



INTERNATIONAL
CRIMINAL TRIBUNAL
FOR RWANDA

1002-98-44-T
9-8-2007
(29675-29669)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

29675
2111

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Gherdao Gustave Kam
Vagn Joensen

Registrar: Adama Dieng

Date: 8 August 2007

THE PROSECUTOR

v.

Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA
Case No. ICTR-98-44-T

2007.08.08
13:00
[Signature]

**INTERIM ORDER FOR THE PROSECUTION TO IDENTIFY RELEVANT AND
PROBATIVE PASSAGES OF CERTAIN MATERIALS IT INTENDS TO TENDER
INTO EVIDENCE UNDER RULE 89(C) OF THE RULES OF PROCEDURE AND
EVIDENCE**

Rule 54 of the Rules of Procedure and Evidence

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Defence Counsel for Joseph Nzirorera
Peter Robinson and Patrick Niny Mayidika Ngimbi

[Signature]

INTRODUCTION

1. The trial in this case started on 19 September 2005 before Trial Chamber III composed of Judges Dennis C. M. Byron, presiding, Emile Francis Short and Giberdao Gustave Kam. The fourth trial session concluded on 13 December 2006.

2. On 21 November 2006, that Chamber denied the Prosecution's application to enter a bundle of UNAMIR Documents into evidence.¹ The Chamber stated that UNAMIR Documents could be admitted without being tendered during the examination of a witness, provided that the moving party shows, for each document, its relevancy and probative value. Furthermore, the Chamber held that it was not appropriate to provide the Chamber with a bundle of documents for it to determine which document has probative value.²

3. On 8 June 2007, as a result of Judge Short's withdrawal from the case in January 2007, Judge Vagn Joensen joined the bench as substitute judge for the continuation of the proceedings.³ The fifth trial session started on 12 June 2007.

4. Meanwhile, on 27 April 2007, the Prosecution filed a Motion seeking the admission into evidence of certain documents, including 50 selected documents about the state of affairs prevailing in Rwanda in 1994 prepared by UNAMIR officials as part of its report to the United Nations Headquarters in New York, attached in Annex A to its Motion.⁴

5. The Defence for Nzirorera opposes this application and submits that the Prosecution has only provided a generic showing of relevancy and probative value for the UNAMIR

¹ *Prosecutor v. Édouard Karemera, Mathieu Ndirumpatswe, Joseph Nzirorera* ("Karemera et al."), Case No. ICTR-98-44-T, Decision on Admission of UNAMIR Documents(TC), 21 November 2006.

² *Ibid* paras 11-12.

³ See: *Karemera et al.*, Decision on Continuation of the Proceedings (TC), 6 March 2007; *Karemera et al.*, Decision on Appeals Pursuant to Rule 15 bis (D), (AC) 20 April 2007. Judge Joensen was sworn in on 2 May 2007 and certified that he had familiarized himself with the record of the proceedings on 8 June 2007, see *Karemera et al.*, Certification of the Familiarisation with the Record of the Proceedings, 8 June 2007.

⁴ *Prosecutor's Motion for Admission of Certain Materials under Rule 89(C) of the Rules of Procedure and Evidence*, filed on 27 April 2007 ("Prosecution Motion").

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documents.⁵ The Defence for Nzitorera further avers that each UNAMIR document is several pages long and relates to a number of topics.⁶

6. The Chamber granted the Defence for Karemura and the Defence for Ngirumpaise an extension of time to respond to the Prosecution's application starting from the day on which they received the French translation of the said documents.⁷

DISCUSSION

7. Under Rule 89 (C) of the Rules, "[a] Chamber may admit any relevant evidence which it deems to have probative value". In order to establish that evidence is relevant, the moving party must show that a connection exists between the evidence sought to be admitted and the proof of an allegation sufficiently pleaded in the indictment.⁸ To establish the probative value of the evidence, the applicant must show that the evidence tends to prove or disprove an issue.⁹

8. According to the Prosecutor, the documents in question are relevant and have probative value because they consist of official United Nations correspondence between high ranking UN officials arising from the UNAMIR peacekeeping mission in Rwanda in 1994; they serve as a contemporaneous record of events during the UN peacekeeping mission in Rwanda; they are dated between March and July 1994; they are authored by senior officials;

⁵ Nzitorera's Response to Prosecution Motion to Admit Exhibits from the Bar, filed on 9 May 2007 ("Nzitorera's Response"), paras. 4-10.

⁶ *Ibid.*, para. 10.

⁷ Karemura et al., Decision accordant une prorogation de délai supplémentaire (TC), 12 May 2007.

⁸ *Prosecution v. Pauline Nyiramasuhuko and Arsène Shalom Ntahobali*, Case No. ICTR-97-21-AR73, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and ABZ Inadmissible" (AC), 2 July 2004, para. 15 ("Nyiramasuhuko Appeals Decision on Inadmissibility of Evidence"); *Prosecution v. Pauline Nyiramasuhuko*, Case No. ICTR-98-42-AR73, Decision on Pauline Nyiramasuhuko's Request for Reconsideration (AC), 27 September 2004, para. 12; *Kagame et al.*, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006, para. 40.

⁹ *Prosecutor v. Bagatze and Jokec*, Case No. IT-02-60-T, Decision on the Admission into Evidence of Intercept-Related Materials (TC), 18 December 2003, para. 17.

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either Jacques-Roger Buhoboo, former Special Representative of the Secretary-General to Rwanda, or Lieutenant-General Romeo Dallaire, former Force Commander of UNAMIR; and they were sent to Kofi Annan, former Under-Secretary-General for Peacekeeping Operations at United Nations Headquarters in New York.¹⁰

9. In Annex A to the Prosecution's Motion, it is indicated in relation to all 50 documents that they "reflect the views of United Nations officials as to the political and military context of Rwanda in 1994". It is further indicated that some of these documents also reflect "government's stance concerning militia activities" (8 documents), "collaboration between militia and RGF" (20 documents) and "militia activities in government controlled areas" (18 documents).¹¹

10. Apart from the first document, entitled "Compte-Rendu De La Rencontre Avec Le Ministre Tanzanien Des Affaires Etrangeres",¹² the Chamber acknowledges that the remaining 49 documents are situation reports that indeed contain paragraphs with a general assessment of the situation which reflect "the views of United Nations Officials as to the political and military context of Rwanda in 1994" and that some of the documents furthermore do contain paragraphs dealing with "government's stance concerning militia activities", "collaboration between militia and RGF" and "militia activities in government controlled areas".

11. However, the Chamber notes that the remaining 49 documents contain a great deal of information which is of tangential relevance to the crimes pleaded in the Indictment, such as UNAMIR logistics. Furthermore, the Chamber notes that the Prosecution has not sought to demonstrate the relevance of the information in question nor how the information could assist the Chamber in its assessment of the case.

¹⁰ *Ibid.*, para. 12.

¹¹ See Annex A to the Prosecution Motion.

¹² *Ibid.* This document is dated 16 March 1994.

12. The Chamber has the duty to ensure fair and expeditious conduct of the proceedings¹³ and that the admission of evidence is always subject to "the interests of justice", which includes keeping the case at a manageable size.¹⁴ A party seeking the admission of evidence should ensure that its request for admission is as concise and as precise as is possible so as to facilitate the decision-making process on admission as well as to avoid the needless consumption of time and resources by the Chamber in terms of the evaluation of the evidence sought to be admitted and likewise for the opposing party or parties in terms of responding to applications for the admission of evidence as well as in terms of the eventual rebuttal of this evidence. The wholesale admission of entire, lengthy documents on the basis of general pleadings as to their relevance would normally impede the expeditiousness of the proceedings and impose a heavy burden on the Chamber and opposing party or parties.

13. Such management of the proceedings is consistent with the approach adopted for the introduction of evidence during oral proceedings.¹⁵ In this regard, the Trial Chamber of the International Tribunal for Former Yugoslavia in the *Prlić* case stated as follows:

The size and nature of the present case is such that a significant amount of documentary and other evidence will be tendered by the parties. However, it would not facilitate the completion of the trial within a reasonable amount of time to set limits on the amount of time available for in-court testimony and then to flood the Chamber with documentary evidence, which must be carefully analysed and assessed in order for a proper determination of the case. The Prosecution and the Defence must therefore be selective in their tendering of documents and other exhibits, and the Chamber will be rigorous in its application of Rule 89(C) and the requirements of relevance and probative value.¹⁶

14. Apart from its obvious benefits in terms of expeditiousness, this approach has the virtue of placing both the Defence and the Chamber in a better position to assess whether the

¹³ See Articles 19 and 20 of Tribunal's Statute.

¹⁴ *Prosecutor v. Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92 bis (C) (AC), 7 June 2002, para. 12; *Prosecutor v. Krajišnik*, Case No. IT-00-39 & 40-PT, Decision on Motion from Momčilo Krajišnik to Compel Disclosure of Exculpatory Evidence Pursuant to Rule 68, 19 July 2001 (TC), p. 2.

¹⁵ See in particular Rule 90(F) which reads as follows: "The Trial Chamber shall exercise control over the mode and order of interrogating witnesses and presenting evidence so as to:

(i) Make the interrogation and presentation effective for the ascertainment of the truth; and
(ii) Avoid needless consumption of time."

¹⁶ *Prlić et al.*, Revised Version of the Decision Adopting Guidelines on Conduct of Trial Proceedings (TC), 28 April 2006, para. 8.

admission of a given piece of evidence would be prejudicial to the Accused or violate their fundamental rights. It allows the parties and the Chamber to focus on the salient, live issues at stake in the trial.

15. In support of its application, the Prosecution refers to a decision on the admission of 15 UNAMIR documents in *Bagosora et al.* case. In that case, the Trial Chamber held that the Defence had discharged its *prima facie* burden of showing the relevance of the documents as they reflected "the views of United Nations officials as to the political and military context of Rwanda in 1994" and this context "[was] relevant to the charges against the Accused and [had] been the object of extensive testimony called by both the Defence and the Prosecution."¹⁷ However decisions relating to the admission of evidence are discretionary and can depend on the number of documents sought to be admitted into evidence and the evidence already adduced during the proceedings. That the UNAMIR documents were found to be relevant in one trial therefore has no bearing on their relevance in this trial.

16. Given the sizable volume of UNAMIR documents the Prosecution intends to tender into evidence, the Chamber deems it to be appropriate to issue an order requesting the Prosecution to specify the relevant passages of the documents it intends to tender into evidence. The Chamber opines that such an approach will further the interests of justice by expediting the proceedings and avail the Defence with ample opportunity to file their responses to the Prosecutor's Motion.

FOR THESE REASONS, THE CHAMBER

I. **ORDERS**, under 89(C) of the Rules, that, in connection with all UNAMIR documents sought to be admitted, except for the document dated 16 March 1994,¹⁸ the Prosecution to identify the specific passage or passages sought to be admitted which reflect or contain:

¹⁷ *Bagosora* Decision on UN Documents, para. 3.

¹⁸ Entitled "Compte-Rendu De La Rencontre Avec Le Ministre Tanzanien Des Affaires Etrangères"

- a) A general assessment of the political and military situation
- b) Government's stance concerning militia activities
- c) Collaboration between militia and RGF
- d) Militia activities in government controlled areas, and
- e) Such other passages containing information which the Prosecution finds of relevance and probative nature, each with an explanation on how the information relates to events plead in the Indictment or can otherwise assist the Chamber in assessing the case.

II. **ORDERS** the Prosecution to file its further submissions according to the above-mentioned Order no later than 28 August 2007;

III. **REQUESTS** the Prosecution, in coordination with and with the assistance of the Registrar, to ensure that the portions identified according to the above-mentioned Order are translated in French and disclosed to the Defence as soon as possible;

IV. **DIRECTS** the Defence to focus their responses to the Prosecution Motion of 27 April 2007 to the remaining issues that will result from the further submissions by the Prosecution according to the above-mentioned Order;

V. **RECALLS** that the Defence will have five days to respond to the above-mentioned further Prosecution submissions after receiving the French version of the material sought for admission according to the anticipated new submissions of the Prosecution.

Amsha 8 August 2007, done in English.

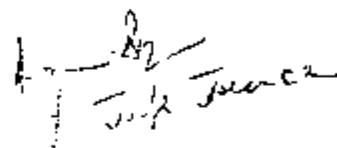


Denis C. M. Byron

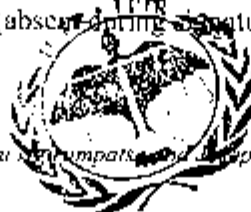
Residing Judge



With the consent and on
behalf of
Gberdao Gustave Kam
Judge
(absent during signature)



With the consent and on
behalf of
Vagn Joensen
Judge
(absent during signature)





TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

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I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

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From:	<input checked="" type="checkbox"/> Chamber Hussein Mohamed Mohamud	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
	(names)			
Case Name:	The Prosecutor vs. Karemera et al.		Case Number: ICTR-98-44-T	
Dates:	Transmitted: 9 AUGUST 2007		Document's date: 8 AUGUST 2007	
No. of Pages:	7	Original Language:	<input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda	
Title of Document:	INTERIM ORDER FOR THE PROSECUTION TO IDENTIFY RELEVANT AND PROBATIVE PASSAGES OF CERTAIN MATERIALS IT INTENDS TO TENDER INTO EVIDENCE UNDER RULE 89(C) OF THE RULES OF PROCEDURE AND EVIDENCE			
Classification Level:		TRIM Document Type:		
<input type="checkbox"/> Strictly Confidential / Under Seal		<input type="checkbox"/> Indictment <input type="checkbox"/> Warrant <input type="checkbox"/> Correspondence <input type="checkbox"/> Submission from non-parties		
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<input checked="" type="checkbox"/> Public		<input type="checkbox"/> Disclosure <input checked="" type="checkbox"/> Order <input type="checkbox"/> Appeal Book <input type="checkbox"/> Accused particulars		
		<input type="checkbox"/> Judgement <input type="checkbox"/> Motion <input type="checkbox"/> Book of Authorities		

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CMS SHALL take necessary action regarding translation.

☒ Filing Party hereby submits only the original, and will not submit any translated version.

☐ Reference material is provided in annex to facilitate translation.

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☐ Filing Party hereby submits BOTH the original and the translated version for filing, as follows:

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Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

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Date: 09 August 2007

Case Name / Affaire:

The Prosecutor vs.

- Joseph NZIRORERA
- Mathieu NGIRUMPATSE
- Edward KAREMERA

Case No / Affaire No.:

ICTR-98-44-T

To:
A:

☐ TC1

Judge E. Mese
Judge J. R. Reddy
Judge S. A. Egorov
Judge F. R. Arrey (Karema & Ranzaho)
SLO
Co-ordinator

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L. Haskell
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K. Ardault

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Judge K. R. Khan
Judge A. J. N. de Silva
Judge S. B. Bossa (Nyiramasuhuku et al.)
Judge L. G. Muthoga (Bizimungu et al.)
Judge E. F. Shost (Bizimungu et al.)
Judge T. Hikmei (Ndindiliyimana et al.)
Judge S. K. Park (Ndindiliyimana et al.)
M. Nang, SLO
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A. Marong, Judgement Co-ordinator
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Judge G. G. Kam (Karamera et al. & Nchamihigo)
Judge R. Fremr (Bakoni & Nchamihigo)
Judge V. Joensen (Karamera et al.)
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H. Gogo, Co-ordinator

(Vacant)
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S. Unnikrishnan
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M. J. Mbadinga
(Vacant)
P. Mathiam

☒ OTP / BUREAU DU PROCUREUR

☐ Senior Trial Attorney in charge of case:

D. Webster

received by

☒ DEFENSE

☐ Accused / Accusé: J. Nzirorera, M. Ngirumpatse & E. Karemera

complete / remplir "CMS3 FORM"

☐ Lead Counsel / Conseil Principal: P. Robinson, C. Hounkpatin & D. Diagne

☐ In / à Arusha Arusha (signature)

☐ by fax complete / remplir "CMS3bis FORM"

☐ Co-Counsel / Conseil Adjoint: P. N. M. Ngimbi, F. Weyl & F. Sow

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All Decisions: ☐ Appeals Chamber Unit, The Hague

☐ S. Chenault, Jurist Linguist

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De:

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☐ M. Diop (Chief, JPU)

☐ N. Diallo (TC1)

☐ R. Kusunoo (TC2)

☒ C. Hounkpatin (TC3)

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☐ F. A. Tilon (Appeals/TC4 IV)

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Subject

Objet:

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INTERIM ORDER FOR THE PROSECUTION TO IDENTIFY RELEVANT AND PROBATIVE
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