

ICTR-01-71-1
20-08-2003
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
(1204-1202)

1204

TRIAL CHAMBER I

Before: Judge Erik Møse
Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 20 August 2003

THE PROSECUTOR

v.

Emanuel NDINDABAHIZI

Case No. : ICTR-2001-71-I

ORIGINAL RECORDS/ARCHIVES
ICTR
2003 AUG 20 A 9:57

DECISION ON PROSECUTION MOTION FOR LEAVE TO AMEND INDICTMENT

The Office of the Prosecutor

Charles Adeogun-Phillips
Wallace Kapaya

The Defence

Pascal Besnier
Guillaume Marçais

E. M.

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“the Tribunal”),

SITTING as Judge Erik Møse, designated by the Trial Chamber, pursuant to Rule 73 of the Rules of Procedure and Evidence (“the Rules”);

BEING SEIZED OF the Prosecution “Motion for Leave to Amend an Indictment”, filed on 7 July 2003;

CONSIDERING the Defence “Réponse de la défense à la requête du procureur aux fins d’amendement de l’acte d’accusation”, filed on 14 July 2003; the Prosecution “Rejoinder” thereto, filed on 24 July 2003; and Defence Counsel’s letter of 31 July 2003;

HEREBY DECIDES the motion.

INTRODUCTION

1. The original Indictment of the Accused was confirmed on 5 July 2001. A modified Indictment was filed on 5 October 2001, with leave, adding a separate charge of crime against humanity (rape), and allegations of superior responsibility under Article 6(3) of the Statute in respect of the charges of genocide and crimes against humanity (murder, extermination and rape). The Prosecution requested further amendments to the Indictment by motion filed 9 May 2003, which included withdrawal of the counts concerning direct and public incitement to commit genocide, crimes against humanity (rape), and the charge of superior responsibility. This motion was not opposed by the Defence and was approved (subject to a minor re-numbering of clauses) by the Chamber by its Decision filed on 30 June 2003. On 7 July 2003, the Prosecution filed the present motion, seeking further amendments to the Indictment.

SUBMISSIONS OF THE PARTIES

2. The Prosecution requests leave to amend its Indictment to correct typographical and grammatical errors, and submits a version of the Indictment showing its proposed additions and deletions. In its Rejoinder, the Prosecution adds that the changes more accurately reflect its case after a reconfirmation exercise in Rwanda.

3. The Defence objects to the changes. It argues that amendments to the Indictment at this late stage, with less than two months until the trial is scheduled to commence, impair the right to a fair trial under Article 20 (4)(b) of the Statute. This is particularly true in respect of the proposed amendments which, contrary to claims of the Prosecution, may implicate substantive changes that alter the scope or meaning of the indictment.

DELIBERATIONS

4. Rule 50 of the Rules of Procedure and Evidence (“the Rules”) permits a Trial Chamber to grant leave for the amendment of an indictment, but does not set forth the criteria for so doing. Case law has placed the onus on the Prosecutor to set out the factual and legal motivation for amendments and has, for instance, approved amendments arising from newly discovered evidence, or which more accurately describe “the totality of the criminal conduct of the accused.”¹

¹ *Prosecutor v. Anatole Nsengiyumva*, Decision on the Prosecutor’s Request for Leave to Amend the Indictment, 2 September 1999, p. 4; *Prosecutor v. Jean Bosco Barayagwiza*, Decision on the Prosecutor’s Request for Leave to File an Amended Indictment, 11 April 2000, p. 4.

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Ivan

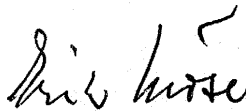
5. The Chamber notes that most of the amendments proposed by the Prosecution are of a linguistic nature or aimed at obtaining consistency, thereby improving the quality of the Indictment. The Defence cannot reasonably object to such changes which simply relate to form, not substance. Changes bringing the language in the Indictment closer to the terminology in the Statute are also acceptable, even at this late stage. In relation to paragraph 21 of the Indictment, the Chamber notes the Prosecution's explanation that a recently concluded reconfirmation exercise showed that the witnesses purportedly able to identify the victims listed in that paragraph are no longer available for trial. The Chamber agrees that, under these circumstances, it is preferable to delete these names from the Indictment and recalls that it follows already from the original formulation that these victims were allegedly not the only ones, cf. the word "including". It is the view of the Chamber that the proposed amendments of the Indictment do not represent any prejudice to the Accused, even if the trial is scheduled to commence on 1 September 2003.

FOR THE ABOVE REASONS, THE CHAMBER

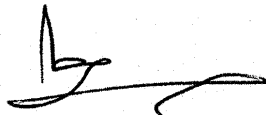
GRANTS the Prosecution leave to amend the Indictment.

INSTRUCTS the Registry to revise the French version of the Indictment immediately and to transmit the final English and French version to the parties urgently.

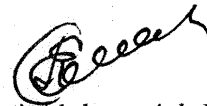
Arusha, 20 August 2003



Erik Møse
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

