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ICTR-00-55C-PT
12-07-2010
(1556 - 1551)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 12 July 2010

THE PROSECUTOR

v.

Ildephonse NIZEYIMANA

CASE NO. ICTR-2001-55C-PT

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**DECISION ON NIZEYIMANA'S MOTION TO ORDER THE PROSECUTOR TO
CONFORM WITH A TRIAL CHAMBER DECISION AND STRIKE PARTS OF THE
JUNE 18 AMENDED INDICTMENT**

Rule 72 of the Rules of Procedure and Evidence

Office of the Prosecution:
Richard Karegyesa

Defence Counsel for Ildephonse Nizeyimana:
John Philpot
Cainnech Lussiaa-Berdou

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INTRODUCTION

1. On 9 June 2010, the Chamber issued a decision on Ildephonse Nizeyimana's Preliminary Motion on Defects in the Indictment ("Decision").¹ On 18 June 2010, the Prosecution filed the corrected Indictment and its reasons explaining compliance with the Decision.² On 23 June 2010, Ildephonse Nizeyimana filed a motion alleging that the Prosecution had not complied with the Chamber's Decision ("Motion").³ The Prosecution opposes the Motion.⁴

2. In the Motion, Ildephonse Nizeyimana argues that: (i) the Prosecution has not complied with the Chamber's Orders with respect to providing further details to the orders, authorizations or instigations alleged; (ii) the Indictment still does not list the criminal activities of Vincent Ntezimana; (iii) insufficient identifying details are provided with respect to soldiers who are members of the joint criminal enterprise; (iv) the location Buye is still not described correctly; and (v) a narrower date range was not provided in certain paragraphs.

DELIBERATIONS

Compliance with the Order to Provide Further Details to Allegations of Orders, Authorizations and Instigations

3. Ildephonse Nizeyimana contends that the Prosecution did not comply with the Chamber's Order to specify where and when the order, authorization, or instigation took place, by what means it was transmitted and to whom it was transmitted in paragraphs 6, 7, 9, 11 to 18 and 22 to 29 of the Amended Indictment.⁵ Nizeyimana states that the Chamber's Order was definitive and that the statement "where this information is known" only applies to the phrase after the last semi-colon relating to "whom it was transmitted".⁶ The Chamber finds that the Defence's interpretation of the Order does not take into account the entire sentence. Based upon the Defence's strict interpretation, the part of the Order which specifies the paragraphs would only apply to the phrase after the final semi-colon. Read in its entirety,

¹ *Prosecutor v. Ildephonse Nizeyimana*, Case No. ICTR-2001-55-PT, Decision on Nizeyimana's Preliminary Motion on Defects in the Amended Indictment (TC), 9 June 2010 ("Decision").

² Prosecution's Compliance with the Decision on Nizeyimana's Preliminary Motion on the Defects in the Amended Indictment, filed 18 June 2010 ("Compliance Motion").

³ Defence Motion to Order the Prosecutor to Conform with a Trial Chamber Decision and Strike Parts of the June 18 Amended Indictment, filed on 23 June 2010 ("Motion"); Defence Reply to Prosecutor's Response to Defence Motion to Order the Prosecutor to Conform with a Trial Chamber Decision and Strike Parts of the June 18 Amended Indictment, filed on 30 June 2010 ("Reply").

⁴ Prosecutor's Response to Defence Motion to Order Compliance to Conform with a Trial Chamber Decision and Strike Parts of the June 18 Amended Indictment, filed on 28 June 2010 ("Response").

⁵ Motion, paras. 19-105.

⁶ Motion, paras. 20-26; Reply, paras. 3-10.

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it is clear that the phrase "where this information is known" relates to all of the categories delineated. Therefore, the Prosecution, in responding that it has provided this information where it is known,⁷ has complied with the Chamber's Order. However, the Chamber will now evaluate the amended paragraphs in question in order to ascertain whether Nizeyimana has sufficient details to conduct his investigation.

4. Paragraphs 6, 7, 9, 11 to 17 and 22 to 29 provide details of when the order, authorization or instigation was made and whom it was made to.⁸ With certain exceptions discussed below, the Chamber finds this information is sufficient for Ildephonse Nizeyimana to conduct his investigations.

Compliance with Order to Provide Details as to Vincent Ntezimana's Criminal Activities

5. The Chamber recalls that it ordered the Prosecution to specify the criminal activity of Vincent Ntezimana or strike his name from the Indictment.⁹ The Prosecution contends that there is no need to further specify the criminal activity of Ntezimana in paragraph 19 of the Indictment as an inference may be drawn of his alleged criminal activities since it is alleged that a killing took place at his home.¹⁰ The Chamber finds that the Prosecution has not complied with its Order. Therefore, the Chamber orders the Prosecution to clearly state Ntezimana's criminal conduct or strike his name from the Amended Indictment.

Compliance with Order to Further Identify Groups of Militiamen, Armed Civilians and Soldiers

6. Ildephonse Nizeyimana contends that the Prosecution did not comply with the Chamber's Order to further identify which group of soldiers it is referring to in paragraphs 10, 13-18, 20-22 and 27-28.¹¹ Nizeyimana states that simply adding the acronym of FAR in front of the expression soldier does not comply with the Chamber's Order as it does not provide any further useful identifying details for the purposes of investigations.¹² The Prosecution did not respond to this contention.

⁷ Compliance Motion, para. 11a.

⁸ For example, paragraph 12 is representative of the detail provided in the Amended Indictment which is sufficient for Ildephonse Nizeyimana to conduct investigations. Paragraph 12 states the specific date of 20 April 1994 when Ildephonse Nizeyimana is alleged to have ordered soldiers from a specific location - the ESO, Ngoma Camp and Butare *Gendarmerie* - to kill Tutsi civilians living in Buye Secteur Ngoma Commune in Butare *préfecture*.

⁹ Decision, Order III.

¹⁰ Response, para. 32.

¹¹ Motion, para. 117.

¹² Motion, paras. 114,115.

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7. The Chamber recalls that it ordered the Prosecution to further identify which group it is referring to when describing militiamen, armed civilians and soldiers who are members of the joint criminal enterprise (“JCE”).¹³ While the addition of FAR does add some specificity to the description, it does not comply with the Chamber’s Order as FAR is a very broad category and consequently does not add sufficient identifying information for Nizeyimana to conduct his investigations. Therefore, the Chamber orders the Prosecution to name the camp where the FAR soldiers are based or use the phrase “unknown FAR soldiers” where the Prosecution does not possess further identifying information with respect to the group of soldiers.

Compliance with Order to Correctly Identify the Location of Buye

8. Ildephonse Nizeyimana alleges that the Prosecution did not comply with the Chamber’s Order to properly identify Buye in paragraph 12 of the Amended Indictment.¹⁴ Nizeyimana contends that there is no Buye *secteur* and that there is only a Buye *cellule* that formed part of the Ngoma *secteur* of Ngoma *commune*.¹⁵ The Prosecution did not respond to this contention. The Chamber notes Nizeyimana’s concerns and orders the Prosecution to specify in the Amended Indictment the *commune* and the *préfecture* where Buye *secteur* is based.

Compliance with Order to Narrow Date Ranges

9. Ildephonse Nizeyimana argues that the Prosecution did not comply with the Order to provide narrower date ranges in paragraphs 6, 7 and 11 of the Amended Indictment.¹⁶ Nizeyimana argues that the three-month period now specified does not help him investigate and that the end-date of July is already provided for in the counts. The Prosecution contends that the charges in question relate to events that occurred over an extended period of time, and therefore, provide Nizeyimana with sufficient information to put him on notice as to the charges against him.¹⁷

10. The Chamber recalls that in its Decision, it quoted the Appeals Chamber stating that a broad date range, in and of itself, does not invalidate a paragraph of an Indictment.¹⁸

¹³ Decision, Order VI.

¹⁴ Motion, paras. 120-123.

¹⁵ Motion, para. 122.

¹⁶ Motion, paras. 124-130.

¹⁷ Response, paras. 33-34.

¹⁸ *Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-A, Judgement (AC), 29 August 2008, para. 58.

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Furthermore, the Appeals Chamber has held that in light of the events that occurred in Rwanda in 1994, it is not always possible to be precise as to the specific date on which the crimes charged were committed.¹⁹ It has also stated, however, that the date range should be balanced with the Accused's right to be informed in detail about the nature and cause of the charge against him in order to allow a comprehensive defence to be raised.²⁰

11. With respect to the roadblocks discussed in paragraph 6 of the Amended Indictment, the Chamber finds that the date range is sufficiently precise for Nizeyimana to conduct his investigations as paragraph 6 specifies the location of the roadblocks and paragraphs 18, 20-22 discuss specific events that occurred at roadblocks at specified locations.

12. In relation to paragraph 7, it is alleged that Ildephonse Nizeyimana trained *Interahamwe* and distributed weapons for a three-month period at the *École des Sous-officier* ("ESO"). The Chamber finds that the date range is sufficiently precise for Nizeyimana to conduct his investigations as the location and the target of the training and weapons distribution are specified.

13. Paragraph 11 of the Amended Indictment states that Ildephonse Nizeyimana regularly met with participants of the JCE during a three-month period. The Chamber finds that this date range is problematic given the context. This paragraph discusses Nizeyimana himself allegedly meeting with members of the alleged JCE at various locations in Butare including the ESO, and roadblocks manned by ESO soldiers. The Chamber considers that it would be very difficult to investigate an unknown number of meetings in a large geographic area such as Butare during a three-month period with a large group of possible participants. Therefore, the Chamber orders the Prosecution to provide further precision, such as specific information as to the dates, locations and/or attendees of the meetings, which will allow Nizeyimana to understand and investigate the charges in question or strike paragraph 11 from the Indictment.

FOR THESE REASONS, THE CHAMBER

- I. **GRANTS** Ildephonse Nizeyimana's Motions in part;
- II. **ORDERS** the Prosecution to clearly state Vincent Ntezimana's criminal conduct in paragraph 19 or strike Ntezimana's name from the Amended Indictment;

¹⁹ *Prosecutor v. Emmanuel Ndindabahizi*, Case No. ICTR-01-71-A, Judgement (AC), 17 January 2007, para. 20.

²⁰ *Id.*

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- III. **ORDERS** the Prosecution to specify in the Amended Indictment the *commune* and the *préfecture* where Buye *secteur* is based;
- IV. **ORDERS** the Prosecution to name the camp where the FAR soldiers are based or use the phrase “unknown FAR soldiers” where it does not possess further identifying information;
- V. **ORDERS** the Prosecution to provide further precision in paragraph 11, such as specific information as to the dates, locations and/or attendees of the meetings, which will allow Nizeyimana to understand and investigate the charges in question or strike paragraph 11 from the Indictment;
- VI. **ORDERS** the Prosecution to file a corrected Indictment no later than Wednesday 14 July 2010; and
- VII. **DENIES** Ildephonse Nizeyimana's Motions in all other respects.

Arusha, 12 July 2010, done in English.


Dennis C. M. Byron
Presiding Judge


Gustave Kam
Judge


Vagn Joensen
Judge

[Seal of the Tribunal]

