

ICTR-97-29-T  
09-03-2006  
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INTERNATIONAL  
CRIMINAL TRIBUNAL FOR RWANDA

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER II**

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

**Registrar:** Mr Adama Dieng

**Date:** 9 March 2007

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JUDGE: [Signature]  
SECRETARY: [Signature]

**The PROSECUTOR v. SYLVAIN NSABIMANA & ALPHONSE NTEZIRYAYO**

Case No. ICTR-97-29-T  
Joint Case No. ICTR - 98 - 42 - T

**DECISION ON NTEZIRYAYO'S MOTION FOR VARIATION OF WITNESS LIST  
(RULE 73 ter)**

**Office of the Prosecutor**  
Silvana Arbia  
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**Defence Counsel for Nteziryayo**  
Titinga Frédéric Pacere  
Guy LaRue

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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");

**SEIZED** of the "*Requête en modification de la liste des témoins de la Défense d'Alphonse Nteziryayo*" filed on 28 February 2007 (the "Motion")<sup>1</sup>;

**CONSIDERING** the

- i. Prosecutor's Response to the '*Requête en modification de la liste des témoins de la Défense d'Alphonse Nteziryayo*' filed on 2 March 2007;
- ii. *Réplique d'Alphonse Nteziryayo à la Prosecutor's Response to the 'Requête en modification de la liste des témoins de la Défense d'Alphonse Nteziryayo'* filed on 5 March 2007.

**CONSIDERING** the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules"), in particular Rule 73 *ter* of the Rules;

**NOW DECIDES** the Motion, pursuant to Rule 73 (A) of the Rules, on the basis of the written briefs filed by the Parties.

**SUBMISSIONS OF THE PARTIES**

***The Defence***

1. The Defence requests the variation of its witness list pursuant to Rule 73 *ter*(E) of the Rules, in the interests of justice. The Defence requests leave to withdraw Witness AND-20, as it will save judicial time, and to withdraw and replace Witness AND-61 with another witness who would bear the pseudonym AND-75.

2. The Defence submits that, Witness AND-61 was initially proposed to contradict Prosecution Witness FAI with respect to the meeting on the appointment of Ntyazo's burgomaster. However, Witness AND-61's evidence would be hearsay whereas the proposed Witness AND-75 has direct knowledge of this meeting.<sup>2</sup> Witness AND-75's evidence would not last longer than the time initially catered for AND-61, and if need be, he could testify at the end of the Defence case so as to allow sufficient time for preparation by the other Parties.<sup>3</sup>

***The Prosecution***

3. The Prosecution does not object to the deletion of Witness AND-20 but opposes the addition of Witness AND-75 at this late stage of the proceedings.

4. The Prosecution submits that the Defence should not have proposed AND-61 in the first place, while apparently knowing that Witness's evidence would be hearsay.

<sup>1</sup> Unofficial translation: Alphonse Nteziryayo's Motion for Variation of its Witness List.

<sup>2</sup> In support of this submission, the Defence quotes from an oral decision of the Chamber in this case dated 28 April 2004, regarding the testimony of Prosecution Witness QAJ.

<sup>3</sup> The Defence refers to the Chamber's Decision dated 14 July 2006 allowing the addition of Witness AGWA under the same circumstances.

5. The Prosecution adds that if the Chamber decides to grant the Motion, it should order immediate disclosure of AND-75's will-say and particulars, to allow sufficient time for preparation for cross-examination.

**Defence Reply**

6. The Defence submits that it was not aware that AND-61's expected testimony was hearsay when it requested its addition in June 2006.

7. The Defence submits that it cannot disclose the identity of the Witness until the Witness formally agrees to testify. Nonetheless, the Defence will disclose his identity at least 21 days before his testimony.

**HAVING DELIBERATED**

8. The Chamber is satisfied that the proposed deletion of Witness AND-20 could expedite the proceedings and enhance judicial economy.<sup>4</sup> Accordingly, the Chamber grants the Defence request to delete Witness AND-20 from the Defence's list of witnesses.

9. Turning now to the request for substitution of Witness AND-61 with Witness AND-75, the Chamber recalls its holding that:

The moving party has always provided an indication of the proposed witness' testimony, in the form of a witness summary or will-say statement. The moving party has also to demonstrate the relevance of the evidence to the proceedings and to provide the estimated length of the examination-in-chief. This is to ensure that there is no prejudicial element of surprise to the other Parties and that there exists sufficient information with which to prepare their examinations and make the necessary investigations if required. More importantly, it allows the Chamber to make a proper determination as to the materiality and probative value of the proposed testimony to the proceedings.<sup>5</sup>

10. Witness AND-75's will-say indicates that the Witness is expected to testify on the appointment ceremony of Mathieu Ndahimana on 22 May 1994 as burgomaster of Ntyazo, in replacement of Narcisse Nyagasaza. The Chamber considers that this expected testimony, which is very similar to the expected testimony of Witness AND-61, may be material and may have probative value to the case of the Accused who is notably charged for direct and public incitement to commit genocide. The Chamber thus grants the Defence request to add Witness AND-75 to its list of witnesses.

<sup>4</sup> *The Prosecutor v. Nyiramasuhuko et al.*, T 18 October 2004, p. 20; Also, *The Prosecutor v. Nteziryayo*, Decision on Alphonse Nteziryayo's Motion to Modify His Witness List (TC), 14 July 2006, para. 26.

<sup>5</sup> *The Prosecutor v. Nsabimana*, Decision on Sylvain Nsabimana's extremely urgent motion to drop and add witnesses, 17 August 2006, para. 15; *The Prosecutor v. Nteziryayo*, Decision on Alphonse Nteziryayo's Motion to Modify His Witness List (TC), 14 July 2006, para. 27; Also, *Nyiramasuhuko et al.* Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Ntahobali (TC), 26 August 2005 para. 40; *Nyiramasuhuko et al.*, Decision on the Prosecutor's Motions for Leave to Call Additional Witnesses and for the Transfer of Detained Witnesses (TC), 24 July 2001; Decision on the Prosecutor's Motion to Modify the Sequence of Appearance of Witnesses on her Witness List (TC), 27 February 2002; *Bagosora et al.* Decision on Prosecutor's Motion for Leave to Vary the Witness List Pursuant to Rule 73bis(E) (TC), 21 May 2004; *Nyiramasuhuko et al.*, Decision on Arsène Ntahobali's Motion to Amend His Witness List and to Reconsider the Decision of 26 August 2005 Titled: "Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Shalom Ntahobali" (TC), 27 January 2006, para. 20.

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11. The Chamber notes that the Defence is required to provide identifying details to the other Parties at least 21 days before Witness AND-75 testifies. Accordingly, the Chamber orders the timely disclosure of the identifying information of Witness AND-75, so that the other Parties may prepare their cross-examination. Furthermore, the Chamber orders the Defence to call the Witness towards the end of its case.

**FOR THE ABOVE REASONS, THE TRIBUNAL,**

**GRANTS** the Motion, and orders the Defence to delete Witness AND-20 from its list;

**GRANTS** the Motion to add Witness AND-75 to its list, and;

- I **ORDERS** the Defence to make disclosure of the identifying information of Witness AND-75 at least 21 days prior to his expected testimony;
- II **ORDERS** the Defence to call Witness AND-75 towards the end of its case.

Arusha, 9 March 2007

William H. Sekule  
Presiding Judge



Arlette Ramaroson  
Judge

Solomy Balungi Bossa  
Judge

[Seal of the Tribunal]



## TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION  
(Art. 27 of the Directive for the Registry)

### I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

<b>To:</b>	<input type="checkbox"/> Trial Chamber I N. M. Diallo	<input checked="" type="checkbox"/> Trial Chamber II R. N. Kouambo	<input type="checkbox"/> Trial Chamber III C. K. Hometown	<input checked="" type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
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<b>From:</b>	<input checked="" type="checkbox"/> Chamber Alice Leroy (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
<b>Case Name:</b>	The Prosecutor vs. Nteziryayo		<b>Case Number:</b>	ICTR-97-29-T
<b>Dates:</b>	Transmitted: 09/03/2006		Document's date: 09/03/2006	
<b>No. of Pages:</b>	4		<b>Original Language:</b>	<input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
<b>Title of Document:</b>	DECISION ON NTEZIRYAYO'S MOTION FOR VARIATION OF WITNESS LIST (RULE 73 ter)			
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<b>TRIM Document Type:</b>	<input type="checkbox"/> Indictment <input type="checkbox"/> Warrant <input type="checkbox"/> Correspondence <input type="checkbox"/> Submission from non-parties <input checked="" type="checkbox"/> Decision <input type="checkbox"/> Affidavit <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Submission from parties <input type="checkbox"/> Disclosure <input type="checkbox"/> Order <input type="checkbox"/> Appeal Book <input type="checkbox"/> Accused particulars <input type="checkbox"/> Judgement <input type="checkbox"/> Motion <input type="checkbox"/> Book of Authorities			

### II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

**CMS SHALL take necessary action regarding translation.**

Filing Party hereby submits only the original, and will **not submit** any translated version.

Reference material is provided in annex to facilitate translation.

Target Language(s):

English  French  Kinyarwanda

**CMS SHALL NOT take any action regarding translation.**

Filing Party hereby submits **BOTH the original and the translated version** for filing, as follows:

Original	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input checked="" type="checkbox"/> Kinyarwanda
Translation	in	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

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<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: