



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER I

Before:

Judge Erik Møse, presiding
Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 21 April 2005

THE PROSECUTOR

v.

Jean-Baptiste GATETE

Case No. : ICTR-00-61-I

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

The Prosecution:

Richard Karegyesa
Roberta Baldini
Khaled Ramadan
Kentaro Kanyamozi

The Defence:

Richard Dubé

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

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

BEING SEIZED OF “The Prosecutor’s Submission and Request for Leave to File an Amended Indictment Complying with the Chamber’s Order of 29 March 2004”, filed on 27 November 2004;

NOTING that the Defence has not filed a response;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Indictment was confirmed against the Accused on 19 December 2000. The Accused was

arrested on 11 September 2002 and was transferred to the Tribunal on 13 September 2002. The Accused made his initial appearance on 20 September 2002 and pleaded not guilty to all charges in the Indictment. In its decision of 29 March 2004, the Chamber ordered the Prosecution to provide more specific information in relation to several paragraphs of the Indictment.[1] Pursuant to this order, the Prosecution now seeks leave to file an amended indictment (“the Amended Indictment”). No date has yet been set for trial.

SUBMISSIONS

2. According to the Prosecution, the Amended Indictment provides precise factual allegations, specific dates and times frames, names of victims and co-perpetrators and accurately reflects the Accused’s level and modes of participation in the crimes alleged, including his participation in a joint criminal enterprise. A substantial volume of the evidence relied on in the Amended Indictment has already been disclosed to the Accused.

DELIBERATIONS

3. Rule 50 provides that after the initial appearance of the Accused, an Indictment may only be amended by leave of the Trial Chamber. The Chamber must weigh three factors in determining whether to grant leave: the ameliorating effect of the changes on the clarity and precision of the case to be met; the diligence of the Prosecution in making the amendment in a timely manner that avoids creating an unfair tactical advantage; and the likely delay or any other prejudice to the Defence caused by the amendment.[2] In addition, the Chamber must also determine whether a *prima facie* case exists with respect to any new charges in the proposed amendments.[3]

4. The Prosecution has eliminated much of the general background information contained in the original Indictment. It has also withdrawn certain factual allegations as well as the counts of direct and public incitement to commit genocide and violations of Article 3 common to the Geneva Conventions and Additional Protocol II. In addition, the proposed Amended Indictment particularizes the allegations in the current Indictment by, *inter alia*, specifying dates and times, locations, names of victims, and names of other individuals present or involved in the alleged attacks. The majority of these particulars correspond to information requested by the Defence and which the Prosecution was ordered to provide in the Chamber’s decision of 29 March 2004. Other amendments describe additional incidents, proximate in time and in place to those alleged in the initial Indictment.

5. The Amended Indictment also advances with greater particularity the mode of criminal liability joint criminal enterprise. Though not using the words “joint criminal enterprise”, paragraph 6.6 of the original Indictment alluded to this mode of liability when it alleged that “Jean Baptiste Gatete, in his position of authority and acting in concert with others, participated in the planning, preparation or execution of a common scheme, strategy or plan to exterminate the Tutsi, by his own affirmative acts or through persons he assisted or by his subordinates with his knowledge and consent”. The Amended Indictment has not therefore added a new form of responsibility, but rather eliminated the ambiguity arising from the formulation used in the original Indictment concerning the Prosecution’s intent to argue this form of participation. Recent jurisprudence of this Tribunal identifies three forms of joint criminal enterprise, basic, systemic, and extended, each characterized by a distinct mental element.[4] Although the Prosecution has not specifically mentioned the three forms by name, the Chamber is of the opinion that the formulation of the allegation of joint criminal enterprise in the Amended Indictment indicates the Prosecution’s intent to argue all three forms.[5]

6. In sum, the added particulars in the Amended Indictment better reflect the case the Prosecution will present at trial and provide further notice to the Accused of the nature of the charges against him. Granting leave to file the Amended Indictment would therefore enhance the fairness of the trial by clarifying the Prosecution’s case and allowing the Defence to streamline its investigations and

better prepare for trial. Most of the amendments are brought in response to the Chamber's decision of 29 March 2004, ordering the Prosecution to amend the Indictment to provide more specific information. Therefore, there is no issue of the Prosecution's lack of diligence in bringing the amendments.

7. While some of the amendments describe new incidents, such incidents are similar in character and proximate in time and place to incidents already enumerated in the existing Indictment. They are described with enough specificity to permit focused investigations by the Defence, if necessary. No date has yet been set for trial. Therefore, the Chamber cannot identify any prejudice to the Accused by allowing the amendments. The Prosecution has also disclosed additional witness statements, which along with earlier disclosure, contain allegations which are reflected in the amendments.

8. The Chamber notes that paragraphs 16 to 28 supporting Counts 1 to 3 are repeated verbatim twice in support of Counts 4 and 5.^[6] Instead, the Prosecution should incorporate paragraphs 16 to 28 by reference under Counts 4 and 5 and remove paragraphs 34 to 47 and 49 to 61.

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Prosecution leave to amend the Indictment in accordance with Annex C of its motion and paragraph 8 of the present decision;

ORDERS that the Amended Indictment be filed with the Registry immediately.

Arusha, 21 April 2005

Erik Møse	Jai Ram Reddy	Sergei Alekseevich Egorov
Presiding Judge	Judge	Judge

[Seal of the Tribunal]

^[1] *Gatete*, Decision on Defence Preliminary Motion (TC), 29 March 2004.

^[2] *Karamera et al.*, Decision on Prosecutor's Interlocutory Appeal Against Trial Chamber III Decision of 8 October 2003 Denying Leave to File an Amended Indictment (AC), 19 December 2003; *Simba*, Decision on Motion to Amend Indictment (TC), 26 January 2004, para. 9; *Muhimana*, Decision on Motion to Amend Indictment (TC), 21 January 2004, para. 6.

^[3] Rule 50 (A) (ii) states: "In deciding whether to grant leave to amend the indictment, the Trial Chamber or, where applicable, a Judge shall, *mutatis mutandis*, follow the procedures and apply the standards set out in Sub-Rules 47(E) and (F) in addition to considering any other relevant factors."

^[4] *Ntakirutimana*, Judgement (AC), 13 December 2004, paras. 463-467; *Simba*, Decision on the Defence's Preliminary Motion Challenging the Second Amended Indictment (TC), 14 July 2004, paras. 8-10.

^[5] See para. 9 of the Amended Indictment, which alleges, "In addition, the accused participated in a joint criminal enterprise. The purpose of this joint criminal enterprise was the destruction, in whole or in part, of the Tutsi racial or [ethnic] group in Byumba and Kibungo *prefectures* as well as throughout all of Rwanda. To fulfil this criminal purpose, the accused, acting individually or with others known and unknown, significantly contributed to the joint criminal enterprise. The crimes enumerated within this Indictment were within the object of the joint criminal enterprise. Alternatively, the crimes enumerated were the natural and foreseeable consequences of the joint criminal enterprise and the accused and others known and unknown, were aware that such crimes were the likely outcome of the joint criminal

enterprise. Despite his awareness of the foreseeable consequences, Jean-Baptiste GATETE and others known and unknown, knowingly and wilfully participated in the joint criminal enterprise.”

[6] In addition, paragraphs 43 and 46 are identical.