



UNITED NATIONS
NATIONS UNIES

ICTR-00-56-T
28-10-2005
(20603 - 20601)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

TRIAL CHAMBER II

Before: Judge Asoka de Silva, Presiding
Judge Taghrid Hikmet
Judge Seon Ki Park

Registrar: Mr Adama Dieng

Date: 28 October 2005

The PROSECUTOR
v.
Augustin NDINDILYIMANA
Augustin BIZIMUNGU
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU

2005 OCT 28 14:00
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Case No. ICTR-00-56-T

DECISION ON BIZIMUNGU'S MOTION TO EXCLUDE THE TESTIMONY OF
WITNESS TN

Prosecution Counsel

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Mr Christopher Black
For A. Bizimungu
Mr Gilles St-Laurent & Mr Ronnie MacDonald
For F-X. Nzuwonemeye
Mr Charles Taku
For I. Sagahutu
Mr Fabien Segatwa & Mr Seydou Dombia

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

SITTING as Trial Chamber II, composed of Judge Asoka de Silva, Presiding, Judge Taghrid Hikmet and Judge Seon Ki Park (the “Chamber”);

BEING SEIZED OF Augustin Bizimungu’s oral motion to have Witness TN’s testimony declared inadmissible, presented on 20 September 2005 (“the Motion”);

HAVING HEARD AND CONSIDERED the oral submissions in support of and against the Motion (the “Oral Responses”);

RECALLING its Oral Ruling of 20 September 2005 directing the Defence to proceed with the cross-examination of Witness TN pending a written decision by the Chamber;

CONSIDERING the Statute of the Tribunal (the “Statute”), and the Rules of Procedure and Evidence (the “Rules”) in particular Rule 73 of the Rules;

HEREBY DECIDES the Motion on the basis of the oral submissions by the Parties pursuant to Rule 73(A) of the Rules.

ORAL SUBMISSIONS

The Defence for Augustin Bizimungu

1. Following the examination-in-chief of Prosecution Witness TN on Tuesday, 20 September 2005, the Defence for Augustin Bizimungu orally requested the Chamber to reject Witness TN’s testimony as inadmissible on the grounds that it was not relevant to this case and had no connection to any of the Co-Accused.¹
2. The Defence submitted that pursuant to Rule 89 (C) of the Rules, evidence can be admitted only if it is relevant and has probative value. The Defence further argued that relevance refers to a direct relation between the factual allegation and the object of litigation, but that there was no such relation between Witness TN’s testimony and the charges against the Accused.
3. Counsel for Bizimungu asserted that according to Witness TN’s testimony, a certain civilian gave orders to a group of men who allegedly committed rapes and other criminal acts. He also argued that there was no indication that the people who committed the acts described in the witness’s testimony were actually soldiers, or that the acts they allegedly committed were brought to the attention of the Accused.

The Prosecution’s Response

4. The Prosecution submitted that the military hierarchy had *de jure* authority over their troops and had a duty to control them. The Prosecution also cited the 1962 law creating the Rwandan Army and the 1974² law establishing the Rwandan *Gendarmerie*, and noted

¹ T. 20 September 2005.

² The Chamber notes that the English Transcript refers to the “decree of 1994” (p. 25) but the French Transcript refers to 1974 (p. 31).

that under the Geneva Conventions of 1949 the armed forces were responsible for protecting civilians in wartime.

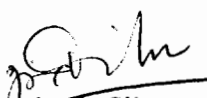
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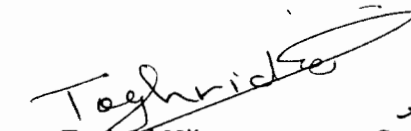
5. The Chamber recalls Rule 89(C) of the Rules, which empowers it to admit any relevant evidence which it deems to have probative value.
6. The Chamber notes that the summary of Witness TN's testimony contained in Annexure IV to the Prosecution's Pre-Trial Brief indicates that the witness would testify to the activities of soldiers in connection with the counts of genocide, complicity in genocide, murder as a crime against humanity, rape as a crime against humanity, and war crimes.³ The Chamber also notes that in a letter dated 13 September 2005, the Prosecution informed the Defence and the Chamber that Witness TN's testimony would relate to paragraphs 3, 17, 18, 22, 23, 25, 53, 59, 68, 69, 70, 116 and 119 of the Indictment, evoking the superior responsibility of the commanding military officers pursuant to Article 6(3) of the Statute.
7. Having heard the arguments of the Parties as well as the testimony of Witness TN, including both the examination-in-chief and the cross-examination, the Chamber concludes that the evidence is relevant, has probative value, and is therefore admissible. The Chamber stresses, however, that any assessment of the weight to be accorded to the witness's testimony will come at a later stage in the proceedings.⁴

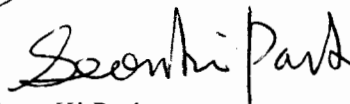
FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Motion in its entirety.

Arusha, 28 October 2005


Asoka de Silva
Presiding Judge


Taghrid Hikmet
Judge


Seon Ki Park
Judge



³ The summary reads as follows: "Witness will give detailed account of how Tutsi women were used as sex slaves, forced into marriages and gang raped by soldiers assisted by Hutu civilians including *Interahamwe* in Butare *Préfecture* in April 1994 and the killing of one Philippe, a Tutsi man."

⁴ *Nyiramasuhuko et al v. The Prosecutor*, Case No. ICTR-97-21-AR73, "Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the 'Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and ABZ Inadmissible'" (AC), 2 July 2004, para. 15.