THE ADMISSIBILITY OF EVIDENCE IN PROCEEDINGS BEFORE THE ICTR AND THE ICTY

Segun Jegede*

1. Introduction

The notion of the admissibility of evidence is central to the conduct of judicial proceedings in most national jurisdictions operating the common law system of justice. In the realm of international law, the role of the concept in adjudication is no less significant as it constitutes an intrinsic part of the law adopted by existing international courts and tribunals. The admissibility of evidence, used in reference to issues to be decided in any judicial proceeding, means evidence that is pertinent and proper to be considered in reaching a decision on the facts in controversy as submitted by the parties before the court. Relevance is regarded as the main criterion of admissibility; the general rule governing admissibility is that all evidence that is sufficiently relevant to an issue before the court is admissible, and all evidence that is irrelevant or insufficiently relevant should be excluded.¹

The criterion of relevance is therefore applied to evidence in both a positive and a negative form. The rules of evidence provide the means by which a court ascertains the truth. As much as is humanly possible, they ensure that the innocent are not convicted and the guilty do not escape the noose of the law. Unfortunately, rules of court tend to be

---

* LLB (University of Lagos), BL (Nigerian Law School), LLM (University of South Africa), the author is a Trial Attorney in the Office of the Prosecutor, United Nations International Criminal Tribunal for Rwanda (ICTR). The views expressed are solely those of the author and are not intended to represent the views of either the ICTR or the United Nations.

¹ See Cross and Tapper on Evidence (Butterworths 8th ed., 1995) at 56.
complex, technical, and incapable of complete codification. This has at least proved true in the cases of the United Nations International Criminal Tribunal for the Former Yugoslavia (ICTY)\(^2\) and the United Nations International Criminal Tribunal for Rwanda (ICTR).\(^3\)

Fashioning a set of admissibility rules agreeable to parties before the international tribunals was a Herculean task. The task was made more complicated by the need to marry the common law “adversarial” and civil law “inquisitorial” rules to produce a blend that both respected the rights of the accused and ensured that justice was done in accordance with the statutes of the two tribunals. Although the regime on the admissibility of evidence adopted by the tribunals is, to a significant extent, patterned on the common law model, the ICTY and ICTR have in practice modified it in certain respects. This paper therefore focuses on the concept of the admissibility of evidence as understood in the jurisprudence of the tribunals and highlights the areas where the tribunals have modified the common law concept to suit the peculiarities of their mandates.

### 2. The Meaning of Relevance

Relevance is essentially a matter of reason and common sense. The American Law Institute’s *Model Code of Evidence* defines relevant evidence as “evidence having any tendency in reason to prove any material matter…”\(^4\) Abstruse as it seems, the exact parameters of the term “relevance” were captured by Justice Stephen when he noted:

---

