

ICTR-05-84-1
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

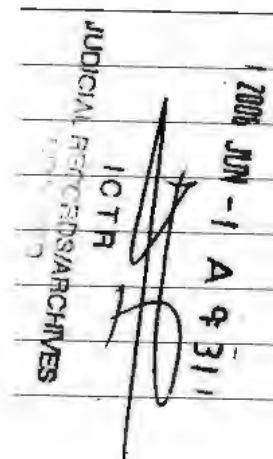
Date: 1 June 2006

THE PROSECUTOR

v.

Joseph SERUGENDO

Case No. ICTR-2005-84-I



**DECISION ON DEFENCE MOTION FOR THE ADMISSION OF WRITTEN
WITNESS STATEMENTS UNDER RULE 92 bis**

Office of the Prosecutor:

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Counsel for the Defence

Cecil J. Maruma

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA,

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

BEING SEIZED of the "Defence Motion for Admission of Written Statements" etc. under Rule 92 *bis* of the Rules of Procedure and Evidence ("the Rules"), filed on 29 May 2006;

NOTING that the Prosecution does not oppose the motion;

HEREBY DECIDES the motion

INTRODUCTION

1. The Defence seeks to admit into evidence the written statements of four witnesses (FG, JF, CN and BN) in lieu of oral testimony, pursuant to Rule 92 *bis* of the Rules. It is argued that all statements confirm to the requirements of that provision. The Defence also contends that the admission of these statements will save judicial time and resources, as well as minimise disruption to the witnesses' lives and risks to their safety. The Prosecution does not oppose the admission of the statements and has waived its right to require the witnesses to be called for cross-examination.

DELIBERATIONS

2 The relevant parts of Rule 92 *bis* read as follows:

Rule 92 *bis*: Proof of Facts Other Than by Oral Evidence

(A) A Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement in lieu of oral testimony which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment.

(i) Factors in favour of admitting evidence in the form of a written statement include, but are not limited to, circumstances in which the evidence in question:
[...]

(e) relates to issues of the character of the accused; or

(f) relates to factors to be taken into account in determining sentence

(ii) Factors against admitting evidence in the form of a written statement include whether:

(a) there is an overriding public interest in the evidence in question being presented orally;

(b) a party objecting can demonstrate that its nature and source renders it unreliable, or that its prejudicial effect outweighs its probative value; or

(c) there are any other factors which make it appropriate for the witness to attend for cross-examination.

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(B) A written statement under this Rule shall be admissible if it attaches a declaration by the person making the written statement that the contents of the statement are true and correct to the best of that person's knowledge and belief and

(i) the declaration is witnessed by:

- (a) a person authorised to witness such a declaration in accordance with the law and procedure of a State; or
- (b) a Presiding Officer appointed by the Registrar of the Tribunal for that purpose; and

(ii) the person witnessing the declaration verifies in writing:

- (a) that the person making the statement is the person identified in the said statement;
- (b) that the person making the statement stated that the contents of the written statement are, to the best of that person's knowledge and belief, true and correct;
- (c) that the person making the statement was informed that if the content of the written statement is not true then he or she may be subject to proceedings for giving false testimony; and
- (d) the date and place of the declaration.

The declaration shall be attached to the written statement presented to the Trial Chamber.

[...]

(E) Subject to any order of the Trial Chamber to the contrary, a party seeking to adduce a written statement or transcript shall give fourteen days notice to the opposing party, who may within seven days object. The Trial Chamber shall decide, after hearing the parties, whether to admit the statement or transcript in whole or in part and whether to require the witness to appear for cross-examination.

3. Rule 92 *bis* was adopted from the Rules of Procedure and Evidence of the International Criminal Tribunal for the Former Yugoslavia. The Appeals Chamber has described Rule 92 *bis* as "*lex specialis* which takes the admissibility of written statements of prospective witnesses and transcripts of evidence out of the scope of the *lex generalis* of Rule 89(C), although the general propositions which are implicit in Rule 89(C) – that evidence is admissible only if it is relevant and that it is relevant only if it has probative value – remain applicable to Rule 92*bis*".¹ Therefore, statements sought to be admitted

¹ *Galić*, Decision on Interlocutory Appeal Concerning Rule 92*bis*(C) (AC), 7 June 2002, para. 31; *Ndayambaje et al.*, Decision on the Prosecutor's Motion to Remove From Her Witness List Five Deceased Witnesses and to Admit Into Evidence the Witness Statements of Four of Said Witnesses (TC), 22 January 2003, para. 20; *Kamuhanda*, Decision on Kamuhanda's Motion to Admit into Evidence Two Statements by Witness GER in Accordance with Rules 89(C) and 92*bis* of the Rules of Procedure and Evidence (TC), 20 May 2003, para. 22.

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under Rule 92 *bis* must also comply with the requirements of relevance and probative value required by Rule 89 (C).

4. Rule 92 *bis* (A) specifically prohibits the admission of evidence going to the acts and conduct of the Accused as charged in the Indictment.² By contrast, one of the factors in favour of admitting statements is that the evidence sought relates to issues of the character of the Accused. The Defence cites this factor in arguing for the admission of the statements.

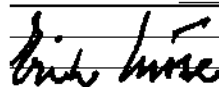
5. Even if a statement fulfils all these requirements, the Chamber must decide whether or not to exercise its discretion to admit, bearing in mind the overarching necessity of ensuring a fair trial as provided for in Articles 19 and 20 of the Statute. If, in exercising its discretion, the Chamber permits the admission of the statement, it must also decide whether or not to require cross-examination of the witness. Again, a relevant factor is the need to ensure a fair trial.³

6. The Chamber observes that the four witness statements tendered for admission do not go to proof of the Accused's acts and conduct as charged but attest to his good character and professional competence prior to the events mentioned in the Indictment; a factor in favour of admission under Rule 92 *bis* (A)(i)(e). The statements are relevant and probative as factors in mitigation of sentence. Furthermore, the formal requirements of admission of a written statement under Rule 92 *bis* (B) have been met by way of attestations attached to all the four written statements. Having considered the statements as a whole, the Chamber finds that fair trial requirements do not require their admission with cross-examination, bearing in mind the uncontested nature of their contents and the waiver of this right by the Prosecution.

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the motion and admits the written statements of Witnesses FG, JF, CN and BN.


Arusha, 1 June 2006



Erik Mose
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

² *Galić*, Decision on Interlocutory Appeal Concerning Rule 92*bis*(C) (AC), 7 June 2002, paras. 8-11; *Milosevic*, Decision on Prosecution's Request to have Written Statements Admitted Under Rule 92*bis* (TC), 21 March 2002, para. 22.

³ *Milosevic*, Decision on Prosecution's Request to have Written Statements Admitted Under Rule 92*bis* (TC), 21 March 2002, paras. 24-25; *Sikirica et al.*, Decision on Prosecution's Application to Admit Transcripts Under Rule 92*bis* (TC), 23 May 2001, para. 4.