



UNITED NATIONS  
NATIONS UNIES

ICTR-01-74-T  
13-07-2006  
(7440-7437)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

7440  
S. MUSA

TRIAL CHAMBER I

**Before:** Judge Erik Møse, presiding  
Judge Sergei Alekseevich Egorov  
Judge Florence Rita Arrey

**Registrar:** Adama Dieng

**Date:** 13 July 2006

2006 JUL 13 P 5:05  
JUDICIAL RECORDS/ARCHIVES  
ICTR

THE PROSECUTOR

v.

François KARERA

Case No. ICTR-01-74-T

DECISION ON VARIATION OF DEFENCE WITNESS LIST

**The Prosecution**

Charles Adeogun-Phillips  
Adesola Adeboyejo  
Peter Tafah  
Memory Maposa  
Florida Kabasinga

**The Defence**

Carmelle Marchessault  
Steven Kelliher

6m

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA,**

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**SITTING** as Trial Chamber I, composed of Judge Erik Møse presiding, Judge Sergei Alekseevich Egorov, and Judge Florence Rita Arrey;

**BEING SEIZED OF** the Karera “Requête de la Défense aux fins d’être autorisée à revoir la composition de sa liste de témoins”, filed on 15 June 2006, the “Requête amendée de la Défense aux fins d’être autorisée à revoir la composition de sa liste de témoins”, filed on 30 June 2006, the “Requête réamendée de la Défense aux fins d’être autorisée à revoir la composition de sa liste de témoins” as well as the “Réplique à la réponse du procureur à la requête amendée de la Défense aux fins d’être autorisée à revoir la composition de sa liste de témoins”, both filed on 10 July 2006;<sup>1</sup>

**CONSIDERING** the Prosecution Responses, filed on 23 June and 6 July 2006;

**HEREBY DECIDES** the motion.

**INTRODUCTION**

1. The Defence requests to add to its witness list Witnesses NKZ, ZIH, YNZ, NSN, François-Xavier Bangamwabo, MVF and YAN, all of whom were only recently discovered as a result of investigations conducted following the close of the Prosecution case. According to the Defence, the proposed witnesses’ evidence is material to its case and adding them at this stage would not prejudice the Prosecution.

2. The Prosecution contests the proposed additions.<sup>2</sup> Their testimony would be needlessly duplicative of testimony already given, and the Defence has not shown why adding these witnesses is required in the interests of justice or why they were not included earlier. The Prosecution accepts, however, that it is in the interest of justice to allow the Defence to include Witness YNZ in its witness list.

**DELIBERATIONS**

3. On 4 May 2006, the Defence began presenting its case. Rule 73 *ter* (E) of the Rules of Procedure and Evidence allows the Defence to request to amend its witness list after the start of its case, “if it considers it to be in the interests of justice”. In deciding such requests, the Chamber has been guided by considerations of the interests of justice and the existence of good cause.<sup>3</sup> Relevant factors considered were the materiality and probative value of the testimony in relation to existing witnesses and allegations in the Indictment; the complexity

<sup>1</sup> The Defence’s initial motion of 15 June requested leave to add Witnesses NKZ, ZIH and YNZ to its witness list; the second Defence motion of 30 June added to those three Witnesses François-Xavier Bangamwabo, RUB, ZAD, ZAE, NVA and NVE; the third motion of 10 July revised its first two requests by removing Witnesses NVE, NVA, ZAD, ZAE and RUB, and adding Witness NSN, MVF and YAN.

<sup>2</sup> The Prosecution has informed the Chamber that it does not intend to file a third response.

<sup>3</sup> *Nahimana et al.*, Decision on the Prosecutor’s Oral Motion for Leave to Amend the List of Selected Witnesses (TC), 26 June 2001, paras. 17-20; *Bagosora et al.*, Decision on Nsengiyumva Motion for Leave to Amend Its Witness List (TC), 6 June 2006 (“*Bagosora* Decision of 6 June 2006”), para. 3; *Bagosora et al.*, Decision on Defence Motions to Amend the Defence Witness List (TC), 17 February 2006, para. 4; *Bagosora et al.*, Decision on Prosecutor’s Motion for Leave to Vary the Witness List Pursuant to Rule 73 *bis* (E) (TC), 21 May 2004, para. 8; *Bagosora et al.*, Decision on Prosecution Motion for Addition of Witnesses Pursuant to Rule 73 *bis* (E) (TC), 26 June 2003, para. 13.

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of the case; prejudice to the opposing party; justifications for the late addition of witnesses; and delays in the proceedings.<sup>4</sup>

4. According to the Defence, Witnesses NKZ and ZIH were present during the attacks on Ntarama church and school, and are able to provide direct testimony about the perpetrators. In particular, they will testify that the Accused neither participated in nor ordered the attacks. Witness YNZ will provide a first-hand account of utterances made by the Accused in Rushashi, rebutting allegations in the Indictment. The Chamber finds that the evidence of these three witnesses is material to the Defence case as it relates to charges in the Indictment. It constitutes direct evidence which appears to be probative concerning the Ntarama and Rushashi events, on which there is limited direct testimony for the Defence.

5. The Defence avers that Witness François-Xavier Bangamwabo observed the Accused on the campus of the National University of Rwanda in Ruhengeri (Nyakinama) in April 1994, that Witnesses YAN and MVF were also on the campus of Nyakinama in April 1994, and that their testimony is essential to the alibi defence that the Accused will present. The Chamber considers that Witness Bangamwabo's eyewitness testimony as to the Accused's alibi is material to the Defence case, as it is direct evidence tending to refute the charges in the Indictment. As to Witness YAN and MVF, however, the Defence has not explained how his testimony will refute the allegations in the Indictment. Their mere presence on the campus during the period in question is not sufficient to show its materiality or probative value.

6. Witness NSN will present testimony intended to refute the evidence and arguments of the Prosecution regarding the role of the Accused as *sous-préfet* in Kigali-Rural prefecture, particularly through testimony about the neutrality of the administration in Rwanda. The Chamber accepts that the evidence of this witness is material to the Defence case as it relates to an important basis of the allegations against the Accused.<sup>5</sup>

7. With the exception of one witness, all the Prosecution witnesses had completed their testimonies by 2 February 2006. The Chamber accepts that ongoing Defence investigations in April through July 2006 led to the discovery of these proposed new witnesses.

8. Six Defence witnesses did not testify during the May 2006 session. Accordingly, the Chamber authorised an additional session.<sup>6</sup> Adding five new Defence witnesses will not delay the trial, as these witnesses can testify during the forthcoming session.<sup>7</sup>

9. The Chamber recalls that, on 10 July 2006, the Defence disclosed all information pertaining to its new witnesses. Consequently, in conformity with the Chamber's order to disclose such material thirty-five days before the next trial session, the Prosecution has sufficient time to prepare its cross-examination and will not suffer any prejudice if the motion is granted.<sup>8</sup>

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<sup>4</sup> Bagosora Decision of 6 June 2006, para. 3; Mpambara, Decision on the Prosecution's Request to Add Witness AHY (TC), 27 September 2005, para. 4

<sup>5</sup> Amended Indictment, paras. 12, 21, and 29. The Prosecution's 6 July 2006 Response states that the "allegation that the accused acted as a *sous-préfet* ... is the thrust of the Prosecutor's case against the accused" (para. 58)

<sup>6</sup> T. 12 May 2006 p. 9

<sup>7</sup> Bagosora Decision of 6 June 2006, para. 7 (finding that adding witnesses would not prolong the proceedings when they could be accommodated within an existing session)

<sup>8</sup> Karera, Decision on Defence Motion for Protection of Witnesses (TC), 9 February 2006 para. 5.


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**FOR THE ABOVE REASONS, THE CHAMBER**

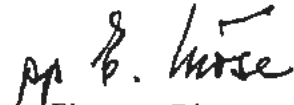
**GRANTS** the Defence leave to vary its witness list adding Witnesses NKZ, ZIH, YNZ, François-Xavier Bangamwabo and NSN;

**DENIES** the Defence motions as to Witnesses YAN and MVF.

Arusha, 13 July 2006

  
Erik Mose  
Presiding Judge

  
Sergei Alekseevich Egorov  
Judge

  
Florence Rita Arrey  
Judge

[Seal of the Tribunal]

