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UNITED NATIONS
NATIONS UNIES

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: 29 May 2008

JUDICIAL RECORDS ARCHIVES
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THE PROSECUTOR

v.

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

**DECISION ON ORAL MOTIONS BY EDOUARD KAREMERA AND THE
PROSECUTION TO ADMIT CERTAIN DOCUMENTS INTO EVIDENCE**

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

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INTRODUCTION

1. During the examination-in-chief of Defence Witness WCL, Counsel for Edouard Karemera orally moved the Chamber to admit into evidence three documents ("Documents 1 - 3). During WCL's cross-examination, the Prosecution orally moved to admit three other documents ("Documents 4 - 6").

2. The Prosecution opposed the Defence motion on the basis that the documents were neither probative nor relevant under Rule 89 (C) of the Rules of Procedure and Evidence, nor assembled in an acceptable manner. Counsel for each Accused orally opposed the Prosecution motion to various degrees and on various grounds.¹ The Chamber reserved its ruling on the admissibility of the documents into evidence in the interest of time management.²

The standard for admitting evidence under Rule 89 (C)

3. Under Rule 89(C) the Chamber may admit any relevant evidence it deems to have probative value.³ The purpose of Rule 89(C) is to ensure that the Chamber is not burdened by evidence for which no reasonable showing of relevance or probative value has been made.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 In order for evidence to be considered 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.⁶ To establish the probative value of the evidence, the applicant must show that the evidence tends to prove or

¹ T. 6 May 2008, pp. 43-45.

² T. 1 May 2008, pp. 19-21.

³ *The Prosecutor v. Edouard Karemera, Mathieu Ndirumpatse, and Joseph Nzirorera*, Case No. ICTR-98-44, ("Karemera, et al."), Decision on the Prosecution Motion for Admission Into Evidence of UNAMIR Documents (TC), 20 October 2007, paras. 5-7.

⁴ *Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Admission of Tab 19 of Binder Produced in Connection with Appearance of Witness Maxwell Nkole (TC), 13 September 2004, para. 9.

⁵ *The Prosecutor v. Delalic and Delic*, Case No. IT-96-21, Decision on Application of Defendant Zejnir 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.

⁶ *The Prosecutor 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.

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disprove an issue.⁷ Evidence may also be relevant and of probative value if it may affect the credibility of a witness. It is sufficient for the moving party to establish the *prima facie* relevance and probative value of the evidence for admission under Rule 89(C).⁸ As the Appeals Chamber has repeatedly emphasized, “[a]dmissibility of evidence should not be confused with the assessment of weight to be accorded by the Chamber to that evidence at a later stage.”⁹

4. Evidence may be considered as inadmissible where it is found to be so lacking in terms of the indicia of reliability, that it is not probative.¹⁰ Indicia of reliability include: the authorship of the document; whether it is an original or a copy; the place from which the document was obtained in conjunction with its chain of custody; whether its contents are supported by other evidence; and the nature of the document itself, such as signatures, stamps, or the form of the handwriting.¹¹

DELIBERATIONS

Document 1.

5. The document is a report, dated December 1994, published by Association Solidaire Rwanda and titled “Les Non-dit Sur les Massacres Au Rwanda.” It contains general comments on massacres on Hutus allegedly perpetrated by the RPF and on RPF infiltration in the area controlled by the Interim Government. The analysis is partly based on witness statements (with lists of victims) included in the report, and the notebook of an alleged RPF collaborator, Father Fidele Murekezi. During the re-examination of WCL, Counsel for Edouard Karemera showed the document to the witness, and asked him to verify whether he had contributed to its contents and signed it. The witness confirmed that he had been the

⁷ *Karemera et al.*, Decision on the Prosecution Motion for Admission Into Evidence of Post-Arrest Interviews with Joseph Nzirorera and Mathieu Ngrumpatse (TC), 2 November 2007, para. 2.

⁸ *The Prosecutor v. Théoneste Bagosora, Gratién Kabiligi, Aloys Ntabakuze, and Anatole Nsengiyumva (“Bagosora et al.”)*, Decision on Bagosora Motion to Exclude Photocopies of Agenda (TC), 11 April 2007, para. 4.

⁹ *Prosecutor v. Ntahobali and Nyiramasuhuko*, 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.

¹⁰ *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-AR73.2, Decision on Pauline Nyiramasuhuko’s Appeal on the Admissibility of Evidence (AC), 4 October 2004, para. 7; *The 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 Zejnir 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.

¹¹ *Bagosora et al.*, Decision on Admission of Tab 19 of Binder Produced in Connection with Appearance of Witness Maxwell Nkole (TC), 13 September 2004, para. 9; and *Bagosora et al.*, Decision on request to Admit United Nations Documents into Evidence Under Rule 89(C) (TC), 25 May 2006, para. 4 (and sources cited therein).

secretary general of the Association Solidaire Rwanda, and that he had been in charge of directing the drafting of the entire document. Counsel for Edouard Karemera had WCL read pages 18 *bis*, 18 *ter*, 20, 24, 25, 28, and 31 into the record during his examination in chief.

6. The Chamber notes that the witness statements, with list of victims, reproduced in the document are not contemporary with the events they describe because they were obtained after those events. Further, the Association Solidaire Rwanda, which is responsible for the compilation of the statements and for the general comments, is not a recognised scientific institution, and WCL not an expert witness. Thus, it has not been demonstrated that the document has probative value apart from the passages concerning events to which WCL was a witness, which were read into the record. The Chamber, therefore, denies Edouard Karemera's request that the document be admitted into evidence, and finds it unnecessary to address the issue of relevance.

Documents 2 and 3.

7. Document 2 is a copy of pages one through forty-eight of Fidele Murekezi's notebook. Document 3 is titled: "Fiche d'information RPF," and is a compilation of handwritten training and study materials for RPF brigades, which was attached to Document 2. During his examination in chief, WCL testified about the discovery of the documents during a search of Father Murekezi's quarters and stated that he read the documents which contain information on RPF infiltration. Counsel for Edouard Karemera had the Witness refer to pages 18 and 19 of Document 2 while he was reading from the Association Solidaire Rwanda report, and had the witness read pages R0004449 and R0004494 of Document 3 into the record.

8. The Prosecution opposes the admission of the entire documents into evidence. It argues that the documents, in their entirety, lack relevance and probative value, and that the methodology of their composition has not been fully explained.

9. The Chamber notes that the documents are contemporary documents, the provenance and discovery of which have been sufficiently explained by the Witness. Further, the Chamber considers that the documents contain information about possible RPF infiltration in the area controlled by the Interim Government, which is relevant to the Defence. The Chamber, therefore, grants Edouard Karemera's request to admit the documents into evidence.

Document 4.

10. The document consists of two pages of the Guichaoua expert report, titled: "Le Roi est mort." During the cross-examination of witness XQL, the Prosecution read portions of those two pages into the record in an effort to impeach the witness, and the witness answered questions related to their contents.

11. The Defence asserts that the document is unreliable because Mr. Guichaoua is biased towards the RPF, and fabricated its contents. The Chamber admits the document as probative because XQL admitted that some portions of the document were true, such as her having attended the same primary school as President Habyarimana, and the fact that she held positions of political leadership within the MRND. Furthermore, the document is relevant for impeachment purposes.

Document 5.

12. The document is a list of alleged *genocidaires*, which was annexed to a letter from the minister of justice of Rwanda to the Belgian ambassador in Kigali, dated 28 April 1995. In an effort to impeach XQL, the Prosecution confronted her with the list during cross-examination and asked her if her name appeared on the list. The witness abstained from responding.

13. The Defence claims that the document should not be admitted because it is unreliable and creates confusion since a name similar to that of the witness appears twice on the list. The Chamber admits the document because it has been sufficiently established that the document originates from the Ministry of Justice of Rwanda, and that Witness appears on the list. Furthermore, the issue of whether the witness was considered a *genocidaire* is relevant for impeachment purposes.

Document 6.

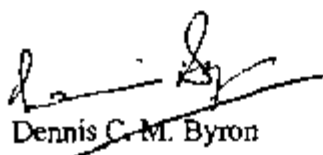
14. The document is a copy of a letter from Belgian senator Willi Kuijpers to the President of Rwanda, dated 2 October 1993. During the cross-examination of witness XQL, the Prosecution read portions of the letter to her, and confronted her with its contents in an effort to impeach her.

15. The Defence opposes the admission of this document because it claims that it contains fabricated, unreliable information. The Chamber admits the document as probative because the witness admitted that she knew of Senator Kuijpers, and stated that he frequently wrote about the issues contained in the document. The Chamber also finds that it is relevant for impeachment purposes.

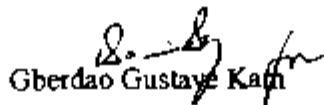
FOR THESE REASONS, THE CHAMBER

- I. **DENIES** the admission of Document 1; and
- II. **ADMITS** Documents 2-6; and requests the Registry to issue them exhibit numbers in this case.

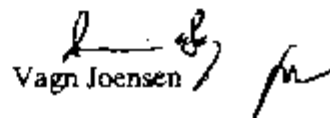
Arusha, 29 May 2008, done in English.


 Dennis C. M. Byron

Presiding Judge


 Gberdao Gustave Kam

Judge
(Absent during signature)


 Vagn Joensen

Judge
(Absent during signature)

[Seal of the Tribunal]

