



ICTR-98-42-T
04-03-2006
(11636-11623)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

11636
Mwamp

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Arlette Ramaroson
Judge Solomy Balungi Bossa

Registrar: Mr Adama Dieng

Date: 3 March 2006

The PROSECUTOR

v.

Pauline NYIRAMASUHUKO and Arsène Shalom NTAHOBALI

Case No. ICTR-97-21-T
Joint Case No. ICTR-98-42-T

**DECISION ON NTAHOBALI'S STRICTLY CONFIDENTIAL MOTION TO RECALL
WITNESSES TN, QBQ, AND QY, FOR ADDITIONAL CROSS-EXAMINATION**
Rule 54, 73 (A), 90 (G), Rules of Procedure and Evidence

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),

SITTING as Trial Chamber II, composed of Judge William H. Sekule, Presiding, Judge Arlette Ramaroson and Judge Solomy Balungi Bossa (the "Chamber");

BEING SEIZED of the Defence for Ntahobali's strictly confidential "*Requête de Arsène Shalom Ntahobali pour faire rappeler les témoins TN, QBQ, QY, pour un contre-interrogatoire supplémentaire* (Art. 54, 73 A, 90 G du Règlement de Procédure et de Preuve et Art. 20 (2)(e) du Statut)", filed on 9 January 2006 (the "Motion");

NOTING the Defence for Ntahobali's additional filing of documents in support of this Motion on 2 February 2006 (the "Additional Documents");

HAVING RECEIVED the following responses and replies by the Parties:

- i. Kanyabashi's strictly confidential "*Réponse de Joseph Kanyabashi à la Requête de Arsène Shalom Ntahobali pour faire rappeler les témoins TN, QBQ, QY, pour un contre-interrogatoire supplémentaire*", filed on 16 January 2006 ("Kanyabashi's Response");
- ii. The confidential "Prosecutor's Response to the Motion of Arsène Shalom Ntahobali to Recall Witnesses TN, QBQ, QY for a Supplementary Cross-Examination", filed on 16 January 2006 ("Prosecutor's Response");
- iii. The "*Réponse de Sylvain Nsabimana à la Requête de Arsène Shalom Ntahobali datée du 6 Janvier 2006 aux fins de rappel des témoins "TN, QBQ, QY" pour un contre-interrogatoire supplémentaire*", filed on 18 January 2006 ("Nsabimana's Response");
- iv. Kanyabashi's strictly confidential "*Réponse supplémentaire de Joseph Kanyabashi à la Requête de Arsène Shalom Ntahobali pour faire rappeler les témoins TN, QBQ, QY, pour un contre-interrogatoire supplémentaire*", filed on 24 January 2006 ("Kanyabashi's Additional Response");
- v. Ntahobali's strictly confidential "*Réplique à la Réponse supplémentaire de Joseph Kanyabashi à la Requête de Arsène Shalom Ntahobali pour faire rappeler les témoins TN, QBQ, QY, pour un contre-interrogatoire supplémentaire*", filed on 30 January 2006 ("Ntahobali's Reply");

RECALLING the Chamber's

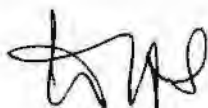
- i. "Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Shalom Ntahobali" of 26 August 2005 (the "Decision on the Modification of Witnesses");
- ii. "Decision on Arsène Shalom Ntahobali's Notice of Intention to File on the Record Written Statements of Witnesses and the Transcripts of their Testimony before the ICTR in lieu of Oral Testimony" of 30 August 2005 (the "92bis Decision");
- iii. "Decision on Arsène Shalom Ntahobali's Motion to have Perjury committed by Prosecution Witness QY Investigated" of 23 September 2005 (the "Perjury Decision");

CONSIDERING the provisions of the Statute of the Tribunal (the "Statute"), in particular its Articles 19 and 20, and of the Rules of Procedure and Evidence (the "Rules"), in particular Rules 73 (A), 90 (G) of the Rules.

SUBMISSIONS BY THE PARTIES

Defence for Ntahobali

1. The Defence for Ntahobali brings its Motion pursuant to Art. 20 (2)(e) of the Statute and Rules 54, 73 (A), and 90 (G) of the Rules. The Defence seeks leave to recall Prosecution Witnesses TN, QY, and QBQ in the instant proceedings, for further cross-examination. The Defence argues that all three witnesses have, after their testimony in this case, testified in other proceedings before the Tribunal or



given supplementary statements which the Defence alleges to be "in flagrant contradiction"¹ to their initial testimonies in the instant proceedings.²

2. The Defence recalls that it had moved the Chamber for leave to add Witnesses QY and QBQ to its list of witnesses, as well as to file their testimonies in other proceedings before this Tribunal *in lieu* of oral testimony, but that these motions were denied.³ Rather, this Chamber had indicated that "the Parties may therefore wish to make the proper application to recall the witnesses for further cross-examination on the alleged specific issues that may have arisen from either the additional statements and/or the testimony given in the *Muvunyi* proceedings".⁴ Therefore, the Defence has included Witness TN in the present Motion, rather than following the same procedure it used regarding Witnesses QY and QBQ.⁵
3. The Defence submits that according to the Tribunal's jurisprudence, the condition for recalling a witness for additional cross-examination is to show good cause, i.e. "a substantial reason amounting in law to a legal excuse for failing to perform a required act".⁶ In assessing this, the Chamber "must carefully consider the purpose of the proposed testimony as well as the party's justification for not offering such evidence when the witness originally testified".⁷ Regarding the specific case where a witness has given statements after his or her testimony, it has been held in *Bagosora et al.* that the Defence may move the Chamber to recall a witness who has made statements inconsistent with his or her testimony, if prejudice can be shown from the Defence's inability to put these inconsistencies to the witness.⁸ Finally, the Defence recalls that there has also been an oral decision in *Bagosora et al.* to recall Witness DO for additional cross-examination regarding alleged inconsistencies.⁹

Witness TN

4. The Defence submits that additional cross-examination of Witness TN is necessary for the defence strategy and will allow it to exercise its right to a full defence.¹⁰ Witness TN has no credibility whatsoever in the eyes of the Defence, and this alleged lack of credibility becomes all the more obvious when confronted with this witness' testimony in the *Ndindiliyimana et al.* proceedings.¹¹ The Defence refers to the following examples:

¹ The Motion, para. 14.

² The Motion, paras. 1-7, 14, 17-18, 24.

³ The Motion, paras. 17, 20-22.

⁴ The Motion, paras. 21-22, quotes Decision on the Modification of Witnesses, para. 71, reiterated in the 92bis Decision, para. 20.

⁵ The Motion, para. 26.

⁶ The Motion, para. 33, quote *Prosecutor v. Bagosora et al.*, TC I, Decision on Defence Motion to Recall Prosecution Witness OAB for Cross-Examination, 19 September 2005, para. 2; *Prosecutor v. Simba*, TC I, Decision on the Defence Motion to Recall Witness KEL for Further Cross-Examination, 28 October 2004, para. 5; *Prosecutor v. Bagosora et al.*, TC I, Decision on the Prosecution Motion to Recall Witness Nyanjwa, 29 September 2004, para. 6.

⁷ The Motion, para. 33, quote *Prosecutor v. Bagosora et al.*, TC I, Decision on Defence Motion to Recall Prosecution Witness OAB for Cross-Examination, 19 September 2005, para. 2; *Prosecutor v. Simba*, TC I, Decision on the Defence Motion to Recall Witness KEL for Further Cross-Examination, 28 October 2004, para. 5; *Prosecutor v. Bagosora et al.*, TC I, Decision on the Prosecution Motion to Recall Witness Nyanjwa, 29 September 2004, para. 6.

⁸ The Motion, para. 34, quotes *Prosecutor v. Bagosora et al.*, TC I, Decision on Defence Motion to Recall Prosecution Witness OAB for Cross-Examination, 19 September 2005, para. 3; *Prosecutor v. Bagosora et al.*, TC I, Decision on the Request for Documents Arising from Judicial Proceedings in Rwanda in Respect of Prosecution Witnesses, 16 December 2003, para. 8.

⁹ The Motion, para. 35, quotes *Prosecutor v. Bagosora et al.*, TC I, Transcriptions d'audience du 14 octobre 2004, p. 26.

¹⁰ The Motion, para. 36.

¹¹ The Motion, para. 37.

- a. Witness TN testified that on 21 April [1994], she witnessed the arrival of members of the presidential guard, soldiers, and Arsène Shalom Ntahobali, in a Toyota.¹² During her testimony in the *Ndindiliyimana et al.* trial, the witness stated that on 21 April, she saw the arrival of Shalom Ntahobali in a Hilux, bearing the inscription "Police", together with members of the presidential guard.¹³ The Defence submits that it would be in the interests of the Accused to confront the witness with this new affirmation, all the more because according to the Defence, there was no vehicle bearing the inscription "Police" in Rwanda in 1994.¹⁴
- b. Witness TN testified in the present proceedings that when she and other girls arrived at Arsène Shalom Ntahobali's home, they were told by the Accused to have sexual intercourse with him, and that those who refused would be killed. These words were spoken in a compound, and the girls were then led to a house and its doors were bolted.¹⁵ However, in *Ndindiliyimana et al.*, Witness TN stated that the girls were led into the house and the Accused immediately bolted the doors, whereupon he threatened the girls with killing their parents.¹⁶ According to the Defence, this demonstrates that there are two versions of the words attributed to Arsène Shalom Ntahobali.¹⁷
- c. Witness TN in *Ndindiliyimana et al.* also referred to a second house, different from the one in which she was locked up, and where she was led in the context of sexual violence committed against her,¹⁸ whereas in the instant proceedings, she did not mention a second house next to the one in which she was locked up.¹⁹
- d. According to the Defence, there are also discrepancies between Witness TN's descriptions of the first time she was allegedly raped in the present proceedings and in *Ndindiliyimana et al.* In the present proceedings, Witness TN stated that after having raped her, Arsène Shalom Ntahobali introduced the handle of a scraper [into her vagina], causing great pain and bleeding.²⁰ According to the Defence, there is no mention of a scraper in the witness' testimony in *Ndindiliyimana et al.*²¹
- e. The Defence further submits that there are inconsistencies regarding the witness' arrival at Munagano refugee camp in Burundi. Whereas Witness TN testified in the present proceedings that when she arrived there, a soldier called Alexis ordered her to have sexual intercourse with three soldiers,²² in *Ndindiliyimana et al.* she stated that Alexis described her as his Tutsi wife, whom he had taken by force. He said to other persons he knew that he could do what he liked to

¹² The Motion, para. 39, quotes *Prosecutor v. Nyiramasuhuko et al.*, TC II, *Transcriptions d'audience du 3 avril 2002*, p. 155 (English Transcripts of 3 April 2002, p. 132).

¹³ The Motion, para. 40, quotes *Prosecutor v. Ndindiliyimana et al.*, TC II, *Transcriptions d'audience du 20 septembre 2005*, p. 6 (English Transcripts of 20 September 2005, p. 4).

¹⁴ The Motion, para. 41.

¹⁵ The Motion, para. 43, quotes *Prosecutor v. Nyiramasuhuko et al.*, TC II, *Transcriptions d'audience du 3 avril 2002*, pp. 176-177 (English transcripts of 3 April 2002, p. 151).

¹⁶ The Motion, para. 42, quotes *Prosecutor v. Ndindiliyimana et al.*, TC II, *Transcriptions d'audience du 20 septembre 2005*, p. 19 (English transcripts of 20 September 2005, p. 15).

¹⁷ The Motion, para. 44.

¹⁸ The Motion, para. 45, quotes *Prosecutor v. Ndindiliyimana et al.*, TC II, *Transcriptions d'audience du 20 septembre 2005*, p. 20 (English transcripts of 20 September 2005, p. 16).

¹⁹ The Motion, para. 46, quotes *Prosecutor v. Nyiramasuhuko et al.*, TC II, *Transcriptions d'audience du 3 avril 2002*, pp. 181-190 (English Transcripts of 20 September 2005, pp. 155-162).

²⁰ The Motion, para. 47, quotes *Prosecutor v. Nyiramasuhuko et al.*, TC II, *Transcriptions d'audience du 3 avril 2002*, pp. 182-184 (English transcripts of 3 April 2002, pp. 156-158).

²¹ The Motion, para. 48, quotes *Prosecutor v. Ndindiliyimana et al.*, TC II, *Transcriptions d'audience du 20 septembre 2005*, p. 21 (English transcripts of 20 September 2005, pp. 17-18).

²² The Motion, para. 49, quotes *Prosecutor v. Nyiramasuhuko et al.*, TC II, *Transcriptions d'audience du 3 avril 2002*, p. 192 (English transcripts of 3 April 2002, p. 163).

the witness, and so could they. He then asked them to sleep with the witness, or they asked the witness to sleep with them. They were four.²³

- f. Witness TN also stated in the present proceedings that the first person she had been able to contact upon her return to Rwanda was her brother.²⁴ However, in *Ndindiliyimana et al.*, she said that she had first met the son of her uncle, and that she later fetched her brothers and sisters from Nyanza.²⁵
 - g. The Defence further stresses that when testifying in *Ndindiliyimana et al.*, Witness TN stated that although her mother had sent her home, she could not go there because Arsène Shalom Ntahobali took her to the *bureau de secteur*.²⁶ The same witness testified in the instant proceedings that she had gone home and that she was arrested there to be taken to the *bureau de secteur*.²⁷
 - h. In the same context, Witness TN testified in the present proceedings that she had been taken to the *bureau de secteur* after the Accused had killed Rwabugili²⁸ and Philippe.²⁹ The Defence submits, however, that this is an inconsistency, because in *Ndindiliyimana et al.*, the same witness stated that she first saw Rwabugili some moments before he was killed.³⁰
 - i. Witness TN also stated in the *Ndindiliyimana et al.* proceedings that she had not been told that she was being led to Shalom's house, but that she deduced it was his from the circumstances.³¹ The Defence submits that this contradicts her testimony in the present proceedings, where she testified that she had been told that it was the house of the Accused.³²
5. Apart from these alleged inconsistencies, the Defence submits that there are also a number of absurdities in Witness TN's testimonies. For instance, Witness TN stated that in spite of being illegally confined for five days with six other young girls, she did not learn the names of those she had not known before³³ and that she did not speak to them.³⁴ Besides, Witness TN affirmed that none of the confined girls felt the need to urinate during the time they were being held.³⁵

²³ The Motion, para. 50, quotes *Prosecutor v. Ndindiliyimana et al.*, TC II, *Transcriptions d'audience du 20 septembre 2005*, p. 27 (English transcripts of 20 September 2005, p. 22).

²⁴ The Motion, para. 51, quotes *Prosecutor v. Nyiramasuhuko et al.*, TC II, *Transcriptions d'audience du 3 avril 2002*, p. 193 (English transcripts of 3 April 2002, p. 164).

²⁵ The Motion, para. 52, quotes *Prosecutor v. Ndindiliyimana et al.*, TC II, *Transcriptions d'audience du 20 septembre 2005*, p. 28 (English transcripts of 20 September 2005, p. 23).

²⁶ The Motion, para. 55, quotes *Prosecutor v. Ndindiliyimana et al.*, TC II, *Transcriptions d'audience du 20 septembre 2005*, pp. 52-54 (English transcripts of 20 September 2005, pp. 45-47).

²⁷ The Motion, para. 55, quotes *Prosecutor v. Nyiramasuhuko et al.*, TC II, *Transcriptions d'audience du 3 avril 2002*, p. 162 (English transcripts of 3 April 2002, p. 139).

²⁸ The Chamber notes that this person's name is spelled in different ways (see, for example, *Prosecutor v. Nyiramasuhuko et al.*, French Transcripts of 3 April 2002, p. 162; *Prosecutor v. Ndindiliyimana et al.*, French Transcripts of 20 September 2005, p. 57; English Transcripts of 20 September 2005, pp. 49-50, 139; French Transcripts of 21 September 2005, pp. 6-7 (CS); English Transcripts of 21 September 2005, p. 6 (CS)), but for clarity's sake will refer to Rwabugili throughout.

²⁹ The Motion, para. 55, quotes *Prosecutor v. Nyiramasuhuko et al.*, TC II, *Transcriptions d'audience du 3 avril 2002*, p. 162 (English transcripts of 3 April 2002, p. 139).

³⁰ The Motion, para. 57, quotes *Prosecutor v. Ndindiliyimana et al.*, TC II, *Transcriptions d'audience du 20 septembre 2005*, p. 57 (English transcripts of 20 September 2005, pp. 49-50).

³¹ The Motion, para. 56, quotes *Prosecutor v. Ndindiliyimana et al.*, TC II, *Transcriptions d'audience du 20 septembre 2005*, pp. 67-68 (English transcripts of 20 September 2005, p. 59).

³² The Motion, para. 56, refers to *Prosecutor v. Ndindiliyimana et al.*, TC II, *Transcriptions d'audience du 20 septembre 2005*, pp. 67-68 (English transcripts of 20 September 2005, p. 59), quote *Prosecutor v. Nyiramasuhuko et al.*, TC II, *Transcriptions d'audience du 3 avril 2002*, p. 168 (English transcripts of 3 April 2002, p. 145).

³³ The Motion, para. 59, quotes *Prosecutor v. Ndindiliyimana et al.*, TC II, *Transcriptions d'audience du 20 septembre 2005*, p. 65.

³⁴ The Motion, para. 60, quotes *Prosecutor v. Ndindiliyimana et al.*, TC II, *Transcriptions d'audience du 21 septembre 2005*, p. 4 (*huis clos*); English transcripts of 21 September 2005, p. 4 (CS). The Chamber notes that the

6. Further, the Defence submits that it would be in the interests of the Accused Ntahobali to be able to confront the witness with her statement that she went to the HCR bureau in Munagano camp,³⁶ since Exhibit D 60, filed in *Ndindiliyimana et al.*, is a letter from HCR affirming that in April 1994, there was no HCR structure at Munagano, where there was no functional camp.³⁷ The Defence has filed a letter from UNHCR, dated 21 March 2003 and indicating "there was no camp at Munagano. However, there were (sic) a camp at Mugano. The Mugano camp was not operational in April 1994 and the UNHCR did not have any structure there".³⁸
7. Finally, whilst Witness TN has testified that the Accused Ntahobali had killed Philippe and Rwabugili, the transcripts of proceedings in *Ndindiliyimana et al.* show that a certain Jean-Baptiste Nzisabira has been found guilty of their deaths by the Butare *Chambre spécialisée, section conseil de guerre*.³⁹
8. The Defence submits that it has not been able to raise these issues during Witness TN's testimony in the instant proceedings, because this testimony was given on 3 and 4 April 2002, whereas the same witness testified in the *Ndindiliyimana et al.* case on 20 and 21 April 2005. The Judgment against Jean-Marie Nzisabira has been rendered on 30 December 2002 and confirmed on appeal on 8 April 2004. The Defence has filed two Rwandan decisions in Kinyarwanda, issued on these dates.⁴⁰ The Defence submits that it has obtained them only very recently and that they were inexistent and could not be addressed at the moment of Witness TN's testimony before this Chamber.⁴¹
9. As to the showing of prejudice, the Defence submits that it will not be able to question Witness TN's credibility if it is not able to confront the witness with the alleged contradictions. Further, it is part of the right to a full defence that the Accused may demonstrate that Prosecution Witnesses, who have personally accused him, do not have any credibility.⁴²

Witness QY

10. As regards Witness QY, the Defence submits that it is necessary to confront her with her testimony in the *Muvunyi* proceedings.⁴³ The Defence raises the following inconsistencies:
 - a. Witness QY indicated in her statements of 11 and 13 March 1998 and of 24 July 2000, and in her testimony in the present proceedings, that she was raped at EER by a person she named.⁴⁴ However, in *Muvunyi*, the witness stated that she had been raped at EER twice in the course of

indicated reference does not bear this out; rather, the portion of transcripts with the designated evidence would be found in the English transcripts of 20 September 2005, at p. 56.

³⁵ The Motion, para. 60, quotes *Prosecutor v. Ndindiliyimana et al.*, TC II, Transcripts of 21 Septembre 2005, p. 4 (CS).

³⁶ The Motion, para. 62, quotes *Prosecutor v. Ndindiliyimana et al.*, TC II, *Transcriptions d'audience du 20 septembre 2005*, pp. 28, 75-81, as well as pp. 82-83 (*huis clos*) and *Transcriptions d'audience du 21 septembre 2005*, pp. 5-6 (*huis clos*) (English transcripts of 20 September 2005, pp. 22, 67-71, as well as pp. 73-74 (ICS) and Transcripts of 21 September 2005, p. 5 (ICS)).

³⁷ The Motion, para. 61-62, quotes *Prosecutor v. Ndindiliyimana et al.*, TC II, *Transcriptions d'audience du 20 septembre 2005*, p. 79 and *Transcriptions d'audience du 21 septembre 2005*, p. 15 (*huis clos*) (English transcripts of 20 September 2005, p. 70 and of 21 September 2005, p. 14 (ICS)).

³⁸ Additional documents, annex 10, p. 1.

³⁹ The Motion, paras. 63-64, quotes *Prosecutor v. Ndindiliyimana et al.*, TC II, *Transcriptions d'audience du 21 septembre 2005*, pp. 6-7 (*huis clos*) (English transcripts of 21 September 2005, p. 6 (ICS)).

⁴⁰ Additional documents, annexes 8 and 9.

⁴¹ The Motion, paras. 65-59.

⁴² The Motion, paras. 70-71.

⁴³ The Motion, para. 72.

⁴⁴ The Motion, paras. 73, 75, quotes *Prosecutor v. Nyiramasuhuko et al.*, TC II, *Transcriptions d'audience du 24 mars 2003*, pp. 19-20 and p. 58 (*huis clos*) (English transcripts of 24 March 2003, pp. 19-20 and pp. 57-58 (CS)). The Chamber notes that this is partly omitted in the English version of the transcripts (*see T. 24 March 2003*, p. 57, and the French original of the same date, p. 58 (CS)).

- one evening,⁴⁵ that she did not know the perpetrator's name⁴⁶ and that the person she had identified as the perpetrator of the rapes at EER in the instant proceedings had raped her at the prefectural office, but not at EER.⁴⁷
- b. Witness QY testified in the instant proceedings that she was raped at Gikongoro in April 1994, before fleeing to Butare and being raped there.⁴⁸ However, in *Muvunyi*, the same witness testified that she had not gone to Gikongoro.⁴⁹
 - c. Witness QY has testified twice and inconsistently to her presence at Kibeho. In the present proceedings, she testified to having gone to Kibeho to visit her parents, accompanied by her sister.⁵⁰ However, in *Muvunyi*, she stated that she had not gone to Kibeho.⁵¹
11. The Defence submits that it is evident from the instances cited that Witness QY contradicts herself and that if her testimonies in the present proceedings and in the *Muvunyi* case are compared, the witness has given contradictory versions of the events she allegedly witnessed.⁵² The Defence further submits that the reason why these issues were not raised when Witness QY testified before this Chamber is the same as for Witness TN, namely, that her testimony of 8 and 13-15 June 2005 in *Muvunyi* is posterior to the one in the present proceedings, on 19, 20, and 24-26 March 2003.⁵³
 12. According to the Defence, the Accused Ntahobali would suffer prejudice if he were not allowed to put the alleged inconsistencies to the witness, because the Chamber will only be able to evaluate the witness' credibility adequately if it has all her statements made in the *Muvunyi* proceedings.⁵⁴ Besides, Witness QY has personally accused Arsène Shalom Ntahobali, and the Defence submits that it is thus fundamental that he be allowed to defend himself and to demonstrate to the Chamber that this witness does not have any credibility.⁵⁵

Witness QBQ

13. The Defence submits that Witness QBQ has contradicted her testimony in the present proceedings in a statement signed later - on 2 September 2004 - and divulged in *Bizimungu et al.*⁵⁶ Whereas in the present proceedings, as well as in an earlier statement of 6 May 1999, the witness indicated that she had not been raped on a certain night because she was carrying an injured baby and thus not picked by the *Interahamwe*,⁵⁷ the statement of 2004 stated that she had been raped on that night.⁵⁸
14. The Defence submits that it is undeniable that the witness has lied under oath and that she must thus be confronted with her contradicting statements so the record reflects that she is not credible.⁵⁹ The Defence further argues that this is fundamental in order to guarantee the Accused's right to a full

⁴⁵ The Motion, para. 74, quotes *Prosecutor v. Muvunyi*, TC II, *Transcriptions d'audience du 8 juin 2005*, pp. 18 and following (English transcripts of 8 June 2005, pp. 18-19).

⁴⁶ The Motion, para. 76, quotes *Prosecutor v. Muvunyi*, TC II, *Transcripts of 8 June 2005*, p. 19.

⁴⁷ The Motion, para. 77, quotes *Prosecutor v. Muvunyi*, TC II, *Transcriptions d'audience du 14 juin 2005*, pp. 16-17 (*huis clos*) (English transcripts of 14 June 2005, pp. 17-19 (ICS)).

⁴⁸ The Motion, para. 80, quotes *Prosecutor v. Nyiramasuhuko et al.*, TC II, English Transcripts of 24 March 2003, p. 21.

⁴⁹ The Motion, para. 81, quotes *Prosecutor v. Muvunyi*, TC II, English Transcripts of 13 June 2005, p. 33 (ICS).

⁵⁰ The Motion, para. 80, quotes *Prosecutor v. Nyiramasuhuko et al.*, TC II, *Transcriptions d'audience du 24 mars 2003*, pp. 72-73 (*huis clos*) (English transcripts of 24 March 2003, pp. 70-71 (CS)).

⁵¹ The Motion, paras. 84-85, quotes *Prosecutor v. Muvunyi*, TC II, English Transcripts of 14 June 2005, pp. 5, 35-36 (ICS).

⁵² The Motion, paras. 86-87.

⁵³ The Motion, paras. 3, 5, 88-90.

⁵⁴ The Motion, paras. 91-93.

⁵⁵ The Motion, para. 94.

⁵⁶ The Motion, paras. 95-99.

⁵⁷ The Motion, paras. 97, 101 quotes witness' declaration of 6 December 1999, p. 5.

⁵⁸ The Motion, para. 100 quotes witness' declaration of 2 September 2004, p. 5.

⁵⁹ The Motion, paras. 102-103.

defence, since from the moment that a witness makes a wrong statement regarding a particular event, it is submitted that this taints the remainder of the testimony with the same falsehood.⁶⁰

15. According to the Defence, these inconsistencies could not have been raised during the cross-examination of Witness QBQ in the present proceedings because the contradicting declaration was made after the witness' appearance before this Chamber.⁶¹ The reasons applicable to Witnesses TN and QY also apply to Witness QBQ, all the more since she has stated in the 2004 declaration that what she had testified to under oath was wrong. Thus, according to the Defence, it is fundamental for the Accused to be able to confront the witness with her declaration.⁶² This will also enable the Chamber to evaluate the credibility of Witness QBQ by disposing of all the relevant elements, which are also necessary for the defence of the Accused.⁶³

Prosecution's Response

16. The Prosecution does not contest that Witnesses TN, QY, and QBQ have testified in the *Butare* case and, subsequently, in the *Ndindiliyimana et al.* and *Muvunyi* proceedings, or have given a new statement.⁶⁴ However, the Prosecution submits that the alleged contradictions in the testimony/statements of the witnesses are not substantial enough to warrant their recall. In support of this, the Prosecution cites the example of the inscription "Police" on a vehicle transporting the presidential guards.⁶⁵
17. The Prosecution stresses that it was held in a decision in the *Bagosora* case that "if there is no need for the witness's explanation of the inconsistency, because the inconsistency is minor or its nature is self-evident, then the witness will not be recalled".⁶⁶
18. The Prosecution further submits that should the recall of these witnesses be allowed for a supplementary cross-examination, the limits of this cross-examination must be clearly delineated so that there is no unnecessary lengthy questioning of the witnesses. Accordingly, the cross-examination should be limited to the alleged contradictions, ensuring the speedy resolution of this matter.⁶⁷
19. The Prosecution also submits that the full transcripts of the relevant parts of the witnesses' testimonies in the *Muvunyi* and *Ndindiliyimana et al.* proceedings ought to be available to the Chamber, so as to ensure that that these testimonies are not taken out of context or misquoted. The Prosecution refers to two instances mentioned in the Motion to illustrate this point. First, contrary to the impression conveyed in the Motion at para. 60 that Witness TN did not urinate in five days, the full transcripts of that day in the *Ndindiliyimana et al.* case make it clear that she did urinate, but on herself.⁶⁸ Secondly, the rape of Witness QY at EER could be considered as one rape because it happened on a single day, or as two rapes, because she was raped in two different locations at EER, but on the same day.⁶⁹

Kanyabashi's Response

20. The Defence for Kanyabashi stresses that it received the Motion on 12 January 2006, but without any annexes.⁷⁰ It submits that it does not object to Witnesses QY and QBQ being recalled for the

⁶⁰ The Motion, para. 104.

⁶¹ The Motion, paras. 105-108.

⁶² The Motion, paras. 109-110.

⁶³ The Motion, para. 111.

⁶⁴ Prosecutor's Response, para. 2.

⁶⁵ Prosecutor's Response, para. 3.

⁶⁶ Prosecutor's Response, para. 4, quotes *Prosecutor v. Bagosora*, TC I, 16 December 2003, para. 8.

⁶⁷ Prosecutor's Response, para. 5.

⁶⁸ Prosecutor's Response, para. 6, quotes *Prosecutor v. Ndindiliyimana et al.*, Transcript of 21 September 2005, p. 4 (ICS).

⁶⁹ Prosecutor's Response, para. 6.

⁷⁰ Kanyabashi's Response, para. 2.

purposes of additional cross-examination, as long as this is strictly limited to the contradictions alleged in the Motion.⁷¹

- 21. The Defence for Kanyabashi recalls that regarding Witnesses QY and QBQ, it has filed several responses in August 2005.⁷² In these responses, it has already indicated that it would not object to the tendering into evidence of the statements made by Witnesses QY and QBQ on 2 September 2004, because they are succinct. This is not the case, however, for the transcripts of these witnesses' testimonies, which cover many issues.⁷³ Therefore, the Defence submits that should the witnesses be recalled, they may be questioned with regard to the alleged contradictions. However, the possible tendering of the transcripts must be limited to the question of credibility, and they must not be assessed as evidence of the different allegations they contain.⁷⁴
- 22. The Defence for Kanyabashi is of the opinion that if the statements and/or transcripts are tendered, they should only have probative value as regards credibility concerning the issues that will have been raised during the additional cross-examination.⁷⁵ Further, since the additional cross-examination should be limited, it is not the totality of the transcripts or statements that may be of relevance at this stage.⁷⁶

Nsabimana's Response

- 23. The Defence for Nsabimana submits that it received the Motion on 13 January 2006. It does not object to the recall of the witnesses⁷⁷ and reserves its right to cross-examine them as well.⁷⁸ However, it points out that the Defence for Ntahobali has not served it with all the documents or other evidence on which it plans to base the additional cross-examination,⁷⁹ and that the scope of this cross-examination has not been delineated clearly in the Motion.⁸⁰
- 24. Accordingly, the Defence for Nsabimana requests that the Chamber grant the Motion and take note of the Defence for Nsabimana's intention of cross-examining the witnesses as well, should this be necessary.⁸¹ However, it also requests that the Chamber direct the Defence for Ntahobali to disclose the points that are to be raised in the additional cross-examination of Witnesses QY, QBQ, and TN before their possible recall.⁸²

Kanyabashi's Additional Response

- 25. In its Additional Response, the Defence for Kanyabashi stresses that it has received the relevant transcripts of Witness TN's testimony on 18 and 20 January 2006⁸³ and that it is now able to respond to all the prayers contained in the Motion. It requests that the Chamber therefore allow it to file its additional response,⁸⁴ which only addresses Witness TN.⁸⁵
- 26. The Defence for Kanyabashi submits that it is for the Chamber to decide whether Ntahobali's allegations warrant Witness TN's recall.⁸⁶ Were the Chamber to grant the Motion, the Defence

⁷¹ Kanyabashi's Response, paras. 11-12.
⁷² Kanyabashi's Response, para. 8.
⁷³ Kanyabashi's Response, para. 14.
⁷⁴ Kanyabashi's Response, para. 15.
⁷⁵ Kanyabashi's Response, para. 15.
⁷⁶ Kanyabashi's Response, para. 16.
⁷⁷ Nsabimana's Response, para. 4.
⁷⁸ Nsabimana's Response, para. 13.
⁷⁹ Nsabimana's Response, para. 11.
⁸⁰ Nsabimana's Response, paras. 6-9.
⁸¹ Nsabimana's Response, paras. 14, 16.
⁸² Nsabimana's Response, para. 15.
⁸³ Kanyabashi's Additional Response, para. 5.
⁸⁴ Kanyabashi's Additional Response, para. 6.
⁸⁵ Kanyabashi's Additional Response, para. 7.
⁸⁶ Kanyabashi's Additional Response, para. 8.

submits that Witness TN's additional cross-examination should be strictly limited to the issues raised in the Motion.⁸⁷ As already stated with regard to Witnesses QY and QBQ, the Defence submits that the possible tendering of the transcripts of Witness TN's testimony must be limited to the issues addressed in cross-examination and to the question of credibility, and that the transcripts must not be assessed as evidence of the different allegations they contain.⁸⁸

27. The Defence for Kanyabashi recalls that it has not yet been served with the *Nzisabira* Judgement referred to in the Motion. In order not to delay proceedings, it does not oppose a possible use of this Judgement to suggest to Witness TN that the death of Philippe and Rwabugili has been perpetrated by Nzisabira. However, should a wider use be envisaged by the Defence for Ntahobali, the Defence submits that the Judgement should have been filed together with the Motion.⁸⁹ It therefore requests that the use of the *Nzisabira* Judgement be strictly limited to the death of Philippe and Rwabugili, and conducted only to address credibility, rather than any question of fact. The Defence further requests that the Chamber orders the immediate disclosure of this Judgement and, subsidiarily, allow the Defence for Kanyabashi to reply to the relevant part of the Motion within ten days after its receipt.⁹⁰

Ntahobali's Reply

28. In its Reply, the Defence for Ntahobali indicates that it only intends to use the files of the *Nzisabira* proceedings to suggest to Witness TN that Nzisabira is responsible for Philippe's and Rwabugili's deaths, rather than Arsène Shalom Ntahobali, as stated by Witness TN.⁹¹
29. The Defence also submits that should its Motion succeed, it will communicate a copy of the *Nzisabira* Judgement to the Defence for Kanyabashi in a timely manner and before its cross-examination.⁹²

DELIBERATIONS

30. As a preliminary matter, the Chamber notes that the Defence for Kanyabashi's request to file its additional response has become moot, because it has not been filed out of time, as is borne out by the e-mail sent to the Parties by the Registry on 13 January 2006.
31. The Chamber underscores that it will assess the witnesses' credibility at a later stage and that at this point, it will only address the matters raised in the Motion, namely, the possible recall of the three witnesses for further cross-examination with regard to the specific instances of alleged inconsistencies raised by the Parties.
32. The Chamber notes that since the Decision on the recall of witnesses in *Kayishema and Ruzindana* proceedings, the Tribunal's jurisprudence allows the recall of witnesses if good cause has been shown.⁹³ It observes that previous jurisprudence has defined good cause to be a substantial reason

⁸⁷ Kanyabashi's Additional Response, para. 9.

⁸⁸ Kanyabashi's Additional Response, para. 10.

⁸⁹ Kanyabashi's Additional Response, paras. 11-12.

⁹⁰ Kanyabashi's Additional Response, p. 4.

⁹¹ Ntahobali's Reply, para. 6.

⁹² Ntahobali's Reply, para. 7.

⁹³ *Prosecutor v. Kayishema and Ruzindana*, TC II, Decision on the Defence Motion for the Re-examination of Defence Witness DE, 19 August 1998, para. 14, reiterated in *Prosecutor v. Bagosara et al.*, TC I, Decision on the Prosecution Motion to Recall Witness Nyanjwa, 29 September 2004, para. 6; *Prosecutor v. Simba*, TC I, Decision on the Defence Motion to Recall Witness KEL for Further Cross-Examination, 28 October 2004, para. 5; *Prosecutor v. Bagosara et al.* TC I, Decision on Defence Motion to Recall Prosecution Witness OAB for Cross-Examination, 19 September 2005, para. 2.

amounting in law to a legal excuse for failing to perform a required act.⁹⁴ In assessing good cause, a Chamber must carefully consider the purpose of the proposed testimony as well as the party's justification for not offering such evidence when the witness originally testified.⁹⁵ The right to be tried without undue delay as well as concerns of judicial economy demand that recall should be granted only in the most compelling of circumstances where the evidence is of significant probative value and not of a cumulative nature.⁹⁶ The Chamber sees no reason to depart from this jurisprudence and notes that in the instant proceedings, the additional testimony of recalled witnesses has been strictly limited.⁹⁷

33. The Chamber also notes that according to the Tribunal's jurisprudence, the Chamber's attention may be drawn to

inconsistencies between testimony of witnesses before this Chamber and any declarations obtained subsequently. If prejudice can be shown from its inability to put these inconsistencies to the witness, the Defence may submit motions for their recall; if there is no need for the witness's explanation of the inconsistency, because the inconsistency is minor or its nature is self-evident, then the witness will not be recalled.⁹⁸

34. The Chamber will address the questions relating to the Witnesses TN, QY and QBQ's testimonies in turn.

Witness TN

35. The Chamber notes that some of the alleged inconsistencies between Witness TN's testimonies in the instant proceedings and in a different case may be explained when the transcripts of the latter's testimony are read as a whole, rather than in isolation.⁹⁹ This applies to the witness' testimony regarding the alleged rape by Arsène Shalom Ntahobali (para. 4 (d) above). While it is true that the rape with the handle of an instrument is not immediately mentioned in the context of forced sexual intercourse in the *Ndindiliyimana et al.* proceedings,¹⁰⁰ the witness mentions on the same page of the transcripts that Arsène Shalom Ntahobali also raped her "with a piece of wood", "it was the handle of a broom – the broom that is used for sweeping".¹⁰¹ The Chamber is of the view that even if there was a contradiction between TN's two testimonies, it would not warrant the witness' recall for further cross-examination on this issue.

⁹⁴ *Prosecutor v. Kayishema and Ruzindana*, TC II, Decision on the Defence Motion for the Re-examination of Defence Witness DE, 19 August 1998, para. 14, reiterated in *Prosecutor v. Bagosora et al.*, TC I, Decision on the Prosecution Motion to Recall Witness Nyanjwa, 29 September 2004, para. 6; *Prosecutor v. Simba*, TC I, Decision on the Defence Motion to Recall Witness KEL for Further Cross-Examination, 28 October 2004, para. 5; *Prosecutor v. Bagosora et al.* TC I, Decision on Defence Motion to Recall Prosecution Witness OAB for Cross-Examination, 19 September 2005, para. 2.

⁹⁵ *Prosecutor v. Bagosora et al.*, TC I, Decision on the Prosecution Motion to Recall Witness Nyanjwa, 29 September 2004, para. 6, reiterated in *Prosecutor v. Simba*, TC I, Decision on the Defence Motion to Recall Witness KEL for Further Cross-Examination, 28 October 2004, para. 5; *Prosecutor v. Bagosora et al.* TC I, Decision on Defence Motion to Recall Prosecution Witness OAB for Cross-Examination, 19 September 2005, para. 2.

⁹⁶ *Prosecutor v. Bagosora et al.*, TC I, Decision on the Prosecution Motion to Recall Witness Nyanjwa, 29 September 2004, para. 6, reiterated in *Prosecutor v. Simba*, TC I, Decision on the Defence Motion to Recall Witness KEL for Further Cross-Examination, 28 October 2004, para. 5; *Prosecutor v. Bagosora et al.* TC I, Decision on Defence Motion to Recall Prosecution Witness OAB for Cross-Examination, 19 September 2005, para. 2.

⁹⁷ See, for example, *Prosecutor v. Ndayambaje*, Decision on Defence Motion Requesting the Recall of Witness "TO" Based on the Decision of the Appeals Chamber in the Matter of Proceedings Under Rule 15bis (D), 6 May 2004, para. 10, and *Prosecutor v. Ndayambaje and Nteziryayo*, Decision on Elie Ndayambaje's and Alphonse Nteziryayo's Request for the Recall of Witness FAG Following the Disclosure of a New Confessional Statement, 18 June 2004, paras. 10-11.

⁹⁸ *Prosecutor v. Bagosora et al.* TC I, Decision on the Request for Documents Arising from Judicial Proceedings in Rwanda in Respect of Prosecution Witnesses, 16 December 2003, para. 8.

⁹⁹ See also Prosecutor's Response, para. 6.

¹⁰⁰ The Motion, para. 48, quotes *Prosecutor v. Ndindiliyimana et al.*, TC II, *Transcriptions d'audience du 20 septembre 2005*, p. 21 (English transcripts of 20 September 2005, pp. 17-18).

¹⁰¹ *Prosecutor v. Ndindiliyimana et al.*, TC II, English Transcripts of 20 September 2005, p. 18.

36. As to the alleged discrepancy between Witness TN's first meeting with her brother or her cousin when she returned to Rwanda (para. 4 (f) above), the Chamber notes that the witness explains this by saying that the relative she had met first upon her return to Rwanda was the son of her paternal uncle, but that "back home we say – we refer to him – I will refer to him as my brother, but he was the son of my paternal uncle". Asked by Counsel if he could be referred to as "brother/cousin, as you refer to him in your country", the witness replied, "yes, that is true".¹⁰² Accordingly, the Chamber is of the view that even if there was a contradiction between TN's two testimonies, it would not warrant the witness' recall for further cross-examination on this issue.
37. Further, as to the witness' testimonies that she had been taken to the *bureau de secteur* after the Accused had killed Philippe and Rwabugili,¹⁰³ and that she first saw Rwabugili some moments before he was killed¹⁰⁴ (para. 4 (h) above), the Chamber is of the view that even if there was a contradiction between TN's two testimonies, it would not warrant the witness' recall for further cross-examination on this issue.
38. The Chamber observes that the following alleged inconsistencies in Witness TN's testimonies may be minor and/or self-evident:
- whether the vehicle in which Arsène Shalom Ntahobali arrived bore the inscription "Police" (para. 4 (a) above);
 - whether the Accused addressed Witness TN and the other girls in the compound or in the house and threatened their parents (para. 4 (b) above);
 - whether there was a second house next to the one in which the witness was locked up (para. 4 (c) above);
 - whether she was able to go home before being arrested and taken to the *bureau de secteur* (para. 4 (g) above);
 - and whether she had been told that she was in Arsène Shalom Ntahobali's house or deduced it from the circumstances (para. 4 (i) above).
- The Chamber is of the view that even if there were contradictions between TN's two testimonies, they would not warrant the witness' recall for further cross-examination on these issues.
39. As to the alleged absurdities regarding the witness' detention (para. 5 above), the Chamber notes that "absurdities" may be a matter for comment or submissions at the end of the trial but do not justify the recall of a witness.
40. The Chamber notes that the remaining instances of alleged inconsistency in Witness TN's testimonies before this Tribunal relate to the responsibility of the Accused Ntahobali or that of Jean-Baptiste Nzisabira for two killings (para. 7 above); the presence or not of a HCR camp at Munagano (para. 6 above); and whether Witness TN was raped by three or four soldiers, apart from Alexis, in Munagano camp (para. 4 (e) above).
41. The Chamber observes that the first two alleged discrepancies arise from documents that were not produced by the witness. Witness TN's evidence in *Ndindiliyimana et al.* has been that she does not know anything about the *Nzisabira* Judgement¹⁰⁵ and that there was an HCR bureau in Munagano camp.¹⁰⁶ The Chamber is satisfied that these matters do not constitute a valid basis for a recall and additional cross-examination. As to her alleged rapes in Munagano camp by three or four soldiers, the Chamber is of the opinion that this disparity, if at all, does not warrant the recall of the witness.
42. The Motion is accordingly denied with respect to the recall of Witness TN.

¹⁰² *Ndindiliyimana et al.*, TC II, English transcripts of 20 September 2005, p. 71.

¹⁰³ *Prosecutor v. Nyiramasuhuko et al.*, TC II, English Transcripts of 3 April 2002, p. 139.

¹⁰⁴ *Prosecutor v. Ndindiliyimana et al.*, TC II, English Transcripts of 20 September 2005, pp. 49-50.

¹⁰⁵ *Prosecutor v. Ndindiliyimana et al.*, TC II, English Transcripts of 21 September 2005, p. 6 (CS).

¹⁰⁶ *Prosecutor v. Ndindiliyimana et al.*, TC II, English Transcripts of 20 September 2005, pp. 22, 67-71, as well as pp. 73-74 (CS) and Transcripts of 21 September 2005, p. 5 (CS).

Witness QBQ

43. The Chamber notes that Witness QBQ's two statements of 6 May 1999 and 2 September 2004 may be contradictory as to her rape on a certain night by the *Interahamwe*. The Chamber observes, however, that the relevant passage in the witness' 1999 statement was read to the witness on three occasions in the instant proceedings. Yet Witness QBQ was never questioned and did not testify to rapes perpetrated against her on the night in question, although sexual violence committed against other persons was addressed at this time.¹⁰⁷ The Chamber notes that Counsel had the opportunity to raise this matter with the witness, but did not do so. This omission does not constitute a basis for recall for further cross-examination. As for the witness' alleged statement of 2004, there is no evidence that she has confirmed it in any proceedings. The Chamber is therefore not convinced that the alleged change has an impact on her testimony in the instant proceedings and therefore, this matter does not warrant the witness' recall for further cross-examination.
44. The Motion is accordingly denied with respect to the recall of Witness QBQ.

Witness QY

45. The Chamber notes that Witness QY, in the instant proceedings, confirmed giving an earlier statement in which she had named the man who allegedly raped her once¹⁰⁸ at the EER.¹⁰⁹ In the *Muvunyi* case, however, Witness QY indicated that she was raped at EER twice in the course of one evening by a person whose identity she did not know¹¹⁰ and that the man whose identity she had confirmed in the Butare proceedings as being the perpetrator's, had not raped her at EER, but at the prefectural office.¹¹¹ The Chamber notes the Prosecution's submissions that the sexual violence perpetrated against Witness QY at EER could be considered as one rape because it happened on a single day, or as two rapes, because she was raped in two different locations at EER, but on the same day.¹¹² The Chamber is of the opinion that while there may be discrepancies in the witness' testimonies regarding the number of times that she was allegedly raped at the EER, they do not seem to relate directly to the Accused. The Chamber therefore considers that this point does not warrant the witness' recall.
46. As to the identity of the perpetrator of the alleged sexual violence against the witness at EER, however, the Chamber finds that the discrepancy between Witness QY's testimonies on this point reaches the threshold for a recall for further cross-examination, strictly limited to this issue.
47. With regard to Witness QY's presence at Gikongoro and Kibeho, the Chamber notes that while the witness in the instant proceedings acknowledged an earlier statement in which she had indicated that she was in Gikongoro, and raped there, before fleeing to Butare,¹¹³ she also stated that she went to Kibeho,¹¹⁴ but did not reach Gikongoro.¹¹⁵ In the *Muvunyi* proceedings, however, the witness denied having been in Gikongoro¹¹⁶ or Kibeho.¹¹⁷ The Chamber observes while some of these differences may be explained by the fact that there is a Kibeho *secteur* in Mubuga *commune*, Gikongoro *préfecture*,¹¹⁸ these are nonetheless discrepancies that meet the threshold for the recall of a witness for further cross-examination, strictly limited to her presence in Kibeho and Gikongoro.

¹⁰⁷ *Prosecutor v. Nyiramasuhuko et al.*, English transcripts of 3 February 2004, pp. 64, 67.

¹⁰⁸ *Prosecutor v. Nyiramasuhuko et al.*, English transcripts of 24 March 2003, p. 20.

¹⁰⁹ *Prosecutor v. Nyiramasuhuko et al.*, French transcripts of 24 March 2003, p. 58 (CS). The Chamber notes that this passage is omitted from the transcripts' English version.

¹¹⁰ *Prosecutor v. Muvunyi*, English transcripts of 8 June 2005, pp. 18-19.

¹¹¹ *Prosecutor v. Muvunyi*, English transcripts of 14 June 2005, pp. 18-19 (CS).

¹¹² Prosecutor's Response, para. 6.

¹¹³ *Prosecutor v. Nyiramasuhuko et al.*, English transcripts of 24 March 2003, p. 21.

¹¹⁴ *Prosecutor v. Nyiramasuhuko et al.*, English transcripts of 19 March 2003, p. 7.

¹¹⁵ *Prosecutor v. Nyiramasuhuko et al.*, English transcripts of 24 March 2003, pp. 70-71 (CS).

¹¹⁶ *Prosecutor v. Muvunyi*, English transcripts of 13 June 2005, p. 33 (CS).

¹¹⁷ *Prosecutor v. Muvunyi*, English transcripts of 14 June 2005, pp. 35-36 (CS).

¹¹⁸ Gikongoro carte de base, published by IMU/Equipe de P.R.D.R. Gikongoro, [Kigali] November 1998.

48. The Motion is therefore granted with regard to the recall of Witness QY for cross-examination on the issues specified above.

FOR THESE REASONS, THE CHAMBER

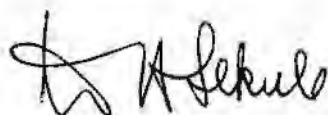
DENIES the Motion with regard to Witnesses TN and QBQ;

GRANTS IN PART the Motion with regard to Witness QY;

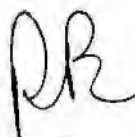
ORDERS the recall of Witness QY for further cross-examination on the identity of the perpetrator of sexual violence committed against the witness at EER, mentioned in the French transcripts of proceedings held in closed session in the instant case on 24 March 2003, p. 58, as well as her presence at Kibeho and Gikongoro between April and July 1994.

DIRECTS the Registry to undertake all necessary steps for the recall of Witness QY.

Arusha, 3 March 2006



William H. Sekule
Presiding Judge



Arlette Ramaroson
Judge



[Seal of the Tribunal]



Solomy Balungi Bossa
Judge