejected with its ancillary applications.

Defects in the Indictment

6. Simon Bikindi argues that the Amended Indictment was defective because it did not include the particulars that would enable him to prepare his defence, and that the Prosecutor did not comply with the Decision of 22 September 2003. Accordingly the Accused requests that the Prosecutor be ordered to file an Amended Indictment strictly in compliance with the Decision.

7. The jurisprudence of the Tribunal as recently clarified in the *Ntakirutimana* Appeals Judgement,² establishes that the Indictment as the primary accusatory instrument must set out the charges against the accused in sufficient detail to enable him to prepare his defence. The Chamber's Order specifically requiring particulars is consistent with that jurisprudence. The Chamber finds it puzzling that the Prosecutor interpreted the Decision of 22 September 2003 to require the filing of a Bill of Particulars. Failure to include in the Indictment particulars that were necessary to avoid it being declared defective for vagueness and lack of specificity represented a failure to comply with the Chamber's Orders. As the proceedings are still at the pre-trial phase, the Chamber is of the view that the interests of justice demand that the required particulars be included in the Amended Indictment, while the submissions of particulars should all be withdrawn.

8. The Chamber notes that all the particulars provided in the two submissions are not related to its Orders; some of those particulars are new allegations for which no leave for amendment was granted.³ This is inconsistent with the Decision of 22 September 2003.⁴ The Prosecutor shall not include the new allegations referred to in this paragraph, in the Amended Indictment. The Chamber also notes that the Prosecutor did not provide all the particulars required in the Decision of 22 September 2003.⁵ In relation with those particulars, the Prosecutor shall comply with the Order and provide the missing details or delete the relevant allegations from the Amended Indictment.

² *The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Case Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004.

³ The new allegations are: In the First Submission of Particulars, included under the paragraph pertaining to Paragraph 30 of the Indictment and Paragraph 38(xxxii) of the Decision: Interahamwe were guarding Simon Bikindi's house; buses full of Interahamwe were seen in front of Simon Bikindi's house; Simon Bikindi distributed rifles to Interahamwe; Simon Bikindi ordered and participated in the killing of an unknown Tutsi businessman and his wife; Simon Bikindi presided over a meeting at which it was decided to establish roadblocks all over Kicukiro commune and allegedly Simon Bikindi ordered Interahamwe to search for and kill Tutsi; Simon Bikindi intervened when Interahamwe refused to allow Minister Ngarabatware and his daughter to pass a roadblock between Ruhengeri and Gisenyi. In the Second Submission of Particulars, under the paragraph pertaining to Paragraph 47 of the Indictment and Paragraph 38(xliv) of the Decision: Simon Bikindi with Ngeze, Rafiki, Sibomana and Hakizimana removed 8 people from their house and transported them to a mass grave where they were killed; Simon Bikindi shot and killed Gasisara in *commune rouge*.

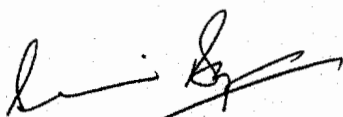
⁴ Para. 29 of the Decision of 22 September 2003.

⁵ In relation with Paragraph 38, Sub-paragraphs (viii), (xvii), (xx), (xxvii), (xxviii), (xxix), (xxx), (xxxii), (xxxvi), and (xli), the Prosecutor did not fully comply with the Order.

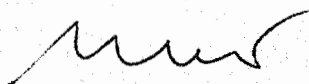
FOR THE REASONS ABOVE, THE CHAMBER

- I. ORDERS** the Prosecutor, within five days, to file an Amended Indictment containing the particulars ordered in the Decision of 22 September 2003,
- II. ORDERS** the Prosecutor to withdraw the two Submissions of Particulars filed on 22 October 2003 and 1 February 2005;
- III. DENIES** the Motion in all other respects.

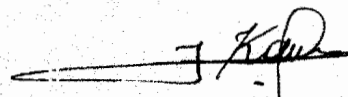
Arusha, 11 May 2005, done in English.



Dennis C. M. Byron
Presiding Judge



Flavia Lattanzi
Judge



Gberdao Gustave Kam
Judge

