



International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

UNITED NATIONS
NATIONS UNIES

TRIAL CHAMBER I

Original: English

Before: Judge Navanethem Pillay, Presiding
Judge Erik Møse
Judge Asoka de Zoysa Gunawardana

Registrar: Ms Marianne Ben Salimo

Decision date: 16 March 2000

2000 MAR 16 P 3:19
ICTR
COURT REGISTRY
RECEIVED

THE PROSECUTOR v. HASSAN NGEZE
(ICTR-97-27-I)

DECISION ON THE DEFENCE'S MOTION FOR BILL OF PARTICULARS

Office of the Prosecutor:

Mr William T. Egbe
Ms Cydney G. Crickard
Ms Charity R. Kagwi
Mr Alphonse Van

Counsel for the Accused:

Ms Patricia Mongo
Mr John C. Floyd III

<p>International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda</p> <p>CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME COPIE CERTIFIÉE CONFORME A L'ORIGINAL PAR NOUS</p> <p>NAME / NOM: <i>Dr. MINDUA K. H. Antoine</i></p> <p>SIGNATURE:.....<i>[Signature]</i>..... DATE: <i>16.03.2000</i></p>

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ("the Tribunal")

SITTING AS Trial Chamber I composed of Judge Navanethem Pillay, presiding, Judge Erik Møse and Judge Asoka de Zoysa Gunawardana;

CONSIDERING the Defence's motion for bill of particulars filed on 19 January 2000 in which he requested the Trial Chamber to order the Prosecutor to clarify and particularize the indictment within a specified time as the Chamber deems fit;

CONSIDERING the Prosecution's reply to the said motion dated 3 March 2000;

CONSIDERING that on 5 November 1999, the Trial Chamber granted leave to the Prosecutor to amend the indictment by re-introducing the former charge of genocide, adding the charges of conspiracy to commit genocide, complicity in genocide and crimes against humanity for extermination;

CONSIDERING that on 30 November 1999, the Trial Chamber granted leave to the Prosecutor to join the accused with Ferdinand Nahimana, pursuant to Rule 48 of the Rules of Procedure and Evidence ("the Rules");

CONSIDERING that on 25 November 1999, after the accused refused to enter a plea to the new charges, the Trial Chamber entered a plea of not guilty on his behalf, pursuant to Rule 62 (iii) of the Rules;

NOTING that the motion was considered on the basis of the briefs of the Parties pursuant to Rule 73 of the Rules.

Arguments by the Parties

The Defence argued *inter alia* that:

1. The accused is not properly apprised of the nature of the charges against him, given that the current indictment is too imprecise.
2. Some particulars regarding the offence are vague, such as specifications relating to the time, place, and means of the alleged crimes, as well as to the definition of conspiracy, complicity and incitement.

The Prosecutor argued *inter alia* that:

3. The motion is not founded in law since there are no provisions in the Rules and no basis in case law, to support the Defence's request for bill of particulars;
4. If Counsel for the accused has any objections regarding the indictment, he can file a motion for defects in the form of the indictment as provided for by Rule 72 (B) (ii) of the Rules.
5. The purpose of a bill of particulars is to oblige the Prosecutor to add needed specificity to an indictment, and not to oblige the Prosecutor to make an evidentiary discovery or to urge prosecution to make a prompt disclosure.
6. The Defence has been given the supporting material substantiating the indictment, which enable him to fully defend the accused.
7. The requests of the Defence are improper, vague, overbroad or unintelligible, and also imply requests for evidence.
8. It is not the Prosecutor's role to provide the Defence with legal research, analysis or definitions.

AFTER HAVING DELIBERATED

The Motion Is Not Founded In Law:

9. The Trial Chamber notes that a bill of particulars is a "Form or means of discovery in which the prosecution sets forth the time, place, manner and means of the commission of the crime as alleged in complaint or indictment"¹. The Chamber holds that there is no provision in the Rules enabling the Defence to address such a motion to a Trial Chamber. The only specific provision in the Rules that provides this type of relief, is Rule 72 (B)(ii), which enables the Defence to raise inconsistencies or imprecision relating to the charges, through a motion for defects in the form of the indictment.
10. The Chamber, therefore, considers that the Defence's request is not in conformity with the procedure envisaged in the Rules, as applied in the case law of the Tribunal. The motion may therefore be dismissed on the ground that it is not founded in law.

¹ Black's Law Dictionary, 6th Edition.

The Bill Of Particulars Is Without Merit:

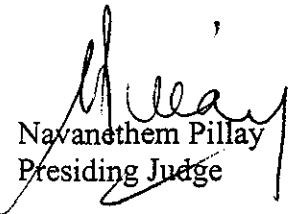
11. Notwithstanding the above, the Chamber has considered the merits of the motion. The Chamber is of the view that, for the most part, the particulars requested by the Defence are not matters that could properly be included in a motion for defects in the form of the indictment, or in any other motion. The requests are either vague in substance, for example, "The specific facts and circumstances surrounding the alleged offences" (request 8); inappropriate as a matter of form, for example, "Define complicity" (request 12); or go to issues of evidence, for example, "The specific time of day that the Defendant allegedly formed the intent of the crime" (request 3). Hence, the Chamber is of the view that the motion is fundamentally without merit.
12. Accordingly, the Defence motion is not based on the Statute or the Rules and, in any event, is without merit.


FOR ALL THE ABOVE REASONS

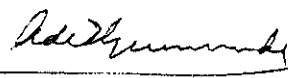
THE TRIBUNAL

DENIES the Defence's motion for bill of particulars.

Arusha, 16 March 2000


Navanethem Pillay
Presiding Judge


Erik Møse
Judge


Asoka de Zoysa Gunawardana
Judge

