



UNITED NATIONS  
NATIONS UNIES

ICTR-00-55A-T  
24-06-2005  
(2571-2567)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

2571  
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Or: ENG

## TRIAL CHAMBER II

**Before:** Judge Asoka De Silva, Presiding  
Judge Flavia Lattanzi  
Judge Florence Rita Arrey

**Registrar:** Mr Adama Dieng

**Date:** 24 June 2005

**The PROSECUTOR**

**v.**

**Tharcisse Muvunyi**

**Case No. ICTR-2000-55A-T**

2005 JUN 24 P 12:15  
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### DECISION ON THE PROSECUTOR'S NOTICE OF THE FILING OF A SCHEDULE OF PARTICULARS TO THE INDICTMENT PURSUANT TO THE DIRECTIVE OF THE TRIAL CHAMBER

#### Office of the Prosecutor

Mr Charles Adeogun-Phillips  
Ms Adesola Adeboyejo  
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#### Defense Counsel

Mr William Taylor  
Mr Jean Flamme  
Ms Cynthia Cline  
Ms Veronique Pandanzyla

*gsc*

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

**SITTING** as Trial Chamber II, composed of Judge Asoka de Silva, Presiding, Judge Flavia Lattanzi and Judge Florence Rita Arrey (the “Chamber”);

**BEING SEIZED** of “The Prosecutor’s Notice of the Filing of a Schedule of Particulars to the Indictment pursuant to the Directive of the Trial Chamber” filed on 28 February 2005 (the “Motion”);

**CONSIDERING** “Accused Tharcisse Muvunyi’s Reply to the Prosecutor’s Notice of the Filing of a Schedule of Particulars to the Indictment pursuant to the Directive of the Trial Chamber and Motion to strike the Schedule of Particulars” filed on 8 March 2005 (the “Defence Response”);

**NOTING** that the Defence filed a Motion for extension of time to respond to the Prosecutor’s Motion on 7 March 2005, and that the Chamber, by an oral ruling on the same day granted the Defence an extension of time until 8 March 2005;

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

**NOW DECIDES** the Motion on the basis of the written submissions filed by the Parties pursuant to Rule 73(A) of the Rules.

## **INTRODUCTION**

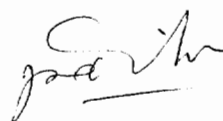
1. The original indictment against Tharcisse Muvunyi, Idelphonse Nizeyimana and Idelphonse Hategekimana was filed on 23 January 2000 and was confirmed by Judge Yakov Ostrovsky on 2 February 2000. On 8 November 2000 the Accused Tharcisse Muvunyi made his initial appearance before the Tribunal and entered a plea of not guilty to all counts of the indictment. On 5 November 2003, the Prosecutor requested the severance of the Accused<sup>1</sup> which was granted by Trial Chamber III on 11 December 2003<sup>2</sup>. The Prosecutor filed the current indictment on 23 December 2003.

2. On 19 January 2005, the Prosecution filed a Motion for Leave to Amend the Indictment.<sup>3</sup> The Chamber, in its Decision of 23 February 2005<sup>4</sup> denied the Prosecution’s

<sup>1</sup> *Prosecutor v. Tharcisse Muvunyi, Idelphonse Nizeyimana and Idelphonse Hategekimana*, Case No. ICTR-2000-55-I, Prosecutor’s Motion for Leave to Sever an Indictment and for Directions on the Trial of Tharcisse Muvunyi.

<sup>2</sup> *Prosecutor v. Tharcisse Muvunyi, Idelphonse Nizeyimana and Idelphonse Hategekimana*, Case No. ICTR-2000-55-I, Decision Regarding the Prosecutor’s Motion for Leave to Sever an Indictment and for Directions on the Trial of Tharcisse Muvunyi (TC), 11 December 2003.

<sup>3</sup> Prosecutor’s Request for Leave to Amend an Indictment Pursuant to Rules 73 and 50 of the Rules of procedure and Evidence.



Motion for Leave to Amend the Indictment and permitted the Prosecutor, “if he chooses, to file a Schedule of Particulars in order to arrange his current pleading in a clearer manner – provided that no new allegation, as found by the Chamber, is added in this exercise.” Furthermore, the Chamber added:

“If the Prosecutor chooses to follow this course, the Chamber directs him to include the following information in the said Schedule: (i) the types of responsibility under Article 6(1) or 6(3) of the Statute, as the case may be; (ii) the factual allegations which refer specifically to a type of responsibility under Article 6(1) or 6(3) of the Statute, as the case may be”.

3. The Prosecution filed the Schedule of Particulars to the Indictment on 28 February 2005.<sup>5</sup>

4. On 28 February 2005, the Prosecution also filed an application for certification to appeal the Chamber’s Decision Denying Leave to Amend the Indictment, which was granted by the Chamber on 16 March 2005.<sup>6</sup> On 23 March 2005, the Prosecution filed its appeal against the Chamber’s Decision,<sup>7</sup> which was dismissed by the Appeals Chamber on 12 May 2005.<sup>8</sup>

5. Following the Appeals Chamber Decision, the Chamber has now to decide whether the Schedule of Particulars filed by the Prosecution is in conformity with the directives given by the Chamber in its Decision of 23 February 2005.

### **ARGUMENTS OF THE PARTIES**

6. The Prosecution filed the Schedule of Particulars without any further submissions.

7. The Defence submits that the Prosecution alleges throughout the Schedule of Particulars that the Accused “ordered, instigated, or otherwise aided and abetted in the planning, preparation or execution of the said offense pursuant to Article 6(1) of the Statute” and that it has therefore not sufficiently specified what particular type of responsibility under Article 6(1) of the Statute it wishes to rely on. The Defence therefore alleges that the Accused has insufficient notice of the charges against him which affects his right to due process and a fair trial.

8. The Defence furthermore complains that the Prosecution has not adequately pleaded Article 6(3) of the Statute: it submits that the Prosecution has not shown how and

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<sup>4</sup> Decision on Prosecution’s Motion for Leave to File an Amended Indictment.

<sup>5</sup> Prosecutor’s Notice of the Filing of a Schedule of Particulars to the Indictment pursuant to the Directive of the Trial Chamber.

<sup>6</sup> Decision on the Prosecutor’s Motion Pursuant to Rule 73 (B) for Certification to Appeal the Decision Denying Leave to File an Amended Indictment and For Stay of Proceedings.

<sup>7</sup> Prosecution’s Appeal of Decision of Trial Chamber II of 23 February 2005 Denying Leave to File an Amended Indictment.

<sup>8</sup> Decision on Prosecution Interlocutory Appeal Against Trial Chamber II Decision of 23 February 2005.

if the Accused was responsible for the acts of individual members of the *Interahamwe*, the gendarmerie or other individuals; that the Prosecution has not shown how these individuals were subordinated to the Accused and which acts or events put the Accused on notice of their misconduct. The Defence therefore argues that with regard to Article 6(3) of the Statute the Accused does not have sufficient notice of the charges against him which also affects his right to due process and a fair trial. The Defence moves the Chamber to strike the Prosecutor's Notice of the Filing of a Schedule of Particulars to the Indictment Pursuant to the Directive of the Trial Chamber.

### DELIBERATIONS

9. As a preliminary matter, the Chamber emphasizes that at this stage of the proceedings, the Prosecution was only given the *option* to file a Schedule of Particulars including the types of responsibility under Article 6(1) and 6(3) of the Statute. The Chamber considers that once the Prosecution specifies the type of responsibility as indicated in the Directive, that suffices for the purposes of complying with the Chamber's order. The Chamber does therefore not agree with the general submission of the Defence that the Prosecution, in its Schedule of Particulars, failed to provide sufficient specifications with regard to the types of liability it wishes to rely on.

10. With regard to the alleged responsibility of the Accused under Article 6(1) of the Statute, the Chamber finds the Defence objection that the Prosecution reserved "all of Article 6(1) of the Statute in an all or nothing approach" to be erroneous and misleading. Indeed, the Prosecution specified the forms of criminal liability it wishes to rely on under Article 6(1) with regard to the different paragraphs of the indictment as follows:

(i) *Paragraphs 3.20, 3.23, 3.27, 3.29, 3.33, 3.34, 3.34(i), 3.36 to 3.40, 3.42, 3.43:*  
The Accused is alleged to have "ordered, instigated, or otherwise aided and abetted in the planning, preparation or execution of the said offence(s)".

(ii) *Paragraph 3.24:*  
The Accused is alleged to have "committed, instigated or otherwise aided and abetted in the planning, preparation or execution of the said offence".

(iii) *Paragraph 3.25:*  
The Accused is alleged to have "committed or otherwise aided and abetted in the planning, preparation or execution of the said offence").

(iv) *Paragraph 3.32:*  
The Accused is alleged to have "planned or otherwise aided and abetted in the planning, preparation or execution of the said offence".

(v) *Paragraph 3.41, 3.41(i), 3.48:*  
The Accused is alleged to have "aided and abetted in the planning, preparation or execution of the said offence(s)".

The Chamber is satisfied that the Prosecution, in compliance with the Chamber's directives, duly specified the forms of criminal liability it wishes to rely on.

11. The Chamber observes that the objections raised by the Defence with regard to the Accused's alleged responsibility under Article 6(3) of the Statute concern the manner in which the material facts are to be proved and are therefore matters of evidence, not pleading.

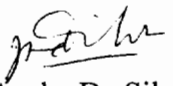
12. The Chamber finally notes that the Prosecution, at paragraphs 1, 3, 14, 15, 17 and 27 of the Schedule of Particulars, introduced elements with regard to factual allegations included at paragraphs 2.2, 3.4, 3.10, 3.33, 3.34, 3.36 and 3.48 of the indictment. The Chamber is satisfied that the factual elements specify allegations within the scope of the confirmed charges of the indictment.


13. The Chamber concludes that the Schedule of Particulars has been filed in compliance with the Chamber's directives.

**FOR THE ABOVE REASONS, THE CHAMBER**

**ADMITS** the Schedule of Particulars as filed by the Prosecution.

Arusha, 24 June 2005

  
Asoka De Silva  
Presiding Judge

  
Flavia Lattanzi  
Judge

  
Florence Rita Arrey  
Judge

*(Seal of the Tribunal)*