



UNITED NATIONS
NATIONS UNIES

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

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 16 July 2008

THE PROSECUTOR

v.

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

DECISION ON JOSEPH NZIRORERA'S MOTION TO STRIKE 1993 INCITEMENT ALLEGATION FROM THE INDICTMENT AND MATHIEU NGIRUMPATSE'S "REQUETE VISANT AU RETRAIT DES ALLEGATIONS D'INCITATION AU GENOCIDE ANTERIEURES A 1994 DE L'ACTE D'ACCUSATION"

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
Deo Mbuto

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 and Patrick Nimy Mayidika
Ngimbi

INTRODUCTION

1. On 2 June 2008, Joseph Nzirorera moved to strike an allegation of incitement occurring in 1993 from the Indictment on the grounds that the Chamber does not have jurisdiction to try him for acts that took place prior to 1 January 1994.¹ Mathieu Ngirumpatse moved to strike the same allegation from the Indictment on the same grounds on 5 June 2008.² The Prosecution opposes both motions in their entirety.³

DELIBERATIONS

2. Joseph Nzirorera and Mathieu Ngirumpatse both move to strike the phrase: "[o]n several occasions in early November 1993" from paragraph 31.1 of the Indictment. This phrase relates to Count 2 of the Indictment, which is "Direct and Public Incitement to Commit Genocide." Paragraph 31.1 states:

"On several occasions in early November 1993, mid-January 1994, mid-February 1994, and March 1994, Mathieu NGIRUMPATSE addressed public gatherings or rallies at Nyamirambo Stadium in Kigali. The rallies assembled leading politicians that espoused the cause of 'Hutu Power' and sometimes ended with chants of 'Tubatsembembe' ["Let us exterminate them"], referring to the Tutsi. Members of the Interahamwe participated in the rallies."

3. Article 7 of the Statute of the Tribunal states that the temporal jurisdiction of the Tribunal shall extend to a period beginning on 1 January 1994, and ending on 31 December 1994.

4. In the *Nahimana* judgement, the Appeals Chamber stated that incitement to commit genocide is not a continuing offense, and that the crime is completed as soon as the discourse in question is uttered or published, even though the effects of incitement may extend in time.⁴ Therefore, the Appeals Chamber concluded that a Trial Chamber does not have jurisdiction over acts of incitement that occurred before 1994 on the grounds that such incitement continued in time until the commission of the genocide in 1994.⁵

5. Joseph Nzirorera and Mathieu Ngirumpatse rely on this excerpt from the *Nahimana* Judgement for the proposition that the phrase at issue should be stricken because the Chamber does not have jurisdiction to prosecute them for incitement based on acts occurring in November 1993.

6. However, the Chamber notes that the Appeals Chamber in *Nahimana* also concluded that, even if a conviction for incitement cannot be based on any acts committed prior to 1994,

¹ Joseph Nzirorera's Motion to Strike 1993 Incitement Allegation from the Indictment, filed on 2 June 2008; Reply Brief: Joseph Nzirorera's Motion to Strike 1993 Incitement Allegation from the Indictment, filed on 13 June 2008.

² Requete Visant au Retrait des Allegations d'Incitation au Genocide Anterieures a 1994 de l'Acte d'Accusation, filed on 5 June 2008.

³ Prosecutor's Consolidated Response to: Nzirorera's Motion to Strike 1993 Incitement Allegation from the Indictment; and Ngirumpatse's *Requete Visant au Retrait des Allegations d'Incitation au Genocide Anterieures a 1994 de l'Acte d'Accusation*, filed 9 June 2008.

⁴ *Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze* ("Nahimana et al."), Case No. ICTR-99-52-A, Judgement (AC), 28 November 2007, para. 723.

⁵ *Ibid.*

a Trial Chamber *can* consider these acts as contextual elements of the 1994 acts, over which it does have temporal jurisdiction.⁶ The Chamber also recalls that, when faced with an allegation by the Defence that twenty-eight of the fifty-nine paragraphs in the indictment referred to events that fell outside the temporal jurisdiction of the Tribunal, the Trial Chamber in *Nahimana* stated that: "information that falls outside the temporal jurisdiction of the Tribunal may be useful in helping the accused and the Chamber to appreciate the context of the alleged crimes, particularly due to the complexity of the events that occurred in Rwanda during 1994."⁷

7. The Chamber notes that the incitement count in the Indictment is not based exclusively on the November 1993 act; it is based on a long list of acts. Thus, the Chamber is free to, and capable of, considering the November 1993 act as contextual evidence for the charge of incitement to commit genocide without regarding it as a punishable act under its jurisdiction. Although it will not try the Accused for the November 1993 act, it finds that this act is useful in helping it and the Accused appreciate the context of the alleged crimes. Accordingly, the Chamber denies the motions, and does not strike the phrase at issue from the Indictment.

FOR THESE REASONS, THE CHAMBER

I. DENIES both motions in their entirety.

Arusha, 16 July 2008, done in English.

Dennis C. M. Byron

Gberdao Gustave Kam

Vagn Joensen

Presiding Judge

Judge

Judge

[Seal of the Tribunal]

⁶ *Nahimana et al.*, Judgement (AC), para. 725.

⁷ *Nahimana et al.*, Decision on the Defence Preliminary Motion, Pursuant to Rule 72 of the Rules of Procedure and Evidence (TC), 12 July 2000.