

ICTR-98-44-T  
14-4-2009  
(45772-45769)

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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:** 14 April 2009

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**THE PROSECUTION**

v.

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

**DECISION ON JOSEPH NZIRORERA'S MOTION TO ADMIT DOCUMENTS  
FROM THE BAR TABLE: PUBLIC STATEMENTS AND MINUTES**

*Rule 89(c) of the Rules of Procedure and Evidence*

**Office of the Prosecution:**  
Don Webster  
Iain Morley  
Saidou N'Dow  
Sunkarie Ballah-Conteh  
Takeh Sendze

**Defence Counsel for Édouard Karemera**  
Dior Diagne Mbaye and Félix Sow

**Defence Counsel for Matthieu Ngirumpatse**  
Chantal Hounkpatin and Frédéric Weyl

**Defence Counsel for Joseph Nzirorera**  
Peter Robinson and Patrick Nimy Mayidika Ngimbi

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## INTRODUCTION

1. On 11 February 2009, Joseph Nzirorera filed a motion pursuant to Rule 89(C) of the Rules of Procedure and Evidence to have 13 documents admitted into evidence as defence exhibits.<sup>1</sup> The documents are, in general, interviews from 7 April to 3 June 1994 with persons in authority in the government of Rwanda and pertain, according to Nzirorera, to the Interim Government's desire to restore peace and security, prevent ethnic division and stop the killing of innocent people.<sup>2</sup> Nzirorera asserts that they are relevant to his defence because he is alleged to have participated in a joint criminal enterprise with these persons and others in the Interim Government.<sup>3</sup>
2. The Prosecution opposes the Motion, arguing that the documents are of collateral and indirect relevance.<sup>4</sup>

## DELIBERATIONS

3. Rule 89(C) of the Rules provides that a Chamber "may admit any relevant evidence it deems to have probative value". In order to establish that evidence is 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.<sup>5</sup> To establish the probative value of the evidence, the moving party must show that the evidence tends to prove or disprove an issue.<sup>6</sup>
4. The admissibility of evidence should not be confused with the assessment of weight to be accorded to that evidence, or even whether its contents are truthful or accurate,<sup>7</sup> which is an issue to be decided by the Chamber after hearing the totality of the evidence.<sup>8</sup>

<sup>1</sup> Joseph Nzirorera's Motion to Admit Documents from the Bar Table: Public Statements and Minutes, filed 11 February 2009 ("Motion").

<sup>2</sup> Motion, paras. 2-3.

<sup>3</sup> Motion, para. 3.

<sup>4</sup> Prosecutor's Response to Joseph Nzirorera's Motion to Admit Documents from the Bar Table: Public Statements and Minutes, 18 February 2009 ("Prosecution Response"), para. 4.

<sup>5</sup> *The Prosecutor v. Édouard Karemera, Matthieu Ndirumpatse, and Joseph Nzirorera*, Case No. ICTR-98-44-T ("Karemera et al."), Decision on the Prosecution's Motion for Admission of Certain Exhibits into Evidence, 22 January 2008 ("Decision on Admission of Certain Exhibits"), para. 6; *Karemera et al.*, Decision on Joseph Nzirorera's Motion to Admit Documents Authored by Enoch Ruhigira, 26 March 2008, para. 3.

<sup>6</sup> *Karemera et al.*, Decision on the Prosecution Motion for Admission into Evidence of Post-Arrest Interviews with Joseph Nzirorera and Mathieu Ndirumpatse, 2 November 2007, para. 4 (incorrectly marked as para. 2); *Karemera et al.*, Interim Order on the Prosecutor's Motion for Admission of Documents, 8 August 2007, para. 7 (and cases cited therein).

<sup>7</sup> *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41, Decision on Request to Admit United Nations Documents into Evidence under Rule 89(C), 25 May 2006, para. 4.

<sup>8</sup> *Karemera et al.*, Decision on Admission of Certain Exhibits, para. 6; *Prosecutor v. Simba*, Case No. ICTR-01-76-T, Decision on the Admission of Prosecution Exhibits 27 and 28, 31 January 2005, para. 12.

5. The Chamber finds that Annexes A, B, C, D, E, I, K and M are of sufficient relevance and probative value to the issue of the position of the Interim Government to be admitted as defence exhibits. The Chamber notes the Prosecution's submission that some of the documents are from witnesses who will be called to testify in these proceedings, but finds that admitting the documents before the witnesses are called will not prevent the Prosecution from cross-examining the witnesses on the contents of these prior statements, as the Prosecution asserts.<sup>9</sup> Further, with respect to the Prosecution's argument that the whole of the documents should be admitted into evidence rather than merely excerpts,<sup>10</sup> the Chamber finds that it is open to the Prosecution to show good cause in this respect.

6. With respect to Annexes F, G, H and L the Chamber notes that they are in Kinyarwanda and no translations have been provided. As the working languages of the Chamber are English and French, the Chamber requests that Joseph Nzirorera provide translations of the precise portions of these documents that he seeks to admit in order to enable the Chamber to rule on their admissibility.

7. With respect to Annex J, the Chamber notes that it appears to contain several documents in addition to that described by Joseph Nzirorera in his Motion. Pages 44885 to 44883 are a report in Kinyarwanda and summary in English of an 11 May 1994 meeting in Gitarama, as described by Nzirorera,<sup>11</sup> which the Chamber finds to be of sufficient relevance and probative value to admit. The next page, 44882, is a Radio Rwanda broadcast by Hyacinthe Bicamumpaka also on 11 May 1994, but which does not appear to relate to the previous report. However, the Chamber finds that as it discusses the goals of the new government, it has sufficient relevance and probative value to be admitted as a separate exhibit.

<sup>9</sup> Prosecution Response, para. 5.

<sup>10</sup> Prosecution Response, para. 6.


<sup>11</sup> Motion, para. 6(J).

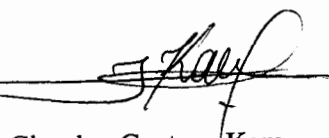
8. Finally, with respect to the document contained in pages 44881 to 44878 of Annex J, pages 44881 and 44880 appear to be duplicative of Annex K and therefore the Chamber does not understand the need to admit these pages as well. The remaining pages are almost entirely in Kinyarwanda. Consequently, the Chamber does not find that pages 44881 to 44878 should be admitted into evidence.

**FOR THE ABOVE REASONS, THE CHAMBER.**

- I. **GRANTS**, in part, Joseph Nzirorera's Motion;
- II. **ADMITS** into evidence Annexes A, B, C, D, E, I, K, M, pages 4485 to 4483 of Annex J and page 4482 of Annex J; and,
- III. **REQUESTS** the Registry to assign these documents an exhibit number in the instant case.

Arusha, 14 April 2009, done in English.

  
Dennis C. M. Byron  
Presiding Judge

  
Gberdao Gustave Kam  
Judge

  
Vagn Joensen  
Judge

