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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before: Judge Arlette Ramaroson, Presiding
Judge William H. Sekule
Judge Solomy Balungi Bossa

Registrar: Mr Adama Dieng

Date: 13 February 2006

The PROSECUTOR

v.

Tharcisse RENZAHO
Case No. ICTR-97-31-I

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**DECISION ON THE PROSECUTOR'S APPLICATION FOR LEAVE TO AMEND THE
INDICTMENT PURSUANT TO RULE 50 (A) OF THE RULES OF PROCEDURE AND
EVIDENCE**

Office of the Prosecutor

Mr Jonathan Moses
Ms Katya Melliush
Mr Ignacio Tredici

Defence Counsel

Mr François Cantier

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),

SITTING as Trial Chamber II composed of Judge Arlette Ramaroson, Presiding, Judge William H. Sekule, and Judge Solomy Balungi Bossa (the "Chamber");

BEING SEIZED of the "Prosecutor's Application for Leave to Amend the Indictment Pursuant to Rule 50 (A) of the Rules of Procedure and Evidence", filed on 19 October 2005 (the "Motion");

NOTING that the Defence indicated by letter filed on 21 December 2005 that it did not wish to respond to the Motion;

CONSIDERING the Statute of the Tribunal (the "Statute"), specifically Articles 19 and 20 of the Statute, and the Rules of Procedure and Evidence (the "Rules"), in particular Rules 47 (E), (F), and (G), 50, and 73 of the Rules;

NOW DECIDES the matter pursuant to Rule 73(A) of the Rules, on the basis of the Motion.

SUBMISSIONS OF THE PROSECUTION

1. The Prosecution moves the Chamber for leave to further amend the Amended Indictment against Tharcisse Renzaho.¹ The Prosecution argues that the Second Amended Indictment, as shown in Annex A of the Motion, does not contain any new Counts or charges requiring a further appearance.²

2. The Prosecution submits that the amendment is sought for the following reasons:

- a) To specify, in accordance with the recent Appeals Chamber jurisprudence, which has developed since the previous Application for leave to amend, and for the benefit of both the Accused and the Trial Chamber, the legal basis for the factual allegations against the Accused;
- b) To extract from the existing Indictment irrelevant factual material and to clarify some of the remaining factual material;
- c) To extract from the existing Indictment inaccurate legal pleading;
- d) To correct errors of grammar and spelling.³

3. The Prosecution alleges that it intends to include in the proposed amended indictment, the modes of participation alleged under Article 6(1) of the Statute in relation to individual factual allegations. The Prosecution submits that such exercise is required by the jurisprudence of the

¹ The Prosecution annexed to its Motion three documents: Annex A: the "Second Amended Indictment With Changes Shown on its Face", Annex B: "Justification for Amendments by Paragraph" and Annex C, the "Second Amended Indictment Without Changes Shown on its Face."

² Paragraphs 3 and 17 of the Motion.

³ Paragraph 3 of the Motion.



Appeals Chamber in the *Kvočka* case.⁴ Furthermore, the Prosecution submits that it seeks to make some small changes to the detail of some of the material facts already pleaded.⁵

4. The Prosecution argues that it seeks to remove material from the current Indictment which can no longer form part of its case because of the death or reluctance of some witnesses to testify.⁶

5. The Prosecution alleges that there are also a number of minor errors of grammar, spelling and nomenclature within the current Indictment which need rectifying.⁷

6. The Prosecution submits that the proposed amendments includes the withdrawal of certain paragraphs in the Indictment, which will not only reduce the workload of the Accused in preparing his Defence, but also reduce the Prosecution evidence at trial, thereby making the trial more expeditious.⁸

7. The Prosecution asserts that the proposed Amended Indictment sets out more precisely and concisely all the allegations against the Accused whilst at the same time withdrawing from it details which are irrelevant, legally inaccurate, or not within the power of the Prosecution to prove from the current Indictment.⁹

8. The Prosecution submits that the amendments are proposed for the purpose of clarifying the Prosecutor's case against the Accused both in terms of the facts alleged and the legal basis of the allegations. According to the Prosecution, such clarification will significantly reduce the length of the trial by assisting both the Accused and the Trial Chamber in their understanding of the case against the Accused.¹⁰

DELIBERATIONS

9. The Chamber notes the relevant provisions of Rules 50 and 47 of the Rules. The Chamber notes that after the initial appearance of an accused, the Trial Chamber has discretion whether to grant leave to amend an indictment and that this determination must be made on a case-by-case basis.¹¹ The Prosecution has the burden to set out the factual and legal justifications for the proposed amendments.¹² In general, "amendments pursuant to Rule 50 are granted in order

⁴ The Prosecutor v. *Kvočka* (AC), IT-98-30/1, 28 February 2005, pp. 14-29.

⁵ Paragraph 6 of the Motion.

⁶ Paragraph 7 of the Motion.

⁷ Paragraph 8 of the Motion.

⁸ Paragraph 20 of the Motion.

⁹ Paragraph 16 of the Motion.

¹⁰ Paragraph 18 of the Motion.

¹¹ *Prosecutor v. Nindiliyimana, et al*, Case No. ICTR-2000-56-I, Decision on Prosecutor's Motion under Rule 50 for Leave to Amend the Indictment (TC), 26 March 2004, para. 41 (citing *Prosecutor v. Bizimungu, et al.*, ICTR-99-50-AR50, Decision on Prosecutor's Interlocutory Appeal Against Trial Chamber II Decision of 6 October 2003 Denying Leave to File an Amended Indictment (AC), 12 February 2004, para. 27 (the "*Bizimungu* Appeals Chamber Decision").

¹² *Prosecutor v. Muhimana*, Case No. ICTR-1995-1B-I, Decision on Motion to Amend Indictment, 21 January 2004, para. 4 (the "*Muhimana* Decision"); *Prosecutor v. Bizimungu, et al.*, Case No. ICTR-99-50-I, Decision on the Prosecutor's Request for Leave to File an Amended Indictment (TC), 06 October 2003, para. 27 (the "*Bizimungu* Trial Chamber Decision").

to (a) add new charges; (b) develop the factual allegations found in the confirmed indictment; and (c) make minor changes to the indictment.”¹³

10. According to the Tribunal jurisprudence, the fundamental question in relation to granting leave to amend an indictment is whether the amendment will prejudice the accused unfairly. There is no prejudice caused to the accused if he is given an adequate opportunity to prepare a defence to the amended case.¹⁴

11. After having considered all the documents annexed to the Motion, specifically Annex B, the Chamber notes that the Prosecution’s proposed amendments could be classified into two broad categories.

12. First, the Prosecution requests the deletion of some paragraphs. The Chamber is of the view that the proposed amendments on this point may “increase the fairness and efficiency of proceedings, and should be encouraged and usually accepted.”¹⁵ Such amendments may result in a more expeditious trial, particularly if there is a reduction in the number of witnesses and, thus, a reduction in the number of trial days, thereby promoting judicial economy and the Accused’s right to be tried without undue delay.¹⁶

13. Second, the Prosecution intends to correct errors of grammar and spelling in the current Indictment and at the same time proposes to add some words or sentences. The Chamber is of the opinion that the proposed amendments on this point, only constitute “minor changes to the amended indictment” and/or “develop the factual allegations found in the confirmed indictment” and that they do not amount to any new Counts or charges against the Accused. Therefore, the Chamber finds that the proposed amendments on these points should be allowed.

14. In light of the foregoing and recalling that the Defence did not respond to the Motion, the Chamber finds that granting the Prosecution’s request for a further amendment of the Indictment is unlikely to prejudice the Accused given that no date has been set for the commencement of the trial and that the Proposed Amended Indictment does not contain any new counts or charges within the meaning of Rule 50(B) and (C) of the Rules. In the circumstances, the Chamber notes that a further appearance would, not be required.

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Motion;

ORDERS the Prosecution to file the Amended Indictment in both languages on or before close of business Friday, 17 February, 2006;

¹³ Bizimungu Trial Chamber Decision, para. 26.

¹⁴ Prosecutor v. Renzaho, case no. ICTR-97-31-I, *Décision sur la Requête du Procureur demandant l'autorisation de déposer un acte d'accusation modifié*, 18 March 2005, para. 47 citing Prosecutor v. Hadzihasanović and Kubura, Case no. IT-01-47-PT, *Décision relative à la forme de l'acte d'accusation*, 17 September 2003, para. 35

¹⁵ Nđindiliyimana, para. 43 (citing Bizimungu Appeals Chamber Decision, Para. 19).

¹⁶ Prosecutor v. Karemera, et al., Case No. ICTR-98-44-T, Decision On The Prosecutor's Motion For Leave To Amend The Indictment - Rule 50 Of The Rules Of Procedure And Evidence, 13 February 2004, paras. 41-45 (the “Karemera Trial Chamber Decision”).

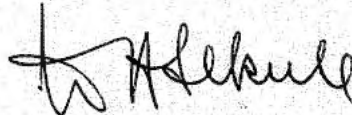
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ORDERS that a further appearance shall not be held.

Arusha, 13 February 2006



Arlette Ramaroson
Presiding Judge



William H. Sekule
Judge



Sc.omy Balungi Bossa
Judge

