



UNITED NATIONS  
NATIONS UNIES

**International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda**

**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: 11 April 2000

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**THE PROSECUTOR  
vs.  
JEAN BOSCO BARAYAGWIZA**

**Case No. ICTR-97-19-I**

**DECISION ON THE PROSECUTOR'S REQUEST FOR LEAVE TO FILE AN  
AMENDED INDICTMENT**

Office of the Prosecutor:

Mr N. Sankara Menon  
Mr William Egbe

Counsel for the accused:

Mr J. P. L Nyaberi (Counsel at the hearing)  
Ms Carmelle Marchessault (newly assigned Counsel)

**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**  
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SIGNATURE: [Signature] DATE: 11/04/2000

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**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 motion from the Prosecutor Request for Leave to File an Amended Indictment, along with a Brief in Support, filed 28 June 1999, and the defence’s brief in response, filed on 20 September 1999;

**NOTING** that the Prosecution has previously filed a motion requesting leave to file an amended indictment, dated 18 December 1998. In the present motion the Prosecution request leave to formally withdraw its motion dated 18 December 1998;

**HAVING** heard the parties on 19 October 1999;

**NOTING** the Appeals Chamber Decision, dated 3 November 1999, and its subsequent review Decision, dated 31 March 2000, in the Barayagwiza case.

**The Facts**

The original indictment against the accused was confirmed on 23 October 1997. The accused made his initial appearance on 23 February 1998, pursuant to Rule 62 of the Rules of Procedure and Evidence (the “Rules”), and pleaded not guilty to all the counts put to him.

The present motion was heard on 19 October 1999. Following the Appeals Chamber decision, dated 3 November 1999, which ordered, *inter alia*, that the indictment against Barayagwiza be dismissed, all matters relating to Barayagwiza were put on hold, including the present decision of this Trial Chamber. Following a request by the Prosecutor for a review of the said Appeals Chamber decision on the basis of new facts, the Appeals Chamber held a review hearing. On 31 March 2000, the Appeals Chamber rendered its review decision, which allows the case against Barayagwiza to continue.

**The Prosecutor’s Motion**

The Prosecution filed its Request for Leave to File an Amended Indictment, along with a Brief in Support on 28 June 1999, and has attached a proposed Amended Indictment (annex B) (“proposed Amended Indictment”). The Prosecution has also supplied the supporting materials (annex C), which the Trial Chamber has not considered.

The Prosecution Motion requests the following amendments:

- (i) To add three new charges namely,
  - crimes against humanity for extermination



- Article 3 Common to the Geneva Convention and Additional Protocol II thereto, for outrages upon personal dignity
  - Article 3 Common to the Geneva Convention and Additional Protocol II thereto, for pillage;
- (ii) To expand the count of conspiracy to commit genocide;
- (iii) To bring the current indictment in line with current charging practices.

## The Deliberations

### *The Applicable Rules*

The Prosecution submitted that Rule 50 of the Rules allows it to amend the indictment at this stage of the proceedings, with leave of the Trial Chamber. The Defence submitted that the format of the proposed Amended Indictment does not conform to the requirements of the Rules, and in particular to Rule 47(C). The Chamber finds no merit in the Defence contention. In numerous cases before this Tribunal, the Trial Chambers have granted the Prosecution leave to amend indictments which used similar formats to the proposed Amended Indictment in the present case; see for example *The Prosecutor v. Pauline Nyiramasuhuko and Arsene Shalom Ntahobali*; *The Prosecutor v. Ferdinand Nahimana*; *The Prosecutor v. Hassan Ngeze*. The Trial Chamber finds that the format of the proposed Amended Indictment meets the requirements of the Rules.

The Defence further submitted that to justify the proposed amendments, the Prosecution must show a *prima facie* case to support each new charge, and that the Trial Chamber should conduct a review of the supporting materials. The same issue was addressed by this Chamber in *Prosecutor v. Ferdinand Nahimana*, in its decision on Prosecutor's request for leave to file an amended indictment, filed on 10 November 1999. In that case the Chamber stated:

"The Trial Chamber wishes to draw a distinction between the procedural requirements of Rules 47 and 50. In the case of Rule 47, a single Judge reviewing an indictment presented for confirmation, is required to establish from the supporting material that a *prima facie* case exists against the suspect. A Trial Chamber seized with a motion requesting leave to amend an indictment, pursuant to Rule 50, against an accused who has already been indicted, has no cause to inquire into a *prima facie* basis for the proposed amendments to the indictment. Since such a finding has already been made in respect of the accused, it is not necessary for the Trial Chamber to consider the supporting material contained in Annex C. The Trial Chamber has therefore not considered the supporting material marked Annex C, in its deliberation. The Trial Chamber finds that in considering the Prosecutor's request for leave to file an amended indictment pursuant to Rule 50, it is sufficient if the Prosecutor establishes the factual basis and the legal motivation in support of her motion." (see *ibid* at paras. 14 and 15).



In the present case, the Chamber concurs with this view.

*The Factual Basis for the Motion*

The Prosecution submitted that the proposed new counts and the reformulated count of conspiracy to commit genocide are based on new evidence, following the on-going investigations by the Office of the Prosecutor. It also argued that the proposed amendments accurately reflect the totality of the criminal conduct of the accused. The Defence submitted that there are no new facts to support the amendment, but only a new layout of the indictment.

The Trial Chamber is of the view that the Prosecution is not prevented by the Rules to conduct on-going investigations against the accused. Indeed, the Prosecution has the responsibility to prosecute the accused to the full extent of the law and to present all relevant evidence before the Trial Chamber.

The Chamber finds that there are new facts to support the additional charges in the proposed Amended Indictment. In essence, the proposed Amended Indictment charges Barayagwiza for acts in relation to his role in 'the media' and in the Prefecture of Gisenyi, and the concise statement of facts indicates the specific paragraphs that support each of the proposed new counts. Proposed Count 5 charges the accused with crimes against humanity for extermination, which is the same charge that was not confirmed by the confirming judge. In the proposed Amended Indictment, the concise statement of facts supports this charge with new factual allegations. Proposed Count 8 and Count 9 charge the accused with violations under Article 3 Common to the Geneva Convention and Additional Protocol II thereto, for outrages upon personal dignity and for pillage, respectively. Count 8 is supported by new factual allegations contained in the concise statement of facts, in particular those contained in paragraph 7.8. Count 9 is also supported by new factual allegations, in particular those contained in paragraph 7.9.

In relation to the count of conspiracy to commit genocide, the Prosecutor requested leave to reformulate this count by adding the names of the alleged co-conspirators. The Trial Chamber is of the view that when the names of co-conspirators are known, these names should be stated in the body of the conspiracy count. In the present case, the proposed new count of conspiracy to commit genocide is supported by the factual allegations. Accordingly, the Chamber finds that the proposed amendments to the count of conspiracy to commit genocide should be granted.

*The Temporal Jurisdiction of the Tribunal*

The Defence submitted that some of the allegations in the proposed amended indictment do not fall within the temporal jurisdiction of the Tribunal. The Trial Chamber notes that some of the allegations in the proposed amended indictment do fall outside the period 1 January 1994 to 31 December 1994. The same issue was addressed by this Chamber in *Prosecutor v. Ferdinand Nahimana*, in its decision on Prosecutor's request for leave to file an amended indictment, filed on 10 November 1999. In that case the Chamber stated:

“the Trial Chamber accepts the Prosecutor’s submission that she intends to rely on these allegations in proving the ingredients of the offences which were allegedly committed within the temporal jurisdiction of the Tribunal. The Trial Chamber recognises the possibility that these allegations may be subsidiary or interrelated allegations to the principal allegation in issue and thus may have probative or evidentiary value. The Trial Chamber is therefore of the view that it is premature to address the relevance and admissibility of these allegations at this stage of proceedings. The appropriate stage will be at the trial of the accused.” (*ibid* at paras. 27 and 28).

In the present case, the Chamber concurs with this view.

*The Issue of Delay*

The Trial Chamber is not satisfied that the amendments sought will unduly delay the trial of the accused or that such delay, as may be occasioned, will prejudice the accused. Further, the Trial Chamber is convinced that the amendments requested by the Prosecution are in the interests of justice and will not adversely effect the accused persons right to a fair trial.

The Trial Chamber is satisfied that the amendments to the Indictment requested by the Prosecutor are supported in fact and in law.

**FOR THESE REASONS:**

**THE TRIBUNAL,**

**GRANTS** the Prosecutor's motion, filed on 28 June 1999, for leave to file an amended indictment against Barayagwiza.

**ORDERS** that the indictment be amended:

By adding:

- i) Count 5. CRIMES AGAINST HUMANITY (EXTERMINATION), pursuant to Articles 3(b), 6(1) and 6(3) of the Statute;
- ii) Count 8. SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II thereof, pursuant to Articles 4(e) and 6(3) of the Statute;
- iii) Count 9. SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II thereof, pursuant to Articles 4(f) and 6(3) of the Statute;



- iv) The names of the alleged co-conspirators in the Count of Conspiracy to Commit Genocide, pursuant to Article 2(3)(b) and 6(1) of the Statute;

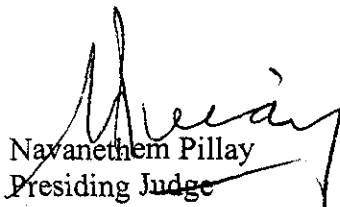
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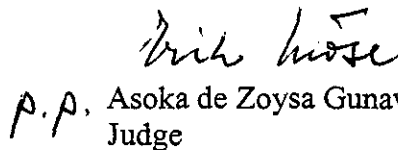
- v) By expanding the existing Counts in the form drafted in the proposed Amended Indictment, in order to reflect the more substantial supportive allegations.

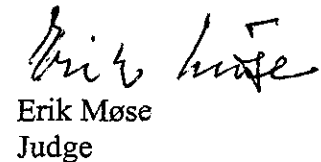
**ORDERS** that the indictment reflecting the amendments as ordered above, along with the additional supporting material, be filed with the Registry and served on the accused, forthwith.

**GRANTS** the Prosecution leave to withdraw its motion filed on 18 December 1998 entitled "The Prosecutor's Request for Leave to File an Amended Indictment".

Arusha, 11. April 2000

  
Navanethem Pillay  
Presiding Judge

  
P.A. Asoka de Zoysa Gunawardana  
Judge

  
Erik Møse  
Judge

Seal of the Tribunal

