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20-05-2005
(2521-2519)

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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 Asoka de Silva, Presiding
Judge Flavia Lattanzi
Judge Florence R. Arrey

Registrar: Mr Adama Dieng

Date: 20 May 2005

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THE PROSECUTOR

vs.

THARCISSE MUVUNYI

ICTR-2000-55A-T

DECISION ON ACCUSED THARCISSE MUVUNYI'S MOTION TO EXCLUDE
WITNESS CCR'S TESTIMONY

Office of the Prosecutor

Mr Charles Adeogun-Phillips, Senior Trial Attorney
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Ms Véronique Pandanzyla, Legal Assistant

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

SITTING as Trial Chamber II composed of Judge Asoka de Silva, Presiding, Judge Flavia Lattanzi and Judge Florence R. Arrey (the “Chamber”);

BEING SEIZED of the “Accused Tharcisse Muvunyi’s Motion to Exclude Witness CCR’s Testimony” filed on 19 May 2005 (the “Motion”);

BEING FURTHER SEIZED of the oral arguments made by both the Defence and the Prosecution during the proceedings on 18 May 2005;

CONSIDERING the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”);

NOW DECIDES the Motion pursuant to Rule 73 of the Rules on the basis of written and oral submissions of the Parties.

SUBMISSIONS OF THE PARTIES

The Defence

1. The Defence submits that whereas in paragraph 3.24 of the Indictment it is alleged that the Accused held sensitisation meetings only in Mugusa commune, Gikore Centre, Muyaga bureau communal, and Nyabitare secteur, the Prosecutor’s Pre-Trial Brief and the proposed testimony of Witness CCR allege that there was another meeting on 10 April 1994 in Nyakizu, Ntagwanza commune, at which weapons were distributed.
2. The Defence submits that Witness CCR’s proposed testimony does not deal with matters alleged in the Indictment; that the reference to the Nyakizu meeting and weapons distribution amounts to allegations of uncharged misconduct; that the mention of Ntagwanza commune and Nyakizu “is tantamount to new charges and therefore should be excluded and CCR should not be allowed to testify about such allegations.”

The Prosecution

3. The Prosecution in its oral response argues that the alleged events at Nyakizu do not constitute a new charge and that a summary of Witness CCR’s testimony was already contained in the Prosecution’s Pre-Trial Brief, at page 1194.¹
4. The Prosecution also points out that the four locations cited in paragraph 3.24 of the Indictment were intended to serve as examples of places where the Accused held sensitisation meetings, not as an exhaustive or exclusive list. The Prosecution maintains that Witness CCR’s testimony is relevant, probative, and supports the charges of genocide and direct public incitement.²

¹ Draft Transcript, 18 May 2005.

² Draft Transcript, 18 May 2005.



HAVING DELIBERATED,

5. The Chamber recalls the Decision of 12 May 2005 in which the Appeals Chamber, reviewing this Chamber's earlier "Decision on the Prosecution's Motion for Leave to File an Amended Indictment", stated as follows with respect to the allegations concerning the Nyakizu meeting:

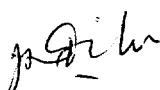
The charge in both versions of the indictment is the provision of weapons; this charge remains the same in both versions of the indictment. The change of the material facts supporting this charge does not change the nature of the charge such that it is a new charge. The Appeals Chamber notes that in the current indictment, the Prosecution relies on this incident as supporting one charge of genocide, or alternatively complicity in genocide, and as such the additional incidents are supplementary material facts in support of an existing charge and do not constitute new charges.³


6. The Chamber is also mindful of the standard endorsed in the *Ntakirutimana* case, where the Appeals Chamber took into consideration such factors as whether any defect in the Indictment was cured by other Prosecution communications regarding the material facts underlying its case, and whether such information was timely, clear and consistent enough to ensure that the Accused does not suffer undue prejudice.⁴
7. Here, the Chamber notes that while the meeting of 10 April 1994 is not specifically mentioned in paragraph 3.24 of the Indictment, this defect was cured in a clear and timely fashion by the Prosecution's Pre-Trial Brief and the attached summaries of witnesses' statements, filed on 25 January 2005, which also mention paragraphs 3.25 (incitement) and 3.26 (weapons distribution).
8. The Chamber also notes that paragraph 3.24 clearly states that the sensitisation meetings took place "in diverse locations throughout Butare *préfecture*, such as..." the four venues cited. In other words, these meetings occurred in many different places in Butare *préfecture*, and the four locations cited are merely examples, not a full or exhaustive list. In that regard, it is not unreasonable for the Prosecution to complete the list by naming other venues.

FOR THE FOREGOING REASONS,

THE TRIAL CHAMBER DENIES the Motion in its entirety.

Arusha, 20 May 2005


Asoka de Silva
Presiding Judge


Flavia Lattanzi
Judge



Florence Rita Arrey
Judge

[Seal of the Tribunal]

³ *Prosecutor v. Tharcisse Muvunyi*, ICTR-00-55A-AR73, "Decision on Prosecution Interlocutory Appeal against Trial Chamber II Decision of 23 February 2005", 12 May 2005, para. 37.

⁴ *Prosecutor v. Ntakirutimana*, ICTR-96-10-A and ICTR-96-17-A, Judgement, 13 December 2004, para. 34.