



UNITED NATIONS
INTERNATIONAL
CRIMINAL TRIBUNAL FOR RWANDA

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-98-44-T
28-11-2007
(32737-32733)

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OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Gberdao Gustave Kam
Vagn Joensen
Registrar: Adama Dieng
Date: 28 November 2007

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THE PROSECUTOR

v.

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

**DECISION ON JOSEPH NZIRORERA'S MOTION FOR ADMISSION OF UNAMIR
RELATED DOCUMENTS**

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

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INTRODUCTION

1. On 6 November 2007, during the presentation of the Prosecution case, Joseph Nzirorera filed a motion moving the Chamber to admit into evidence 45 UNAMIR-related documents, pursuant to Rule 89(C) of the Rules of Procedure and Evidence ("Rules").¹

2. The Prosecutor does not oppose the admission of 37 of the documents which originate from UNAMIR, but opposes the admission of the remaining 8 documents, submitting that Joseph Nzirorera has not made a sufficient showing of their reliability and/or relevance and probative value.²

3. In his reply, Joseph Nzirorera withdrew the attachment of Document No. 14 from his Motion and provided further explanation as to the relevance and probative value of the remaining contested documents.³

DELIBERATION

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

¹ Joseph Nzirorera's Motion for Admission of UNAMIR Documents, filed on 6 November 2007 ("Nzirorera's Motion"). To the Motion are attached Annex A which lists the document with an explanation of their relevance and probative value, and Annex B which contains the documents with the relevant portions highlighted.

² Prosecutor's Response to Nzirorera's Motion for Admission of UNAMIR Documents, filed on 12 November 2007 ("Prosecutor's Response").

³ Reply Brief: Joseph Nzirorera's Motion for Admission of UNAMIR documents, filed on 14 November 2007 ("Nzirorera's Reply").

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.

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*").

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5. 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

6. In addition, 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

Documents originating from UNAMIR

7. The Chamber is satisfied, and it is not in any case in dispute, that Joseph Nzirorera 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.⁸ The identified passages of the documents also show relevance and probative value, since they show how UNAMIR officials assessed the events at the crucial time.

Contested documents not originating from UNAMIR

On reliability and authenticity

8. Document No. 21 does not originate from UNAMIR nor is it attached to a UNAMIR document, and bears no seal or other identification marks. It purports to be a letter from the Director of the President's Cabinet to the UNAMIR Special Representative with handwritten notes added.

9. At the Chamber's request for documentation as to the provenance of the documents, Joseph Nzirorera has replied that the handwriting on Document No. 21 would be that of General Dallaire.⁹ The Prosecutor however has declined to stipulate to this contention.¹⁰ The

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 *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.

⁸ *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on the Prosecution Motion for Admission Into Evidence of UNAMIR Documents (TC), 20 October 2007.

⁹ Email of 16 November 2007.

¹⁰ Email of 21 November 2007.

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Chamber is not satisfied that Joseph Nzirorera has made a sufficient showing of the reliability and authenticity of Document No. 21.

10. The Chamber finds that Joseph Nzirorera has made a *prima facie* showing of the reliability and authenticity of the remaining documents. One is a UN Security Council document with another document attached to it;¹¹ the other documents are letters or cables from UNAMIR, forwarding attached documents to the UN Headquarters in New York.¹² With the exception of Document No. 14, the attached documents, for which admission is also sought, are sufficiently identified through the documents they are attached to, and by the official stamps and signatures borne by some of them.

On relevance and probative value

11. The Prosecutor submits that the contested documents lack sufficient relevance and probative value because they reflect the views of the Rwandan Government or Government officials, who were party to the conflict.¹³

12. The Chamber finds that Joseph Nzirorera has made a *prima facie* showing of the relevance and probative value of the remaining documents. They indeed tend to show how the Rwandan Government or Government officials viewed or represented their views on issues pleaded in the Indictment and/or are relevant to the understanding of the general background of the conflict. The fact that the documents reflect the views of or representations of a party to the conflict may be relevant to their evidentiary weight, not their admissibility.

FOR THOSE REASONS, THE CHAMBER

- I. **GRANTS** in part Joseph Nzirorera's Motion for Admission of UNAMIR related documents,
- II. **ADMITS** into evidence the documents presented in Annex B to Joseph Nzirorera's Motion, except for the communiqué attached to Documents No. 14 and No. 21.

¹¹ Document no. 42.

¹² Documents no. 5, 13, 14, 16, 34 and 39.

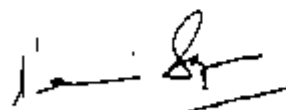
¹³ Prosecutor's Response, para. 9.

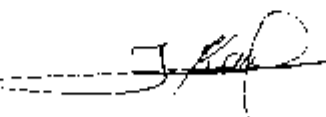
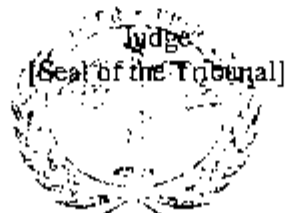
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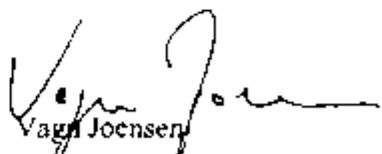
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III. **REQUESTS** the Registrar to assign these documents exhibit numbers in the instant case.

Arusha, 28 November 2007, done in English.


Dennis C. M. Byron
residing Judge


Gberdao Gustave Kam
Judge

[Seal of the Tribunal]


Vagn Joensen
Judge