

ICTR-97-20-I  
23-8-2000  
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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 Pavel Dolenc  
Registrar: Agwu U. Okali  
Date: 23 August 2000

JUDICIAL RECORDS ARCHIVES  
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**THE PROSECUTOR  
v.  
LAURENT SEMANZA**

Case No. ICTR-97-20-I

**DECISION ON THE DEFENCE MOTION FOR EXCLUSION OF  
EVIDENCE ON THE BASIS OF VIOLATIONS OF THE RULES OF  
EVIDENCE, RES GESTAE, HEARSAY AND VIOLATIONS  
OF THE STATUTE AND RULES OF THE TRIBUNAL**

Office of the Prosecutor:

Chile Eboe-Osuji  
Holo Makwaia

Defence Counsel:

Charles Achaleke Taku

1. **THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (Tribunal),

**SITTING AS** Judge Pavel Dolenc, a single judge, designated by Trial Chamber III (Chamber) from among its members, pursuant to Rule 73(A) of the Tribunal's Rules of Procedure and Evidence (Rules);

**BEING SEISED** of Semanza's "Motion on Notice for Exclusion of Evidence on basis of Violations of (1) The Rules of Evidences [*sic*] Res Gestae Hearsay (2) Violations of the Statute, Rules of Procedures [*sic*] and Evidence of the Tribunal," filed on 13 April 2000 (Motion);

**CONSIDERING** the "Prosecutor's Brief in Response to the Defence Motion on Notice for the Exclusion of Evidence on basis of Violations of (1) the Rules of Evidence, Res Gestae, Hearsay (2) Violations of the Statute, Rules of Procedures [*sic*] and Evidence of the Tribunal," filed on 20 April 2000 (Brief in Response);

**NOW CONSIDERS** the matter, solely on the briefs, pursuant to Rule 73(A).

**SUBMISSIONS OF THE DEFENCE**

2. Defence Counsel relies on Rules 5, 89(D) and 95 as the legal bases of his Motion.

3. The Defence submits that two reports disclosed by the Prosecutor—one compiled by Mr. P. Heuts, the other by Mr. Pierre Duclos and Mr. Geir Bing—fall short of the standards required for their consideration as either primary evidence or expert evidence. The reports are hearsay; they may be inaccurate and they are based on conjecture and on sources that the Prosecutor does not intend to call to give oral testimony at trial. Neither, says the Defence, does the Prosecutor intend to call Heuts, Duclos or Bing as witnesses in the trial of the Accused and this will deny the Defence the possibility of cross-examining them.

4. The Defence also submits that the reports contain prejudicial comments and conclusions tending to deprive them of any probative value. The investigators compiled the reports several years after the events to which they relate, and produced the reports only after the Office of the Prosecutor had amended the confirmed indictment several times.

5. The admissibility of photographic evidence is, Defence Counsel submits, conditional on it being proved by evidence that the photographs were taken by a certain person at a certain time and that the prints were taken from untouched negatives. Defence Counsel submits that a Trial Chamber may exclude photographic evidence if its prejudicial effect outweighs its probative value.

6. Defence Counsel submits that the Prosecutor must satisfy the Chamber of the admissibility of evidence beyond a reasonable doubt and that a party seeking to prove the admissibility of evidence normally bears the burden of proof. Defence Counsel further submits that an expert must have the advantage of a special skill, training and experience, this being a matter to be tested by evidence.

7. Defence Counsel deposes that, on perusing the reports of Heuts, Duclos and Bing, Semanza observed that they constituted secondary evidence, that the Prosecutor did not serve the reports in compliance with nor pursuant to the Rules, nor did they comply with "the substantive law of evidence". Motion, Affidavit of Mr. Taku, at para. 7(f).

8. Defence Counsel prays that the Chamber not admit into evidence the two reports, and the photographs and videocassettes on which the reports are based.

### **SUBMISSIONS OF THE PROSECUTOR**

9. In response, the Prosecutor submits that she disclosed the challenged reports, photographs, and videocassettes to the Defence in accordance with Rule 66(B).

10. The Prosecutor submits that the Motion raises issues best dealt with at trial. The Motion is premature at this stage of the proceedings.

11. The Prosecutor prays that the Chamber dismiss the Motion.

### **FINDINGS**

12. There is no specific provision in the Statute or Rules stipulating the stage at which a Trial Chamber should decide on the admissibility of evidence. The Chamber, however, finds that a Trial Chamber should decide the issue of admissibility of evidence, in principle, at trial, after a party gives notice or seeks to introduce a particular item of evidence. A Trial Chamber can best assess disputed evidence at trial taking into account the evidence in its totality and the development of the case in general. The Tribunal adopted this approach in *Prosecutor v. Kabiligi*, ICTR-97-34-I (Decision on Kabiligi's Motion to Nullify and Declare Evidence in Admissible) (2 June 2000).

13. In the present case, the Prosecutor, in her Brief in Response, submits that she disclosed the disputed reports of her investigators to the Defence pursuant to Rule 66(B). She has not made any representation as to whether she intends to produce these reports as evidence nor whether she intends to call the investigators and other persons mentioned in these reports to testify at trial. Therefore, it is impractical at this stage to decide the issue of admissibility of the disputed reports because it is not clear if the Prosecutor will adduce them at trial. In this respect, the Motion is premature.

14. Further, Rule 94 *bis* allows a party to object to the statement of an expert and indicate, within fourteen days of the filing of the statement of the expert, that it wishes to cross examine that expert at trial. If a party objects to an expert's evidence, then he or she should request that the other party call the witness and, at trial, the Tribunal can determine the admissibility of the expert's testimony.

15. The Tribunal finds no merit in the Defence's contention that the service of the two reports violates the Statute and Rules. Indeed, the Defence fails to particularise any violation and none is apparent to the Tribunal. Although the Prosecutor was unorthodox in serving this evidence pursuant to Rule 66(B) without a request, the Tribunal finds that the Prosecutor complied with the spirit of the Rules governing disclosure. Indeed, early disclosure of all evidence material to the preparation of the Defence is something the Tribunal encourages.

Accordingly, the Tribunal finds that the Prosecutor's service of the two reports does not violate the Statute or the Rules.

16. For the above reasons, the Tribunal **DENIES** the Motion.

Arusha, 23 August 2000.



Pavel Dolenc  
Judge

Seal of the Tribunal

