



UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR: ENG

TRIAL CHAMBER II

Before Judges: Asoka de Silva, Presiding
Taghrid Hikmet
Seon Ki Park

Registrar: Adama Dieng

Date: 31 January 2008

The PROSECUTOR

v.

**Augustin NDINDILYIMANA
Augustin BIZIMUNGU
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU**

Case No. ICTR-00-56-T

DECISION ON NZUWONEMEYE'S REQUEST TO VARY HIS WITNESS LIST

Rule 73 ter (E) of the Rules of Procedure and Evidence

Office of the Prosecutor:

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Mr Christopher Black and Mr Vincent Lurquin **for Augustin Ndingilyimana**
Mr Charles Taku and Ms Beth Lyons **for François-Xavier Nzuwonemeye**
Mr Fabien Segatwa and Mr Seydou Doumbia **for Innocent Sagahutu**

INTRODUCTION

1. The Prosecution finished presenting its evidence in this case on 7 December 2006 after calling 72 witnesses. The Defence for Bizimungu closed its case on 14 December 2007 after calling 42 witnesses (including the Accused), subject to three expert witnesses to be called by other Defence teams at a later time, for an expected total of 45 witnesses. The Defence for Nzuwonemeye is scheduled to begin its case after the Defence for Ndindiliyimana, which began calling its witnesses on 16 January 2008 during the current trial session. Following the Chamber's Order to file a revised witness list and subsequent permission to file that revision at the end of the last trial session,¹ the Defence for Nzuwonemeye (the Defence) filed this request to vary its witness list.² The Prosecution and the other Defence teams did not respond to the Motion.

DELIBERATIONS

(i) Addition and withdrawal of witnesses

2. The Defence requests the Chamber to permit it to reduce its witness list by 24 and to add five more witnesses to its original list in the pre-Defence Brief filed on 15 March 2007, totaling 57 witnesses.

3. Rule 73ter(E) provides that after a Defence case has started, the Chamber may authorize that the witness list be varied if it is in the interests of justice. The Chamber notes that although Nzuwonemeye's defence case has not officially started, it already examined four witnesses in conjunction with the cases of his co-Accused. Furthermore, the Chamber finds that in a case with multiple accused, the Defence case as a whole effectively starts with the presentation of the first accused's defence.³ In considering the interests of justice, Trial Chambers have taken into account various factors such as the potential importance of the testimony, in relation to existing witnesses and allegations in the indictment, the complexity of the case, any prejudice to the opposing party, the legitimacy of the reasons, and timing for variation of the witness list.⁴

4. The Chamber has reviewed the proposed testimonies of the five witnesses, which the Defence requests to be added to its witness list. Witness F10 had a specific position with regards to the Reconnaissance Battalion and a particular vantage point to give a direct account of the events to the Chamber. Witness F11 had a similar position and vantage point as Witness F10. Witness B13 will testify that Nzuwonemeye was not present at a meeting the evening of 6-7 April 1994, but was present at a meeting on 7 April 1994, as well as give other information related to Nzuwonemeye garnered from his particular position. Witness S3's employment in Rwanda in April 1994 allegedly puts him in a position to testify that no rapes could have happened at the *Centre hospitalier de Kigali (CHK)*. It is proposed that Witness N1 has known Nzuwonemeye for a long time and can testify on several meetings and the position of the Rwandan Armed Forces. The Chamber finds that all five witnesses could be important to refute the allegations against the Accused Nzuwonemeye, and appear to be able

¹ T. 20 November 2007, p. 45.

² Nzuwonemeye Defence Motion to Vary the Witness List, as per Oral Order of the President Judge De Silva, on 20 November 2007, filed on 14 December 2007.

³ See also *Prosecutor v. Alphonse Nteziryayo*, Joint Case No. ICTR-98-42-T, Decision on Alphonse Nteziryayo's Motion to Modify His Witness List, 14 July 2006, para. 24.

⁴ *Prosecutor v. Ndindiliyimana et. al.*, Decision on Augustin Bizimungu's Request to Vary His Witness List, 24 October 2007, para. 3 (citations omitted).

to provide direct evidence on those allegations. Additionally, due to the timely submission of this motion, the Prosecution will not suffer any prejudice with the authorized changes. The Chamber therefore permits their addition to the witness list.

5. Since it was submitted in response to the Chamber's prior direction to reduce the witness list, and for the efficiency of the trial, the Chamber allows the Defence's request to withdraw 24 witnesses.

(ii) Number of witnesses

6. Concerning the total number of witnesses to be called for a Defence case, the Appeals Chamber declared that it is within the Trial Chamber's discretion to order the Defence to decrease the number of witnesses it intends to call after reviewing the expected content of the testimony and determining that multiple witnesses on the same issues are excessive.⁵ When doing so, the Trial Chamber must provide its reasons while considering the opportunity of the Defence to present an adequate defence.⁶ It is the Trial Chamber's duty to ensure the fairness and expeditiousness of trial proceedings and take into account the interests of the accused, particularly in cases with multiple accused.⁷

7. The Chamber notes that even after the withdrawal of 24 witnesses, there are still more witnesses than needed posed to testify on the same issues.⁸ More specifically, the Chamber notes that there are 10⁹ witnesses listed for testimony only on the incidences at CHK¹⁰, and seven¹¹ more who have and who are expected to testify on what happened at the hospital in addition to other allegations in the Indictment. The Chamber finds that it is excessive to call 17 witnesses to testify on this issue.

8. The Chamber also notes that there are three witnesses expected to testify only on the death of the Belgian UNAMIR soldiers in Camp Kigali¹², one witness only on the death of the Prime Minister Agathe Uwilingiyimana¹³, and four other witnesses to testify only on both of those incidents¹⁴. Further, there are at least 14 other witnesses who are expected to testify on those incidents as part of their testimonies as well.¹⁵ The Chamber considers that it is excessive to hear secondary testimony from 14 witnesses on issues that constitute the primary focus of at least four or five other witnesses due to testify.

⁵ Prosecutor v. Élie Ndayambaje, Joseph Kanyabashi, Pauline Nyiramasuhuko, Arsène Shalom Ntahobali, Sylvain Nsabimana, Alphonse Nteziryayo, Case No. ICTR-98-42-AR73, Decision on Joseph Kanyabashi's Appeal against the Decision of Trial Chamber II of 21 March 2007 concerning the Dismissal of Motions to Vary his Witness List (AC), 21 August 2007, para. 16.

⁶ *Id.* at para. 24.

⁷ *Id.*

⁸ The Chamber reviewed the testimonies of the four witnesses who have already testified for the Defence for Nzuwonemeye, from the expected testimonies of the witnesses listed in its pre-Defence Brief, and the witnesses it has requested permission to add to its existing list.

⁹ See for example Witnesses MLG, LIKO, Y3, B1, ULK, HL9, ZHN, S1, S2, S3

¹⁰ The Accused Nzuwonemeye is charged with superior responsibility for alleged massacres and rapes that took place at the *Centre hospitalier de Kigali (CHK)*. See Paragraphs 108, 112, 118 and 119 of the Amended Indictment of 23 August 2004.

¹¹ See for example Witnesses KKO, REO, ZAW, SGD, F5/F2, NU6, B5

¹² Witnesses D1, GLO, NU1 (see paragraph 105, 118 of the Indictment).

¹³ Witness K3 (see paragraphs 103 and 104 of the Indictment).

¹⁴ Witnesses LOF, JJO, NU4, NU5.

¹⁵ See for example witnesses D3, NTM, WPP, SGD, F5/F2, B11, YKP, NU6, K4, K6, K8, Arms expert, KBN, N1.

9. As for the issues concerning the general structure and functioning of the Reconnaissance (RECCE) Battalion, the Defence has currently proposed at least 12 witnesses.¹⁶ The Chamber finds this proposal also to be excessive.

10. Finally, the Defence has put forth at least eight witnesses to testify on the character or personal life of the Accused Nzuwonemeye.¹⁷ The Chamber concludes that this number of witnesses on this issue is unnecessary.

11. At this point, the Chamber will not determine the exact number of witnesses that the Defence for Nzuwonemeye is permitted to call in order to mount an adequate defence, but rather orders that its list of prospective witnesses be reduced in accordance with the Chamber's findings above.

FOR THE ABOVE REASONS, THE CHAMBER HEREBY

GRANTS the Defence Motion to add Witnesses F11, F10, B13, N1 and S3 to its witness list;

GRANTS the Defence Motion to withdraw Witnesses KOM, PFO, POR2, ACS, MJL, OKC, F6, B3, B6, HNA, F7, DNA, JMD, VNY, ZNB, K1, K2, NU2, NU3, NU7, K5, K7, NU8, and CBK from its witness list;

ORDERS that the witness list as a whole be reduced as indicated and that the revised witness list be filed by 10 March 2008.

Arusha, 31 January 2008, done in English.

Asoka de Silva

Taghrid Hikmet

Seon Ki Park

Presiding Judge

Judge

Judge

[Seal of the Tribunal]

¹⁶ See for example Witnesses REO, LLO, LTY, ZA, NGT, Y2, T1, K4, K6, K8, F10, F11.

¹⁷ See for example Witnesses LLO, NDW, LTA, EGN, ZHN, F10, B13, N1.