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UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Dennis C. M. Byron, Presiding  
Emile Francis Short  
Gberdao Gustave Kam

**Registrar:** Adama Dieng

**Date:** 26 April 2006

**THE PROSECUTOR**

v.

Édouard KAREMERA  
Mathieu NGIRUMPATSE  
Joseph NZIRORERA  
Case No. ICTR-98-44-T

ICTR  
2006 APR 26 P 12:15

**DECISION ON DEFENCE MOTION FOR DISCLOSURE OR INSPECTION OF  
HAND-WRITTEN NOTES FROM OTP INVESTIGATOR**

*Rules 66 and 89 of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**  
Don Webster  
Gregory Lombardi  
Gilles Lahaie  
Alayne Frankson-Wallace  
Iain Morley  
Sunkarie Ballah-Conteh  
Takeh Sendze

**Defence Counsel for Édouard Karemera**  
Dior Diagne Mbaye and Félix Sow

**Defence Counsel for Mathieu Ngirumpatse**  
Chantal Hounkpatin and Frédéric Weyl

**Defence Counsel for Joseph Nzirorera**  
Peter Robinson and Patrick Nimy Mayidika Ngimbi

1 The trial in this case started on 19 September 2005. The second trial session was completed on 17 March 2006 after hearing the third Prosecution witness, Witness UB. During Witness UB's cross-examination, the Defence for Nzirorera referred to the report of his interviews of 26, 27, 28 and 29 April 2004 drafted by a Prosecution investigator.<sup>1</sup> The Defence for Nzirorera contended that there is a contradiction between this report and his testimony given in court.<sup>2</sup> As a result, it moved the Chamber to order the disclosure of the hand-written notes of the investigator for those statements, if they exist, which contradict this witness or at least, that they be produced for inspection, under Rule 66(B) of the Rules of Procedure and Evidence. The Defence for Nzirorera submitted that the investigator's handwritten contemporaneous notes of his conversations with Witness UB are the best physical evidence of those meetings which make them necessary and material to the preparation of the defence.

2. The Prosecution opposed the Motion and argued that the investigator's report is a reflection of the investigator's recollection of his conversation with the witness. It submitted that beyond that, the Defence can speak to the investigator and even, call him as a Defence witness.<sup>3</sup>

3. Pursuant to Rule 89(C) of the Rules and the jurisprudence of this Tribunal,<sup>4</sup> the Chamber has the discretionary power to admit any relevant evidence which it deems to have probative value, to the extent that it may be relevant to the proof of allegations pleaded in the Indictment. It must be noted that the admissibility of evidence is not to be confused with the assessment of the weight to be accorded to the evidence.

4. In the present case, it is not disputed that the Accused was provided with a copy of the report of interviews with Witness UB on 26, 27, 28 and 29 April 2004 and that he had full opportunity to cross-examine the witness on their content.<sup>5</sup> It can be admitted that the investigator's report is a reflection of the investigator's recollection of his conversation with the witness. There is no need to order further disclosure of the investigator's hand-written

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<sup>1</sup> T. 6 March 2006, p. 46.

<sup>2</sup> T. 6 March 2006, p. 46-52.

<sup>3</sup> T. 6 March 2006, p. 52.

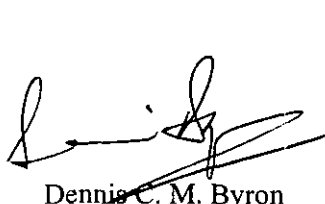
<sup>4</sup> See for e.g.: *Prosecutor v. Pauline Nyiramasuhuko*, Decision on Pauline Nyiramasuhuko's Request for Reconsideration (AC), 27 September 2004, par. 12; *Prosecutor v. Ntahobali and Nyiramasuhuko*, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and ABZ Inadmissible" (AC), 2 July 2004, par. 15; *Prosecutor v. Alfred Musema*, Judgment (AC), 16 November 2001, par. 46-50.

<sup>5</sup> See: T. 6 March 2006.

notes, if they still exist. Finally, the Chamber observes that the weight to be attached to evidence given by Witness UB is an issue to be addressed by the Chamber at a later stage.

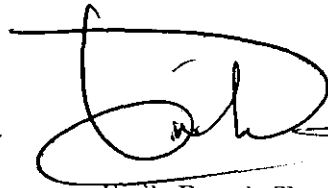
**FOR THE ABOVE REASONS, THE CHAMBER  
DENIES** the Nzirorera's Motion in its entirety.

Arusha, 26 April 2006, done in English.



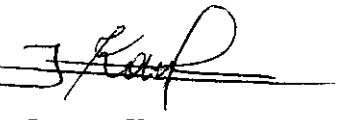
Dennis C. M. Byron

Presiding Judge



Emile Francis Short

Judge



Gberdao Gustave Kam

Judge

