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NATIONS UNIES

ICTR-98-44D-T  
13-05-2011  
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Am

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Solomy Balungi Bossa, Presiding  
Bakhtiyar Tuzmukhamedov  
Mparany Rajohnson

**Registrar:** Adama Dieng

**Date:** 13 May 2011

**THE PROSECUTOR**

v.

**Callixte NZABONIMANA**  
*Case No. ICTR-98-44D-T*

JUDICIAL  
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**DECISION ON DEFENCE MOTION FOR THE ADMISSION OF DOCUMENTARY  
EVIDENCE: "Le Château – The Lives of Prisoners in Rwanda" by Carina Tertsakian**

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

**Office of the Prosecutor**

Paul Ng'arua  
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Mary Diana Karanja

**Defence Counsel**

Vincent Courcelle-Labrousse  
Philippe Larochelle

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## INTRODUCTION

1. On 7 April 2011, the Defence filed a Motion pursuant to Rule 89(C) of the Rules of Procedure and Evidence ("Rules"), requesting that the Trial Chamber admit into evidence a document entitled, "*Le Château – The Lives of Prisoners in Rwanda by Carina Tertsakian*" ("*Le Château*").<sup>1</sup>
2. On 18 April 2011, the Prosecution filed a Response opposing the Motion in part.<sup>2</sup>
3. The Defence did not Reply.

## SUBMISSIONS OF THE PARTIES

### *Defence Motion*

4. The Defence submits that *Le Château* is relevant and has probative value. In particular, it argues that *Le Château* supports the testimony of numerous Defence witnesses regarding the conditions in Rwandan prisons; the role of certain individuals within the prisons; circumstances surrounding the testimonies of inmates testifying in Arusha; information gathering sessions relating to the genocide held in prisons; visitation procedures; and confessions made in the prison and *Ingando* camp sessions that often precede an inmate's release.<sup>3</sup>
5. The Defence recalls that several of its witnesses including Straton Sibomana, T24, T31, T27, T40, T71, T25, T34, T28, T109, T64, T110, T150, T300, T193 and T95, as well as Prosecution witnesses CNAA, CNAC, CNAM and CNAV were all incarcerated in Rwandan prisons.<sup>4</sup> It states that among these witnesses a number testified variously about the issues described addressed in *Le Château*.<sup>5</sup> It further refers to the testimony of those Defence witnesses who alleged that Prosecution witness CNAA was appointed a *Capitat*

<sup>1</sup> *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Callixte Nzabonimana's Motion for the Admission of Documentary Evidence: *Le Château – The Lives of Prisoners in Rwanda by Carina Tertsakian* ("Motion"), 7 April 2011.

<sup>2</sup> *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Prosecutor's Response to Nzabonimana's Motion for the Admission of Documentary Evidence: *Le Château – The Lives of Prisoners in Rwanda by Carina Tertsakian* ("Response"), 18 April 2011.

<sup>3</sup> Motion, para. 9.

<sup>4</sup> Motion, para. 10.

<sup>5</sup> Motion, paras. 11-16.

*Général* so that he would accuse members of the interim Government detained in Arusha and obtain confessions from inmates.<sup>6</sup>

6. To demonstrate the relevance of Le Château, the Defence submits that pages 16, 18-20 address the general conditions in Rwandan prisons,<sup>7</sup> while pages 30-31, 33, 36, 38-39, 49-50, 59-60, 62-64, 66 and 68-72 refer to more specific conditions that might impact on a witness' willingness to trade favours.<sup>8</sup> Pages 82, 85-88, 90-94, 97-100 and 110-111 relate to the internal organisation of the prison and the role of the *Capitat Général*.<sup>9</sup> Pages 238-241 provide details with respect to *cachots* and brigades where certain prisoners are detained prior to being sent to a prison.<sup>10</sup> Pages 250-251, 255-256, 259-260, 267-269 provide details on visitation procedures and work performed by prisoners outside the prison complex.<sup>11</sup> Pages 350-354-355, 364-366, 376-380 provide details on information gathering sessions held in prisons prior to the establishment of the *Gacaca* system.<sup>12</sup> Pages 396-397, 399-400, 403-405, 411-415, 418 provide a description of the confession system.<sup>13</sup> Pages 434-439, 443-444 describe the *Ingando* camps and the involvement of *Ibuka* at those camps.<sup>14</sup> The Defence therefore requests that these pages be admitted into evidence pursuant to Rule 89(C).
7. The Defence submits that the reliability of Le Château is demonstrated by Ms. Tertsakian's work experience in research with globally recognised NGOs such as Amnesty International, Human Rights Watch and Global Witness. It asserts that the methodology employed by Ms. Tertsakian in collecting data for her research is professional, and notes that Ms. Tertsakian conducted interviews with over 200 interviews inmates including men, women, elders and minors. It notes that Ms. Tertsakian also conducted first hand

<sup>6</sup> Motion, para. 15.

<sup>7</sup> Motion, paras. 18-19.

<sup>8</sup> Motion, para. 20.

<sup>9</sup> Motion, para. 21.

<sup>10</sup> Motion, para. 22.

<sup>11</sup> Motion, para. 23.

<sup>12</sup> Motion, para. 24.

<sup>13</sup> Motion, para. 25.

<sup>14</sup> Motion, para. 26.

observations of the prison conditions, and refers to sources inside and outside the prisons and reports from NGOs and other public documents.<sup>15</sup>

### *Prosecution Response*

8. On the issue of relevance, the Prosecution observes that Chapters V<sup>16</sup> and VI<sup>17</sup> of Le Château have no relevance to issues before the Chamber including the issue of witness credibility.<sup>18</sup> It notes that these Chapters deal with women and children in prison although no witness who has testified before this Chamber falls into these categories.<sup>19</sup> However, the Prosecution concurs that the rest of Le Château examines experiences of other categories of prisoners and that their experiences may be relevant to the assessment of the credibility of witnesses in this case.<sup>20</sup>
9. In respect of Le Château's reliability, the Prosecution does not dispute that it is based on substantial research, but argues instead that the interview pool is not substantially representative of the prison population as Ms. Tertsakian interviewed only 200 of 85,000 inmates in Rwanda at the time she conducted her research.<sup>21</sup>
10. In conclusion, the Prosecution does not object to the admission of the Document into evidence because the issue of weight to be accorded is to be determined at a later stage.<sup>22</sup>

## **DELIBERATIONS**

### *Applicable Law*

11. Rule 89 (C) of the Rules provides that a Chamber "may admit any relevant evidence which it deems to have probative value." Rule 89 (D) adds that a Chamber "may request verification of the authenticity of evidence obtained out of court." In determining the relevance of evidence, the moving party must show that a connection exists between the

<sup>15</sup> Motion, paras. 28-34.

<sup>16</sup> Chapter V is comprised of pages 160-172.

<sup>17</sup> Chapter VI is comprised of pages 173-187.

<sup>18</sup> Response, para. 13.

<sup>19</sup> Response, para. 14.

<sup>20</sup> Response, para. 15.

<sup>21</sup> Response, paras. 17-18.

<sup>22</sup> Response, para. 20.

evidence sought to be admitted and the proof of an allegation sufficiently pleaded in the indictment.<sup>23</sup> In order to establish the probative value of the evidence, the moving party must show that the evidence tends to prove or disprove an issue.<sup>24</sup> A factor in the assessment of the relevance and probative value of evidence is the requirement that it be *prima facie* credible; that is, it must have sufficient indicia of reliability.<sup>25</sup> 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.<sup>26</sup>

12. While a Chamber may always request verification of the authenticity of evidence obtained out of court, pursuant to Rule 89(D), "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)."<sup>27</sup>

13. Finally, 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>28</sup> which are issues to be decided by the Chamber after hearing the totality of the evidence.<sup>29</sup>

<sup>23</sup> *The Prosecutor v. Édouard Karemera, Mathieu 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, 25 January 2008, para. 6; *Karemera et al.*, Decision on Joseph Nzirorera's Motion to Admit Documents Authored by Enoch Ruhigira, 26 March 2008, para. 3.

<sup>24</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. 2; *Karemera et al.*, Interim Order on the Prosecutor's Motion for Admission of Documents, 8 August 2007, para. 7.

<sup>25</sup> *The Prosecutor v. Delalic and Delic*, Case No. IT-96-21 ("Delalic et al."), 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 ("Decision on Admissibility"), para. 20; *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41 ("Bagosora et al."), Decision on Admission of Tab 19 of Binder Produced in Connection with Appearance of Witness Maxwell Nkole, 13 September 2004, para. 8.

<sup>26</sup> *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).

<sup>27</sup> *Delalic et al.*, Decision on Admissibility, para. 20.

<sup>28</sup> *Bagosora et al.*, Decision on Request to Admit United Nations Documents into Evidence under Rule 89(C), 25 May 2006, para. 4.

<sup>29</sup> *Karemera et al.*, Decision on Admission of UNAMIR Documents, para. 7; *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.

*Relevance and Probative Value of the Document*

14. At the outset, the Trial Chamber observes that the Defence has not asked the Chamber to admit into evidence those Chapters that the Prosecution objects to.<sup>30</sup> Therefore, the Trial Chamber concludes that the Prosecution does not object to the Defence Motion.

15. The Trial Chamber finds that Le Château may assist the Chamber in assessing the credibility of detained witnesses who have appeared before the Chamber in this trial. The Chamber therefore concludes that Le Château may be relevant and have probative value. Therefore, it will admit those pages of Le Château proposed by the Defence into evidence. The Trial 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.<sup>31</sup>

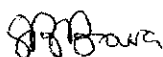
**FOR THESE REASONS, THE TRIAL CHAMBER**

**GRANTS** the Motion;

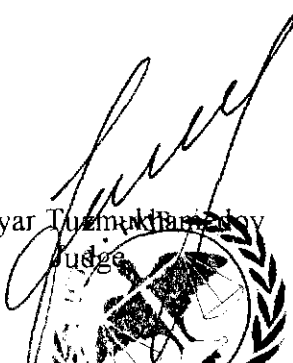
**ADMITS** into evidence pages 16, 18-20, 30-31, 33, 36, 38-39, 49-50, 59-60, 62-64, 66, 68-72, 82, 85-88, 90-94, 97-100, 110-111, 238-241, 250-251, 255-256, 259-260, 267-269, 350, 354-355, 364-366, 376-380, 396-397, 399-400, 403-405, 411-415, 418, 434-439, 443-444 from the document entitled "*Le Château – The Lives of Prisoners in Rwanda*" by Carina Tertsakian;

**REQUESTS** that the Registry assign an exhibit number to the Document.

Arusha, 13 May 2011, done in English.



Solomy Balungi Bossa  
Presiding Judge



Bakhtiyar Tuzmukhanzadev  
Judge



Mparany Rajohnson  
Judge

<sup>30</sup> Chapters V and VI of Le Chateau cover pages 160-187 and 173-187 respectively.

<sup>31</sup> *Pauline Nyiramasuhuko v. The Prosecutor*, Case No. ICTR-98-42-AR73.2, Decision on Pauline Nyiramasuhuko's Appeal on the Admissibility of Evidence (AC), 4 October 2004, para. 7.