



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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OR: ENG

**TRIAL CHAMBER II**

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

Registrar: Mr. Adama Dieng

Date: 4 July 2012

ICTR-99-54-1  
4th July 2012  
(111426-111414)

**The PROSECUTOR**

v.

**Augustin NGIRABATWARE**

Case No. ICTR-99-54-T

JUDICIAL RECORDS ARCHIVES  
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**DECISION ON THE THIRD DEFENCE MOTION FOR  
ADMISSION OF DOCUMENTARY EVIDENCE**

**Office of the Prosecutor**

Mr. Wallace Kapaya  
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**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (the “Tribunal”),

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**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 confidentially on 22 February 2012 (the “Defence Motion”);

**CONSIDERING:**

- (a) The “Prosecution Response to Defence Motion for Admission of Documentary Evidence”, filed on 5 March 2012 (the “Prosecution Response”); and
- (b) The “Defence Reply to Prosecution Response to Defence Motion for Admission of Documentary Evidence”, filed on 14 March 2012 (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 73 and 89 (C) of the Rules.

### **INTRODUCTION**

1. The Defence filed the present Motion on 22 February 2012.<sup>1</sup>
2. Also on 22 February 2012, the Defence closed its case, subject to the resolution of any Defence Motion pending before the Chamber.<sup>2</sup>
3. On 24 February 2012, the Chamber granted the Prosecution request for an extension of time to file its Response by 5 March 2012. The Chamber also provided an extension of similar length to the Defence for the filing of any Reply.<sup>3</sup>
4. On 12 and 13 March 2012, the Chamber admitted into evidence Defence Exhibits 204 and 206A, which had been described respectively as an article from the Pan-African news agency in Dakar, and as the English translation of a Radio Rwanda interview with the Accused on 24 May 1994.<sup>4</sup>

<sup>1</sup> See Defence Motion, p. 1 (indicating that it was filed at 9.41 a.m.).

<sup>2</sup> See T. 22 February 2012, p. 28 (indicating that the Defence closed its case shortly before 11.30 a.m.).

<sup>3</sup> T. 24 February 2012, p. 7.

<sup>4</sup> T. 12 March 2012, pp. 61-63, 67-68; T. 13 March 2012, pp.7-9. See also Defence Exhibit 204; Defence Exhibit 206A.

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5. On 2 April 2012, the Chamber admitted into evidence Defence Exhibit 206B, which was identified as the French translation of Defence Exhibit 206A.<sup>5</sup>

### SUBMISSIONS OF THE PARTIES

#### *Defence Motion*

6. The Defence seeks the admission of ten documents, identified as Documents A through E, F.1, F.2 and F.3, and G.<sup>6</sup>

#### (A) Note Verbale from the Ministry of Foreign Affairs of the Republic of Benin dated 23 June 2011

7. The Defence seeks to admit a *Note Verbale* from the Ministry of Foreign Affairs of the Republic of Benin that, the Defence submits, confirms the authenticity of the Accused's visa to Dakar on 6 May 1994. The Defence submits that it is relevant and has probative value as it corroborates the Accused was in Senegal, not Rwanda, on 6 May 1994. Moreover, the Defence submits that this document bears sufficient indicia of reliability, as it is an official document that has been communicated from a national institution.<sup>7</sup>

#### (B) Copy of a Press Article of KNA Reproducing a PANA Report

8. The Defence seeks to admit this press article which reproduces a Pan-African news agency report on Ndirabatware's declaration on 1 May 1994 in Dakar. The Defence submits that this document confirms the Accused's testimony that he was in Senegal in early May 1994.<sup>8</sup>

#### (C) Transcripts of an Audio Broadcast of 14 March 2004

9. The Defence seeks to admit this broadcast, as well as the English, French, and Kinyarwanda transcripts, in which the Defence submits reference is made to an interview Ndirabatware gave on 27 April 1994 to *Radio Afrique No. 1*, a radio station that broadcasted only from Gabon. The Defence submits that this broadcast confirms the Accused's alibi that he was in Gabon between 25 April and 27 April 1994, and also confirms the legitimacy of the Accused's visa and passport stamps. Moreover, the broadcast corroborates the testimony of the Accused and of Witness Jérôme-Clément Bicamumpaka. As for the transcript's reliability, the Defence notes that the Prosecution disclosed them and that they bear K numbers.<sup>9</sup>

<sup>5</sup> T. 2 April 2012, pp. 11-12. See also Defence Exhibit 206B.

<sup>6</sup> Defence Motion, para. 24, pp. 7, 10, 12, 14, 17, 21, 24-25, 28, 30, Annexes 1-5,7-10.

<sup>7</sup> *Id.*, paras. 28-30, 32-34, Annex 1. See also *id.*, para. 31.

<sup>8</sup> *Id.*, paras. 35-44, Annex 2.

<sup>9</sup> *Id.*, paras. 45-50, Annex 3. The Defence further submits that the original of the audio document is "available in the Defence office and can be inspected any time", and "will be filed in the event the present Motion is granted". *Id.*, paras. 4-5.

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(D) Records of an Interview Given by the Accused on 4 May 1994 to Radio France Internationale in Dakar, Senegal

10. The Defence seeks the admission of these records into evidence. According to the Defence, they prove that the Accused was in Dakar on 4 May 1994, and corroborate that he was in Senegal between 30 April and 8 May 1994. These records also corroborate other Defence evidence and undermine the Prosecution's theories that the Accused's passport may be falsified and that the Accused did nothing to stop the events in Rwanda.<sup>10</sup>

11. According to the Defence, these documents come from the French police force who obtained them from *Radio France Internationale*. The Defence also received a letter from the French *Gendarmerie Nationale* confirming the reliability of this chain of custody. As documents coming from national official institutions, the Defence submits that they are sufficiently reliable.<sup>11</sup>

(E) Fiche Individuelle de Recensement (individual census file) of Vincent Kayihura dated 19 August 2003

12. The Defence seeks admission of a census file from the Gisenyi Prefecture for Vincent Kayihura which reveals his employment as a state agent in 2003. This file holds probative value as it proves that Vincent Kayihura could not have been killed in 1994 as alleged in two paragraphs of the Indictment. It also corroborates the testimony of Prosecution Witness AFS and Defence Witness DWAN-21.<sup>12</sup>

13. The Defence also submits that this census file is authentic and reliable, as it is an official document delivered by Rwandan authorities, bearing a signature and a stamp.<sup>13</sup>

(F) Radio Rwanda Broadcasts

14. The Defence seeks admission of the Radio Rwanda broadcasts of 11 and 16 April 1994, and 24 May 1994 (F.1, F.2 and F.3 respectively), as well as of the French and Kinyarwanda transcripts thereof.<sup>14</sup>

15. The Defence submits that the broadcasts of 11 and 16 April 1994 corroborate the Accused's testimony about cabinet meetings on those dates in Kigali. In addition to supporting the Accused's alibi, the Defence contends that the 11 April 1994 broadcast also discusses the efforts of the Interim Government to improve the security situation, and contradicts Prosecution evidence about the security situation in Kigali.<sup>15</sup>

<sup>10</sup> *Id.*, paras. 53, 55-57, 59, 62, Annex 4. The Defence also states that the Prosecution has admitted the exculpatory nature of this interview. *Id.*, para. 58.

<sup>11</sup> *Id.*, paras. 54, 60-61. The Defence notes that it filed a CD-ROM copy of the audio records together with the Defence Motion, and indicates that the original audio records are available. *Id.*, para. 61.

<sup>12</sup> *Id.*, paras. 63-64, 66-69, Annex 5. See also *id.*, para. 65.

<sup>13</sup> *Id.*, para. 70.

<sup>14</sup> *Id.*, paras. 78, 83, Annexes 7-9. See also *id.*, Annex 6.

<sup>15</sup> *Id.*, paras. 78, 86-92, 93-95, 97. See also *id.*, paras. 85, 96.



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16. The Defence further submits that the broadcast of 24 May 1994 which is a Radio Rwanda interview of Ngirabatware to Jean-Baptiste Bamwanga, supports the Accused's alibi for the period of 23 April to 23 May 1994.<sup>16</sup>

17. According to the Defence, these broadcasts meet all authenticity requirements as they are official audio records disclosed by the Prosecution and bearing K numbers, while the French transcripts are official translations.<sup>17</sup>

(G) Trial of Faustin Bagango before the Gacaca Courts of Munanira and Rubona

18. The Defence submits that this document goes directly to a matter in dispute between the parties, and is linked to allegations of the Prosecution. Because this document confirms that Faustin Bagango was acquitted in regards to his theft charges, according to the Defence, it also refutes the testimonies of numerous Prosecution witnesses.<sup>18</sup>

19. The Defence further submits that this document, as an official stamped document from the Rwandan authorities, is sufficiently reliable and authentic for admission into evidence.<sup>19</sup>

***Prosecution Response***

20. The Prosecution opposes the admission of Documents A through F, but does not oppose the admission of Document G.<sup>20</sup>

21. The Prosecution asserts that admitting evidence through the bar lacks contextual appreciation and should be used sparingly, and therefore contends that admission of the *Note Verbale* from the Ministry of Foreign Affairs in Benin should be denied.<sup>21</sup>

22. Regarding the PANA report, the Prosecution alleges this document lacks sufficient authenticity for admission and should therefore be precluded from admission into evidence.<sup>22</sup>

23. The Prosecution submits that the transcript of the audio broadcast of 14 March 1994 lacks sufficient verification and reliability and is essentially "hearsay of hearsay". Also, the nexus between the contents and evidentiary purpose is too nebulous for admission.<sup>23</sup>

<sup>16</sup> *Id.*, paras. 99-103.

<sup>17</sup> *Id.*, paras. 84, 92, 98, 104. The Defence notes that it filed a CD-ROM copy of these audio recordings with its Motion, and that the originals are available in the Defence office. *Id.*, para. 109.

<sup>18</sup> *Id.*, paras. 111-119, 121, Annex 10.

<sup>19</sup> *Id.*, para. 120.

<sup>20</sup> Prosecution Response paras. 9, 14, 18, 23-26, 30, 32, 38-39.

<sup>21</sup> *Id.*, paras. 9-12.

<sup>22</sup> *Id.*, paras. 14-16.

<sup>23</sup> *Id.*, paras. 19-21.

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24. The Prosecution contends that the chain of custody of an interview given by the Accused on 4 May 1994 to *Radio France Internationale* in Dakar, Senegal fails to meet authenticity requirements and that this evidence should have been admitted through the interviewer as a witness.<sup>24</sup>

25. The Prosecution opposes the admission of Vincent Kayihura's census file as it fails to reliably confirm this Vincent Kayihura is the same specified in the Indictment.<sup>25</sup>

26. The Prosecution asserts that the Radio Rwanda broadcasts of 11 April, 16 April, and 24 May 1994 were previously assessed, adjudicated and rejected and the Defence should rather file a Motion for Reconsideration.<sup>26</sup>

### ***Defence Reply***

27. Regarding the *Note Verbale*, the Defence reminds the Chamber of its limit on witnesses and the impracticality of calling a witness for one document and asserts that this document should not be denied for this reason. The Defence notes that the Prosecution did not challenge the document's relevance or authenticity.<sup>27</sup>

28. The Defence notes that the PANA report was filed into evidence on 12 March 2012 as Defence Exhibit 204A and therefore considers that the issue is now moot.<sup>28</sup>

29. The Defence disagrees that the transcript of the audio broadcast of 14 March 2004 amounts to "hearsay of hearsay" as the radio participant indicated he personally heard the accused on *Radio Afrique*. Even if hearsay, the Defence purports that "some" probative value remains regarding the Accused's alibi period.<sup>29</sup>

30. Regarding the authenticity and chain of custody of the *Radio France Internationale* ("RFI") interview on 4 May 1994, the Defence points to the testimony Prosecution Witness Massamba Ndiaye, Defence Exhibit 203, the signature of the French Judicial Police, the confirmation letter from the *Directeur-Adjoint de l'Information* of RFI, and other supporting documentation to reveal the authenticity of this interview and its chain of custody.<sup>30</sup> As the Defence case is closed it is now precluded from calling additional witnesses.<sup>31</sup>

31. The Defence asserts that given the limited evidence provided about Vincent Kayihura, this census file bears probative value and sheds reasonable doubt on

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<sup>24</sup> *Id.*, paras. 23-28.

<sup>25</sup> *Id.*, para. 30.

<sup>26</sup> *Id.*, paras. 33-37.

<sup>27</sup> Defence Reply, paras. 6-13.

<sup>28</sup> *Id.*, para. 14, referring to T. 12 March 2012, pp. 61, 68.

<sup>29</sup> Defence Reply, paras. 15-22.

<sup>30</sup> *Id.*, paras. 25-29.

<sup>31</sup> *Id.*, para. 30. The Defence notes that the Court stated multiple times on 12 March 2012 that the Defence could apply to have this document admitted under Rule 89 (C). See T. 12 March 2012, pp. 37, 45.

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allegations in the Indictment. The weight of the evidence should not be confused with admissibility.<sup>32</sup>

32. Although the English version of the radio broadcast of 24 May 1994 was admitted into evidence, the Defence still seeks to admit the original Kinyarwanda file and French translation thereof to enhance authenticity and resolve translation issues.<sup>33</sup>

33. The Defence contends that prior admission of the 24 May 1994 broadcast (Document F.3) negates the Prosecution's claim that the matter has already been adjudicated. The Defence maintains that the court should be willing to review the Radio Rwanda broadcasts of 11 and 16 April 1994, and the English and French translations, on their relevance and probative value. The Defence argues that the Prosecution's objections relating to authenticity are misleading and unrelated, and that filing a Motion for Reconsideration would be inappropriate.<sup>34</sup>

### DELIBERATIONS

34. As a preliminary matter, the Chamber notes that the Defence Motion is moot with respect to Documents B and F.3, which have already been admitted into evidence as Defence Exhibits 204 and 206B.<sup>35</sup>

#### *Admission of Documents from the Bar Table*

35. Under Rule 89 (C), the Chamber may admit any relevant evidence which it deems to have probative value. If the Chamber is able to appreciate the relevance and probative value of a document independent of any witness, with due regard to the principles referred to in Rule 89 (B)<sup>36</sup> and to the applicability of Rule 92bis, then the document may be admitted under Rule 89 (C). The admission of evidence from the bar table is in fact a well-established practice before the *ad hoc* Tribunals.<sup>37</sup> The Chamber recalls that it has previously admitted some documents which were not tendered through witnesses.<sup>38</sup>

<sup>32</sup> Defence Reply, paras. 37-39, referring to T. 4 March 2010 (Witness AFS), pp. 64-65 (CS); T. 28 September 2011 (Witness DWAN-21), p. 57 (CS).

<sup>33</sup> Defence Reply, paras. 41-44.

<sup>34</sup> *Id.*, paras. 40-41, 43, 45-46, 48-52.

<sup>35</sup> Compare Defence Exhibit 204 (consisting of K0616497 and K0616498), and Defence Motion, Annex 2 (same); Defence Exhibit 206B (French translation of K0163301 through K0163342) and Defence Motion, Annex 9 (same). See also Defence Reply, paras. 14, 41.

<sup>36</sup> *Prosecutor v. Dario Kordić & Mario Čerkez*, Case No. IT-95-14/2-AR73.5, Decision on Appeal Regarding Statement of a Deceased Witness (AC), 21 July 2000, paras. 19-20.

<sup>37</sup> See generally *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T ("*Nzabonimana*"), Decision on Defence Motion for the Admission of Documentary Evidence (TC), 15 June 2011 ("*Nzabonimana* Decision of 15 June 2011"); *Nzabonimana*, Decision on Defence Motion for the Admission of Documentary Evidence: "Le Château – The Lives of Prisoners in Rwanda" by Carina Tertsakian (TC), 13 May 2011; *Nzabonimana*, Decision on Defence Motion for the Admission of Documentary Evidence: "Official Government of Rwanda Comments on the Draft UN Mapping Report on the DRC" (TC), 31 March 2011; *The Prosecution v. Édouard Karemera et al.*, Case No. ICTR-98-44-T ("*Karemera et al.*"), Decision on Joseph Nzirorera's Motion to Admit Documents from the Bar Table: Public Statements and Minutes (TC), 14 April 2009; *The Prosecutor v. Arsène Shalom Ntahobali*, Case No. ICTR-98-42-T, Decision on Ntahobali's Motion for Admission of Documents into Evidence (TC), 30

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36. The Appeals Chamber has held that in order for evidence to be admissible under Rule 89 (C), it must bear sufficient indicia of reliability. The Appeals Chamber has further noted that admission of evidence does not constitute a binding determination as to the authenticity or trustworthiness of the document, which will be determined at a later stage of the proceedings when the Trial Chamber assesses the probative weight to be attached to the evidence.<sup>39</sup>

37. Jurisprudence of this Tribunal provides that while there are no formal requirements for establishing the reliability and authenticity of documents, some factors to consider include the extent to which their content is corroborated by other evidence; their provenance; whether the documents submitted are originals or copies; if copies, whether these were registered or filed with an institutional authority; and whether these are signed, sealed, stamped or certified in any way.<sup>40</sup>

38. While Rule 89 (D) provides that a Chamber may request verification of the authenticity of evidence obtained out of court, the Appeals Chamber has held that this is not a prerequisite to admission under Rule 89 (C).<sup>41</sup>

(A) Note Verbale from the Ministry of Foreign Affairs of the Republic of Benin dated 23 June 2011

39. The Defence seeks to tender a *Note Verbale* from the Minister of Benin that, the Defence submits, confirms the authenticity of the Accused's visa to Dakar on 6 May 1994 and corroborates the Accused's alibi. This *Note Verbale* states that a Mr. Augustin Ngirabatware received a visa, bearing number 053/CBD/VE/94, from the Consulate of Benin in Dakar on 6 May 1994. The Chamber observes that a visa bearing this number and date appear in the Accused's passport, entered into evidence as Defence Exhibit 112. In this regard, the Chamber considers that this document may be relevant and may have probative value insofar as it may relate to the Accused's alibi and to Defence Exhibit 112.

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September 2008; *Karemera et al.*, Decision on Joseph Nzirorera's Motion for Admission of UNAMIR Related Documents (TC), 28 November 2007; *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T ("*Bagosora et al.*"), Decision on Request to Admit United Nations Documents into Evidence under Rule 89(C) (TC), 25 May 2006. See also *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on the Prosecution's First Bar Table Motion (TC), 13 April 2010; *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, Decision on Prosecution's Motion to Re-Open the Case and Exceed the Word Limit and Second Motion to Admit Exhibits from the Bar Table (TC), 7 December 2009; *The Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on Admission of Evidence (TC), 13 July 2006.

<sup>38</sup> Decision on Defence Motion for Admission of Documentary Evidence (TC), 9 February 2012 ("Decision of 9 February 2012"); Decision on Defence Motion for Admission of Documentary Evidence (TC), 25 November 2010; Decision on Prosecutor's Motion for Judicial Notice of Facts of Common Knowledge (TC), 15 July 2010.

<sup>39</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.

<sup>40</sup> *Nzabonimana* Decision of 15 June 2011, para. 18; *Karemera et al.*, Decision on the Prosecutor's Motion for Admission of Certain Exhibits into Evidence (TC), 25 January 2008, para. 8; *Bagosora et al.*, Decision on Ntabakuze Motion to Deposit Certain United Nations Documents (TC), 19 March 2007, para. 3.

<sup>41</sup> *Prosecutor v. Zejnil Delalić et al.*, Case No. IT-9 6-21-A, Decision on Application of Defendant Zejnil Delalić for Leave to Appeal against the Decision of the Trial Chamber of 19 January 1998 for the Admissibility of Evidence (AC), 4 March 1998, para. 25.



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40. As this document appears to be an official state document communicated from and certified by a national institution, bearing an official stamp and having been relayed from the External Relations and Strategic Planning Section of the Tribunal, the Chamber also considers that this *Note Verbale* bears sufficient indicia of reliability.<sup>42</sup>

41. Accordingly the Chamber grants admission into evidence of this document insofar as it may relate to the Accused's alibi and to Defence Exhibit 112.

(C) Transcripts of an Audio Broadcast of 14 March 2004

42. The Defence seeks to admit an audio broadcast that makes reference to an interview by the Accused on *Radio Afrique* on 27 April 1994. The Defence claims this corroborates that the Accused was in Gabon on this date and was not in Rwanda between 23 April and 23 May 1994.<sup>43</sup>

43. The Chamber recalls that it previously rejected the possible exculpatory nature of this document, stating that:

[A] review of the disclosed transcripts reveals that there appears to be a lone reference to the Accused speaking over "*Radio Afrique No. [sic] on 27 April*". There appears to be no reference to the year that this would have occurred, nor whether this speech or any subsequent broadcast would have emanated from outside Rwanda. In the Chamber's view, the non-descript nature of this information is insufficient to be potentially exculpatory.<sup>44</sup>

44. The Chamber has reviewed the content and nature of the document attached to the Defence Motion, and has persistent doubts pertaining to the document's probative value. This radio station has broadcasted an individual who mentioned he heard on another radio station, ten years earlier, Ngirabatware's opinion on the instigator of the President's plane crash. The Chamber further lacks confirmation that any such *Radio Afrique* interview was only conducted and broadcast in Gabon. The Chamber therefore denies admission into evidence of this document.

(D) Records of an Interview Given by the Accused on 4 May 1994 to *Radio France Internationale* in Dakar, Senegal

45. The Defence seeks to admit an interview given by the Accused on 4 May 1994 as it corroborates the Accused's alibi that was in Senegal during this time, as well as Defence Exhibit 112 and the *Note Verbale* from the French Ministry of Foreign Affairs confirming the authenticity of his French visa delivered in Dakar on 7 May 1994. The Defence contends this interview also disputes the Prosecution's claim that the Accused

<sup>42</sup> Defence Motion, paras. 28-30, 32-34, Annex 1. See also *id.*, para. 31.

<sup>43</sup> See, for example, *id.*, para. 46.

<sup>44</sup> Decision on Defence Motion to Declare the Prosecution in Violation of Its Disclosure Obligations (TC), 26 April 2012, para. 59.

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did not seek help from the international community.<sup>45</sup> The Chamber finds that these documents have sufficient probative value for admission under Rule 89 (C).

46. The Chambers notes the Prosecution's objections regarding the reliability and authenticity of the material, particularly the chain of custody of the material. The Chamber also observes that the recording itself does not appear to indicate the date of the alleged interview, but that the date of any such interview appears to be indicated only in the accompanying documents. Given the material's accompaniment with an official document confirming the chain of custody, as well as a signature from the French Judicial Police certifying authenticity, the Chamber finds this chain of custody to be sufficiently reliable in accordance with Rule 89. Accordingly the Chamber grants the admission into evidence of this recording and accompanying documents insofar as they may relate to the Accused's alibi and to Defence Exhibit 112.

(E) Fiche Individuelle de Recensement (individual census file) of Vincent Kayihura dated 19 August 2003

47. The Defence seeks to admit the census file of a Vincent Kayihura, an individual alleged in the Indictment to have been put on an extermination list by the Accused.<sup>46</sup>

48. The Chamber considers that an insufficient link has been made between the Vincent Kayihura mentioned in the census file and the Vincent Kayihura identified in the Indictment. The Chamber therefore considers that the probative value of this document is insufficient to warrant its admission into evidence under Rule 89(C).

(F.1 and F.2) Radio Rwanda Broadcasts of 11 and 16 April 1994

49. The Chamber recalls its earlier Decision of 1 April 2011 granting the Defence's request for disclosure of these broadcasts pursuant to Rule 68 (A).<sup>47</sup> The Chamber also recalls its Decision of 9 February 2012, where the Chamber rejected admission to the above radio recordings in their Kinyarwanda format.<sup>48</sup> Noting these decisions, the Defence now seeks to tender the French translations of the 11 and 16 April 1994 broadcasts as well as the Kinyarwanda originals thereof.<sup>49</sup>

50. The Defence asserts that the Radio Rwanda broadcast of 11 April 1994 corroborates the alibi and testimony of the Accused that a cabinet meeting with the *Préfets* of Rwanda occurred in Kigali on 11 April 1994 and confirms the Interim Government's condemnation of the post 6 April 1994 violence. The Defence claims the

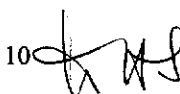
<sup>45</sup> See, for example, Defence Motion, paras. 53, 59.

<sup>46</sup> See Indictment, paras. 11, 32, 57. The Chamber notes that these paragraphs have been withdrawn by the Prosecution. See Decision on Defence Motion for Judgement of Acquittal (TC), 14 October 2010, p. 12. Two of these paragraphs, however, are referenced elsewhere in the Indictment. See, for example, Indictment, paras. 33, 60.

<sup>47</sup> Decision on Defence Motion for Disclosure of Additional Exculpatory and Other Relevant Material Pursuant to Defence Oral Motion Presented on 24 November 2010 (TC), 1 April 2011 ("Decision of 1 April 2011"), para. 30, p. 8.

<sup>48</sup> Decision of 9 February 2012, paras. 63-64.

<sup>49</sup> Defence Motion, paras. 78, 83.

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broadcast also contradicts Prosecution Witness ANAE by demonstrating that the Accused was in Kigali and not Nyamyumba on this date as well as Prosecution Witnesses ANAW and DAK regarding road security in Kigali.<sup>50</sup> As for the Radio Rwanda broadcast of 16 April 1994, the Defence claims that it corroborates the testimony of the Accused that a cabinet meeting occurred on 16 April 1994, as well as the content of that meeting.<sup>51</sup>

51. The Chamber notes that both broadcasts discuss meetings that were attended by ministers. Neither broadcast, however, mentions Ndirabatware by name or alleges that he attended any meetings held on 11 April 1994 in Kigali, or on 16 April 1994 in Gitarama. The Chamber considers that although these broadcasts do not necessarily demonstrate Ndirabatware's alleged presence at any meetings on 11 and 16 April 1994, they may be relevant and have probative value insofar as they may pertain to the existence and possible attendees of such meetings, as well as to the Accused's alibi.

52. As for the contents of any such meetings, the Chamber considers them to be irrelevant in the context of this case.

53. The Chamber notes the previous admission of the Radio Rwanda broadcast of 24 May 1994 during the testimony of Prosecution Witness Massamba Ndiaye.<sup>52</sup> As the 11 and 16 April 1994 documents originated from the same source and bear the same certification, the Chamber finds these transcripts to bear sufficient indicia of reliability and authenticity. The Chamber notes these documents also bear K numbers, were disclosed by the Prosecution and were translated by the Language Services Section of the Tribunal.

54. Accordingly, the Chamber admits these documents into evidence insofar as they may pertain to the existence and possible attendees of such meetings, as well as to the Accused's alibi.

(G) Trial of Faustin Bagango before the Gacaca Courts of Munanira and Rubona

55. With no objection from the Prosecution, the Defence seeks to admit Gacaca records relating to Faustin Bagango. The Defence claims that the judgements, acquitting Bagango of his property theft charges, contradict allegations from Prosecution Witnesses ANAK, AFS, ANAJ and ANAO regarding the trial proceedings and outcomes. Further, the Defence claims these trial outcomes connect to the character of an individual alleged in the Indictment to have participated with the Accused in a joint criminal enterprise.<sup>53</sup>

56. The Chamber finds this document's connections to previous witnesses as indicia of sufficient probative value and therefore it is acceptable for admission. As this is an

<sup>50</sup> See, for example, *id.*, paras. 86-93.

<sup>51</sup> See, for example, *id.*, paras. 78, 83, 95-96. Although the Defence claims that the Chamber has previously stated that the broadcast of 16 April 1994 may confirm the Accused's presence in Kigali, the Chamber recalls that it has identified this broadcast as being potentially exculpatory in regards to a cabinet meeting that may have been held on 16 April 1994 in Gitarama. Compare *id.*, para. 97, and Decision of 1 April 2011, para. 27.

<sup>52</sup> See T. 13 March 2012, pp. 3-11; Defence Exhibit 206A; Defence Exhibit 206B.

<sup>53</sup> See, for example, Defence Motion, paras. 111-119.

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official trial record the Chamber also accepts the reliability and authenticity of this document and its translation. Finally, the Chamber considers that this document may have sufficient relevance and probative value, and therefore admits it into evidence for the reasons stated above in paragraph 55.

**FOR THE ABOVE REASONS, THE CHAMBER**

**GRANTS** the Defence Motion in part;

**ADMITS** into evidence the material identified in Annexes A, D, F.1, F.2, and G as lettered by the Defence in its Motion;

**DIRECTS** the Registry to assign an exhibit number to each of these documents;

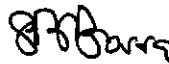
**DISMISSES** the Defence Motion in part as moot, insofar as it concerns Documents B and F.3; and

**DENIES** the admission into evidence of Documents C and E.

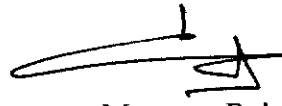
Arusha, 4 July 2012



William H. Sekule  
Presiding Judge



Solomy Balungi Bossa  
Judge



Mparany Rajohnson  
Judge

