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UNITED NATIONS
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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: 10 July 2008

JUDICIAL RECORDS/ARCHIVES
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THE PROSECUTOR

v.

Callixte KALIMANZIRA

Case No. ICTR-05-88-T

**DECISION ON PROSECUTION MOTION FOR ADMISSION OF CERTAIN
MATERIALS**

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

Office of the Prosecutor

Christine Graham
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INTRODUCTION

1. On 19 June 2008, the Prosecution filed a motion pursuant to Rule 89(C) of the Rules of Procedure and Evidence to have the Trial Chamber admit as evidence 45 documents and their various translations, all of which are attached to the Prosecution Motion.¹ The Prosecution has organized the documents from (A) through (K), with (C) comprising 31 separate documents, and (D) comprising five. The Prosecution submits that all of these materials either originate from the Accused, or are official documents involving the Accused and/or relating to events set out in the Indictment.

2. By oral motion on 25 June 2008, the Defence for Kalimanzira requested the Trial Chamber to grant an extension of time to respond to the Prosecution Motion, which the Chamber granted until 30 June 2008.² On 03 July 2008, the Court Management Section ("CMS") of the Registry distributed the Defence Response to the Prosecution Motion.³ However, the document was not signed by any of the Defence Counsel, and its date-stamp indicated that it had been duly filed on 30 June 2008 at 12h23.

3. Immediately upon electronic receipt of the Defence Response, the Prosecution objected to the CMS filing. The date and propriety of this filing was the subject of an Interim Order issued by the Chamber on 07 July 2008, requiring the Defence to show proof that it had filed its Response in due form and within the time-limit prescribed. The Defence made its submissions to this effect on 08 July 2008 ("Defence Submissions"),⁴ and the Prosecution abstained from responding to them. The Prosecution did, however, file a Reply to the Defence Response, in the event that the Chamber might eventually accept the filing as valid.⁵

DELIBERATIONS

Timeliness and Admittance of the Defence Response

4. As a preliminary matter, the Chamber will first decide whether to admit the Defence Response to the Prosecution Motion. Because no receipt of delivery is issued by CMS upon hand delivery of documents, it is impossible to prove whether or not a hard copy of the Defence Response ever passed hands from the Defence to the Registry on 30 June 2008. The

¹ Prosecutor's Motion for Admission of Certain Materials under Rule 89(C) of the Rules of Procedure and Evidence, filed 19 June 2008.

² See T. 25 June 2008, p. 50.

³ *Réponse à la requête du Procureur en date du 19 juin 2008 et intitulée « Prosecutor's Motion for Admission of Certain Materials under Rule 89(C) of the Rules of Procedure and Evidence »*, filing date in dispute.

⁴ *Observations de la défense de Callixte Kalimanzira sur le dépôt de la « Réponse à la requête du Procureur en date du 19 juin 2008 et intitulée « Prosecutor's Motion for Admission of Certain Materials under Rule 89(C) of the Rules of Procedure and Evidence »*, filed 08 July 2008 ("Defence Submissions").

⁵ Prosecutor's Reply to the Defence's Response to the Prosecutor's Motion for Admission of Certain Materials under Rule 89 (C) of the Rules of Procedure and Evidence, filed 09 July 2008.

Defence therefore relies upon e-mail correspondence to show that it indeed filed the document on 30 June 2008, providing CMS with an electronic version in addition to the paper copy purportedly filed on the same day.⁶

5. CMS has forwarded the e-mail sent by Defence Co-Counsel to CMS on 30 June 2008 which contains three electronic attachments. The file intended to distribute the Defence Response on 30 June 2007⁷ does not conform to the document distributed on 02 July 2008. It contains no cover page, no arguments or substance of any kind, and appears to be a very rudimentary draft of the final product. The Chamber considers therefore that the Defence Response was not filed on 30 June 2008, but rather on 02 July 2008. The Chamber decides not to admit the untimely filed Defence Response and requires greater diligence from the Defence for Kalimanzira with regard to filing written submissions in due form and time.

Applicable Law

6. Under Rule 89(C) the Chamber may admit any relevant evidence it deems to have probative value.⁸ 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.⁹ To establish the probative value of the evidence, the applicant must show that the evidence tends to prove or disprove an issue.¹⁰ 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).¹¹

7. 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.¹² 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

⁶ See Defence Submissions, para. 12 and Annex 1: "Mail de Me GUISSÉ du 30 juin 2008".

⁷ Document entitled "080630 Réponse à la requête 89 C.docx".

⁸ *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.

⁹ *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.

¹⁰ *Karemera et al.*, Decision on the Prosecution Motion for Admission Into Evidence of Post-Arrest Interviews with Joseph Nzirorera and Mathieu Ndirumpatse (TC), 2 November 2007, para. 2.

¹¹ *The Prosecutor v. Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze, and Anatole Nsengiyumva*, Case No. 98-41-T, ("Bagosora et al."), Decision on Bagosora Motion to Exclude Photocopies of Agenda (TC), 11 April 2007, para. 4.

¹² *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.

standard envisioned by Sub-rule 89(C).¹³ The Chamber must also determine whether sufficient indicia of reliability of the tendered document have been established. 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.¹⁴ 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.¹⁵

Admissibility of the Materials

8. Document (A) is a Presidential Order by which the Accused was appointed on 23 September 1992 to his post as Director of the Cabinet of the Ministry of the Interior and Communal Development ("MININTER"). The Accused's rank, post and position are issues in this trial, related to paragraphs 1 and 2 of the Indictment. The Chamber therefore finds Document (A) to have sufficient relevance and probative value to be admitted into evidence.

9. Document (B) is a report on an MRND Prefectural Conference held in Butare *préfecture* on 31 May 1993. The Accused's rank, post, and prominent membership to the MRND are issues in this trial, related to paragraphs 1 and 2 of the Indictment. The Chamber therefore finds Document (B) to have sufficient relevance and probative value to be admitted into evidence.

10. The bundle of 31 documents categorized by the Prosecution as (C) include, *inter alia*, the Accused's personal identification documents, Presidential Orders relating to the Accused's appointments and promotions to various posts, and the Accused's annual evaluation reports. All of this documentation reflects on the Accused's various posts and positions, which are issues in this trial, related to paragraphs 1 and 2 of the Indictment. The Chamber therefore finds all the documents in category (C) to have sufficient relevance and probative value to be admitted into evidence.

11. The bundle of five documents categorized by the Prosecution as (D) is a series of telegrams sent by either the Director of the Cabinet of MININTER (i.e. the Accused himself),

¹³ *The 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 Decision").

¹⁴ *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; see also Delalic Decision.

¹⁵ *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).

or by MININTER. The telegrams regard, *inter alia*, the progression of the internal armed conflict in Butare *préfecture*, issues on the governmental agenda, and the new appointment of Alphonse Nteziryayo to the post of *préfet*. The content and origin of the telegrams relate to issues and events set out in the Indictment, including paragraphs 1, 2, 7 and 8. The Chamber therefore finds the five telegrams to have sufficient relevance and probative value to be admitted into evidence.

12. Document (E) is a letter sent by the Accused as Director of the Cabinet of MININTER, giving instructions to *sous-préfets*, *bourgmestres*, and *conseillers* in respect of a sensitization project, on 17 May 1993. The Accused's exercise of authority over various such persons is an issue at this trial, related to paragraph 2 of the Indictment. The Chamber therefore finds Document (E) to have sufficient relevance and probative value to be admitted into evidence.

13. Documents (F) and (G) are letters dated 21 April 1994 and 7 May 1994, respectively, each signed by the Accused on behalf of the Minister of the Interior and Communal Development. Document (K) is another such letter, also dated 21 April 1994. The Accused's role as acting Minister of the Interior between 6 April and 25 May 1994 is an issue in this trial, related to paragraphs 1 and 2 of the Indictment. The Chamber therefore finds Documents (F), (G), and (K) to have sufficient relevance and probative value to be admitted into evidence.

14. Document (H) comprises the minutes of a meeting held on 25 May 1993 for the Group of Cabinet Directors and Advisors of MRND-held Ministries, stating that the Accused attended the meeting. Document (J) comprises the minutes of a meeting held on 23 August 1993 for all *Préfets*, stating that the Accused, as Director of the Cabinet of MININTER, chaired the meeting. As mentioned above, the Accused's rank and position are issues in this trial, related to paragraphs 1 and 2 of the Indictment. The Chamber therefore finds Documents (H) and (J) to have sufficient relevance and probative value to be admitted into evidence.

15. Document (I) is a letter dated 31 January 2006 from the Accused to the Commander of the United Nations Detention Facility, which evidences the Accused's signature. This document provides a means by which to measure the reliability of other documents purportedly bearing the Accused's signature. The Chamber therefore finds Document (I) to have sufficient relevance and probative value to be admitted into evidence.

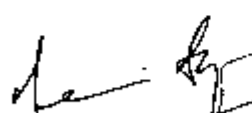
16. The Chamber recalls that the admissibility of evidence should not be confused with the assessment of weight to be accorded to that evidence, an issue which is to be decided by the Chamber after hearing the totality of the evidence.

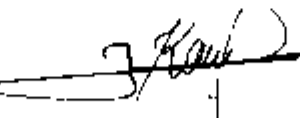
FOR THESE REASONS, THE CHAMBER

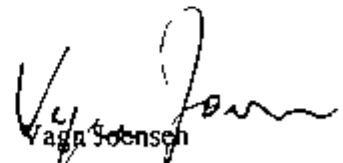
GRANTS the Prosecution Motion in its entirety; and

REQUESTS the Registrar to assign each document sought to be admitted an exhibit number.

Arusha, 10 July 2008, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vaga Soensen
Judge

