

ICTR-98-44-T
30-10-2007
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INTERNATIONAL
CRIMINAL TRIBUNAL

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
Vagn Joensen

Registrar: Adama Dieng

Date: 30 October 2007

THE PROSECUTOR

v.

Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

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**DECISION ON THE PROSECUTION MOTION FOR ADMISSION INTO
EVIDENCE OF UNAMIR DOCUMENTS**

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

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

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INTRODUCTION

1. On 27 April 2007, during the presentation of its case, the Prosecutor filed a Motion seeking the admission into evidence of i) fifty selected Situation Reports about the state of affairs in Rwanda during 1994 made by UNAMIR officials reporting to United Nations Headquarters in New York (Annex A); ii) 10 exhibits admitted in other trials (Annex B); and iii) two previous statements of Joseph Nzirorera and Mathieu Ndirumpatse to the Office of the Prosecutor (Annex C).¹

2. The Chamber will consider each Annex separately and rules in the present Decision on the admission into evidence of Annex A to the Prosecutor's Motion.

3. On 8 August 2007, the Chamber rendered an Interim Order for the Prosecutor to identify relevant and probative passages of the UNAMIR documents it seeks to admit into evidence,² which was accordingly submitted by the Prosecution on 28 August 2007.

4. Counsel for Ndirumpatse and Counsel for Karemera opposes the admission of any document contained in Annex A. Counsel for Nzirorera no longer opposes the admission of these documents, being satisfied by the clarifications given by the Prosecutor in its submission of 28 August 2007.³

DELIBERATION

Applicable law

5. Rule 89 (C) of the Rules of Procedure and Evidence ("Rules") provides that a Chamber "may admit any relevant evidence it deems to have probative value". According to the Appeals Chamber, the first step to determine if a document is admissible is to ascertain whether sufficient indicia of reliability have been established.⁴ While a Chamber always

¹ Prosecutor's Motion for Admission of Certain Materials under Rule 89(c) of the Rules of Procedure and Evidence, filed on 27 April 2007 ("Prosecutor's Motion").

² Karemera et al., Case No. ICTR-98-44-T, 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, (TC), 8 August 2007.

³ Joseph Nzirorera's Further Submission on Admission of UNAMIR Documents, filed on 28 September 2007; Prosecutor's Submission in Compliance with Trial Chamber III Interim Order concerning Prosecutor Motion to Admit Certain Exhibits pursuant to Rule 89 (C), filed on 28 August 2007.

⁴ See *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-98-42-AR73.2, Decision on Pauline Nyiramasuhuko's Appeal on the Admissibility of Evidence (AC), 4 October 2004, para. 7; *Prosecutor v. Georges Anderson Rutaganda*, Case No. ICTR-96-3-A, Judgement (AC), para. 33; *Prosecutor v. Delalic and Delic*, Decision on Application of Defendant Zejnil Delalic for Leave to Appeal Against the Decision of the Trial Chamber of 19 January 1998 for the Admissibility of Evidence (AC), 4 March 1998.

retains the competence under Rule 89(D) to request verification of the authenticity of evidence obtained out of court, "to require absolute proof of a document's authenticity before it could be admitted would be to require a far more stringent test than the standard envisioned by Sub-rule 89 (C)."⁵

6. Trial Chambers of both *ad hoc* Tribunals have further held that documents need not be recognised by a witness in order to have probative value.⁶

7. Moreover, the admissibility of evidence should not be confused with the assessment of weight to be accorded to that evidence, which is an issue to be decided by the Chamber after hearing the totality of the evidence.⁷

On reliability

8. Counsel for Karemera challenges the authenticity of the documents presented in Annex A, submitting that, because the information contained only presents a view on a particular situation as perceived by one or more persons, it is subjective.

9. The Chamber notes that the objection made by Counsel for Karemera does not relate to the issue of reliability and authenticity, being a question of whether the documents originate from the indicated source, but rather to the issue of the probative nature of the documents. Accordingly it will be discussed in that context.

10. Moreover, the Chamber is satisfied that the Prosecutor has made a *prima facie* showing of the authenticity and reliability of the UNAMIR documents, which were obtained from the archives of the United Nations Headquarters and most of which bear institutional stamps and signatures.

⁵ *Prosecutor v. Delalic and Delic*, Case No. IT-96-21, Decision on Application of Defendant Zejnil Delalic for Leave to Appeal Against the Decision of the Trial Chamber of 19 January 1998 for the Admissibility of Evidence (AC), 4 March 1998 ("Delalic Appeals Decision on the Admissibility of Evidence").

⁶ *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Request to Admit United Nations Documents into Evidence under Rule 89(C) (TC), 25 May 2006, para. 4; *Prosecutor v. Tihomir Blaskic*, Case No. IT-95-14-T, Judgement (TC), 3 March 2000, para. 35; *Prosecutor v. Kvočka et al.*, Decision on Zoran Zigic's Motion For Rescinding Confidentiality of Schedules Attached to the Indictment Decision On Exhibits (TC), 19 July 2001; *Prosecutor v. Prlic et al.*, IT-04-74-PT, Revised Version of the Decision Adopting Guidelines on Conduct of Trial Proceedings (TC), 28 April 2006; *Prosecutor v. Prlic et al.*, IT-04-74-T, Decision on Admission of Evidence (TC), 13 July 2006.

⁷ *Nyiramasuhako Appeals Decision on Inadmissibility of Evidence*, para. 15; *Prosecutor v. Simba*, Case No. ICTR-01-76-T, Decision on the Admission of Prosecution Exhibits 27 and 28 (TC), 31 January 2005, para. 12.

On relevance and probative value

11. Counsel for Karemera further argues that the relevance of the UNAMIR documents has not been established by the Prosecutor because it seeks to admit documents that corroborate some facts that have not yet been proved. Counsel for Karemera also opposes the probative value of the documents on the ground that there are not sufficient indicia in the Prosecutor's Motion of a link between these documents and a testimony or some elements of proof. It further submits that the proposed documents may be interpreted in a number of ways and have not been corroborated by their author or a witness.⁸

12. Counsel for Ndirumputse objects to the admission into evidence of the UNAMIR documents on the grounds that they are presented out of context and that the Prosecution did not demonstrate their relevance.⁹ It relies, moreover, on the arguments adopted in the decision of 21 November 2006, whereby the Chamber rejected the admission of UNAMIR documents.¹⁰

13. The Chamber is satisfied with the identifications by the Prosecutor of relevant passages in the UNAMIR documents and finds that the Prosecutor has shown sufficient relevance and probative value in the identified passages for the documents to be admitted into evidence. Thus, the Chamber considers that the identified passages are *prima facie* relevant to the crucial time period and the general context of events referred to in the Indictment and that they are of a probative value as to how UNAMIR officials at the crucial time assessed the events.

FOR THOSE REASONS, THE CHAMBER

- I. **GRANTS** the Prosecutor's Motion for Admission of Certain Materials under Rule 89 (C) of the Rules as to the 50 documents contained in Annex A to the Motion, and accordingly
- II. **REQUESTS** the Registrar to assign these documents with an exhibit number in the instant case.

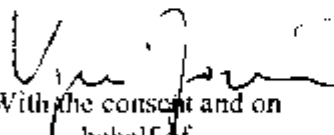
⁸ Karemera's Response, p. 3-8

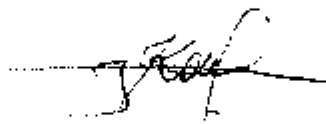
⁹ Mémoire Complémentaire pour M. Ndirumputse sur la Prosecutor's Motion for Admission of Certain Materials under the rule 89 (C) of the Rules of Procedure and Evidence, filed on 4 October 2007, para. 6.

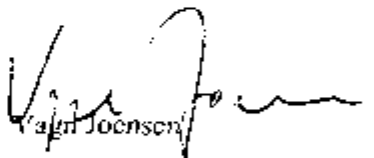
¹⁰ *Karemera et al.*, Case No. ICTR-98-44-T, Decision on Admission of UNAMIR Documents, (TC), 21 November 2006.

57

Arusha, 30 October 2007. done in English.


 With the consent and on
 behalf of
 Dennis C. M. Byron
 Presiding Judge
 (Absent during signature)


 Gberdao Gustave Kam
 Judge


 Vign Jørgensen
 Judge

