



**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Gberdao Gustave Kam
Robert Fremr

Registrar: Adama Dieng

Date: 2 October 2006

THE PROSECUTOR

v.

Siméon NCHAMIHIGO

Case No. ICTR-2001-63-T

**ORAL DECISION ON ADMISSION OF EXHIBITS RELATED TO THE
ALLEGATION OF A FORGED DIPLOMA**

Rule 89(C) of the Rules of Procedure and Evidence

Office of the Prosecutor:

Alphonse Van
Lloyd Strickland
Madeleine Schwarz
Adama Niane

Defence Counsel:

Denis Turcotte
Benoît Henry

See transcript p. 13-14 (English- Original Language), p. 14-15 (French)

MR. PRESIDENT:

Yes, the Chamber will now give its reasons for the decision on the admission of the exhibits on which we ruled a little while ago.

On the 28th of September 2006, the Defence opposed the admission into evidence of three documents which were typed and subsequently given to ICTR investigators by Witness BPX, and which relate to the allegation that the Accused acted in his capacity of *Substitut du Procureur*, in the office of the prosecutor in Cyangugu on the basis of a forged diploma presented to him in 1991. These documents were marked as IP. 3, 4, 5 and 6.

The Defence submits three arguments to support its motion. The documents sought to be admitted do not fall within the temporal jurisdiction of this Tribunal, since they are dated 1992. Their content is not relevant to the counts the Accused has been charged with, and the person who drafted the document marked as IP. 5 had not seen the forged diploma at the time of drafting it.

The Defence concludes that the content of this document is merely hearsay and has no probative value. The Chamber will address each of these arguments in turn.

According to the established jurisprudence of this Tribunal, evidence of events prior to 1994 can establish a pattern, design or systematic course of conduct by the Accused or provide the context or background to crimes falling within the temporal jurisdiction of the Tribunal is, however, admissible.

As this Chamber already stated, the allegations in the indictment concerning the fact that the Accused acted in his capacity of *Substitut du Procureur*, on the basis of a forged diploma, may provide the context and background concerning the Accused and cannot independently ground the conviction, on any of the counts included in the indictment.

The Defence's argument falls, therefore, to be rejected.

Rule 89C of the rules -- of Rules of Procedure and Evidence provides the Chamber with the discretionary power to admit any relevance evidence which it deems to have probative value, to

the extent that it is relevant, or as maybe relevant to the proof of allegations pleaded in the indictment.

Admissibility of evidence should not be confused with the assessment of the weight to be accorded to that evidence, an issue to be decided by the Chamber at a later stage. In the present case, the exhibits are relevant to the indictment insofar they provide background information to the allegations set forth in the indictment. They are related to the Accused's position at the time of the commission of the crimes, and to his alleged abuse of magistrature for political reasons.

With respect to the alleged hearsay character of the document marked IP. 5, it must be noted that according to the established jurisprudence, a Chamber has a broad discretion to admit hearsay evidence pursuant to Rule 89C of the Rules. It will be for the Judges to determine at a later stage the weight to give to this evidence and decide the importance to be attached to this document when assessing the evidence as a whole.

It is for these reasons that the Chamber denied the Defence motion and admitted the documents.