



UNITED NATIONS
NATIONS UNIES

ICTR-01-74-I
16-12-2005
(1642-1638)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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Ivan

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Flavia Lattanzi
Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 12 December 2005

THE PROSECUTOR

v.

François KARERA

Case No. ICTR-01-74-PT

JUDICIAL
ADMINISTRATION
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**DECISION ON THE PROSECUTOR'S REQUEST FOR LEAVE
TO AMEND THE INDICTMENT**

Rule 50 of the Rules of Procedure and Evidence

Office of the Prosecutor:
Charles Adeogun-Phillips
Memory Maposa
Peter Tafah
Florida Kabasinga

Defence Counsel
Carmelle Marchessault
Steven Kelliher

[Signature]

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

SITTING as Trial Chamber III (“Chamber”), composed of Judge Dennis C. M. Byron, Presiding, Judge Flavia Lattanzi and Judge Gberdao Gustave Kam;

CONSIDERING the “Prosecutor’s Request for Leave to Amend an Indictment pursuant to Rules 73, 50 and 51 of the Rules of Procedure and Evidence” (“Motion”), filed by the Prosecutor on 23 November 2005;

CONSIDERING the Response thereto, filed by the Defence for Francois Karera (“Defence”) on 29 November 2005;

CONSIDERING the “Prosecutor’s Response to the Trial Chamber’s Scheduling Order of 7 December 2005 pursuant to Rule 54 of the Rules”, filed on 8 December 2005;

HEREBY DECIDES the Motion, pursuant to Rule 73 of the Rules of Procedure and Evidence (“Rules”).

INTRODUCTION

1. The trial in this case is scheduled to begin on 9 January 2006. On 10 November 2005, the Prosecution disclosed all of its witness statements to the Defence in an un-redacted form. On 23 November 2005, at a Status Conference, the parties confirmed their trial readiness. On that day, however, the Prosecutor filed a Motion seeking amendments to the Indictment. The Chamber will now address this Motion.

DISCUSSION

2. The Chamber may grant leave to amend the Indictment pursuant to Rule 50 of the Rules. It will consider the rights of the Accused to be informed promptly and in detail of the nature and cause of the charge against him, and to a fair trial without undue delay.¹ The Chamber does not consider that this is a complex case, and will also consider the ameliorating effect of the changes on the clarity and precision of the case to be met, whether new charges have arisen as a consequence of the proposed modifications, the diligence of the Prosecutor in making the amendment in a timely manner, and the delay or other possible prejudice to the Defence caused by the amendment.²

The charge of murder in the alternative

3. The indictment initially charged murder and extermination as crimes against humanity in the alternative. This application seeks to charge them as two separate offences. The jurisprudence supports cumulative pleading in the sense that both charges could be based on similar facts. In this case the defence would have had to prepare for both charges even when they were charge as alternative offences. The issue of prejudice does not arise.

4. The indictment has used the same statement of facts in support of both charges of the indictment. The elements of the crime of extermination were alleged, and in each event

¹ *Prosecutor v. Augustin Ndindiliyimana, Augustin Bizimungu, Francois-Xavier Nzuwonemeye, Innocent Sagahutu*, Case No. 2000-56-I, Decision on Prosecutor’s Motion Under Rule 50 for Leave to Amend the Indictment Issued on 20 January 2000 and Confirmed on 28 January 2000 (TC), 26 March 2005, paras. 40-44

² *Id.*



extermination and murder, in which the indictment did not specifically mention the term extermination, was the allegation in paragraph 36 that the Accused led attacks against a civilian population in which Theoneste Gakuru was killed. In the Chamber's view it seems illogical to separate the charges without a clarified pleading of the events on which the Prosecutor will rely to support the charge of murder. The Prosecutor should clarify which facts are meant to support the charge of murder, including the names of the victims, the places and circumstances of their death, or to allow the charge to remain in the alternative.

Deletion of certain paragraphs and words

5. The Prosecutor requests to delete paragraphs 7, 8, 11, 16, 17, 18, and 26 of the Indictment because they are not sufficiently supported by the proposed testimony of the witnesses in the case and certain words and sections from paragraphs 9, 12, 15, 19, and 29 of the Indictment as he no longer relies on those assertions. These deletions will make the indictment more consistent with the evidence the Prosecutor intends to adduce at trial and will clearly be in the interests of justice. In paragraphs 15 and 29 the proposed deletions relate to a substitution of a geographical location and these are dealt separately in this decision. In regard to all other deletions the Chamber allows the proposed changes.

Addition of names of victims

6. The Prosecutor requests to add names of victims in paragraph 35 and to add the death of the Conseiller of Kimisange, Theoneste Gakuru in paragraph 36. The Defence does not oppose that addition if the victims do not relate to new charges. The Chamber has reviewed the witness statements submitted by the Prosecution and has found that the victims refer to events that took place in Nyarugenge commune, already outlined in the Indictment in paragraphs 32- 34. The addition of the names of victims in paragraph 35 adds specificity and clarity to the indictment and is allowed.

7. As for the addition of the death of the Conseiller of Kimisange, Theoneste Gakuru, in paragraph 36, the Chamber has found the mention of this death in the witness statement of Witness BMR signed on 21 October 2005. In that statement, the alleged death of Theoneste Gakuru took place in Rushashi commune. The Prosecutor states that he had falsely thought that was located in Bugesera region. In this case the reference to the event in the Indictment, coupled with the disclosure of the witness statement gave notice to the defence and eliminates surprise and prejudice. However the Indictment remains unsatisfactorily vague because it omits to specify the location, time or manner of the killing. The Prosecutor should therefore add such specifications within the time limit specified below.

Correction of time frame of alleged criminal activity

8. The Prosecution requests to alter the reference made in paragraph 27 concerning "late December 1994" and substitute it with "between July and December 1994". The Defence does not oppose this request. The Chamber finds that the requested modification is not substantial but simply formal and therefore should be allowed.

Expansion of geographic area of alleged criminal activity

9. In each of the four counts of the indictment the accused was charged with crimes in the prefectures of Kigali-Ville and Kigali-Rural. In the statement of facts supporting these counts, the Indictment made specific allegations of events that occurred in locations within these prefectures. The Prosecutor seeks to replace the locations specified with the prefectures in which they were located. In his submission he alleged that he received new information as late as November 2005, all of which has been disclosed on the Accused and the Defence. The Chamber is concerned, from its own enquiry that the Indictment may be using geographical

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designations that were not in use in 1994.³ The Chamber considers that the Indictment should use the names and government divisions of prefectures and communes that existed in 1994. However, this may be a matter for evidence at the trial and the Chamber makes no order at this time.

10. In paragraph 14, 15 and 36 the Indictment alleges that the accused had led attacks against the civilian population in the Bugesera region of the Kigali-Rural prefecture and that he was sous-prefet or prefect of that region. The Prosecutor seeks to delete the "Bugesera region" so that the allegations against the Accused will include the entire Kigali-Rural prefecture. Pursuant to an Order of 7 December 2005, the Prosecutor clarified that the Bugesera region is a part of the Prefecture of Kigali consisting of Ngenda, Gashora and Kanzenze communes located in the southern part of the said prefecture, close to the border with Burundi.⁴ The Prosecutor explained that he had falsely believed that Rushashi commune in Kigali-Rural was in the Bugesera region and it was significant being the home commune of the Accused. It should be noted that the pleading in paragraph 2 alleges that the accused was born in Huro secteur in the Musasa commune, and in paragraph 4 of the Indictment indicates that Nyarugenge commune in Kigali-Ville is the home secteur of the Accused. The Chamber is not in a position to determine whether these references are inconsistent with each other. It is notable that neither of those communes is in the Bugesera region, as the Prosecutor submits. Moreover, the Chamber must consider the allegation relating to the killing of Theoneste Gakura in the Rushashi commune referred to above.

11. In paragraph 29, the Indictment alleges that in support of counts 3 and 4 the Prosecutor reiterates and incorporates the acts of the Accused in Nyarugenge and Kankenze communes as specified in paragraphs 4 through 27. The present application is to substitute the communes with the prefectures of Kigali-Ville and Kigali-Rural in which they were respectively located.

12. The Chamber notes that the language of the paragraph does not allege any events not included in the preceding paragraphs of the Indictment. This does not introduce any new charges or new material facts. In the preceding paragraphs, which were incorporated into paragraph 29, there were some references to the Kigali Rural prefecture.⁵ There are also the allegations of activities emanating from the Accused's status as prefect or sous-prefet of Kigali-Rural and his former status as Bourgemestre of Nyarugenge commune in Kigali-Ville. The proposed amendment does not introduce new charges, but merely creates a broader generalization of the geographical area in which the alleged events occurred.⁶

13. In determining whether the Prosecutor's request will delay the proceedings or cause a possible prejudice to the Accused⁷, the Chamber must be sure that no unfair tactical

³ The Chamber notes that in 1994 there were Kigali and Kigali-ville prefectures but no Kigali-Rural and that around 1996 there was a restructuring of the prefectures and Kigali and Kigali-Ville were re-divided into Kigali-Ville and Kigali-Rural, but differently than the previous division between the two Kigalis.

⁴ Prosecutor's Response to the Trial Chamber's Scheduling Order of 7 December 2005 pursuant to Rule 54 of the Rules, para. 10.

⁵ See for example, paragraph 19 of the Indictment which alleges killing at road blocks in Kigali-Rural.

⁶ *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55AR73, Decision of The Prosecution Interlocutory Appeal Against Trial Chamber II Decision of 23 February 2005 (AC), 12 May 2005, paras. 27 and 29.

⁷ *The Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-T, Decision on the Prosecutor's Request for Leave to Amend the Indictment (TC), 6 May 1999, par. 18; *The Prosecutor v. Juvénal Kajelijeli*, Case No. ICTR-98-44A-T, Decision on Prosecutor's motion to correct the indictment dated 22 December 2000 and motion for leave to file an amended indictment warning to the Prosecutor's counsels pursuant to rule 46 (A) (TC), 25 January 2001, par. 36.

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advantage will be gained by the Prosecutor and assess the gravity, nature and complexity of the case.⁸

14. Under these circumstances, the use of the prefecture, instead of a region of the prefecture, does not result in the Prosecutor seeking convictions on events that have not been specifically pleaded in the Indictment. The Chamber is of the view that there is no expansion of the crimes or material facts to which the altered geographical designation will lead. As a result of this conclusion, the Accused will not suffer any prejudice nor will his rights be infringed by any delay in the trial schedule.

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the deletion of paragraphs 7, 8, 11, 16, 17, 18, and 26 of the Indictment;

GRANTS the deletion of certain words and sections from paragraphs 9, 12, and 19 of the Indictment;

GRANTS addition of names of the victims in paragraph 35 of the Indictment;

ORDERS that the location, time and manner of the death of Theoneste Gakuru be specified, in paragraph 6, above;

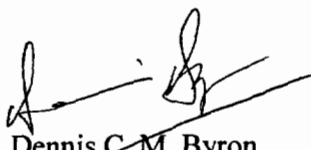
ORDERS that the Prosecutor clarify the facts which are intended to support the charge of Murder as a Crime Against Humanity, as opposed to Extermination as a Crime Against Humanity by Monday, 19 December 2005. Such clarification should include the names of the victims, the location, time and manner of the alleged murders.

GRANTS the change of paragraph 27 of the Indictment;

DENIES the remainder of the Motion; and

ORDERS the Prosecutor to file an amended version of the Indictment, no later than Monday, 19 December 2005.

Arusha, 16 December 2005, done in English.



Dennis C. M. Byron
Presiding Judge

Flavia Lattanzi
Judge

[Seal of the Tribunal]



Gberdao Gustave Kam
Judge

⁸ *The Prosecutor v. Juvénal Kajelijeli*, Case No. ICTR-98-44-A-T, Decision on Prosecutor's motion to correct the indictment dated 22 December 2000 and motion for leave to file an amended indictment warning to the Prosecutor's counsels pursuant to rule 46 (A) (TC), 25 January 2001, para. 37; *The Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-T, Decision on the Prosecutor's request for leave to amend the indictment, 6 May 1999, para. 18; *The Prosecutor v. Mika Mwachira*, Case ICTR-1995-1B-I, Decision on motion to leave indictment (TC), 21 January 2004.