



UNITED NATIONS
NATIONS UNIES

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

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 17 June 2008

THE PROSECUTOR

v.

Ephrem SETAKO

Case No. ICTR-04-81-I

**DECISION ON DEFENCE MOTION FOR CERTIFICATION TO APPEAL THE
CHAMBER'S DECISION OF 3 MARCH 2008 ON DEFECTS IN THE
INDICTMENT**

The Prosecution
Ifeoma Ojemeni-Okali
Simba Mawere
Christiana Fomenky

The Defence
Lennox Hinds
Cainnech Lussiaà-Berdou

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy and Judge Sergei Alekseevich Egorov;

BEING SEIZED OF the Defence's "Motion for Certification", filed on 10 March 2008;

CONSIDERING the Prosecution Response, filed on 17 March 2008;

HEREBY DECIDES the motion.

INTRODUCTION

1. On 3 March 2008, the Chamber granted in part a Defence motion concerning defects in the Indictment and ordered the Prosecution to make several changes in the Indictment.¹ On 10 March 2008, the Defence filed a motion for certification of this decision in relation to two elements of the decision. The Prosecution filed on the same day an Amended Indictment in an effort to comply with the Chamber's decision.

2. The Defence seeks certification to appeal the Chamber's decision concerning the pleading of paragraphs 38 and 65 of the Indictment. According to the Defence, the Chamber erred in finding that paragraph 38 of the Indictment was not vague because the allegations in paragraph 39 provided additional specificity. In addition, it contends that the Chamber erred in not granting the Defence request to remove allegations concerning Kigali-Ville prefecture from paragraph 65, underpinning the charge of pillage (Count 6). The Prosecution responds that the requirements in Rule 73 (B) of the Rules of Procedure and Evidence are not satisfied.

DELIBERATIONS

3. Pursuant to Rule 73 (B), certification to appeal may be granted "if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings".

4. The Defence is correct that issues of notice may impact the fair and expeditious conduct of the proceedings or the outcome of the trial.² The Chamber notes that the Defence has raised these same matters in its motion to challenge the Amended Indictment, filed on 3 April 2007. In the decision on that motion, issued today, the

¹ *Setako*, Decision on Defence Motion Concerning Defects in the Indictment (TC), 3 March 2008, p. 6.

² *See, e.g., Nahimana et al. v. The Prosecutor*, Decision on the Prosecutor's Motion to Pursue the Oral Request for the Appeals Chamber to Disregard Certain Arguments Made by Counsel for Appellant Barayagwiza at the Appeals Hearing on 17 January 2007 (AC), 5 March 2007, para. 15 (allowing the appellant to raise notice arguments for the first time on appeal given the importance of the right).

Chamber has addressed or provided additional clarification on these points.³ The Defence request for certification is therefore moot. Accordingly, an immediate resolution by the Appeals Chamber would not materially advance the proceedings.

FOR THE FOREGOING REASONS, THE CHAMBER

DENIES the motion.

Arusha, 17 June 2008

Erik Møse
Presiding Judge

Jai Ram Reddy
Judge

Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

³ *Setako*, Decision on Defence Motion Concerning Defects in the Amended Indictment (TC), 17 June 2007, paras. 3-6, 9-10.