



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 CONCERNING DEFECTS IN THE
AMENDED 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 Motion challenging the Amended Indictment, filed on 3 April 2008;

CONSIDERING the Prosecution Response, filed on 7 April 2008, as well as the Prosecution motion to correct errors in the Amended Indictment, filed on 11 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 The Prosecution filed, on 10 March 2008, an Amended Indictment in an effort to comply with the Chamber's decision. On 3 April 2008, the Defence filed the present motion challenging the pleading of paragraphs 38-39, 47, 55 and 65-68 of the Amended Indictment.² The Prosecution filed its response on 7 April 2008, requesting the Chamber to deny the Defence motion.³

DELIBERATIONS

2. The Chamber will address the Defence's specific arguments to each of the challenged paragraphs of the Amended Indictment, bearing in mind the relevant legal principles, fully articulated in its decision of 3 March 2008.⁴

(i) *Paragraphs 38-39*

3. Paragraphs 38 and 39 of the Amended Indictment read as follows:

38. On or about 11 April 1994, EPHREM SETAKO instigated, ordered, and aided and abetted the killing of Tutsi civilians throughout the various communes in Ruhengeri prefecture by expanding membership in the *Amahindure* from 80 to over 600 youths, by providing further military training, rifles, and grenades to the *Amahindure*, and ordering

¹ *Setako*, Decision on Defence Motion Concerning Defects in the Indictment (TC), 3 March 2008, p. 6. (“*Setako* Indictment Decision”). On 10 March 2008, the Defence filed a motion for certification of this decision in relation to two elements of the decision, which the Chamber dismissed on 17 June 2007. See *Setako*, Decision on Defence Motion For Certification to Appeal the Chamber's Decision of 3 March 2008 on Defects in the Indictment (TC), 17 June 2006.

² Preliminary Motion Challenging Defects in the Indictment filed on 10 March 2008, filed on 3 April 2008 (“Defence Motion”).

³ Prosecutor's Response to Preliminary Motion Challenging Defects in the Indictment filed on 10 March 2008, filed on 7 April 2008 (“Prosecution Response”).

⁴ See *Setako* Indictment Decision, paras. 4-6, citing *Mikaeli Muhimana v. The Prosecutor*, Judgement (AC), 21 May 2007, para. 76; *Sylvestre Gacumbitsi v. The Prosecutor*, Judgement (AC), 7 July 2006, para. 49; *The Prosecutor v. André Ntagerura et al.*, Judgement (AC), 7 July 2006, para. 25; *The Prosecutor v. Zoran Kupreškić et al.*, Judgement (AC), 23 October 2001, para. 89.

them to go to various parts of Ruhengeri even to Butaro, the farthest commune in Ruhengeri bordering Uganda, and to kill all Tutsi there.

39. Consequently, on or about 14 April 1994, EPHREM SETAKO in concert with his co-perpetrators, notably: Augustin Bizimungu, Basile Nsabumugisha, Fabian Maniragaba, Colonel Bivugabagabo, Colonel Ntiburura, and other military and civilian authorities, further instigated, encouraged, aided and abetted the *Interahamwes* from the various parts of Ruhengeri prefecture to kill about 100-300 Tutsi refugees within the compound and inside the building of the Court of Appeal in Ruhengeri which resulted in the death of several hundred Tutsi refugees. The Accused was present during this attack and had before the attack incited the *Interahamwe* that the only enemy of the country was the Tutsi and that they must be exterminated with no exception.⁵

4. In its decision of 3 March 2008, the Chamber concluded that paragraph 39 provided further specificity on the locations mentioned in paragraph 38 by indicating that the result of Setako's acts included an attack on a specific location, namely the Ruhengeri Court of Appeal.⁶ The Defence argues that the Chamber erred in concluding that there was a nexus between paragraphs 38 and 39, thereby allowing it to find that paragraph 38 was not vague with respect to the locations of the crimes. It asks the Chamber to reconsider its decision. The Defence primarily contends that the different date ranges in the two paragraphs as well as the different description of the assailants suggests that they are not linked.⁷ The Prosecution responds that the Chamber has already addressed the pleading of these paragraphs and correctly determined that paragraph 39 provided additional specificity to paragraph 38.⁸

5. Implicit in the Chamber's finding in its decision of 3 March 2008 is the conclusion that paragraph 38, when read alone, does not provide sufficient notice of the location of the killings. Therefore, it would not be permissible to enter a conviction against Setako for the general killings mentioned in paragraph 38, beyond the specific attack against the Ruhengeri Court of Appeal pleaded in paragraph 39. Effectively, the Chamber's decision limited the scope of killings alluded to in paragraph 38 to the more specific allegations in paragraph 39. This finding benefits the Accused. To the extent that the Prosecution wishes to pursue Setako for other killings on the basis of paragraph 38, not otherwise pleaded in the Indictment, it must seek a further amendment.

6. That the two paragraphs are linked follows plainly from the fact that, after the general allegations in paragraph 38 about expanding membership in the *Amahindure*, arming and training the group, and ordering it to kill Tutsi throughout Ruhengeri, the first word of the more specific allegation in paragraph 39 referring to the attack at the Court of Appeal is "Consequently". In addition, bearing in mind that paragraph 38 refers to acts of recruitment, arming and training, it is logical that the attack referred to in paragraph 39 occurred on a later date. As the Defence notes, the descriptions of the assailants in the two paragraphs are somewhat different. Paragraph 38 refers to *Amahindure* while paragraph 39 describes the assailants as "*Interahamwes* from the various parts of Ruhengeri". This difference is not significant because the description of assailants in

⁵ These paragraphs are identical to the text in the Indictment considered by the Chamber in its decision of 3 March 2008.

⁶ *Setako* Indictment Decision, para. 15.

⁷ Defence Motion, paras. 18-21.

⁸ Prosecution Response, para. 10.

paragraph 39 is broader and encompasses the *Amahindure*. Indeed, elsewhere in the Amended Indictment assailants are referred to as *Amahindure-Interahamwe*. The question of whether the groups of assailants were in fact the same is an issue for trial. Accordingly, there is no reason for the Chamber to reconsider its findings with respect to paragraphs 38 and 39.

(ii) Paragraph 47

7. With respect to the Defence's challenge to paragraph 47 of the Amended Indictment, the Chamber previously ordered the Prosecution to remove a reference to Kigali-Ville prefecture from the allegation.⁹ The Defence notes that the Prosecution complied with this order in the English version of the Amended Indictment, but not in the French version. The Prosecution responds that this was an inadvertent error.¹⁰ The Prosecution should correct this oversight in a subsequent amendment.

(iii) Paragraph 55

8. Concerning paragraph 55 of the Amended Indictment, the Defence submits that the Prosecution did not provide additional particulars, as ordered by the Chamber, with respect to dates of the alleged killings pleaded therein.¹¹ In particular, it notes that the original version of the Indictment referred to the date range as: "Between the months of April and July 1994". In response to the Chamber's order to provide additional specificity, the Amended Indictment changed this language to "During the period of April up until when Kigali fell in July 1994".¹² The Prosecution responds that this change complied with the Chamber's order and provided a more specific time-frame.¹³ The Chamber agrees with the Defence that there is no material distinction between the two formulations. The Prosecution has not offered any explanation for this lack of precision. Accordingly, it must provide a more specific date range for the attacks mentioned in paragraph 55 or remove the allegation.

(iv) Paragraphs 64-66

9. Turning to paragraphs 64 to 66 of the Amended Indictment, the Defence submits that the Prosecution's amendments concerning the charge of pillage (Count 6) fail to identify any specific location in Kigali-Ville prefecture where the crime allegedly occurred.¹⁴ The Chamber notes, however, that paragraph 66 of the Amended Indictment alleges that assailants looted and destroyed personal and public property in various sectors in Kigali-Ville prefecture. Paragraph 68 of the Amended Indictment incorporates by reference the allegations found in paragraph 55. Paragraph 55 specifically mentions attacks at Saint Famille, Saint Paul and at the "Chinese house at Celtar in Kiyovu" in Kigali-Ville sector.

10. Reading these paragraphs together, the Chamber considers that the Defence has sufficient notice of the locations of the attacks in Kigali-Ville prefecture involving the

⁹ *Setako* Indictment Decision, para. 16.

¹⁰ Prosecution Response, para. 7.

¹¹ *Setako* Indictment Decision, para. 17.

¹² Defence Motion, paras. 11-12.

¹³ Prosecution Response, para. 8.

¹⁴ Defence Motion, paras. 13-17; *Setako* Indictment Decision, para. 19.

crime of pillage. However, as discussed above, if the Prosecution fails to adequately clarify the specific date range for these attacks, it must also remove the allegations concerning Kigali-Ville from Count 6.

(v) *Other Matters*

11. On 11 March 2008, the Prosecution filed a motion to correct certain typographical and translation errors in the Amended Indictment.¹⁵ During the status conference of 20 March 2008, the Defence noted that it did not have any objections to the Prosecution's motion to correct those minor errors. Nonetheless, the Defence indicated its intention to file the present motion challenging other aspects of the Amended Indictment. In view of this, the Chamber noted that it would delay consideration of the Prosecution's motion to correct the Amended Indictment pending the disposition of the Defence's forthcoming motion.¹⁶

12. The Chamber considers that, in making the amendments ordered by the present decision, the Prosecution should also make the other typographical or translation corrections highlighted in its motion of 11 March 2008.

FOR THE FOREGOING REASONS, THE CHAMBER

GRANTS the Defence Motion, in part;

ORDERS the Prosecution to remove the reference to Kigali-Ville prefecture in paragraph 47 of the French version of the Amended Indictment;

ORDERS the Prosecution to provide a more specific date range for the attacks in Kigali-Ville prefecture pleaded in paragraph 55 of the Amended Indictment or to withdraw the allegation, as stated above in paragraphs 7 and 10 of this decision.

ORDERS the Prosecution to file the Indictment as amended in accordance with this decision in French and English within five days of the filing of this decision.

CONSIDERS the Prosecution motion of 11 March 2008 to correct typographical and translation errors in the Amended Indictment to be moot.

Arusha, 17 June 2008

Erik Møse
Presiding Judge

Jai Ram Reddy
Judge

Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

¹⁵ Prosecution Motion to Correct an Amended Indictment Dated on 10 March 2008 pursuant to the Trial Chamber's Decision of 3 March 2008, filed on 11 March 2008.

¹⁶ T. 20 March 2008 pp. 2-3.