



UNITED NATIONS
NATIONS UNIES

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8-6-2006
(27031 - 27029)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Emile Francis Short
Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 8 June 2006

JUDICIAL SECRETARIAT
ICTR
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THE PROSECUTOR



Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

DECISION ON ORAL MOTION FOR A BILL OF PARTICULARS

Office of the Prosecutor:

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Peter Robinson and Patrick Nimy Mayidika Ngimbi

INTRODUCTION

1. Count Five of the Amended Indictment charges Édouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera with being part of a joint criminal enterprise of which rape as a crime against humanity was a natural and foreseeable consequence of its object.¹

2. On 28 February 2006, Witness UB testified about the commission of sexual crimes against a particular individual. Joseph Nzirorera objected to the admission of this evidence in support of Count five since no prior notice of these facts had been given in the Indictment. Instead, he submitted, the evidence should be admitted for the limited purpose of proving that rapes were committed in Rwanda, during the relevant period.

3. After the Chamber deferred ruling on this issue because it was premature at this stage, and should be dealt with at the end of the Prosecution case, Nzirorera made a Motion for a Bill of Particulars, for the Prosecution to provide a list of the names of individuals, whose identity is known, on which evidence will be led and that the Prosecution intends to hold his client responsible for their rape or sexual assault.

4. The Prosecution responded that the Chamber had already found Count Five to be properly pleaded in the Indictment. It submitted that to prove Count Five, the Prosecution only has to lead evidence on whether rape and sexual assault was widespread and systematic in Rwanda during 1994 and that the Accused have responsibility for those acts as part of the joint criminal enterprise. It claimed that there could be a similar request for all of the murders charged in the Indictment, which is not possible.

DISCUSSION

5. In the *Kupreskic* Appeals Chamber Judgment, the Court held that the rights of the Accused to be entitled to a fair hearing and to be informed of the nature and cause of the charges against him and to have adequate time and facilities for the preparation of his defence, require the Prosecution to state the material facts underpinning the charges in the Indictment.² The amount of detail required, depends on the nature of the Prosecution's case:

“there may be instances where the sheer scale of the alleged crimes makes it impracticable to require a high degree of specificity in such matters as the identity of the victims and the dates for the commission of the crimes”.³

6. In its Decision on Joint Criminal Enterprise of 14 September 2005, the Chamber ruled in accordance with the established case-law, and in particular, with the above-mentioned principles set out in the *Kupreskic* case, finding that the particulars of the acts of rape encompassed by Count Five were not material facts which had to be pleaded in

¹ On 23 February 2005, the Prosecutor filed an Amended Indictment. A new Amended Indictment dated 24 August 2005 was filed on 25 August 2005 pursuant to the Chamber's Decision on Defects in the Form of the Indictment of 5 August 2005. See also para. 7 of the Amended Indictment.

² *Prosecutor v. Kupreskic et. al.*, Case No. IT-95-16, Judgment (A), 23 October 2001, para. 88

³ *Id.* at para. 89

the Indictment.⁴ However, the Chamber also found that such particulars were important for the preparation of the Defence, and noted that the details of the acts of rape had been disclosed through 143 witness statements in the Prosecution Pre-Trial Brief.

7. In relation to the present Motion, the Chamber finds that, pursuant to the aforementioned jurisprudence, and in light of this Chamber's Decision of 14 September 2005, the Indictment in this case contains sufficient information to inform the Accused of the nature of the charges against them.

8. The Chamber further notes that the details of the sexual violence to which Witness UB testified, and which formed the substance of this application, are found in his statement of interview dated 10 February 2004. This included details concerning the identity of the victim. Although the Prosecution is not required to identify each individual who has been the victim of rape or sexual violence in order to meet its obligations under the jurisprudence, the Prosecution must give notice of details to the extent that those details are within its knowledge. In this instance, timely notice was given concerning the identity of the victim in question which was sufficient for the Defence to be adequately prepared for its cross-examination of Witness UB.

9. Consequently, if the Prosecution has information regarding the names and details of witnesses and victims of rape or sexual violence upon which evidence will be led at trial and which is not contained in the witness statements that have already been disclosed to the Defence, then that information must be disclosed. In addition, for the fairness of the trial, it is in the best interests of the Prosecution to assist with the preparation of the Defence, as it has done here, through timely disclosure of details in a witness statement.

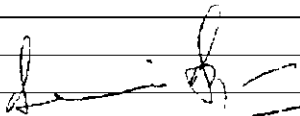
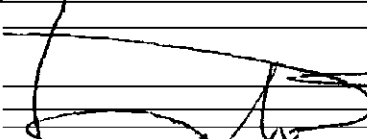
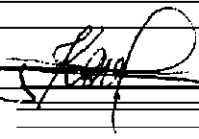
FOR THOSE REASONS, THE CHAMBER

GRANTS the Defence Motion in part;

ORDERS the Prosecution to disclose the known details of the witnesses and victims of rape and sexual violence upon which evidence will be led at trial which have not already been disclosed in witness statements;

DENIES the remainder of the Motion.

Arusha, 8 June 2006, done in English.

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| Dennis C. M. Byron Presiding | Emile Francis Short Judge | Gberdao Gustave Kam Judge |



⁴ Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera. Case No. ICTR-98-44-T, Decision on Defence Motions Challenging the Indictment as Regards the Joint Criminal Enterprise Liability, 14 September 2005, para. 7.