



1272-00-59-1
(28-06-2007)
423 - 420
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

423
Amstrong

OR: ENG

TRIAL CHAMBER II

Before: Judge Asoka de Silva, Presiding
Judge Taghrid Hikmet
Judge Seon Ki Park

Registrar: Mr Adama Dieng

Date: 28 June 2007

The PROSECUTOR
v.
Juvenal RUGAMBARARA
Case No. ICTR-00-59-I

JUDICIAL RECORDS/ARCHIVE
2007 JUN 28 P 4: 20
RECEIVED

DECISION
ON THE PROSECUTION MOTION TO AMEND THE INDICTMENT

Office of the Prosecutor
Mr Charles Adeogun-Phillips
Mr Peter Tafah
Ms Memory Maposa

Counsel for the Defence
Mr Maroufa Diabira
Mr Boubou Diabira

INTRODUCTION

1. The Indictment against the Accused Juvenal Rugambarara, containing nine counts, was confirmed on 13 July 2000 by Judge Pavol Dolenc. On 15 August 2003, the Accused made his initial appearance and pleaded not guilty to all counts. On 12 June 2007, the Prosecution filed the present Motion, requesting the Chamber to grant leave to amend the indictment pursuant to Rules 73, 50 and 51 of the Rules of Procedure and Evidence (the 'Rules').¹ On 13 September 2007, the Defence filed a Response supporting the Prosecution Motion.²

SUBMISSIONS

2. The Prosecution seeks leave to amend the indictment in the following manner: withdraw eight of the nine counts including the factual allegations supporting the counts³, delete some factual allegations with respect to the count which has been retained (i.e. extermination as a crime against humanity), and add new and additional facts in support of that count.

3. The Prosecution submits that the proposed indictment, containing only one count, will allow for a more expeditious trial and will thus assist the Tribunal to fulfill its mandate, that is, to prosecute those responsible for serious violations of international humanitarian law and to contribute to national reconciliation in Rwanda.

4. The Prosecution further submits that this case has not been set for trial. Therefore, granting the request would not cause any delay in the commencement of the trial.

DELIBERATIONS

5. The relevant provisions governing amendment of an indictment are Rules 50 and 47. After the initial appearance of an accused, the Trial Chamber has the discretion to grant leave to amend an indictment. Such a determination is made on a case-by-case basis.⁴ The Prosecution has the burden to set out the factual and legal justifications for the proposed amendment.⁵

6. In general, "amendments pursuant to Rule 50 are granted in order to (a) add new charges; (b) develop the factual allegations found in the confirmed indictment; and (c) make minor changes to the indictment."⁶ However, according to the jurisprudence of the Tribunal, the fundamental question in relation to granting leave to amend an indictment is whether or

¹ "Prosecutor's Request for leave to amend an Indictment pursuant to Rules 73, 50 and 51 of the Rules of Procedure and Evidence."

² "Réponse de la Défense à la requête du Procureur demandant l'autorisation de modifier un acte d'accusation conformément aux articles 73, 50 et 51 du Règlement de Procédure et de Preuve."

³ Namely genocide (count 1), complicity in genocide (count 2), conspiracy to commit genocide (count 3), direct and public incitement to commit genocide (count 4), torture and rape as crime against humanity (count 6 and count 7), serious violations of common Article 3 of the Geneva Conventions and of Additional Protocol II pursuant to Article 4(a) and 4(c) of the Statute of the Tribunal (count 8 and count 9).

⁴ *Prosecutor v. Ndiindiliyimana, 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").

⁵ *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").

⁶ *Bizimungu Trial Chamber Decision*, para. 26.

not the amendment will prejudice the accused. There is no prejudice caused to the accused if he is given an adequate opportunity to prepare a defence to the amended case.⁷

7. In the instant case, the Prosecution seeks leave to withdraw eight counts and delete all factual allegations in support thereof. Generally, amendments seeking to narrow the indictment may "increase the fairness and efficiency of proceedings, and should be encouraged and [are] usually accepted."⁸ The proposed amendments will result in a more expeditious trial, thereby fostering judicial economy and ensuring that the right of the accused to be tried without undue delay is respected.⁹

8. Since the Defence agrees to the amendment, including the new factual allegations, and given the fact that no date has yet been set for trial, granting leave to amend will not negatively impact the rights of the Accused. The Chamber therefore grants the Prosecution request to amend the Indictment.

9. Unlike the current Indictment which charges the accused with nine counts, the proposed amended indictment retains only one count, to wit, extermination as a crime against humanity. Furthermore, that single count envisages command responsibility of the Accused pursuant to Article 6(3) only in respect of his failure to take the necessary steps to punish his subordinates.¹⁰ The proposed amended indictment includes also substantial expanded factual allegations in relation to the single count.¹¹

10. In light of the fundamentally changed nature of the case against the Accused and the substantial factual expansions in the proposed amended indictment, a further appearance of the Accused is required to enable him to enter a plea on the count.

⁷ *Prosecutor v. Renzaho*, case no. ICTR-97-31-1, *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.

⁸ *Ndindifiyimana*, para. 43 (citing *Bicimungu Appeals Chamber Decision*, Para. 19).

⁹ *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*").

¹⁰ The proposed amended indictment charges the Accused with having "failed [in his duty] to take the necessary and reasonable measures to commission an investigation into the said crimes with a view to apprehending and referring his subordinates ... to the competent authorities for appropriate punishment" (paras. 20, 22, 25, 29 and 33).

¹¹ The proposed amended indictment charges the Accused with superior responsibility in relation to attacks allegedly launched on the Tutsi civilian population, resulting in the death of hundreds of Tutsi refugees, between 13 and 18 April 1994 in *Mwulire secteur* (paras. 17-22), between 12 and 18 April 1994 in *Mabare secteur* (paras. 23-25), between 16 and 18 April 1994 at *Mabare mosque* (paras. 26-29) and on or about 8 April 1994 in *Nawe secteur* (paras. 30-34). All these locations are found in *Bicumbi commune*.

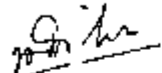
420

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Motion;

ORDERS that a further appearance shall be held on **Friday 13 July 2007** to enable the Accused to enter a plea on the count.

Arusha, 28 June 2007


Asok de Silva
Presiding Judge


Tadić
Judge


Seon Ki Park
Judge

[Seal of the Tribunal]