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20-6-2001

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
NATIONS UNIES

TRIAL CHAMBER III

Original: English

Before: Judge Lloyd George Williams, Presiding

Registrar: Mr. Adama Dieng

Date: 20 June 2001

THE PROSECUTOR

vs.

SYLVESTRE GACUMBITSI

Case No.

JUDICIAL RECORDS/ARCHIVES
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**DECISION ON THE PROSECUTOR'S APPLICATION FOR
CONFIRMATION OF AN INDICTMENT AND RELATED ORDERS**

The Office of the Prosecutor:

Mr. Richard KAREGYESA

Ms. Holo Makwaia

Ms. Andra MOBBERLEY

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

SITTING as Judge Lloyd George Williams, designated by the President of the Tribunal pursuant to Rule 28 of the Tribunal’s Rule of Procedure and Evidence (the “Rules”):

HAVING RECEIVED an Indictment against one Sylvestre Gacumbitsi, filed by the Prosecutor on 13 June 2001 pursuant to Article 17 of the Tribunal’s Statute (hereinafter, “Indictment”);

HAVING RECEIVED and REVIEWED the supporting materials comprising, among other materials, redacted and unredacted statements of twenty-eight (28) witnesses identified by pseudonyms, Reports of the Special Rapporteurs, R. Degni-Segui and B.W. Ndiaye, reports of the expert A Guichaoua, the Final Report of the Commission of Experts, dated 9 December 1994 and other United Nations Reports, Legislative Acts of Rwanda on the structure of communes and the Rwandan Gazette dated 31 December 1999.

BEING SEIZED of the Prosecutor’s “Application for Confirmation of an Indictment and Related Orders,” filed on 13 June 2001 (hereinafter, “*Ex Parte* Application”); the Prosecutor’s “Brief in Support of the Prosecutor’s *Ex-Parte* Application for Confirmation of an Indictment and Related Orders,” filed 18 June 2001 (hereinafter, “*Ex Parte* Brief”); the Prosecutor’s “Explanatory Notes in Support of the Indictment”, filed 18 June 2001 (hereinafter, “Explanatory Notes”); and “Prosecutor’s Brief on the Explanatory Notes in Support of the *Ex-Parte* Application, filed 18 June 2001 (hereinafter, “Brief on Explanatory Notes”).

HAVING HEARD the Prosecutor during an *ex parte* hearing held on 18 June 2001 pursuant to Rule 47(D);

NOW CONSIDERS the matter:

FINDINGS

1. The Judge reviewing an indictment must examine the indictment to determine whether it is consonant with the requirements of the Tribunal’s Statutes and Rules. Notably, in this regard, Article 18(1) of the Tribunal’s Statute provides:

1. The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that the Prosecutor has established a *prima facie* case, he or she shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.
(Emphasis added).

2. Moreover, consistent with Rule 47, the reviewing Judge must determine whether the Prosecutor has presented within the Indictment and the supporting materials allegations as would provide “reasonable grounds for believing” that the identified suspect has committed crimes falling within the jurisdiction of the Tribunal.

3. After reviewing the proposed indictment and the supporting materials, including the written statements of some 28 witnesses, both in their redacted and unredacted forms, the Tribunal finds that the Prosecutor has presented sufficient allegations to establish *prima facie* case for each of the five (5) counts in the Indictment, namely, genocide, complicity in genocide, Crimes Against Humanity, including Extermination, Murder, and Rape. In the allegations of the Indictment, as further supported by the various witness statements and reports that comprise the supporting materials, the Tribunal is satisfied that the Prosecutor has demonstrated the existence of reasonable grounds for believing that the identified suspect, Sylvestre Gacumbitsi, committed crimes falling within the jurisdiction of the Tribunal. Accordingly, the Tribunal confirms the Indictment in its entirety subject to the modifications to paragraphs 9 and 27 that were introduced by the Prosecutor during the hearing of this matter, specific reference to which will be made later in this decision.

4. In order to facilitate the review of the Indictment, the Chamber asked the Prosecutor to produce its internal notes, which provide annotated references to the supporting materials in relation to each count of the Indictment. In addition, upon insistence of the Chamber, the Prosecutor produced during the hearing of the *Ex Parte* Application unredacted copies of the various witness statements, bearing the witnesses identities and other identifying data. Concomitant with the production of the Explanatory Notes, however, the Prosecutor requested that they be excluded from the disclosure requirements pursuant to Rule 70 because they constitute the internal work product of the Prosecutor prepared in connection with her investigation and preparation of this matter. Finally, the Prosecutor in the Brief in Support of the *Ex Parte* Application requests and order, in conformity to Rules 53 and 66(C), that the witnesses' names and other information likely to reveal their identities not be disclosed to the suspect, or to the public or media.

5. Under Rule 53 the Tribunal may, upon "consultation with the Prosecutor" enjoin the disclosure to the public of any documents or information, including the Indictment, if such an order is in the interests of justice or necessary to give effect to a provision of the Rules. The Tribunal finds that non-disclosure to the public, media, and the suspect, of the names and other identifying information with respect to the twenty-eight (28) witnesses, identified by pseudonyms is necessary at this time to facilitate the arrest and transfer of the suspect and to ensure the safety of the witnesses whose statements comprise the larger part of the supporting materials to the Indictment.

6. Consistent with Rule 70, the Tribunal finds that the Explanatory Notes should not be disclosed to the public or media or to the suspect, or any of his representatives as they constitute the internal work product of the Office of the Prosecutor and are as such exempted from the disclosure requirements under the rules. For the foregoing reasons the Tribunal:

CONFIRMS the Indictment, dated 13 June 2001, brought by the Prosecutor against SYLVESTRE GACUMBITSI subject to the following modifications to paragraphs 9 and 27 of the Indictment, which the Prosecutor interposed during the *ex parte* hearing.

The first sentence of Paragraph 9 of the Indictment shall be deleted and replaced with the following:

“SYLVESTRE GACUMBITSI ordered *responsables de cellule* and *nyumbakumi* to deliver weapons to certain members of the populace. He also ordered the *responsables de cellule cellule* and *nyumbakumi* to disseminate to members of the populace and to carry out the official policy of massacring civilian Tutsis.”

In the first sentence in Paragraph 27 of the Indictment the date of 17 April shall be replaced with 15 April.

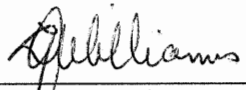
ORDERS the Registrar to translate the Indictment, including the modifications indicated above, into a language that the Accused understands and to prepare certified copies of the Indictment, bearing the seal of the Tribunal; and further

ORDERS that the Indictment, the Supporting Materials, and other documents which form part of the Indictment, including this Decision, be placed under seal and kept confidential and not disclosed to public or the media, until further order of the Tribunal; and further

ORDERS that the names and other identifying information about the twenty-eight witnesses identified by pseudonyms in the supporting materials to the Indictment not be disclosed to the suspect or his counsel or other representatives until further order of the Tribunal; and further

ORDERS that the Prosecutor’s Explanatory Notes to the Indictment, which constitute the Prosecutor’s internal work product in connection with her investigation and preparation of this matter shall remain confidential and exempt from the disclosure requirements under the Tribunal’s Rules of Procedure and Evidence.

Arusha, 20 June 2001



Lloyd G. Williams
Judge

Seal of the Tribunal