



UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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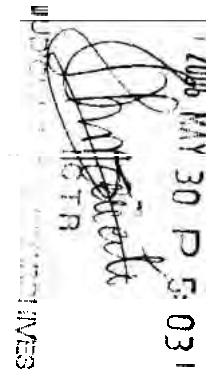
TRIAL CHAMBER II

ICTR-00-55A-T  
30-05-2006  
(3447-3443)

**Before:** Judge Asoka de Silva, Presiding  
Judge Flavia Lattanzi  
Judge Florence Rita Arrey

**Registrar:** Mr Adama Dieng

**Date:** 30 May 2006



**THE PROSECUTOR**

v.

**THARCISSE MUVUNYI**

ICTR-2000-55A-T

**DECISION ON MOTION TO STRIKE OR EXCLUDE PORTIONS OF  
PROSECUTOR'S EXHIBIT No. 34, ALTERNATIVELY DEFENCE OBJECTIONS  
TO PROSECUTOR'S EXHIBIT No. 34**

**Office of the Prosecutor**

Mr Charles Adeogun-Phillips, Senior Trial Attorney  
Ms Adesola Adeboyejo, Trial Attorney  
Ms Renifa Madenga, Trial Attorney  
Ms Memory Maposa, Assistant Trial Attorney  
Mr Dennis Mabura, Case Manager

**Counsel for the Defence**

Mr William E. Taylor, Lead Counsel  
Ms Cynthia Cline, 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 Rita Arrey (the “Chamber”);

**BEING SEIZED** of the “Motion to Strike or Exclude Portions of Prosecutor’s Exhibit No. 34, Alternatively Defence Objections to Prosecutor’s Exhibit No. 34”, filed on 24 March 2006 (the “Motion”);

**NOTING** that the Prosecution has not filed a response;

**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 on the basis of the written submissions filed by the Defence.

## **INTRODUCTION**

1. On 10 March 2006, during the cross-examination of Defence Witness MO15, the Prosecution put to the witness two paragraphs of a document purported to be a Judgement of the Special Bench of the War Council of the Republic of Rwanda, sitting in Butare. The Prosecution tendered the entire document to be admitted into evidence.<sup>1</sup> The Defence objected to the admission of this document as an exhibit.<sup>2</sup> The Prosecution entered what it purported to be the original document in Kinyarwanda and its purported English translation. The Chamber admitted those two documents as Prosecution Exhibits P. 34A and P. 34 respectively and directed that because the Defence had just been provided with a copy of the said document during the proceedings of 10 March 2006, it was free to review the document and bring any issues to the attention of the Chamber at a later stage.<sup>3</sup>

## **SUBMISSIONS OF THE DEFENCE**

2. In its Motion, the Defence requests the Chamber to entirely exclude Prosecution Exhibit 34 (“Exhibit P. 34”) and Prosecution Exhibit 34A (“Exhibit P. 34A”). Alternatively, the Defence urges the Chamber to exclude portions which do not appear relevant to the witness’s credibility. Additionally, the Defence submits that the Chamber should strike from the record all other cross-examination based on this exhibit.<sup>4</sup>
3. The Defence submits that Exhibit P. 34, a document of 78 pages, marked K0364204 through K0364281, is allegedly a Judgement by the Special Bench of the War Council of ~~the Republic of Rwanda, sitting in Butare, in Respect of Offences Constituting the Crime~~

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<sup>1</sup> T. 10 March 2006, p. 40 (ICS).

<sup>2</sup> T. 10 March 2006, p. 40 (ICS).

<sup>3</sup> T. 10 March 2006, pp. 44, 48 & 50 (ICS).

<sup>4</sup> The submissions of the Defence are as follows: - in para. 1 of its Motion, the Defence seeks to exclude portions of the said exhibit or, alternatively, to exclude it entirely (see also the title of the Motion), - and in para. 15 of the same Motion, the Defence first asks the Chamber to exclude the entire exhibit or, alternatively, to “exclude all but the single paragraph possibly relevant to the witness’ credibility”.

of Genocide or Crimes against Humanity (the "Judgement"). The Defence adds that Exhibit P. 34A is allegedly the Kinyarwanda version of Exhibit P. 34 and that this document was first disclosed to the Defence in court on the day it was put to Witness MO15 by the Prosecution. For the purpose of Rule 5 of the Rules, the Defence argues that this is the earliest opportunity it has to object to this document.

4. The Defence asserts that the authenticity and reliability of Exhibit P. 34 are questionable. It also states that only one paragraph of the document is relevant for the purpose for which the Prosecution introduced it and that the document was not provided in its entirety.<sup>5</sup>
5. The Defence further submits that Exhibit P. 34 is a third party's summation of how witnesses, including Defence Witness MO15, testified in the case in which the Judgement was allegedly rendered and does not contain actual statements of Defence Witness MO15.
6. The Defence asserts that the Prosecution was disingenuous at best and attempting a fraud on the Court at worst when it implied that Defence Witness MO15 had made "testifying for his former bosses an art form". Furthermore, and contrary to the Prosecution assertion, the Defence argues that the testimony of Witness MO15 before the Special Bench of the War Council of the Republic of Rwanda was for the Prosecutor, not for the Defence.
7. Moreover, the Defence submits that even if the document is admissible, it is nothing more or less than the purported record of what occurred. According to the Defence, since the document is neither the witness's statement nor one adopted by him, it has no relevance to his credibility. The Defence adds that even if a portion of the document were admissible to impeach the witness, the remainder would not be relevant for that purpose.

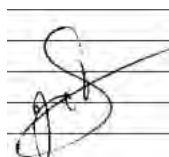
#### HAVING DELIBERATED

8. The Chamber notes that the real issue raised by this Motion is whether the Chamber should reconsider its earlier Decision admitting Exhibits P34 and P34A into evidence. The Chamber recalls the jurisprudence of the ICTR and ICTY according to which a Trial Chamber may reconsider its own decisions if it discovers a new fact that was not known to the Chamber at the time the earlier decision was made, if it finds that a material change in circumstances has occurred, or if there is reason to believe that a previous decision was erroneous and therefore prejudicial to either party.<sup>6</sup>
9. Rule 89 (C) of the Rules gives the Chamber a broad discretion to admit evidence, including documents, which it considers relevant and of probative value.<sup>7</sup> The Appeals

<sup>5</sup> Exhibit P. 34, p. 15, between paras. 90 and 91, p. 16, between paras. 96 and 97.

<sup>6</sup> *The Prosecutor v. Ndindiliyimana et al.*, "Decision on Bizimungu's Motion for Reconsideration of the Chamber's 19 March 2004 Decision on Disclosure of Prosecution Materials, 3 November 2004, para. 21; *The Prosecutor v. Milosevic*, Case No. IT-02-54-T, "Decision on Prosecution Motion for Reconsideration Regarding Evidence of Defence Witness Mitar Balevic, Vladislav Jovanovic, Vukasin Andric, and Dobre Aleksovski, and Decision *Proprio Motu* Reconsidering Admission of Exhibits 837 and 838 Regarding Evidence of Defence Witness ~~Barry Lituchy~~", ~~17 May~~ 2005, paras. 6-8; *The Prosecutor v. Mucic et al.*, Case IT-96-21-A bis, "Judgement on Sentence Appeal", 8 April 2003, para. 49.

<sup>7</sup> *The Prosecutor v. Bagasora et al.*, Case No. ICTR-98-41-AR93 & ICTR-98-41-AR93.2, "Decision on the Prosecutor's Interlocutory Appeals Regarding Exclusion of Evidence", Appeals Chamber, 19 December 2003, para. 11.



Chamber in *Nyiramasuhuko v. The Prosecutor* affirmed that “at the stage of admissibility, only the beginning of proof that evidence is reliable, namely, that sufficient indicia of reliability have been established, is required for evidence to be admissible.”<sup>8</sup>

- 10 The Chamber has considered the Defence submissions, and had the opportunity to review Exhibits P. 34 and P. 34A more closely than was possible during the hearing. The Chamber notes that the Prosecution has not given any explanation about the source of the translation of the document in question. In addition, there is no indication that the said translation was certified as correct by the Tribunal’s Language Services Section or any other person or organization.
- 11 The Chamber has, however, closely examined the document in Kinyarwanda vis-à-vis the purported English translation, and concludes that on their face, the two documents do not seem to relate to the same facts. The two documents appear to be different in their structure and do not address the same persons. For example, the names of “Rwangampuhwe”, “Gatera”, “Kajuga” (1<sup>st</sup> para.), “Mukarubibi” (2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 7<sup>th</sup> paras.), “EER” (2<sup>nd</sup>, 3<sup>rd</sup> paras.) “Karenzi” (3<sup>rd</sup> para.) appear on the first page of Exhibit P. 34A while they do not appear in the corresponding paragraphs or even the first two pages of Exhibit P. 34. Moreover, Exhibit P. 34 bears the following title on the top of the first page: “The Special Bench of the War Council of the Republic of Rwanda, sitting in Butare in Respect of Offences Constituting the Crime of Genocide or Crimes Against Humanity, Delivered the Following Judgement, On July 1998: the Hearing of Which where Held on 11, 25, 26 May; 9, 10, 16, 17, 18, 19, 24, 25 and 26 June 1998...”. No such header can be found on top of Exhibit P. 34A. The Chamber also notes that the last two pages of Exhibit P. 34A contain tables indicating amounts in Rwandan Francs whereas the last two pages of document P. 34 contain text organised in paragraphs with no reference to any amount of money.
- 12 The Chamber also recalls that during the proceedings of 10 March 2006, the Prosecution relied exclusively on the document in English later entered as Exhibit P. 34, and it was only when the Chamber was marking the document as an exhibit that the Prosecution introduced a document in Kinyarwanda to be admitted as the original version of Exhibit P. 34. Therefore, the Chamber considers that since Exhibit P. 34, the purported English translation, appears to be a different document from the original Kinyarwanda document, Exhibit P. 34 is not *prima facie* reliable or authentic.
13. The Chamber has also taken into account the Defence submission that the translator has indicated that two portions of the original document were missing and therefore could not be translated.<sup>9</sup> Having examined Exhibit P. 34A, the Chamber finds that pages marked K035894 through K035897 are missing.
14. In view of its finding that Exhibit P. 34 lacks *prima facie* reliability and authenticity, the Chamber concludes that the document should not have been admitted as an exhibit. The Chamber therefore invokes its inherent power to reconsider its Decision of 10 March 2006 admitting into evidence a purported translation into English of a

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<sup>8</sup> *Nyiramasuhuko v. The Prosecutor*, Case No. ICTR-2000-56-T, “Decision on Pauline Nyiramasuhuko’s Appeal on the Admissibility of Evidence”, 4 October 2004, para. 7.

<sup>9</sup> P. 15 of Exhibit P. 34, between paras. 90 and 91: “[Translator’s note: pages 21 through 29 of the Judgement (*sic*) missing]; p. 16 of Exhibit P. 34, between paras. 96 and 97: “[Translator’s note: pages 31 through 59 of the Judgement missing].”



Judgement of the War Council in Rwanda and its Kinyarwanda original as Exhibits P. 34 and P. 34A respectively.

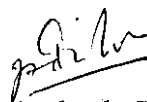
15. In light of the Chamber's finding that this document lacks *prima facie* reliability or authenticity, the Chamber is of the view that the evidence associated with these exhibits and elicited during cross-examination, should equally not be taken into account.
16. Finally the Chamber wishes to remind the Parties of their obligation to act with all necessary diligence when submitting materials to be admitted as evidence.

**FOR THE FOREGOING REASONS, THE CHAMBER**

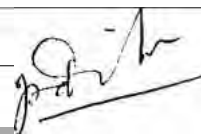
**GRANTS** the Defence Motion;

**ORDERS** that Prosecution Exhibit P. 34 and Prosecution Exhibit P. 34A be excluded from the record.

Arusha, 30 May 2006

  
Asoka de Silva  
Presiding Judge

  
Flavia Lattanzi  
Judge

  
Florence R. Arrey  
Judge

[Seal of the Tribunal]

