



ICTR-98-44-T
10-11-2011
Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda
(54493-54490)

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TRIAL CHAMBER III

Case No. ICTR-98-44-T

ENGLISH
Original: FRENCH

Before: Judge Dennis C. M. Byron, presiding
Judge Gberdao Gustave Kam
Judge Vagn Joensen

Registrar: Adama Dieng

Date: 19 April 2011

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The Prosecutor
v.
Édouard Karemera,
Matthieu Ngirumpatse

**DECISION ON PROSECUTOR'S MOTION FOR ADMISSION INTO EVIDENCE
OF PID-70
Pursuant to Rule 89(C) of the Rules of Procedure and Evidence**

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Counsel for Matthieu Ngirumpatse:
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CIII11-0092 (E)

Translation certified by LSS, ICTR

INTRODUCTION

1. The Prosecutor sought to tender into evidence the Human Rights Watch report on human rights in Africa and United States policy of July 1994 (hereinafter “the report”)¹ during the cross-examination of Malien Habyarimana,² a Defence witness for Matthieu Ngirumpatse, who testified before the Chamber on 10 and 11 January 2011. The Chamber initially denied its admission, but however agreed to give it an identification number in order to assess its probative value and relevance at a later stage.³
2. In a Motion of 14 March 2011, the Prosecutor moved the Chamber to admit the said report into evidence pursuant to Rule 89(C). The Defence made no submission in response.

DELIBERATIONS

3. Under Rule 89(C), the Trial Chamber has a broad discretion to admit any relevant evidence which it deems to have probative value.⁴ The party moving for the admission of a document bears the burden of establishing *prima facie* that the document is relevant and has probative value.⁵ The Chamber must ascertain that sufficient indicia of reliability have been established. Evidence may be deemed inadmissible where it is found to be so lacking in terms of indicia of reliability, such

¹ Prosecutor’s Motion for Admission into Evidence of PID-70 Pursuant to Rule 89 (C) of the Rules of Procedure and Evidence, *Human Rights in Africa and U.S. Policy of June 26-27 1994, A Special Report by Human Rights Watch/Africa*, (“Motion”), filed on 14 March 2011. See Annex A: Report of 26 and 27 June 1994 on human rights in Africa and United States human rights policy entitled “*A Special Report by Human Rights Watch/Africa for the White House Conference on Africa*”.

² Transcript, 11 January 2011, p.18.

³ *Idem*.

⁴ *The Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44, “Decision on the Prosecution Motion for Admission into Evidence of UNAMIR Documents” (Trial Chamber), 20 October 2007, paras. 5 to 7; *The Prosecutor v. Casimir Bizimungu, Justin Mugenzi, Jérôme-Clement Bicamumpaka and Prosper Mugiraneza* (“*Bizimungu et al.*”), Case No. ICTR-99-50-T, “Decision on Defence Motions to Admit Church Records and School Records” (Trial Chamber), 2 June 2008, para. 9; *Bizimungu et al.*, “Decision on Defence Motion for the Admission of Testimony Given by Prosecution Witness GFA before *Karemera et al.* (“Decision concerning Witness GFA”)” (Trial Chamber), 28 September 2008, para. 12.

⁵ *Bizimungu et al.*, “Decision on Defence Motions to Admit Church Records and School Records” (Trial Chamber), 2 June 2008, para. 9; *Bizimungu et al.*, “Decision Concerning Witness GFA”, para. 12.

that it is not probative.⁶ Indicia of reliability of a document may be determined by such factors as the author of the document, the nature of the document, whether it is an original or a copy, its origin, chain of custody, corroboration of its content with other evidence and other features of the document itself, such as signatures, stamps and handwriting.⁷

4. In the instant case, the Prosecutor sought admission of the report in order to contest the credibility of Malien Habyarimana, a Defence witness called by Matthieu Ngirumpatse.⁸ The Prosecutor submitted that some pages of the report referred to the discovery by UNAMIR⁹ of an unauthorized, secret landing and unloading of a planeload of arms at Kigali airport, as well as the delivery of three more planeloads of arms and ammunition for the Rwandan government.¹⁰ As Habyarimana was the former director-general for technical coordination of all the services of the ministry of transport and telecommunications from the second semester of 1992 to 6 April 1994,¹¹ the Prosecutor suggested that the witness had knowledge of the movement of aircraft at the Kigali airport and that admitting this document into evidence would assist the Chamber in assessing the witness's reliability.¹²
5. The document is a report published by the non-governmental organization, Human Rights Watch, in July 1994¹³ in relation to human rights in Africa and United States human rights policy. It is entitled "A special report by Human Rights Watch/Africa for the White House Conference on Africa held on 26-27 June 1994".¹⁴ Firstly, the report outlines the objective of the conference which is to examine human rights

⁶ *The Prosecutor v. Pauline Nyiramasuhuko, Joseph Kanyabashi, Arsène Shalom Ntahobali, Sylvain Nsabimana, Alphonse Teziryayo and Elie Ndayambaje*, Case No. ICTR-98-42-AR73.2, "Decision on Pauline Nyiramasuhuko's Appeal on the Admissibility of Evidence" (Appeals Chamber), 4 October 2004, para. 7.

⁷ *The Prosecutor v. Théoneste Bagosora, Gratién Kabiligi, Aloys Ntabakuze and Anatole Nsengiyumva*, ("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" (Trial Chamber), 13 September 2004, para. 9; *Bagosora et al.*, "Decision on Request to Admit United Nations Documents into Evidence under Rule 89(C)" (Trial Chamber), 25 May 2006, para. 4.

⁸ Motion, paras. 3 and 6.

⁹ United Nations Assistance Mission in Rwanda.

¹⁰ Motion, para. 3. See also Transcript, 11 January 2011, pp. 7 and 8.

¹¹ Transcript, 10 January 2011, p. 47 and Transcript, 11 January 2011, pp. 9 and 12.

¹² Motion, para. 8.

¹³ Motion, Annex A, p. 6.

¹⁴ Non-official translation [into French] of "A special report by Human Rights Watch/Africa for the White House Conference on Africa held June 26-27, 1994".

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violations in Africa within the framework of United States foreign policy.¹⁵ Human Rights Watch urges the Clinton Administration to take appropriate measures to enforce human rights in Africa.¹⁶ Secondly, the report details human rights developments and United States human rights policy in 10 African countries: Angola, Ethiopia, Kenya, Liberia, Nigeria, Rwanda, Somalia, South Africa, Sudan and Zaire.¹⁷

6. With regard to the pages of the report sought for admission and which concern Rwanda,¹⁸ the Chamber notes that there are no footnotes or references indicating the source of the information provided; nor does the report present its method of analysis. Only the last page of the report presents the organization and its executive members, but does not show the authors of this report in particular. The Chamber further notes that the non-governmental organization, Human Rights Watch, is an internationally-recognized organization respected by many stakeholders of the international community. However, the organization does not have the status of expert witness.¹⁹ Consequently, the Chamber holds that the report does not have probative value within the meaning of Rule 89(C), as it is in no position to determine the reliability of the factual allegations contained therein.

7. As the Prosecutor has failed to establish the *prima facie* probative value of the document, the Chamber finds it unnecessary to assess its relevance.²⁰

FOR THESE REASONS, THE CHAMBER DENIES the Prosecutor's motion.

Arusha, 19 April 2011

[Signed]
Dennis C. M. Byron
Judge

[Signed]
Gberdao Gustave Kam
Judge

[Signed]
Vagn Joensen Presiding
Judge

[Seal of the Tribunal]



¹⁵ Motion, Annex A, 52745.

¹⁶ *Ibid.*, 52744.

¹⁷ *Ibid.*, 52744 to 52710.

¹⁸ *Ibid.*, 52730 to 52724.

¹⁹ *Karemera et al.*, "Decision on Oral Motions by Édouard Karemera and the Prosecutor to Admit Certain Documents into Evidence" (Trial Chamber), 29 May 2008, para. 6.

²⁰ Rule 89(C) provides: "A Chamber may admit any evidence which it deems to have probative value." (emphasis added).

