



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Emile Francis Short
Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 14 September 2005

THE PROSECUTOR

v.

Edouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

ORAL DECISION ON DEFENCE MOTIONS OBJECTING TO THE PROPOSED AMENDED INDICTMENT OF 24 AUGUST 2005

Office of the Prosecutor:

Don Webster
Gregory Lombardi
Iain Morley
Gilles Lahaye
Sunkarie Ballah-Conteh
Takeh Sendze

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

See transcripts E: p. 2; l. 34 – p. 4; l. 34 (original language) – F p. 2; l. 31 – p. 5; l. 5

MR. PRESIDENT:

Our oral decisions. First, the decision on Defence motions objecting to the proposed amended indictment of 24th August 2005. The Defence for Ngirumpatse and the Defence for Nzirorera filed respectively on the 6th and 7th of September 2005, motions requesting the Chamber to order that the Prosecution filed -- file an amended indictment in compliance with the decision on defects in the form of 5 August 2005.

Now, in accordance with the Chamber's scheduling orders, the Prosecution filed its response to Ngirumpatse's motion on 8th September 2005 and orally responded on Nzirorera's motion during the pre-trial conference of 9 -- September 9th, 2005. The Defence for each Accused was additionally heard by the Chamber.

The Defence for Ngirumpatse contends that the insertion by the Prosecution of the word "including" in place of the word "among others" is vague and does not comply with the Chamber's order of 5th August 2005. It adds that using phrases such as, and I quote: "The Prosecutor is unable to specifically identify each and every participant in the joint criminal enterprise", "This is the best information available at this time", are also vague. It also contends that the Prosecution added new charges at paragraphs 18, subparagraph (iv) and paragraph 24.8. The Defence accordingly requests the Chamber to order the Prosecution to remove the above-mentioned phrases and add, where appropriate, the identity of persons or dates.

The Defence for Nzirorera contends that the Prosecution added new charges at paragraph 6, subparagraph (iii) and paragraph 18 of the amended indictment. It requests that these new charges are stricken out or, should the Chamber allow them, that further initial appearance and the possibility to file additional preliminary motions should be granted.

The Defence Nzirorera also argues that the Prosecution did not comply with the Chamber's decision by failing to name any of the MRND office holders at paragraph 18, subparagraph (i). It argues that the Prosecution failed to elaborate on the issue of

command responsibility, as requested by the Chamber, and it did not provide additional details, neither about the meetings at paragraph 24.8 of the indictment, nor about the attacks at paragraph 62.12.

In its oral and written response to the Defence motions, the Prosecution contends that it has complied with the Chamber's order -- decision of 5th August 2005 in conformity with the ICTY's jurisprudence and did not add any new charge. Concerning the elaboration and command responsibility and attacks at paragraph 62.12, the Prosecution declares that it was unable to elaborate further and that it is sufficiently pleaded in the indictment.

As a preliminary matter, the Prosecution argued in its oral submission that these Defence motions were alleging further defects in the form under Rule 72 of the rules. While the Prosecution did not draw any explicit conclusion from that statement, the Chamber does not share the Prosecution's view. It could not be admitted that the Prosecution could file an indictment not amended in accordance with the Chamber's order, and the Defence should be prevented from complaining because of time limits set out in Rule 72 or because the time limits set out in Rule 72 have expired. The Chamber will therefore consider the matter under Rule 73 of the rules.

With respect to the use of the word "including" and phrases such as: "The Prosecutor is unable to specifically identify each and every participant in the joint criminal enterprise" and "This is the best information available at this time", the Chamber is of the view that the Prosecution complied with the Chamber's decision of 15th -- of 5th August 2005 in conformity with the relevant jurisprudence.

Considering the alleged failure to name any of the MRND office holders at paragraph 18, subparagraph (i), the Chamber recalls that the indictment must be read as a whole. At the end of the said paragraph, it is specified that, and I quote, "The Prosecution is unable to specifically identify each and every subordinate of the Accused. This is the best information available at this time."

The Chamber does not consider that the additional information provided by the Prosecution at paragraph 6, subparagraph (iii) and paragraph 18, subparagraph (iv) of the indictment constitutes expanded factual allegations amounting to new charges. They are evidentiary matters to be addressed at trial. Contrary to Ngirumpatse's contention, paragraph 24.8 does not contain new charges, since in the indictment of 23rd February 2005, it was already pleaded that, and I quote, "Joseph Nzirorera organised a fundraising banquet for the *Interahamwe* at the Hotel Rebero in Kigali."

The Chamber, however, is concerned that in the same paragraph 24.8 the Prosecution did not provide more specific dates, time frames and locations about the alleged meetings. The same applies about the attacks pleaded at paragraph 62.12 of the indictment and the pleading of command responsibility. While the Prosecution cannot be compelled to disclose information which is not in its possession, the Chamber strongly recalls that it is not acceptable for the Prosecution to omit material aspects of its main allegations in the indictment with the aim of molding its case in the course of the trial, depending on how the evidence unfolds. The Prosecution is expected to know its case before it moves to trial and should provide any additional details in its possession to put the Accused on proper notice of the charges against them. Under Article 20 of the statute and Rule 54 of the rules, the Chamber will, therefore, be ready, where appropriate, to take all the necessary measures in the interests of justice and to guarantee the rights of the Accused. For these reasons the Chamber denies the motions.