



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

(1237 - 1235)

Trial Chamber I

ICTR-02-78-1  
14-11-2007

1237  
Ivan

**Before:** Judge Erik Mose, presiding  
Judge Jai Ram Reddy  
Judge Sergei Alekseevich Egorov

**Registrar:** Mr. Adama Dieng

**Decision of:** 14 November 2007

**THE PROSECUTOR**

v.

**Gaspard KANYARUKIGA**

Case No. ICTR-02-78-1

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 INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

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**Decision on Prosecution Request to Amend the Indictment**

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**The Prosecution**  
Richard Karegyesa  
Thembile Monica Segote

**The Defence**  
Ernest Midegu Bahati

Ivan

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

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

**BEING SEIZED OF** the Prosecution request for leave to amend the Indictment, filed on 1 October 2007;<sup>1</sup>

**CONSIDERING** the Defence response, filed on 24 October 2007;

**HEREBY DECIDES** the motion.

**INTRODUCTION**

1. On 4 March 2002, the Indictment was confirmed against the Accused, containing four counts: genocide; or in the alternative complicity in genocide; conspiracy to commit genocide; and extermination as a crime against humanity.<sup>2</sup> The Accused pleaded not guilty to all counts during his initial appearance on 28 February 2003. It is presently difficult to indicate a commencement date for this trial, although the bench is actively seized of this case in order to ensure necessary progress in relation to a trial in Arusha.<sup>3</sup> On 7 September 2007, the Prosecution filed a Request for transfer of this case to the Republic of Rwanda pursuant to Rule 11 *bis* of the Rules of Procedure and Evidence.

2. The Prosecution seeks leave to file an amended Indictment withdrawing the count of conspiracy to commit genocide, and some of the paragraphs in the Indictment. It also clarifies with respect to the entirety of the Indictment, the alleged modes of participation under Article 6 (1) through which the Accused is alleged to have participated in the charged crimes, and provides further and better particulars on the nature of the charges against him.

3. According to the Prosecution, the Accused will not be prejudiced, as the proposed Amended Indictment only withdraws certain charges and factual allegations and provides greater clarity. No date has yet been set for trial. The proposed amendments more consistently reflect the recent jurisprudence of the Tribunal and its current charging practices.<sup>4</sup> The Defence does not oppose the motion.<sup>5</sup>

**DELIBERATIONS**

4. Rule 50 of the Rules provides that, after the initial appearance of the Accused, an indictment may only be amended with leave of the Chamber. As established in the jurisprudence, there are three factors to be weighed 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 other possible prejudice to the Defence, if any, caused by the amendment. The

<sup>1</sup> Prosecutor's Request for Leave to file an Amended Indictment, 1 October 2007 with the proposed amended indictment as an annex to the Request (the "Amended Indictment")

<sup>2</sup> Decision on Confirmation of an Indictment against Gaspard Kanyarukiga, 4 March 2002, p. 2.

<sup>3</sup> T. 13 July 2007 pp. 12-13 (Status Conference).

<sup>4</sup> Motion, paras. 7-8.

<sup>5</sup> The Defence was given extended time to respond, see Decision on Defence Motion for Extension of Time to Respond to Prosecution Request to Amend the Indictment (TC), 19 October 2007

Chamber must also consider whether a *prima facie* case exists with respect to any new charges in the proposed amendment.<sup>6</sup>

5. The Chamber notes that the proposed amendments better particularise the Prosecution's theory of criminal responsibility,<sup>7</sup> remove certain allegations,<sup>8</sup> and correct certain material facts.<sup>9</sup> Such amendments would have an ameliorating effect on the case. The Chamber finds it appropriate to allow the Prosecution to make its proposed changes to the Indictment, which are designed to enhance trial fairness, through the better articulation of its theories of criminal responsibility, removal of factual allegations it no longer wishes to pursue, and correcting or supplementing existing factual allegations with additional detail.

6. The proposed amendments will not unduly delay the proceedings or otherwise prejudice the Defence. No date has yet been set for trial, but if tried in Arusha, this case is unlikely to commence prior to 2008. At this stage, the Chamber cannot see that the amendments will prevent the commencement of trial in early 2008.

7. Consequently, the Chamber grants the Prosecution motion to amend the Indictment, as set forth above. As the Chamber is not permitting the Prosecution to add additional counts, the Chamber sees no reason hold a further appearance in order to plead.

**FOR THE FOREGOING REASONS, THE CHAMBER**

**GRANTS** the Prosecution motion to amend the Indictment;

**PERMITS** the Prosecution to make the other proposed amendments set forth in the Amended Indictment annexed to the request;

**ORDERS** the Prosecution to file the Indictment as amended in accordance with this decision in French and English within five days of the filing of this decision.

Arusha, 14 November 2007

  
Erik Mose  
Presiding Judge

  
Jai Ram Reddy  
Judge

  
Sergei Alekseevich Egorov  
Judge

[Seal of the Tribunal]

<sup>6</sup> See generally *Prosecutor v. Casimir Bizimungu*, Case No. ICTR-00-50-AR5, Decision on Prosecutor's Interlocutory Appeal Against Trial Chamber II Decision of 6 October 2003 Denying Leave to File Amended Indictment (AC), 12 February 2004, para. 16; *Prosecutor v. Eubank Karuzira et al.*, Case No. ICTR. 98-44-AR73, Decision on Prosecutor's Interlocutory Appeal Against Trial Chamber II Decision of 8 October 2003 Denying Leave to File an Amended Indictment (AC), 19 December 2003, paras. 15-20, 28; *Prosecutor v. Jean Baptiste Gatete*, Case No. ICTR-00-61-I, Decision on the Prosecution's Request for Leave to File an Amended Indictment (TC), 21 April 2005, para. 3; *Prosecutor v. Ephrem Setako*, Decision on the Prosecution's Request to Amend the Indictment (TC), 18 September 2007, para. 6.

<sup>7</sup> Amended Indictment, paras. 4-5, 14-15 and 16-18.

<sup>8</sup> See Motion, paras. 7-8.

<sup>9</sup> Cf. Amended Indictment, paras. 1-2, 9-18.