

ICTR-99-54-T  
25-11-2010  
(9422-9409)

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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER II**

Before: Judge William H. Sekule, Presiding  
Judge Solomy Balungi Bossa  
Judge Mparany Rajohnson

Registrar: Mr. Adama Dieng

Date: 25 November 2010

**The PROSECUTOR**

v.

**Augustin NGIRABATWARE**

Case No. ICTR-99-54-T

JUDICIAL RECORDS SECTION  
2010 NOV 25 A 10:11

**DECISION ON DEFENCE MOTION FOR ADMISSION  
OF DOCUMENTARY EVIDENCE**

**Office of the Prosecutor**

Mr. Wallace Kapaya  
Mr. Patrick Gabaake  
Ms. Veronic Wright  
Mr. Iskandar Ismail  
Mr. Michael Kalisa  
Ms. Faria Rekkas

**Defence Counsel**

Mr. Peter Herbert  
Ms. Mylène Dimitri  
Mr. Deogratias Sebureze  
Ms. Anne-Gaëlle Denier  
Ms. Chloé Gaden-Gistucci

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (the “Tribunal”),

**SITTING** as Trial Chamber II composed of Judges William H. Sekule, Presiding, Solomy Balungi Bossa, and Mparany Rajohnson (the “Chamber”);

**BEING SEIZED** of the “Defence Motion for Admission of Documentary Evidence”, filed on 7 September 2010 (the “Defence Motion”);

**CONSIDERING:**

- (a) The “Prosecution Response to Defence Motion for Admission of Documentary Evidence”, filed confidentially on 13 September 2010 (the “Prosecution Response”); and
- (b) The “Defence Reply to the Prosecutor’s Response to the Defence Motion to Admit Documentary Evidence Pursuant to Rules 54 and 89 (C) of the Rules of Procedure and Evidence”, filed on 17 September 2010 (the “Defence Reply”);

**CONSIDERING** also the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”);

**NOW DECIDES** the Motion pursuant to Rules 54 and 89 (C) of the Rules.

### **INTRODUCTION**

1. Ngirabatware has presented an alibi that allegedly places him at the Presidential Guard Camp and at the French Embassy in Kigali from 6 through 12 April 1994.<sup>1</sup>
2. On 15 July 2010, the Chamber granted a Prosecution Motion to admit into evidence certain pages of a report by André Guichaoua. These pages listed Rwandans who were evacuated from the French Embassy on 12 April 1994.<sup>2</sup>

### **SUBMISSIONS OF THE PARTIES**

#### ***Defence Motion***

3. The Defence asks the Chamber to admit into evidence nine diplomatic telegrams concerning persons taking refuge at the French Embassy in Kigali between 7 and 12 April 1994.<sup>3</sup>

<sup>1</sup> Second Additional Notice of Alibi, dated 3 May 2010, para. 7. See also Additional Notice of Alibi, 22 March 2010; Defence Response to Prosecutor’s Motion for an Order to Compel the Accused to Disclose Particulars of His Alibi, 11 January 2010, para. 22; Notice of Alibi Pursuant to Rule 67 (A) (ii), 23 September 2009.

<sup>2</sup> Decision on Prosecutor’s Motion for Judicial Notice of Facts of Common Knowledge (TC), 15 July 2010, paras. 1, 12, 19, p. 6, Annex 2.



4. According to the Defence, the telegrams are relevant because they support Ngirabatware's alibi. Moreover, they corroborate the testimony of certain witnesses, and contradict accounts given by other witnesses.<sup>4</sup>

5. The telegrams were reliable, as they are official documents written by French authorities in 1994, and they bear appropriate stamps, dates and times. Furthermore, the French authorities transmitted these documents to the Registry of the Tribunal, and another Trial Chamber has already concluded that these same telegrams bear sufficient indicia of reliability.<sup>5</sup>

**Prosecution Response**

6. The Prosecution does not contest the admission of these documents into evidence, but submits that they should be admitted for the limited purpose of showing Ngirabatware's presence at the French Embassy during certain periods in April 1994. If the documents are to be used for any other purpose, they should be admitted only if their author is to be called as a witness.<sup>6</sup>

7. The Prosecution contends that the documents should not be admitted to draw an inference that Ngirabatware remained at the Embassy during the relevant time period, or that the documents' author visually confirmed Ngirabatware's presence at the times indicated in the documents.<sup>7</sup>

**Defence Reply**

8. The Defence prays that the telegrams be admitted into evidence without any precondition that would limit the Chamber's ability to assess their probative value.<sup>8</sup>

9. The Defence disputes that the author of these documents needs to be called as a witness. The Prosecution does not challenge the telegrams' authenticity. Moreover, the French Embassy staff had a duty to ensure the safety of persons inside, and thus their records are more reliable than a book.<sup>9</sup>

**DELIBERATIONS**

10. As a preliminary matter, the Chamber notes that the Prosecution filed its Response confidentially, although it does not contain confidential information. Filing such submissions publicly, when appropriate, helps to guarantee the transparency of these

<sup>3</sup> Defence Motion, paras. 1, 4, 30-31, Annex A pp. 3-11. These telegrams are annexed to this Decision.

<sup>4</sup> *Id.*, paras. 8-21.

<sup>5</sup> *Id.*, paras. 22-30, citing *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Decision on Defence Motion for the Admission of Documentary Evidence (TC), 7 May 2010, paras. 12, 15-16. See also Defence Motion, Annex B.

<sup>6</sup> Prosecution Response, paras. 4-8.

<sup>7</sup> *Id.*, para. 6.

<sup>8</sup> Defence Reply, paras. 3-6, 8, 11-13, p. 5.

<sup>9</sup> *Id.*, paras. 4, 9-10. See also *id.*, para. 7, referring to the list found in André Guichaoua's report that has been admitted into evidence pursuant to a Prosecution Motion.

proceedings.<sup>10</sup> Accordingly, the Chamber orders the Registrar to lift the confidentiality of the Prosecution Response.

11. Pursuant to Rule 89 (C), the Chamber “may admit any relevant evidence which it deems to have probative value”.

12. The Chamber agrees that the telegrams are relevant and may have probative value, as they may assist the Chamber in determining the issues related to the Accused’s alibi defence. These documents meet the threshold of Rule 89 (C), and the Chamber grants the Defence Motion to have them admitted into evidence.

13. As for the Prosecution’s request that these documents be admitted for a limited purpose only, the Chamber notes that the Prosecution provides no explanation supporting this position.<sup>11</sup> Similarly, the Prosecution does not explain why the admission of the telegrams into evidence would necessitate the author’s testimony.<sup>12</sup> Accordingly, the Chamber denies these requests.

**FOR THE ABOVE REASONS, THE CHAMBER**

**GRANTS** the Motion;

**ADMITS** into evidence the documents annexed to this Decision, to be marked as Defence Exhibit 104A;

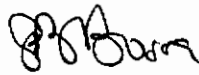
**DIRECTS** the Registry to have the documents annexed to this Decision translated to English, to be marked as Defence Exhibit 104B; and

**DIRECTS** the Registry to lift the confidentiality of the Prosecution Response.

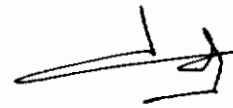
Arusha, 25 November 2010



William H. Sekule  
Presiding Judge



Solomy Balungi Bossa



Mparany Rajohnson  
Judge



<sup>10</sup> See, for example, *The Prosecutor v. Jean-Baptiste Gatete*, Case No. ICTR-2000-61-T, Decision on Defence Motion to Strike Portions of the Prosecution Closing Brief (TC), 30 September 2010, para. 3.

<sup>11</sup> See Prosecution Response, paras. 4-6, 8.

<sup>12</sup> See *id.*, paras. 7-8.