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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: 02 March 2009

THE PROSECUTOR

v.

Callixte KALIMANZIRA

Case No. ICTR-05-88-T

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DECISION ON DEFENCE MOTION FOR ADMISSION OF CERTAIN MATERIALS

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

Office of the Prosecutor

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INTRODUCTION

1. On 9 February 2009, the Defence for Kalimanzira filed a motion seeking the admission of 19 documents under Rule 89(C) of the Rules of Procedure and Evidence.¹ On 12 February 2009, the Defence added four more documents to its motion, making a total of 23 documents it seeks to admit into evidence under Rule 89(C).² On 13 February 2009, the Prosecution made oral submissions in response to the Defence's first request; it objected to eight of 19 documents.³ On 17 February 2009, the Prosecution made written submissions in response to the Defence's supplemental request; it objected to three of four documents.⁴ On 13 February 2009, the Defence made an Oral Reply to the Prosecution Oral Response, and was granted until 20 February 2009 to reply to the Prosecution's subsequent written submissions, which it did so by fax.⁵

DELIBERATIONS

Applicable Law

2. Under Rule 89(C) the Chamber may admit any relevant evidence it deems to have probative value.⁶ 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.⁷ To establish the probative value of the evidence, the applicant must show that the evidence tends to prove or disprove an issue.⁸ 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).⁹

¹ *Requête de la défense aux fins d'admission de documents par la Chambre de première instance du TPIR*, filed 9 February 2009.

² *Addendum à la requête de la défense en admission de documents*, filed 12 February 2009.

³ T. 13 February 2009 pp. 12-17 (Status Conference).

⁴ Prosecution Response to Defence Motions for the Admission of Documents under Rule 89(C), filed 17 February 2009.

⁵ T. 13 February 2009 pp. 15-19 (Status Conference); *Réplique de la défense à la "Prosecution Response to Defence Motions for the Admission of Documents under Rule 89 C)" du 17 février 2009*, filed 23 February 2009.

⁶ *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.

⁷ *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.

⁸ *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.

⁹ *The Prosecutor v. Théoneste Bagosora, Gratién 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.

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.¹⁰ 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).”¹¹ 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.¹² 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.¹³

Admissibility of the Materials

Lists

4. Documents 1-4 and 6 are various lists of people suspected of perpetrating genocide in Rwanda. Kalimanzira’s name does not appear on any of these lists. Document 1 is an official gazette of Rwanda dated 30 November 1996 containing 1946 names. Document 2 is also an official gazette of Rwanda dated 31 December 1999 containing 2133 names. Document 3 is a UN document dated October 1994 containing 220 names. Document 4 is a reproduction of the UN list, containing the same 220 names in the same order, but adds some additional information on the persons named therein; the source, origin and date of Document 4 are unknown. Document 6 is a list of 93 names; the source, origin and date of Document 6 are unknown.

5. The Prosecution objects to the admission of these lists, arguing that they have little to no probative value because the omission of Kalimanzira’s name from all these lists does

¹⁰ *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.

¹¹ *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 (“Delalic Decision”).

¹² *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.

¹³ *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).

nothing to determine his guilt or innocence.¹⁴ The Chamber recalls that evidence need not be exculpatory to have probative value, which means only that it tends to prove or disprove an issue at trial, not the guilt or innocence of the Accused. The Chamber finds that these lists are relevant and probative. However, the indicia of reliability for Documents 4 and 6 cannot be verified and therefore cannot be admitted. The Chamber admits Documents 1, 2 and 3.

Transcripts

6. Documents 7, 8, 10, 12-14, 16, and 20 are transcripts of broadcasts on Radio Rwanda, RTLM, or Radio RSF. Document 7 is a transcript of a 22 April 1994 news broadcast announcing Kalimanzira's presence in Kibungo *préfecture* the previous day, on 21 April 1994, for the installation of Kibungo's new *préfet*, Anaclet Rudakubana; this relates to Kalimanzira's whereabouts around that date, which are alleged to have been at Kabuye hill according to paragraphs 9 and 10 of the Indictment. The Chamber therefore finds Document 7 to have sufficient relevance and probative value in this respect to be admitted into evidence.

7. Document 8 is a transcript of an 11 April 1994 news broadcast in which Prime Minister Jean Kambanda, among others, speak. The Defence submits that this document is relevant and probative in that it shows Kalimanzira was present at "the 11 April 1994 meeting", thereby corroborating other Defence witnesses who testified on Kalimanzira's whereabouts during April 1994. Nothing in the document, however, shows that Kalimanzira attended any meeting on 11 April 1994. In any event, Kalimanzira's presence at a meeting of *préfets* on 11 April 1994 in Kigali is not a disputed issue in this trial. Notwithstanding the failed argument, the Chamber notes on page 16 of the transcript (K0260678) that Kambanda announces that in the absence of the Minister of the Interior, who was supposed to convene the meeting of *préfets*, the Prime Minister would take his place; this relates to Kalimanzira's functions and the allegation at paragraph 2 of the Indictment that he was acting as Minister of the Interior between 6 April and 25 May 1994. The Chamber therefore finds Document 8 to have sufficient relevance and probative value in this respect to be admitted into evidence.

8. Document 10 is a transcript of a 17 June 1994 broadcast. The Defence submits that this document is relevant and probative in that it shows Alphonse Nteziryayo was appointed the new *préfet* of Butare on 17 June 1994. This is not, however, a disputed issue in the present trial. Notwithstanding the meager argument, the Chamber notes that the transcript indicates that Prime Minister Jean Kambanda presided over a meeting of the Council of Ministers to nominate the new *préfet* of Butare, Alphonse Nteziryayo, as well as several *bourgmestres* of various *communes*, a function which might otherwise be exercised by the

¹⁴ T. 13 February 2009 pp. 12-14 (Status Conference).

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Minister of the Interior; this relates to Kalimanzira's functions and the allegation at paragraph 2 of the Indictment that he was acting as Minister of the Interior between 6 April and 25 May 1994. The Chamber therefore finds Document 10 to have sufficient relevance and probative value in this respect to be admitted into evidence.

9. Document 12 is a transcript of a 17 April 1994 broadcast. The Defence submits that the relevant and probative portion of this document is found at page 27 (K0335809) where the speaker mentions that a meeting of the Council of Ministers presided over by Prime Minister Jean Kambanda took place, administrative decisions were taken, and various *préfets* were nominated. The Defence maintains this relates to Kalimanzira's rank and functions. The Chamber notes that the Annex to the Defence motion, as filed, is missing a few pages, including the one referenced. The missing pages were forwarded to the Chamber by electronic correspondence on 23 February 2009. The Chamber does not find Document 12 to have sufficient relevance and probative value as the information contained therein does very little to prove or disprove anything regarding Kalimanzira's rank and functions, which are already addressed in a similar, if not identical, fashion by seeking to admit Documents 10 and 14. In the interest of not burdening the record, the Defence request to admit Document 12 falls to be rejected.

10. Document 13 is a transcript of a 7 April 1994 announcement whereby the population of Rwanda was asked to stay at home until further notice; this relates to Kalimanzira's whereabouts, who asserts he did not leave his house before 11 April 1994,¹⁵ whereas paragraphs 16 and 19 of the Indictment allege he was in Kanage *cellule* on 9 April 1994 and Kigembe *commune* on 8 April 1994. The Chamber therefore finds Document 13 to have sufficient relevance and probative value in this respect to be admitted into evidence.

11. Document 14 is a transcript of a 9 April 1994 broadcast announcing an upcoming meeting of all *préfets* to be presided over by the Minister of the Interior, or in his absence, by Prime Minister Jean Kambanda; this relates to Kalimanzira's functions and the allegation at paragraph 2 of the Indictment that he was acting as Minister of the Interior between 6 April and 25 May 1994. The Chamber therefore finds Document 14 to have sufficient relevance and probative value in this respect to be admitted into evidence.

12. Document 16 is a transcript of a 23 and 24 April 1994 broadcast announcing Faustin Munyazesa, Minister of the Interior, as the Rwandan representative in Arusha during negotiations with the RPF; this relates to Kalimanzira's functions and the allegation at paragraph 2 of the Indictment that he was acting as Minister of the Interior between 6 April

¹⁵ T. 10 February 2009 p. 23 (Callixte Kalimanzira).

and 25 May 1994. The Chamber therefore finds Document 16 to have sufficient relevance and probative value in this respect to be admitted into evidence. 1417

13. Document 20 is a transcript of a 19 April 1994 broadcast which transmitted a recording of Prime Minister Jean Kambanda's speech at the MRND Palace meeting in Butare *prefecture* on 19 April 1994 in which he introduces all the officials present and never mentions Kalimanzira's name; this relates to paragraphs 7 and 8 of the Indictment. The Chamber therefore finds Document 20 to have sufficient relevance and probative value in this respect to be admitted into evidence.

Indictments

14. Documents 17 and 18 are the ICTR's 17 June 1996 initial and 11 August 1999 amended indictments against Elie Ndayambaje, both of which allege his participation in the killings on Kabuye hill. The Defence submits that these documents have relevance and probative value because the omission of Kalimanzira's name contradicts the Prosecution's case that Kalimanzira was involved. The Chamber notes that no other name but Ndayambaje's is mentioned in Ndayambaje's indictments in relation to the killings at Kabuye hill, which took place over several days and resulted in thousands of deaths. It would be absurd to conclude that the Prosecution case is that Ndayambaje alone is alleged to have committed these crimes simply because the Office of the Prosecutor at the ICTR did not mention anyone else's involvement in the indictments against Ndayambaje. The Chamber therefore finds that these indictments do not tend to disprove Kalimanzira's alleged involvement in the killings on Kabuye hill. Moreover, indictments are public documents and can be referred to without tendering them into evidence. The Defence request to admit Documents 17 and 18 falls to be rejected.

Speeches

15. Documents 21, 22, and 23 are speeches by Interim President Théodore Sindikubwabo given on 8, 13, and 14 April 1994, respectively. The Defence submits that these speeches are complementary to Prosecution Exhibit 81, a letter signed by Kalimanzira on behalf of the Minister of the Interior, Faustin Munyazesa, forwarding to all *préfets* three speeches by President Sindikubwabo on 8, 13, and 14 April 1994. Prosecution Exhibit 81, however, does not contain the speeches, just the forwarding letter. The Defence maintains that the speeches are calls for peace, not incitement to commit genocide. The Prosecution objects to the admission of these documents on the grounds that they lack sufficient indicia of reliability. However, the speeches have been admitted into evidence in the *Karemura* trial as Defence

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Exhibits NZ 25, 26, and 29. The Chamber finds Documents 21, 22, and 23 to have sufficient relevance and probative value to be admitted into evidence.

Other

16. Document 5 is an official Rwandan journal dated 15 November 1992, publishing certain laws relating to the organization of Rwandan Ministries, including a description of the functions and attributions of the *Directeur de Cabinet* of the Ministry of the Interior. This reflects on the Kalimanzira's rank, post, and functions, which are issues in this trial related to paragraphs 1 and 2 of the Indictment. The Chamber therefore finds Document 5 to have sufficient relevance and probative value to be admitted into evidence.

17. Document 9 is a directive signed by Prime Minister Jean Kambanda dated 27 April 1994 to all *préfets* on the organization of civil defence, a function which might otherwise be exercised by the Minister of the Interior; this relates to Kalimanzira's functions and the allegation at paragraph 2 of the Indictment that he was acting as Minister of the Interior between 6 April and 25 May 1994. The Chamber therefore finds Document 9 to have sufficient relevance and probative value to be admitted into evidence.

18. Document 11 is the minutes of a security meeting held by former *préfet* of Butare *préfecture*, Jean-Baptiste Habyalimana, on 27 April 1993 during which it was decided, among other things, that roadblocks be used to monitor the movement of people; this relates to the allegation at paragraph 15 of the Indictment that from mid-April to late June 1994, Kalimanzira called on the population to erect roadblocks to eliminate the Tutsi. The Chamber therefore finds Document 11 to have sufficient relevance and probative value to be admitted into evidence.

19. Document 15 is a letter dated 15 May 1994 sent from the Ministry of Defence appointing Colonel Aloys Simba as advising and supervising civilian defence training in Butare and Gikongoro *préfectures*; this relates to the functions of the Ministry of the Interior, and by extension Kalimanzira's, as alleged at paragraph 2 of the Indictment. The Chamber therefore finds Document 15 to have sufficient relevance and probative value in this respect to be admitted into evidence.

20. Document 19 is the minutes of a 10 May 1994 meeting attended by employees and heads of services of Butare *préfecture*, presided over by *préfet* Sylvain Nsabimana. The minutes indicate that the meeting began at 9:30 a.m. and ended at 11:00 a.m., and contains a list of the 29 other persons present, which does not include Kalimanzira. Prosecution Witness AZM, however, places Kalimanzira and Nsabimana together at a Prefectural

Security Council meeting at the MRND Palace in Butare at around 10:00 a.m. the same day.¹⁶
The Chamber therefore finds Document 19 to have sufficient relevance and probative value to be admitted into evidence.

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21. The Chamber recalls that the admissibility of evidence should not be confused with the assessment of weight to be accorded to that evidence.


FOR THESE REASONS, THE CHAMBER


GRANTS the Defence Motion in part;


DENIES the Defence Motion in respect of Documents 12, 17, and 18; and

REQUESTS the Registrar to assign Documents 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 19, 20, 21, 22, and 23 with exhibit numbers.

Arusha, 02 March 2009, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


With the consent of
Vagn Joensen
Judge
(Absent during signature)



¹⁶ T. 17 June 2008 pp. 13-14, 43 (Witness AZM).