



**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Sergei Alekseevich Egorov
Judge Florence Rita Arrey

Registrar: Adama Dieng

Date: 12 June 2007

THE PROSECUTOR

v.

Hormisdas NSENGIMANA

Case No. ICTR-2001-69-T

**DECISION ON DEFENCE MOTION ALLEGING
DEFECTS IN THE INDICTMENT**

The Prosecution

Wallace Kapaya
Sylver Ntukamazina
Charity Kagwi-Ndungu
Gina Butler
Iskandar Ismail
Jane Mukangira

The Defence

Emmanuel Altit

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Sergei Alekseevich Egorov, and Judge Florence Rita Arrey;

BEING SEIZED OF the Nsengimana “Exception préjudicielle de la défense pour vices de forme de l’acte d’accusation modifié”, filed on 31 May 2007;

CONSIDERING the Prosecution Response, filed on 5 June 2007, and the Defence Reply, filed on 8 June 2007;

HEREBY DECIDES the motion.

INTRODUCTION

1. On 29 March 2007, Trial Chamber II granted the Prosecution leave to file an amended indictment, subject to the Prosecution specifying certain dates or time periods for events described in paragraphs 41 and 42 of the proposed amended indictment.¹ In accordance with the terms of the decision, the Prosecution filed an Amended Indictment on 4 April 2007. The Accused entered a further appearance and pleaded not guilty to the three counts alleged in the Indictment on 27 April 2007.²

2. On 26 April 2007, Trial Chamber II denied a Defence motion for certification of its decision granting leave to amend the Indictment on the grounds that the motion was time-barred and consequently inadmissible.³

3. On 30 April 2007, the case was transferred to Trial Chamber I. However, when the Defence filed a reconsideration motion, asserting that its certification motion should not have been declared inadmissible because the filing deadline ran from the time of receipt of the French translation of the decision since French is the working language of the Defence, Trial Chamber II agreed to remain seized of the matter.⁴ It denied the Defence request on the merits on 10 May 2007.⁵

SUBMISSIONS

4. The Defence filed the present motion, alleging defects in the Indictment, before Trial Chamber I on 31 May 2007. It argues that the Prosecution has not satisfied the requirements set forth by Trial Chamber II for the amendment of paragraphs 41 and 42 of the Indictment so as to provide precise dates for the events alleged therein. The Defence further submits that the Indictment is vague, insofar as dates, places, and the identities of certain persons, in

¹ *Nsengimana*, Decision on Prosecution Motion for Leave to File an Amended Indictment (TC), 29 March 2007, para. 68. The Chamber also instructed the Prosecution to correct all typographical errors in the proposed indictment (para. 71).

² The three counts alleged in the Indictment are genocide, murder as a crime against humanity, and extermination as a crime against humanity.

³ *Nsengimana*, Decision on Hormisdas Nsengimana’s Motion for Certification to Appeal the Decision of 29 March 2007 (TC), 26 April 2007.

⁴ *Nsengimana*, Decision on Hormisdas Nsengimana’s Motion for Certification to Appeal the Decision of 29 March 2007 (TC), 26 April 2007, para. 10.

⁵ *Nsengimana*, Decision on Hormisdas Nsengimana’s Motion for Reconsideration of the Decision of 26 April 2007 (TC), 10 May 2007.

numerous other paragraphs. It requests that the Chamber order the Prosecution to amend the Indictment to provide the requested precisions.⁶

5. The Prosecution responds that the motion is inadmissible because of its late filing and, in the alternative, that the Prosecution has met its burden in terms of providing sufficient detail in the Indictment. It therefore asks the Chamber to dismiss the motion as without merit.⁷

DELIBERATIONS

(i) *Inadmissibility*

6. Rule 50 (C) of the Rules of Procedure and Evidence provides that an “accused shall have a further period of thirty days in which to file preliminary motions pursuant to Rule 72” from the time of his or her further appearance on the charges contained in the amended indictment.⁸

7. Given that the Accused made his further appearance on 27 April 2007, the Defence had, according to Rule 7 *ter* (B), until Monday 28 May 2007 to file a motion alleging defects in the Indictment. The Defence did not file its motion until 31 May 2007. Consequently, it is untimely. The Chamber nonetheless has discretion to consider late-filed submissions and, in the present instance, chooses to do so.⁹

(ii) *Merits*

8. The standard for which elements must be pleaded in an indictment is set forth in the *Kupreškić* Judgement:

An indictment shall, pursuant to Article 18(4) of the Statute, contain “a concise statement of the facts and the crime or crimes with which the accused is charged”. Similarly, Rule 47(C) of the Rules provides that an indictment, apart from the name and particulars of the suspect, shall set forth “a concise statement of the facts of the case”. The Prosecution’s obligation to set out concisely the facts of its case in the indictment must be interpreted in conjunction with Articles 21 (2) and (4)(a) and (b) of the Statute. These provisions state that, in the determination of any charges against him, an accused is entitled to a fair hearing and, more particularly, to be informed of the nature and cause of the charges against him and to have adequate time and facilities for the preparation of his defence. In the jurisprudence of the Tribunal, this translates into an obligation on the part of the Prosecution to state the material facts underpinning the charges in the indictment, but not the evidence by which such material facts are to be proven. Hence, the question whether an indictment is pleaded with sufficient particularity is dependent upon whether it sets out the material facts of the Prosecution case with enough detail to inform a defendant clearly of the charges against him so that he may prepare his defence.

⁶ Motion, paras. 11-15, 16, 19, 21.

⁷ Response, paras. 10-12, 14, 16-17, 20.

⁸ Preliminary motions governed by Rule 72 include those motions which (i) challenge jurisdiction, (ii) allege defects in the form of the indictment, (iii) seek the severance of counts joined in one indictment or seek separate trials, or (iv) raise objections relating to requests for assignment of counsel.

⁹ *Bagosora et al.*, Decision on Kabiligi Request for Particulars of the Amended Indictment (TC), 27 September 2005, para. 3; *Mpambara*, Decision on the Defence Preliminary Motion Challenging the Amended Indictment (TC), 30 May 2005, para. 1.

The Appeals Chamber must stress initially that the materiality of a particular fact cannot be decided in the abstract. It is dependent on the nature of the Prosecution case. A decisive factor in determining the degree of specificity with which the Prosecution is required to particularise the facts of its case in the indictment is the nature of the alleged criminal conduct charged to the accused. For example, in a case where the Prosecution alleges that an accused personally committed the criminal acts, the material facts, such as the identity of the victim, the time and place of the events and the means by which the acts were committed, have to be pleaded in detail. Obviously, there may be instances where the sheer scale of the alleged crimes “makes it impracticable to require a high degree of specificity in such matters as the identity of the victims and the dates for the commission of the crimes”.¹⁰

9. In its decision allowing leave to amend the Indictment, Trial Chamber II ordered the Prosecution to specify “the exact dates or time period” when the events described in paragraphs 41 and 42 took place.¹¹ The Indictment now reads that the events alleged in these paragraphs took place “between late April and mid-May 1994”. The Defence argues that this time period is insufficient. The Chamber disagrees in light of the Prosecution submission that “this is all the information that is found in the witness statements” describing these events.¹²

10. The Defence also challenges a number of other paragraphs in the Indictment based on three specific grounds. First, it cites twelve paragraphs as failing to provide a specific date for alleged events. In five of these instances, the actual or approximate date is expressly provided in the Indictment.¹³ In two instances, dates are given by period because they relate to ongoing events, like the Accused’s alleged membership in a group called *Les Dragons* or *Escadrons de la Mort* or his generalized supervision of certain roadblocks.¹⁴ Two other paragraphs, in which time periods are specified by a matter of weeks, relate to meetings allegedly attended by the Accused.¹⁵ A similar time period is set forth for an event in which the Accused allegedly refused to admit a certain man to the Collège Christ-Roi.¹⁶ The Chamber also finds that paragraphs 16 and 18 of the Indictment are sufficiently detailed to meet the requirements of Article 18 (4) of the Statute as interpreted by case law.

11. The Defence requests additional information about locations provided in seven paragraphs of the Indictment. The Chamber finds that the request for additional information in relation to six of these paragraphs is baseless as the location is easily identifiable from the wording and context of each paragraph as a whole.¹⁷ In relation to paragraph 36, the Chamber finds that the Prosecution has adequately pleaded the circumstances surrounding the killing of Father Furaha.

12. The Defence further challenges fifteen paragraphs in the Indictment, requesting additional information about the identity of persons described in these paragraphs.¹⁸ Here too, the Chamber finds the Defence request without merit. The degree of precision requested is not only impractical in view of the circumstances but also exceeds the requirements

¹⁰ *Kupreškić*, Appeal Judgement, 23 October 2001, paras. 88-89 (footnotes omitted).

¹¹ *Nsengimana*, Decision on Prosecution Motion for Leave to File an Amended Indictment (TC), 29 March 2007, para. 68.

¹² Response, para. 14.

¹³ Indictment, paras. 20, 21, 22, 23, 29. For example, paragraph 23 of the Indictment reads “[o]n or about 21 April 1994”.

¹⁴ Indictment, paras. 19, 26.

¹⁵ Indictment, paras. 27, 35.

¹⁶ Indictment, para. 32.

¹⁷ Indictment, paras. 21, 23, 27, 30, 40, 42.

¹⁸ The Defence refers to paras. 16-23, 26, 27, 33, 40-43 of the Indictment.

established by *Kupreškić* and other jurisprudence of the Tribunal. The Chamber finds it unnecessary to address the individual paragraphs identified by the Defence.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the motion.

Arusha, 12 June 2007

Erik Møse
Presiding Judge

Sergei Alekseevich Egorov
Judge

Florence Rita Arrey
Judge

[Seal of the Tribunal]