

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-01-63-T
07-12-2006
(1753-1750)

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1753

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Gberdao Gustave Kam
Robert Fremr

Registrar: Adama Dieng

Date: 7 December 2006

THE PROSECUTOR

v.

Siméon NCHAMIHIGO

Case No. ICTR-2001-63-T

2006 DEC - 7 11 P 5: 22
JUDICIAL RECORDS/ARCHIVES
UNICTR
07/12/06

DECISION ON DEFENCE MOTION FOR NON-CONFORMITY OF THE
INDICTMENT WITH THE TRIAL CHAMBER'S DECISION ON DEFECTS IN THE
FORM OF THE INDICTMENT

Article 20 of the Statute

Office of the Prosecutor:

Alphonse Van
Lloyd Strickland
Madeleine Schwarz
Adama Niane

Defence Counsel:

Denis Turcotte
Benoît Henry

INTRODUCTION

1. The trial in this case began on 25 September 2006. The Prosecution filed an Amended Indictment on 18 July 2006 and its Corrigendum on 25 July 2006. On 27 September 2006, the Trial Chamber's Decision on the Defence Motion on Defects in the Form of the Indictment ("Decision on Defects") ordered the Prosecution to make additions and changes to the Amended Indictment. The Prosecution filed its Revised Amended Indictment on 29 September 2006. The Defence now asserts that this new version of the Indictment does not conform to the Chamber's orders and that the non-compliance violates the rights of the Accused to know the charges against him and prepare his defence.¹ It therefore requests the Chamber to order the Prosecutor to conform to the Decision on Defects, or to strike the paragraphs in question from the Indictment. The Prosecution submits that the Revised Amended Indictment conforms to the Decision on Defects, but proposes further amendments to it.

DISCUSSION

2. Article 20 of the Statute provides for the minimum rights of the Accused. Subsection 4(a) provides for the Accused to be informed promptly and in detail in a language which he understands and of the nature and cause of the charges against him. The Defence alleges that the Prosecution failed in three respects to comply with the Decision on Defects. The Chamber will review the merits of these alleged failures, and determine the appropriate remedy for any breach.

Clarifications in Paragraphs 10 and 20(a)

3. The Defence complains that the Prosecution failed to comply with the Chamber's order to clarify certain dates in paragraphs 10 and 20(a) of the Amended Indictment and resolve the doubt whether the meetings pleaded in those two paragraphs were the same or different meetings.²

4. In the Revised Amended Indictment, the Prosecution made no clarification in this regard to paragraphs 10 and 20(a) in the Revised Amended Indictment but in its response to the Defence motion, the Prosecution stated that those paragraphs refer to different and separate events³ and that there is no better information on the dates than already alleged. The

¹ *The Prosecutor v. Simeon Nchamihigo*, Case No. ICTR-2001-63-T, Requête de la Défense en Non Conformité de L'Acte D'Accusation Révisé Avec la Décision de la Chambre de Première Instance "Decision on Defence Motion for Defects in the Form of the Indictment" Rendue le 27 Septembre 2006, filed on 9 October 2006.

² *Nchamihigo*, Decision on Defence Motion on Defects in the Form of the Indictment (TC), 27 September 2006 ("Decision on Defects"), para. 20; Order I.

³ *Nchamihigo*, Prosecution's Reply to the Defence Motion, filed on 16 October 2006, paras. 5-7.

Chamber specifically required the provision of information to the extent possible and, in the absence of further information, is satisfied that the Prosecution has now complied with this aspect of the Decision on Defects. The allegation in paragraph 10 is now under the heading of "The Accused" and is not included in the statement of facts supporting any of the charges in the Indictment. If that allegation is meant to support one of the charges in the Indictment, then it should be included in the facts of the relevant count(s).

Clarifications Concerning Alleged Roadblocks

5. The Prosecution contends that although it complied with the Chamber's order in the Decision on Defects which instructed the Prosecution to provide the best detail available in the Revised Amended Indictment concerning the roadblocks mentioned in paragraphs 21, 22, 23, 24, and 25, it furnished "additional" details in its response to the Motion in order to assist the Defence.

6. The "additional" details on the roadblocks provide for their easier identification allowing the Accused to better understand the charges against him and are what the Prosecution was required to have originally included in the Revised Amended Indictment. In this respect, the Prosecution breached the Chamber's orders.

7. Under the circumstances, the Chamber does not find – and the Defence has not shown – any prejudice to the Accused which would justify the removal of these paragraphs from the Indictment and considers that the Prosecution should include the "additional" details in the Indictment.

Clarifications Concerning the Identities of Individuals

8. The Defence contends that the Prosecution failed to comply with the order to specify, to the extent possible, the identities of the individuals in paragraphs 26, 30, 32, 54, 60, 61, 64 and 65 of the Amended Indictment. The Prosecution responds that no further names are available for paragraphs 26, 30, 32, 60, 61 and 65.

9. In the absence of further evidence, the Chamber cannot conclude that its order has been breached in relation to these paragraphs. However, the Chamber notes that the Prosecution made no comment as to whether further details could be provided for paragraph 64 and directs the Prosecution to clarify its position with respect to this paragraph and if more specific information exists, it should be provided.

10. With regard to paragraph 54, the Prosecution provided information in its Response clarifying the location of the roadblocks manned by Nchamihigo although not ordered to do so by the Decision on Defects, while asserting that it has no further information on the

identities of individuals mentioned in the paragraph. Although the Chamber does not find that there was any breach of its order for this paragraph it directs the Prosecution to include the information on the roadblocks in the Indictment.

Conclusion


11. The Chamber conveys its concern as to how the Prosecution complied with the Chamber's Decision on Defects. Although it did not entirely act in accordance with with the Chamber's orders in the Decision on Defects of 27 September 2006, the additional details provided in the Prosecution's Response to the Defence Motion remedy the deficiencies. The Chamber therefore directs the Prosecution to file a new Indictment including the additional information.

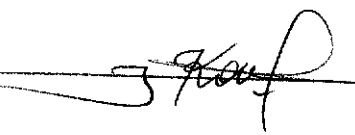
FOR THOSE REASONS, THE CHAMBER


GRANTS the Motion in part;

- I. **ORDERS** the Prosecution to file a new Revised Amended Indictment with the proposed additional details as submitted for paragraphs 21, 22, 23, 24, 25, and 54 of the Amended Indictment by 11 December 2006;
- II. **ORDERS** the Prosecution to review its submission concerning paragraph 64 and make any appropriate additions to this paragraph in the new Revised Amended by 11 December 2006;
- III. **ORDERS** that the Prosecution specify what crime or crimes, if any, the facts pleaded in paragraph 10 of the Indictment are meant to support in the new Revised Amended Indictment and include it, if appropriate, in the facts of the relevant count(s) by 11 December 2006.
- IV. **DENIES** the remainder of the Motion.

Arusha, 7 December 2006, done in English.


Dennis C.M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Robert Fremr
Judge

[Seal of the Tribunal]

