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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  
Gberdao Gustave Kam  
Vagn Joensen

**Registrar:** Adama Dieng

**Date:** 22 November 2007

**THE PROSECUTOR**

v.

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

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**DECISION ON THE DEFENCE MOTIONS TO EXCLUDE PROSECUTION  
WITNESS AWD EVIDENCE ON 28 JANUARY 1993 MRND MEETING**

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[Signature]

## INTRODUCTION

1. During cross-examination by Mathieu Ndirumpatse, Prosecution Witness AWD gave a statement about the extermination of Tutsis made by Mathieu Ndirumpatse, in connection with the MRND meeting of 28 January 1993.<sup>1</sup> Following the Chamber's directions, Joseph Nzirorera, joined by the Mathieu Ndirumpatse, filed written submissions moving the Chamber to exclude the evidence given by Witness AWD regarding the 28 January 1993 MRND meeting on the grounds of a lack of notice and the "unresponsive answer" of the Witness.<sup>2</sup> However, in his reply, Joseph Nzirorera in its reply indicated that he no longer seeks to have this evidence excluded on the ground of lack of notice, acknowledging that the evidence presented is not a material fact.<sup>3</sup>

2. The Prosecutor responded to the Defence Motions asking the Chamber to find that the evidence is relevant and probative, that it had been elicited properly and that it should not be excluded.<sup>4</sup>

## DELIBERATION

3. Both Joseph Nzirorera and Mathieu Ndirumpatse move the Chamber to exclude the evidence of AWD concerning the 28 January 1993 MRND meeting. Ndirumpatse submits that the cross-examination of Prosecution witnesses shall be conducted within the limits of the examination-in-chief of the Witness and the notifications given by the Prosecution before the Witness is heard by the Chamber.<sup>5</sup> It contends that the Pre-Trial-Brief and the notice given by the Prosecution under Rule 67 of the Rules of Procedure and Evidence ("the Rules") concerning additional evidence that might be elicited during the anticipated testimony of the Witness refer only to one meeting in Nyamirambo after Ndadaye's death and another meeting that took place in January 1994.<sup>6</sup> Mathieu Ndirumpatse therefore requires the Chamber to

<sup>1</sup> T. 7 November 2007.

<sup>2</sup> Joseph Nzirorera's Motion to Exclude Witness AWD Evidence of 28 January 1993 MRND Meeting, filed on 8 November 2007 ("Nzirorera's Motion"), para. 1; Memoire pour M. Ndirumpatse, filed on 9 November 2007 ("Ndirumpatse's Motion"), paras. 1-6; Joseph Nzirorera's Reply Concerning Outstanding Issues Relating to Witness AWD, filed on 14 November 2007, ("Nzirorera's Reply"), paras. 8, 10.

<sup>3</sup> Nzirorera's Motion, paras. 7-8.

<sup>4</sup> Prosecutor's Consolidated Response to Nzirorera's and Ndirumpatse's Motions to Exclude AWD's Evidence of 28 January 1993 MRND Meeting, filed on 12 November 2007 ("Prosecutor's Response").

<sup>5</sup> Ndirumpatse's Motion, para. 3.

<sup>6</sup> Ndirumpatse's Motion, para. 4; citing the Pre-trial Brief of 27 June 2005: "AWD will recall attending a meeting at Nyamirambo Stadium sometime between the assassination of Ndadaye (21 October 1993) and Habyarimana's swearing in (5 January 1994)..." and "AWD will also report that sometime in late February 1994 President Habyarimana, Nzirorera and Ndirumpatse among other MRND notables participating in a

exclude this evidence on the ground of lack of notice and prejudicial effect, pursuant to Rules 82(A) and 89(C).<sup>7</sup>

4. Both Joseph Nzirorera and Mathieu Ndirumpatse also submit that the contested evidence should be excluded on the ground that the answer given by Witness AWD was “unresponsive” to the question asked by the Defence.<sup>8</sup>

5. The Chamber notes that the testimony of Witness AWD regarding the 28 January 1993 meeting relates to what was said by Mathieu Ndirumpatse and other persons before the meeting took place. It is therefore not a public statement that would be considered as a material fact but, rather, relates to a private conversation. As an evidentiary fact, the statement of Witness AWD did not need to be pled in the Indictment or to have been the subject of adequate notice from the Prosecution.<sup>9</sup> The Chamber therefore finds that the objection based on the grounds of lack of notice and prejudicial effect falls to be rejected.

6. As to the exclusion of evidence on the ground of the “unresponsive answer”, the Chamber recalls that, under Rule 89(C) of the Rules, it “may admit any relevant evidence it deems to have probative value”. According to the Appeals Chamber, a finding that a material fact has not been sufficiently pleaded in the Indictment does not render the evidence inadmissible.<sup>10</sup> The evidence can be admitted to the extent that it may be relevant to the proof of any allegation sufficiently pleaded in the indictment.<sup>11</sup> Moreover, the admissibility of evidence should not be confused with the assessment of weight to be accorded to that

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fundraising event for the *Interahamwe* at Hotel Rebero L’ Horizon in Kigali.”; Moreover, the Notice of Additional Evidence pursuant to Rule 67(D) for Witness AWD, 27 March 2007 provides that “AWD clarified the following portions of his prospective evidence: (...) AWD attended two large rallies...one after the death of Ndadaye (...) and the other in January 1994, where Ndirumpatse and Mugenzi both addressed the crowd. AWD does not recall the date of the January 1994 rally, but notes that both rallies are described in his unsolicited memorandum.”

<sup>7</sup> Ndirumpatse’s Motion, paras. 1, 7; relying on Nzirorera’s Motion, paras. 2-4; Rule 82(A) reads: “In joint trials, each accused shall be accorded the same rights as if he were being tried separately”.

<sup>8</sup> Ndirumpatse’s Motion, paras. 6-7; Nzirorera’s Reply, para. 10.

<sup>9</sup> *Prosecutor v. Zigiranyiraza*, Case No. ICTR-01-73-I, Decision on the Defence Preliminary Motion Objecting to the Form in the Indictment, 15 July 2004, para. 28; *Prosecutor v. Ndindiyimana et al.*, Case No. ICTR-00-56-T, Decision on Bizimungu’s Request for Certification to Appeal the Oral Decision Dated 8 June 2005, 30 June 2005, para. 18.

<sup>10</sup> *Prosecution v. Nyiramasuhuko et al.*, Case No. ICTR-97-21-AR73, 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, para. 15; *Prosecution v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-AR73, Decision on Pauline Nyiramasuhuko’s Request for Reconsideration (AC), 27 September 2004, para. 12.

<sup>11</sup> *Ibidem*. See also: *Prosecutor v. Bagosora et al.*, Decision on Aloys Ntabakuze’s Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006, footnote 40.

evidence, which is an issue to be decided by the Chamber after hearing the totality of the evidence.<sup>12</sup>

7. When deciding on the admissibility of evidence, the Chamber must also guarantee the protection of the rights of the Accused as prescribed by Articles 19 and 20 of the Statute.<sup>13</sup>

8. Under Rule 90(F) of the Rules, the Trial Chamber "shall exercise control over the mode and order of interrogating witnesses and presenting evidence so as to make the interrogation and presentation effective for the ascertainment of the truth and avoid needless consumption of time."

9. Rule 90(G) further requires that cross-examination is limited i) to the subject-matter of the examination-in-chief; ii) to matters affecting the credibility of the witness, and iii) where the witness is able to give evidence relevant to the case for the cross-examining party, to the subject-matter of the case.

10. Pursuant to these Rules, the Chamber is of the view that the answer of Witness AWD was directly elicited by the Defence for Ndirumpatse, who invited the witness to be more specific on the information he was giving.<sup>14</sup> The fact that the cross-examination of a Prosecution witness gives rise to an answer unfavorable to the Defence case is not a basis for the exclusion of evidence.

11. In view of those circumstances, there is no ground for excluding the portions of Witness AWD's testimony relating to the meeting of 28 January 1993.

<sup>12</sup> *Nyiramasuhuko Appeals Decision on Inadmissibility of Evidence*, para. 15; *Prosecutor v. Simba*, Case No. ICTR-01-76-T, Decision on the Admission of Prosecution Exhibits 27 and 28 (TC), 31 January 2005, para. 12.

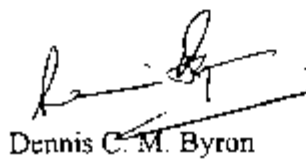
<sup>13</sup> Article 19(1) reads: "The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules of Procedure and Evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses." Article 20 reads: "In the determination of any charge against the accused pursuant to the Present Statute, the accused shall be entitled to the following minimum guarantees..." and then lists, amongst others, the rights to be tried without delay, the right to be informed of the charges brought against one's and the right to legal assistance.

<sup>14</sup> The Defence states: "this is a very new piece of information. Please elaborate so that we can carry out further investigations", T. 7 November 2007, p. 42.

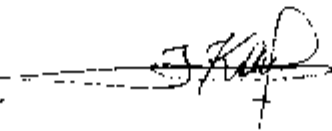
**FOR THOSE REASONS, THE CHAMBER**

- I. DENIES** both Defence Motions to Exclude Witness AWD Evidence of 28 January 1993 meeting in their entirety.

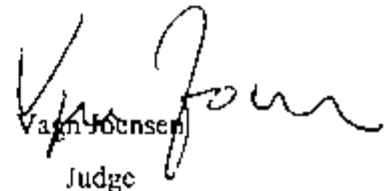
Arusha, 22 November 2007, done in English.



Dennis C. M. Byron  
Presiding Judge



Gberdao Gustave Kam  
Judge  
[Seal of the Tribunal]



Vain Joensen  
Judge