

ICTR-07-90-R77-I
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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Gberdao Gustave Kam
Vagn Joensen
Registrar: Adama Dieng
Date: 30 November 2007

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THE PROSECUTOR

v.

GAA¹

Case No. ICTR-07-90-R77-I

**DECISION ON PROSECUTOR'S APPLICATION FOR LEAVE TO AMEND THE
INDICTMENT**

Rules 73, 50 and 51 and 62 bis(A)(i) of the Rules of Procedure and Evidence

Office of the Prosecutor
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Defence Counsel
Cecil J. Maruma

¹ The Accused is a protected witness who testified in different trial under the pseudonym GAA. The real name of the Accused cannot be disclosed due to this matter.

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INTRODUCTION

1. On 11 June 2007, Judge Jai Ram Reddy confirmed the Indictment² against the Accused known by the pseudonym GAA, containing six counts, namely: Giving False Testimony under Solemn Declaration, contrary to Rule 91 of the Rules of Procedure and Evidence ("Rules") (Count One), Contempt of the Tribunal, contrary to Rule 77 (A) and (G) of the Rules (Count Two), and various Attempts to Commit Acts Punishable as Contempt of the Tribunal, contrary to Rule 77 (A), (B) and (G) of the Rules (Counts Three through Six).
2. On 10 August 2007, the Accused made his initial appearance before Judge Dennis Byron pleading guilty to Count One and not guilty to the other five counts.³ The matter has been set for hearing on 3 December 2007.
3. On 27 November 2007, the Accused provided the Solemn Declaration and Statement of Admitted Facts⁴ and signed a Plea Agreement, in which he confirms his guilty plea to Count One and enters a guilty plea to Count Two of the Original Indictment.
4. On 28 November 2007, the Prosecution requested the Chamber to grant leave to amend the Indictment of 23 March 2007 ("Original Indictment"), pursuant to Rules 73, 50 and 51 of the Rules⁵ and replace it with its "Proposed Amended Indictment" appended to its request.⁶ The Defence supported the Prosecution's Application.⁷

DELIBERATIONS

Applicable Law

5. Rule 50 (A) of the Rules empowers the Prosecution to seek leave to amend an indictment following the initial appearance of an accused person.⁸ After the initial appearance of an accused, the Trial Chamber has the discretion to grant leave to amend an indictment.

² Indictment against GAA, dated 23 March 2007 ("Original Indictment")

³ *Prosecutor v. GAA*, Initial Appearance, ICTR-07-90-R77-I, Trial Transcript of 10 August 2007

⁴ The Solemn Declaration and Statement of Admitted Facts of GAA", 27 November 2007 [hereinafter "The Statement of Admitted Facts"], Annex C to the Prosecution's Application.

⁵ Prosecutor's Application for Leave to Amend the Indictment dated 23 March 2007, pursuant to Rules 73, 50 and 51 and 62 bis(A)(i) of the Rules of Procedure and Evidence, filed on 28 November 2007 ("Prosecutor's Application")

⁶ See Annex A appended to the Prosecutor's Application

⁷ "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."

⁸ *Prosecutor v. Alfred Musema* Case No. ICTR-96-13-T; *Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-1A-T; *Prosecutor v. André Ntagerura et al.* Case No. ICTR-96-10-I.

Such a determination is made on a case-by-case basis.⁹ The Prosecution has the burden to set out the factual and legal justifications for the proposed amendment.¹⁰

6. Rule 50 also provides that “[i]f the amended indictment includes new charges and the accused has already appeared before a Trial Chamber in accordance with Rule 62, a further appearance shall be held as soon as practicable to enable the accused to enter a plea on the new charges.”

7. Under Rule 62*bis* (A)(i), where the Prosecution and the Defence have agreed that upon the accused entering a plea of guilty to the indictment on one or more counts in the Indictment, the Prosecutor shall “... apply to amend the Indictment accordingly...”.

8. The Chamber notes that 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.”¹¹ However, according to the jurisprudence of the Tribunal, the fundamental question in relation to granting leave to amend an indictment is whether or 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.¹²

9. In addition, the Chamber recalls that amendments seeking to narrow the indictment may “increase the fairness and efficiency of proceedings, and should be encouraged and [are] usually accepted.”¹³ The proposed amendments will result in a more expeditious trial, thereby

⁹ *Prosecutor v. Ndindiliyimana, 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*”).

¹⁰ *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*”).

¹¹ *Bizimungu Trial Chamber Decision*, para. 26.

¹² *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. Hadzhihasanović and Kubura*, Case no. IT-01-47-PT, Décision relative à la forme de l'acte d'accusation, 17 September 2003, para. 35

¹³ *Ndindiliyimana*, para. 43 (citing *Bizimungu Appeals Chamber Decision*, Para. 19).

fostering judicial economy and ensuring that the right of the accused to be tried without undue delay is respected.¹⁴

On the merits

10. The Prosecution seeks leave to withdraw six counts and delete all factual allegations in support thereof. It seeks leave to amend the indictment in the following manner:

- a) Retain Count One from the original Indictment, to which the Accused already pleaded guilty;¹⁵
- b) Amend Count Two in order to reflect the new facts admitted by the Accused GAA, which are detailed in his signed Statement of Admitted facts.
- c) Withdraw Counts Three to Six from the original Indictment, concerning various Attempt to Commit Acts punishable as Contempt of the Tribunal.

11. The Prosecution asserts that the Proposed Amended Indictment is justified in law and will assist the Tribunal to fulfil its mandate, object and purpose.

12. The Chamber notes that since the Prosecution and the Accused have agreed that upon him entering a plea of guilty to the Original Indictment on two counts, pursuant to Rule 62*bis* (A)(i), the Prosecution shall apply to amend the Indictment accordingly.

13. The Chamber is of the view that the amendments proposed by the Prosecution narrowing the Indictment may increase the fairness of the Trial and will result in more expeditious proceedings, thereby fostering judicial economy and ensuring that the right of the Accused to be tried without undue delay is respected.

14. Regarding the protection of the Accused's rights, this Chamber notes that there is no prejudice or infringement of them, as the Prosecutor has not added new charges in the Proposed Amended Indictment, but intends to withdraw Counts Three to Six from its original Indictment.

¹⁴ *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").

¹⁵ *Prosecutor v. GAA*, Initial Appearance, ICTR-07-90-R77-I, Trial Transcript of 10 August 2007, p. 6, lines 5 to 9, p. 7, lines 18 to 19.

15. With regards to the amendment of Count Two's factual allegations, the Chamber notes that a) the additional facts and details are only based on the Accused's Statement of Admitted Facts and the Plea Agreement, both signed on 27 November 2007; and b) the Accused has pleaded guilty to this Count as stated in the Plea Agreement. Under these circumstances, the Chamber is of the view that there can be no prejudice or infringement of the Accused's rights, as the Prosecutor is simply supplementing the facts in support of Count Two to reflect the Accused's guilty plea. Therefore, the Chamber grants the Prosecution request to amend the Indictment.

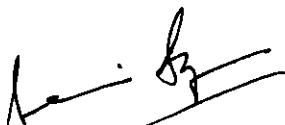
16. In the present case, the Chamber does not find new charges in the Proposed Amended Indictment; therefore it deems not necessary any further initial appearance of the Accused.

FOR THE ABOVE REASONS, THE CHAMBER

I. GRANTS the Prosecutor's application to amend the Indictment as set forth in its Motion and Annex A: Proposed Amended Indictment;

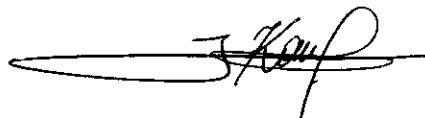
II. ORDERS the Proposed Amended Indictment to be filed by the Prosecution with the Registry immediately.

Arusha, 30 November 2007, done in English.



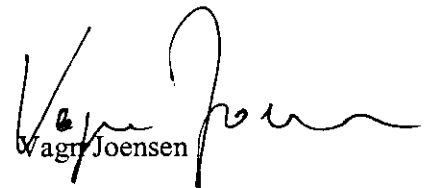
Dennis C. M. Byron

Presiding Judge



Gberdao Gustave Kam

Judge



Wagn Joensen

Judge

[Seal of the Tribunal]





TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	<input type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input checked="" type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
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From:	<input checked="" type="checkbox"/> Chamber RENE BETANCOURT (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. GAA		Case Number: ICTR-90-R77-I	
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<input type="checkbox"/> Strictly Confidential / Under Seal	<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence	<input type="checkbox"/> Submission from non-parties
<input type="checkbox"/> Confidential	<input checked="" type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal	<input type="checkbox"/> Submission from parties
<input checked="" type="checkbox"/> Public	<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book	<input type="checkbox"/> Accused particulars
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Reference material is provided in annex to facilitate translation.

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Original	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

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<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: