



UNITED NATIONS  
NATIONS UNIES

ICTR-98-44-T  
22-8-2007  
(30065 - 30062)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

30065  
2007

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Dennis C. M. Byron, Presiding  
Gherdao Gustave Kam  
Vagn Joensen

**Registrar:** Adama Dieng

**Date:** 21 August 2007

**THE PROSECUTOR**

v.

Édouard KAREMERA  
Mathieu NGIRUMPATSE  
Joseph NZIRORERA  
Case No. ICTR-98-44-T

*[Handwritten signature]*

**DECISION ON JOSEPH NZIRORERA'S MOTION TO DISMISS COUNT 5**

*Rules 72 and 73 of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**  
Don Webster  
Alayne Frankson-Wallace  
Iain Morley  
Saidou N'Dow  
Gerda Visser  
Sunkarie Ballah-Conteh  
Takeh Sendze

**Defence Counsel for Édouard Karemera**  
Dior Diagne Mbaye and Félix Sow

**Defence Counsel for Mathieu Ndirumpatse**  
Chantal Hounkpatin and Frédéric Weyl

**Defence Counsel for Joseph Nzirorera**  
Peter Robinson and Patrick Niny Mayidika Ngimbi

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## INTRODUCTION

1. On 25 June 2007, Joseph Nzirorera, joined by Mathieu Ndirumpatse, filed a motion to dismiss Count 5 of the Indictment on the ground that its allegations are so vague and shifting that it is impossible for the Accused to prepare a defence.<sup>1</sup> The Prosecution opposes the motion.<sup>2</sup>

2. Count 5 of the Indictment charges the accused persons with Rape as a Crime against Humanity. This count alleges that the accused were responsible for rapes as part of a systematic or widespread campaign against a civilian population on political ethnic or racial grounds. It further alleges that as part of those widespread or systematic attacks *Interahamwe* and other militiamen raped Tutsi women and girls and that the accused were aware that those rapes were the natural and foreseeable consequence of a joint criminal enterprise to destroy the Tutsi group. Moreover Count 5 of the Indictment alleges that the accused, although they had the material capacity to do so, did not halt or prevent the rapes or punish the perpetrators.

3. Prior to the commencement of the proceedings, the accused challenged this pleading in the Indictment as being defective on the ground of its vagueness. The Chamber denied the motion.<sup>3</sup>

<sup>1</sup> Joseph Nzirorera's Motion to Dismiss Count Five, filed on 25 June 2007; Mémoire pour M. Ndirumpatse sur la Joseph Nzirorera's Motion to Dismiss Count Five, filed on 2 July 2007; Reply Brief: Joseph Nzirorera's Motion to Dismiss Count Five, filed on 3 July 2007.

<sup>2</sup> Prosecutor's Response to Nzirorera's Motion to Dismiss Count 5 - Rape, filed on 2 July 2007.

<sup>3</sup> Decision on Defence Motions Challenging the Indictment as Regards the Joint Criminal Enterprise Liability, 14 September 2005.

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## DISCUSSION

4. The accused submits that the allegations of rape are so vague and shifting that he cannot possibly prepare an adequate defence on Count 5 and thus is not being subject to due process of law. The allegation of the accused seems to raise the issue that the Indictment is defective because of its vagueness. The accused argues that his motion is brought under Rule 73 of the Rules of Procedure and Evidence (the "Rules"). Rule 73 of the Rules does not give the Chamber any jurisdiction to rule on defects in the Indictment. Furthermore such a complaint must fail as the timeframe within which it should have been filed is limited by Rule 72 of the Rules, which in this case was in 2005. In any event, the Chamber has already adjudicated on the vagueness of the Indictment and ruled that the pleading of Count 5 was not defective.<sup>4</sup>

5. The Chamber recalls that in its decision on 14 September 2005 it explained that Count 5 does not charge the accused with having personally committed any specific rape. Rather, the pleading is a pleading on joint criminal enterprise alleging that the accused persons are responsible for rapes committed by others. Consequently, the details to be pleaded as material facts are the acts of the accused, not the acts of those persons for whose acts he is alleged to be responsible and the particulars of rape in Count 5 of the Indictment are not material facts to be pleaded.

6. In its Motion, the accused also argues that his complaint is based on the way the Prosecution has conducted its case by constantly shifting witness lists and theories of the case. The accused submits that the Prosecution reduced its list of witnesses called to testify on Count 5 from 143 to 16 and that it results for him not to know from one day to the next what testimony to expect. Though the accused acknowledges having been served with the statements of the Prosecution witnesses, the Chamber finds that if the accused was prepared to defend against 143 witnesses it is inconceivable that he can suffer prejudice if only 16 of those witnesses are called to testify. It would have been different if notice had originally been given for 16 witnesses and the number of witnesses had increased to 143 or if the 16 witnesses were not part of the original list of 143 witnesses.

<sup>4</sup> Decision on Defence Motions Challenging the Indictment as Regards the Joint Criminal Enterprise Liability, 14 September 2005.

7. Consequently, the Chamber is satisfied that the manner in which evidence on Count 5 was adduced and the reduction of the witness list on this count do not impede the ability of the accused to prepare a defence on Count 5 of the Indictment.


**FOR THESE REASONS, THE CHAMBER**


**DENIES** the Defence Motion in its entirety.

Arusha: 21 August 2007, done in English.

  
Dennis C. M. Byron

Presiding Judge

  
With the consent and on  
behalf of  
Gberdao Gustave Kam  
Judge  
(Absent during signature)

  
With the consent and on  
behalf of  
Vagn Joensen  
Judge  
(Absent during signature)

[Seal of the Tribunal]





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Dates:	Transmitted: 22-August-2007			Document's date: 21-August-2007
No. of Pages:	4			Original Language: <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	DECISION ON JOSEPH NZIRORERA'S MOTION TO DISMISS COUNT FIVE			
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Date: 22 August 2007

Case Name / Affaire: The Prosecutor vs.

- Joseph NZIRORERA  
- Mathieu NGIRUMPATSE  
- Edward KAREMERA

Case No / Affaire No.: ICTR-98-44-T

To:  
A:

☐ TC1  
Judge E. Mase  
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Judge S. A. Egorov  
Judge F. R. Arey (Karema & Renzaho)  
SLO  
Co-ordinator

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Judge K. R. Khan  
Judge A. J. N. de Silva  
Judge S. B. Bossa (Myrmasuhuku et al.)  
Judge L. G. Muthoga (Bizimungu et al.)  
Judge E. F. Short (Bizimungu et al.)  
Judge T. Hume (Ndindiyimana et al.)  
Judge S. K. Park (Ndindiyimana et al.)  
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☐ Senior Trial Attorney in charge of case: D. Webster

received by

☒ DEFENSE

☐ Accused / Accusé: J. Nzirorera, M. Ngirumpatse & E. Karemera

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☐ Lead Counsel / Conseil Principal: P. Robinson, C. Hounkpatin & D. Diagne

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☐ Co-Counsel / Conseil Adjoint: P. N. M. Ngimbi, F. Weyl & F. Sow

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4