



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 Rita Arrey

Registrar: Mr Adama Dieng

Date: 20 June 2005

PROSECUTOR

v.

Tharcisse MUVUNYI

Case No. ICTR-2000-55A-T

**DECISION ON ACCUSED THARCISSE MUVUNYI'S MOTION TO EXCLUDE
TESTIMONY OF WITNESSES AFV, TM, QCS, QY, AND QBP AND MOTION
TO STRIKE QY'S TESTIMONY**

Office of the Prosecutor

Mr Charles Adeogun-Phillips
Ms Adesola Adeboyejo
Ms Renifa Madenga
Mr Dennis Mabura

Defence Counsel

Mr William E. Taylor
Mr Jean Flamme
Ms Cynthia Cline
Ms Véronique Pandanzya

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 Rita Arrey (the “Chamber”);

BEING SEIZED of the “Accused Tharcisse Muvunyi’s Motion to Exclude Testimony of Witnesses AFV, TM, QCS, QY, and QBP and Motion to Strike QY’s Testimony” filed on 13 June 2005 (the “Motion”);

TAKING INTO CONSIDERATION the oral arguments made by both the Defence and the Prosecution during the oral hearing of 13 June 2005;

RECALLING the Chamber’s Decision on the “Prosecutor’s Very Urgent Motion Pursuant to Rule 73bis (E) for Leave to Vary the Prosecutor’s List of Witnesses Filed on 19 January 2005” of 24 March 2005 (the “Decision of 24 March 2005”) which allowed the Prosecutor to present additional witnesses in support of Counts 4 and 5 of the indictment;

RECALLING the oral motion presented by the Defence on 08 June 2005 relating to Witness QY in which the Defence requested the exclusion of the testimony of this witness or alternatively to be given more time to prepare the cross examination Witness QY;

CONSIDERING the Chamber’s Oral Decision of 08 June 2005 in which the Chamber denied the Defence motion to exclude the testimony of Witness QY but granted more time to the Defence to prepare the cross examination of this witness;

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 (A) of the Rules.

SUBMISSION OF THE PARTIES

The Defence

1. The Defence files this Motion pursuant to the Chamber’s Decision of 24 March 2005 which allowed the Prosecutor to present additional witnesses QY, AFV, TM, QBP and QCS for Counts 4 and 5 of the indictment. The Defence seeks to exclude the testimony of witnesses AFV, QCS, and TM on the ground that contrary to the Chamber’s Decision of 24 March 2005, they are being offered for other counts besides Counts 4 and 5.

2. The Defence seeks to strike from the record the testimony of Witness QY, who had already started to testify before the Chamber at the time this Motion was filed, on the ground that her testimony related to several matters that were previously undisclosed to the Defence.

3. The Defence further submits that Witness QY is not alleged as a victim in the indictment though she is listed in the Addendum to the Pre-trial Brief. In the latter, it is stated that her testimony would establish that she was a victim of rape by a soldier at the E.E.R. The Defence argues that this would be the only allegation in the pre-trial brief that could relate to paragraphs 3.41 and 3.41 (i) of the indictment. In addition, the Defence argues that the indictment and the amended pre-trial brief fail to delineate how this event would be the responsibility of the Accused either under Article 6(1) or 6(3) of the Statute. Furthermore during her testimony before the Chamber on 08 June 2005, Witness QY testified for the first time about other rapes than the one at the E.E.R. attributable to soldiers.

4. The Defence submits that QBP should be excluded as a witness because the indictment fails to allege this witness as a victim and as the pre-trial brief, as amended, fails to delineate the responsibility of the Accused as to any events she may offer by way of testimony.

5. During its oral submission on 13 June 2005, the Defence asked the Chamber to reconsider its Decision of 08 June 2005 concerning Witness QY.

6. Finally, the Defence submits that QY, AFV, TM, QBP and QCS are not alleged to be victims in the indictment as required by proper pleading practices and that neither the pre-trial brief, nor the addendum to the pre-trial brief or the witness statements detail how the Accused is responsible for any of the facts these witnesses are to testify about.

The Prosecution

7. The Prosecution in its oral response argues that the Defence had 30 days from 24 March 2005 to file this Motion, by virtue of Rule 72 (A) and (B) (ii) of the Rules. Consequently the Defence is time barred.

8. Concerning the ability of the Prosecution to limit the testimony of the witnesses to the allegations that support Count 4 and Count 5 of the indictment, the Prosecution points out that the Motion is premature and can be dealt with in the closing arguments of the Defence and that the Chamber is at liberty in deliberating on this case to disregard any part of evidence that has been brought before it.

9. Finally, the Prosecution argues that the issue concerning Witness QY has already been dealt with by the Chamber in its oral Decision of 08 June 2005.

HAVING DELIBERATED,

10. The Chambers recalls its oral Decision of 08 June 2005 concerning Witness QY. As stated on 13 June 2005 during the proceedings, the Chamber has already made a decision concerning Witness QY. The Defence application in this regard is therefore moot.

11. The Chamber does not agree with the Prosecution that the Defence should have filed its Motion within a month from 24 March 2005 as the Motion was not filed as a preliminary motion under Rule 72 of the Rules.

12. The Chamber recalls its Decision of 24 March 2005 in which it directed the Prosecution to reformulate its witness list to include only those additional witnesses who will support Count 4 ('rape as...a crime against humanity') and Count 5 ('other inhumane acts as... a crime against humanity) of the indictment.

13. Concerning Witness AFV, the Chamber observes that the summaries of AFV's statements provided by the Prosecution do not demonstrate that AFV's proposed testimony will relate to Counts 4 or 5 of the indictment. However, having examined AFV's statements, disclosed to the Defence on 05 May 2005, the Chamber finds that the witness may offer testimony with regard to Counts 4 and/or 5. The Chamber is therefore satisfied that the Prosecution has complied with the Chamber's Decision of 24 March 2005.

14. Concerning Witnesses QCS, QBP and TM, the Chamber is satisfied, in the view of the summaries of their statements provided by the Prosecutor, that they may offer testimony concerning the allegations that support Counts 4 and/or 5 of the indictment and have therefore been added in compliance with the Chamber's Decision of 24 March 2005.

FOR THE FOREGOING REASONS, THE CHAMBER

DENIES the Defence Motion to exclude the testimony of Witnesses AFV, TM, QCS, QY and QBP;

DENIES the Defence Motion to strike Witness QY's testimony.

Arusha, 20 June 2005

Asoka de Silva
Presiding Judge

Flavia Lattanzi
Judge

Florence Rita Arrey
Judge

[Seal of the Tribunal]