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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
Karin Hökberg
Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 5 August 2005

JUDICIAL RECORDS/ARCHIVES
ICTR
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THE PROSECUTOR

v.

**Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA**

Case No. ICTR-98-44-R73

**DECISION ON RENEWED MOTION TO DISMISS FOR LACK OF JURISDICTION:
UNITED NATIONS CHARTER, CHAPTER VII POWERS**

Rule 73 of the Rules of Procedure and Evidence

Office of the Prosecutor:
Don Webster
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Defence Counsel for Édouard Karemera
Dior Diagne Mbaye and Félix Sow

Defence Counsel for Mathieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

Defence Counsel for Joseph Nzirorera
Peter Robinson

[Signature]

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

SITTING as Trial Chamber III, composed of Judges Dennis C. M. Byron, Presiding, Karin Hökberg, and Gberdao Gustave Kam ("Chamber");

BEING SEIZED of "Joseph Nzirorera's Renewal of Preliminary Motion to Dismiss for Lack of Jurisdiction: Chapter VII Powers" ("Motion"), filed by Joseph Nzirorera ("Defendant Nzirorera") on 13 May 2005; and Mathieu Ndirumpatse's ("Defendant Ndirumpatse") Joinder filed on 16 May 2005 ("Defence");

CONSIDERING the Prosecution's Response, filed on 18 May 2005, which incorporates its prior submissions, including an "incidental request" to deny fees for the Defence;

RECALLING the Appeals Chamber Decision of 10 June 2004¹, and on that basis;

HEREBY DECIDES the Motion pursuant to Rule 73 of the Rules.

INTRODUCTION

1. Defendant Nzirorera renews his Preliminary Motion to Dismiss for Lack of Jurisdiction: Chapter VII Powers filed on 17 March 2004, incorporating the arguments in his prior submissions related to the Motion.² He is now joined by Defendant Ndirumpatse.

2. The Defence challenges the jurisdiction of the Tribunal to bring and confirm new charges against the Accused, as well as the continued exercise of criminal jurisdiction over crimes committed in 1994, because there is no longer a "threat to peace" that continues to exist in Rwanda. As a result, the Defence contends that the Chapter VII Powers of the Security Council which created the Tribunal should now conclude the Tribunal's existence and dismiss the Amended Indictment in its entirety.

3. The Prosecution also incorporates its prior submissions into its opposition to this Motion³, including a request for the Chamber to sanction the Defence because the Motion completely lacks merit.

DELIBERATION

4. After reviewing various information including the reports of the Secretary General, the Special Rapporteur for Rwanda of the United Nations Commission on Human Rights, and the subsequent Commission of Experts⁴, on 8 November 1994, the Security Council determined that the situation in Rwanda continued to constitute a threat to international peace and security.⁵ The Security Council adopted Resolution 955 creating the Tribunal in accordance with the United Nations Charter and upon the request of the Government of

¹ *Joseph Nzirorera v. The Prosecutor*, Case No. ICTR-98-44-AR72, Decision Pursuant to Rule 72(E) of the Rules of Procedure and Evidence on Validity of Appeal of Joseph Nzirorera Regarding Chapter VII of the Charter of the United Nations (AC), 10 June 2004.

² Reply Brief: Preliminary Motion to Dismiss for Lack of Jurisdiction: Chapter VII Powers, filed on 24 March 2004; Appeal of Décision relative à la requête en exception préjudicielle de Nzirorera aux fins de rejet de l'acte d'accusation pour défaut de compétence: Chapitre VII de la Charte des Nations Unies, filed on 13 April 2004; Reply Brief: Appeal of Décision relative à la requête en exception préjudicielle de Nzirorera aux fins de rejet de l'acte d'accusation pour défaut de compétence: Chapitre VII de la Charte des Nations Unies, filed on 29 April 2004.

³ Prosecutor's Response to Joseph Nzirorera's Preliminary Motion to Dismiss for Lack of Jurisdiction: Chapter VII Powers; Prosecutor's Response to Joseph Nzirorera's Appeal of Décision relative à la requête en exception préjudicielle de Nzirorera aux fins de rejet de l'acte d'accusation pour défaut de compétence: Chapitre VII de la Charte des Nations Unies, filed on 27 April 2004.

⁴ UN doc. S/1994/879; S/1994/906; S/1994/1157, annex I and annex II; S/1994/1125.

⁵ Security Council Resolution 955, S/RES/955 (1994); UN doc. S/PV.3453.

Rwanda. That Resolution includes the Statute of the Tribunal, thereby establishing the Tribunal's jurisdiction pursuant to the Chapter VII powers of the Security Council.

5. The Chamber recalls that the Tribunal's only mandated function is to try persons who have committed crimes in Rwanda and its neighbouring countries as defined by the Statute of the Tribunal.⁶ The Tribunal also has incidental jurisdiction, as a result of its mandated function, to evaluate its constitution.⁷ Any constitutional evaluation, however, only assesses whether the Security Council's actions in setting up the Tribunal were valid at the time of the Tribunal's establishment, which was 8 November 1994. Therefore, the functions and jurisdiction of the Tribunal are not related to the continued existence of a threat to international peace and security in Rwanda.

6. The Defence further argues that Chapter VII measures must be proportionate in relation to the threat to peace concerned and must stop when the threat has ended. It argues that the threat has indeed ended and therefore the need for prosecution before the Tribunal is no longer appropriate. It also contends that the sovereignty of the Rwanda has been infringed by the creation and maintenance of the Tribunal in violation of Article 2(1) of the United Nations Charter. The Chamber recalls that the *Kanyabashi* Decision and the *Tadić* Decision on jurisdiction have already decided these same issues and adopts their reasoning and findings.⁸ As a result, the Defence Motion is dismissed.

7. The Prosecution requests that the Defence be sanctioned because this Motion completely lacks merit, and at the time of the original submission, the Prosecution alleged that the Motion was filed as a pretext to obtain grounds to delay the commencement of trial. The Chamber notes Rule 46 of the Rules allowing a Chamber, "after a warning, [to] impose sanctions against a counsel, if his conduct remains offensive or abusive, obstructs the proceedings, or is otherwise contrary to the interests of justice." No warning has been given in this case, nor can sanctions be imposed for the filing of a motion that lacks merit without further reason as dictated by Rule 46. The Prosecution's request shall therefore be denied.

FOR THE ABOVE REASONS, THE CHAMBER

DISMISSES the Defence Motion and the Prosecution's incidental request.

Arusha, 5 August 2005, done in English.


Dennis C. M. Byron
Presiding


Karin Holmberg
Judge


Gberdao Gustave Kam
Judge

[Seal of the Tribunal]



⁶ The Prosecution v. Joseph Kanyabashi, Case No. ICTR-96-15-T, Decision on the Defence Motion for Dismissal (TC), 10 June 1997, citing *Prosecution v. Duško Tadić*, Case No. IT-94-I-AR72, Decision on the Defence Motion for Interim Appeal on Jurisdiction (AC), 2 October 1995.

⁷ *Tadić*, paras. 14-49.

⁸ See earlier have jurisdiction in *Gberdao Kanyabashi* and *Tadić*.