

ICTR-98-44-T
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(31718 - 31712)

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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

25 OCT 2007 15:52
[Signature]

**DECISION ON THE PROSECUTION MOTION FOR ADMISSION INTO
EVIDENCE OF CERTAIN EXHIBITS FROM OTHER TRIALS**

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

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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 fifty UNAMIR documents (Annex A), 10 exhibits admitted in other trials (Annex B) and 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 B to the Prosecutor's Motion. The Defence for each Accused opposes the admission of any of the documents.² Moreover, the Defence for Nzirorera moves that the Prosecutor's consolidated reply,³ which provides further explanations as to the relevancy and probative value of the documents, be stricken as untimely filed.⁴

DELIBERATION

Preliminary issue

3. The Chamber recalls its *Décision Accordant Une Prorogation de Délai Supplémentaire* of 24 May 2007,⁵ whereby the time limits for the Defence for Karemera and the Defence for Ndirumpatse to file their responses to the Prosecutor's Motion and for the Prosecutor to file his consolidated reply were set to 5 days and 10 days respectively from the date on which the French translations of the exhibits were received. The Chamber further notes that the French translations of the present documents were received by the Parties on 27 September 2007.⁶ Thus, pursuant to Rule 7 *ter* of the Rules of Procedure and Evidence

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 Joseph Nzirorera's Response to Prosecution Motion to Admit Exhibits from the Bar Table, filed on 9 May 2007 ("Nzirorera's Response"), para. 99; Mémoire pour M. Ndirumpatse sur la Prosecutor's Motion for admission of certain materials under the rule 89 (C) of the Rules of Procedure and Evidence, filed on 22 May 2007 ("Ndirumpatse's Response"), paras. 5, 11; d) and 6; Soumission de Edouard Karemera suite à la requête du Procureur en admission de certaines pièces sur le fondement de l'Article 89 (C) du Règlement de Preuve et de Procédure, filed on 3 October 2007 ("Karemera's Response"), p. 12. See *Karemera et al.*, Case No ICTR-98-44-T, *Décision en prorogation de délai supplémentaire* (TC), 17 May 2007; *Karemera et al.*, *Décision accordant une prorogation de délai supplémentaire* (TC), 24 May 2007.

³ Prosecutor's Consolidated Reply to the Motion to Admit Certain Exhibits Pursuant to Rule 89 (C), filed on 16 October 2007 ("Prosecutor's Consolidated Reply").

⁴ Motion to Strike Prosecutor's Consolidated Reply Motion to Admit Certain Exhibits Pursuant to Rule 89 (C), filed on 18 October 2007.

⁵ *Karemera et al.*, *Décision accordant une prorogation de délai supplémentaire* (TC), 24 May 2007.

⁶ See Prosecutor's Consolidated Reply, para. 3.

("Rules"), the responses of the Defence were due on 2 October 2007 and the Prosecutor's reply on 8 October 2007.

4. However, the response of the Defence for Karemera was filed on 3 October 2007, the response of the Defence for Ndirumputse on 4 October 2007 and the Prosecutor's Consolidated Reply on 16 October 2007. Hence, all three submissions to the Prosecutor's Motion were untimely filed, even in relation to the Rule 73 (E) time limit, being 5 days from receipt of the response of the Defence for Ndirumputse.

5. The Chamber has, in previous decisions, emphasised that the Parties must comply with the set time limits. However, the Chamber is satisfied that the overrun of the time limits in the present matter has not caused prejudice to any opposite Party and opines that the need to sanction the violations is outweighed by it being in the interests of justice that the information provided in the late submissions be taken into account.

ON THE MERITS

On Reliability

6. According to the Appeals Chamber, the first step in the determination of whether a document is admissible is to ascertain whether sufficient indicia of reliability have been established.⁷ While a Chamber always 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)."⁸

7. The Chamber notes that the documents in question have been admitted into evidence in other trials,⁹ either with the consent of the accused/author or without any party objecting to

⁷ 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.

⁸ *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").

⁹ See *Prosecutor v. Kayishema and Ruzindana*, Case No. ICTR-95-1, P-337, admitted on 09 March 1998, P-53, admitted on 01 October 1997, P-296, admitted on 16/02/98; *Prosecutor v. Bagilishema*, Case No. ICTR-95-1A, P-86, P-87, P-89 and P-94, admitted on 15 February 2000; *Prosecutor v. Musema*, Case No. ICTR-96-13, P-69, admitted on 27 May 1999; *Prosecutor v. Niyitegeka E.*, Case No. ICTR-96-14, D-54, admitted on 14 November 2002.

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their admission into evidence. In the present case, the Chamber is satisfied that sufficient indicia of reliability have been shown.

On relevance and probative nature

Applicable Law

8. Rule 89 (C) provides that a Chamber “may admit any relevant evidence it deems to have probative value”.

9. In order to establish that evidence is relevant and of a probative nature it must be shown, first, that there is a connection between the evidence sought to be admitted and the proof of an allegation sufficiently pleaded in the indictment¹⁰ and, second, that the evidence tends to prove or disprove an issue.¹¹

10. Trial Chambers of both *ad hoc* Tribunals have held that documents need not be recognised by a witness in order to have probative value.¹² 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.¹³

11. When deciding on the admissibility of evidence, Trial Chambers must also guarantee the protection of the rights of the accused as prescribed by Articles 19 and 20 of the Statute. The Chamber therefore has the inherent power to exclude evidence if its probative value is substantially outweighed by its prejudicial effect or otherwise by the need to ensure a fair trial.¹⁴

¹⁰ *Bagosora 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 (ACI, 18 September 2006, fn. 40).

¹¹ *Prosecutor v. Blagojevic and Jokic*, Case No. IT-02-60-T, Decision on the Admission into Evidence of Intercept-Related Materials (TC), 18 December 2003, para. 17.

¹² *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. Kvodka 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.

¹³ *Nyiramasuhuko* 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.

¹⁴ See *Karemura et al.*, Case No. ICTR-98-44-T, Decision on Defence Oral Motions for Exclusion of XBM's Testimony, for Sanctions Against the Prosecution and for Exclusion of Evidence Outside the Scope of the Indictment (TC), 19 October 2006, para. 29.

12. The Chamber recalls that the evidence of a witness in the form of a written statement must comply with the requirements of Rule 92 *bis* (see consideration of Item (k), below).

Items (a)–(j) and (l).

13. The Chamber notes that the Motion is moot in relation to Items (g) and (l), which have already been admitted into evidence as exhibits P 55 and P 53.¹⁵

14. The Chamber further notes that Item (a) is a letter of 5 May 1994 from Clément Kayishema, Préfet of Kibuye Préfecture, to the Minister of the Interior about the security situation in Kibuye Préfecture from 11 April to 30 April 1994. Item (b) is a letter of 5 May 1994 from Kayishema to all bourgmestres in the prefecture exhorting them to make immediate reports on the security situation in their communes. Item (c) is a certification of 3 June 1994 from bourgmestre Bagilishema to five persons to report on the work at the Trafipro roadblock. Items (d) and (e) are attestations of 7 June 1994 from Bagilishema to two residents of his commune to go to Kigali to help other *Interahamwe* in the fight. Item (f) is a letter of 12 June 1994 from Alfred Musema to the Minister of the Interior, Edouard Karemera, referring to a meeting in June 1994 at the Gisovu Communal Bureau. Item (h) is a letter of 30 June 1993 from the Minister of Information, Eliezer Niyitegeka, to Edouard Karemera on the mismanagement of Gisovu commune by Bourgmestre Ndimbati, including reference to civil defence. Item (ij) is an attestation of 6 July 1994 from Bagilishema concerning the lending of a firearm.

15. The Defence of each Accused challenges the explanations given in the Prosecutor's Motion and asserts that the Prosecutor has not given sufficient justification as to the relevance and probative nature of each item.¹⁶

16. The Defence for Karemera and the Defence for Nzirorera further submit that the meaning and relevance of each item is open to interpretation and as such the items should not be admitted into evidence without the authors being called to testify and the defence given the opportunity to cross-examine.¹⁷

¹⁵ *Prosecutor v. Karemera et al.*, Case No. ICTR 98-44-T, Decision on Prosecutor's Motion to Admit Prior Sworn Trial Testimony of the Accused Persons, 6 December 2006; Prosecutor's Motion to Admit Sworn Trial Testimony of the Accused under Rule 89 (C), filed on 5 September 2006.

¹⁶ See note 2.

¹⁷ Karemera's Response, p. 3-4; Nzirorera's Response, paras 22-26.

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17. The Defence for Nzirorera also submits that Item (f) is clearly irrelevant, being about the marketing of tea, and that admitting the items into evidence on the basis of a written motion does not represent judicial economy, since the Defence will be obligated to summon the authors as witnesses during the Defence cases.¹⁸

18. The Chamber, however, is satisfied that there is a *prima facie* showing that Items (a) to (f), (h) and (ij) tend to prove alleged facts pleaded in the indictment, with Item (f) tending to show in particular the presence of Edouard Karemera in Kibuye Préfecture at a crucial time. Therefore, the Chamber considers that the requirements of relevance and probative value have been met. This being the case, the Chamber has no basis to deny the admission into evidence of these items on the ground that the Defence may feel obligated to call the authors of the items to testify, should it not suffice to seek to have admitted into evidence the transcripts of their previous testimony pursuant to Rule 92 *bis* (D).

Item (k)

19. The Chamber notes that Item (k) is a handwritten memorandum, entitled *Réalité sur les Massacres à Butare*, produced by Sylvain Nsahimana, ex-préfet of Butare, in July 1994, after going into exile. The Chamber further notes that this item was admitted into evidence in the *Butare* trial during the testimony of the author and not pursuant to Rule 92 *bis*.¹⁹

20. The Chamber holds that Item (k) falls under Rule 92 *bis* of the Rules. Under that provision, the evidence of a witness in the form of a written statement in lieu of oral testimony may, under certain conditions, be admitted into evidence if the evidence "goes to proof of a matter *other than* the acts and conducts of the accused as charged in the indictment".²⁰ Since part of the memorandum relates to the acts and conduct of Edouard Karemera, Item (k) cannot be admitted into evidence. Furthermore, the formal requirements of Rule 92 *bis* (B) are clearly not met.

FOR THOSE REASONS, THE CHAMBER

- I. **GRANTS** in part the Prosecutor's Motion to admit into evidence certain exhibits from other trials,

¹⁸ Nzirorera's Response, paras 20-21, 24-25.


¹⁹ See *Butare* Trial, T. 17 October 2006, p. 40.

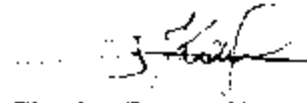
²⁰ Emphasis added.

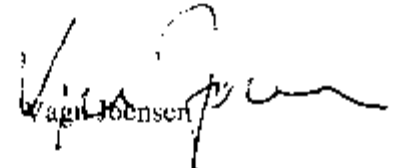
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- II. **ADMITS** into evidence Items (a), (b), (c), (d), (e), (f), (h) and (ij) of Annex B to the Motion,
- III. **REQUESTS** the Registrar to assign these documents an exhibit number in the instant case, and
- IV. **DENIES** the Motion as to the admission into evidence of Items (g), (k) and (l) of Annex B.

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


Wain Jørgensen
 Judge

[Seal of the Tribunal]

