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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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Mwamp

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 15 February 2008

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The PROSECUTOR v. Joseph KANYABASHI

Case No. ICTR-96-15-T

Pauline NYIRAMASUHUKO & Arsène Shalom NTAHOBALI

Case No. ICTR-97-21-T

Joint Case No. ICTR-98-42-T

**DECISION ON KANYABASHI'S MOTION TO VARY HIS LIST OF WITNESSES
PURSUANT TO RULE 73ter**

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aus

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

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

BEING SEIZED of the "*Requête en modification de la liste des témoins de la défense de Joseph Kanyabashi en vertu de l'article 73 ter*", filed by the Defence for Joseph Kanyabashi on 11 December 2007 ("Kanyabashi's Motion");

CONSIDERING the:

- i. "Prosecutor's Response to the '*Requête en modification de la liste des témoins de la défense de Joseph Kanyabashi en vertu de l'article 73 ter*', filed on 13 December 2007 ("Prosecution's Response");
- ii. "*Réponse de Arsène Shalom Ntahobali à la requête de Joseph Kanyabashi en modification de sa liste de témoins*", filed on 17 December 2007 ("Ntahobali's Response");
- iii. "*Réponse de l'accusée Pauline Nyiramasuhuko à la 'Requête en modification de la liste des témoins de la défense de Joseph Kanyabashi en vertu de la liste des témoins de la défense de Joseph Kanyabashi [sic] de l'article 73 ter du 11 Décembre 2007'*", filed on 17 December 2007 ("Nyiramasuhuko's Response");
- iv. "*Réplique aux réponses du procureur, de Nyiramasuhuko et Ntahobali suite à la requête en modification de la liste des témoins de la défense de Joseph Kanyabashi en vertu de l'article 73 ter*", filed by the Defence for Joseph Kanyabashi on 24 December 2007 ("Kanyabashi's Reply");
- v. "*Informations demandées par la chambre selon le Scheduling Order du 22 Janvier 2008*", filed by the Defence for Joseph Kanyabashi on 25 January 2008 ("Kanyabashi's Additional Information");
- vi. "*Réponse de l'accusée Pauline Nyiramasuhuko à la procédure déposée par la Défense de Joseph Kanyabashi intitulée 'Informations demandées par la chambre selon le Scheduling Order du 22 Janvier 2008'*", filed on 28 January 2008 ("Nyiramasuhuko's Response to Kanyabashi's Additional Information");
- vii. "*Ordre de comparution des prochains témoins*", filed by the Defence for Joseph Kanyabashi on 11 February 2008 (Kanyabashi's witness list, 11 February 2008); and
- viii. "*Ordre de comparution des prochains témoins*", filed by the Defence for Joseph Kanyabashi on 12 February 2008 (Kanyabashi's witness list, 12 February 2008);

RECALLING the Scheduling Order of 22 January 2008;¹

CONSIDERING the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules");

¹ The Prosecutor v. Nyiramasuhuko et al., Case No. ICTR-98-42-T, Scheduling Order, 22 January 2008

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

INTRODUCTION

1. On 31 December 2004, the Defence for Kanyabashi filed its Pre-Defence Brief, pursuant to Rule 73ter of the Rules. The brief contained the list of witnesses the Defence intended to call.
2. On 5 April 2007, the Defence for Kanyabashi filed a list containing not more than 30 witnesses in compliance with the Trial Chamber's Decision of 21 March 2007,² upheld by the Appeals Decision of 21 August 2007.³
3. On 11 December 2007, the Defence for Kanyabashi filed a Motion to delete and add twelve witnesses from its current list pursuant to Rule 73ter (E) of the Rules, attaching statements of D-2-17-A, D-2-17-I and D-2-17-M and will-says of all of the twelve proposed witnesses and indicating the estimated duration of each witness' examination-in-chief.
4. In accordance with the Chamber's Scheduling Order of 22 January 2007, on 25 January 2008 the Defence for Kanyabashi submitted additional information concerning the Motion.

SUBMISSIONS OF THE PARTIES

Kanyabashi's Motion

5. The Defence for Kanyabashi moves the Chamber to replace twelve witnesses currently on the witness list: D-2-QQQQ, D-2-UUUU, D-2-9-B, D-2-13-K, D-8-N, D-9-O, D-2-14-T, D-20-J, D-22-A, D-30-S, and the representatives of African Rights and the Rwandan Judicial system with twelve new witnesses: D-2-10-Y, D-2-15-V, D-2-16-L, D-2-16-P, D-2-17-A, D-2-17-I, D-2-17-K, D-2-17-M, D-2-19-F, D-2-20-F, D-2-20-K and D-9-GG, all of whom have agreed to testify before the Chamber.
6. The Defence submits that pursuant to Rule 92bis of the Rules, it may seek at a later stage the admittance of the written statements of D-22-A, D-30-S, the representative of African Rights and the representative of the Rwandan judicial system.
7. The Defence asserts that the proposed witnesses could not be included in the pre-defence brief of 31 December 2004 because they were not known or had not consented to testify. The Defence asserts that the proposed witnesses were first met between February 2005 and December 2006, with the exception of D-2-15-V, who was initially unwilling to testify.

² *The Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Joseph Kanyabashi's Motions for Modification of his Witness List, the Defence Responses to the Scheduling Order of 13 December 2006 and Ndayambaje's Request for Extension of Time within which to Respond to the Scheduling Order of 13 December 2006, 21 March 2007.

³ *The Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-AR73, Decision on Joseph Kanyabashi's Appeal against the Decision of Trial Chamber II of 21 March concerning the Dismissal of Motions to Vary his Witness List, 21 August 2007.

8. The Defence asserts that the evidence of the proposed witnesses will be relevant to the Defence case and provides the following details on the expected testimony:

- D-2-17-A will challenge Prosecution Witness QI's testimony on Kanyabashi's alleged incitement to kill Tutsi via a megaphone; the Defence submits that so far none of Kanyabashi's current witnesses relate directly to QI's testimony on the alleged incitement. D-2-17-A will also testify on the events at the Matyazo dispensary.
- D-2-17-K, D-2-17-M and D-9-GG will challenge Prosecution Witnesses QJ, TK and QI and will corroborate each others testimony on the megaphone incident.
- D-2-20-K will challenge Prosecution Witness RK's allegations against Kanyabashi and corroborate D-2-15-N's testimony. D-2-17-I will contradict the allegations made by Prosecution Witness TK.
- D-2-10-Y, D-2-15-V, D-2-16-L, D-2-16-P, D-2-19-F and D-2-20-F will replace D-2-9-B and D-2-13-K. They are called to support D-2-YYYY, D-2-13-D, D-2-14-D and D-2-5-I's testimony on the Kabakobwa events, and to contradict Prosecution Witnesses QP, QW, QCB, FAM and QAM. D-2-10-Y, D-2-16-P and D-2-19-F will further testify on the accusation in relation to the refugees at Rango.
- D-2-20-F will complete D-2-15-S, D-2-YYYY and D-2-5-I's testimony on events at Cyarwa-Sumo and challenge Prosecution Witness QG.
- D-2-15-V, D-9-GG, D-2-17-I and D-2-17-M will provide evidence on the presence and role of *Interahamwe* in Butare during the relevant period. D-2-17-K, D-2-17-M, D-9-GG, D-2-16-L, D-2-15-V, D-2-10-Y, D-2-16-P and D-2-20-F will testify specifically on threats made by soldiers and *Interahamwe* against Kanyabashi.
- D-9-GG, a former soldier, will testify about the role played by soldiers in Ngoma *commune* after 6 April 1994; he is scheduled to replace D-8-N. The Defence emphasises that D-9-GG will be the only witness who was a soldier during the relevant period. D-2-16-L will give evidence on the presence of certain members of the Presidential Guards in Ngoma *commune*.
- D-2-10-Y, D-2-15-V, D-2-17-A, D-2-17-I, D-2-17-K and D-9-GG will also give evidence on the roadblock located near Hotel Ihuliro.

Prosecution's Response

9. The Prosecution does not oppose Kanyabashi's Motion. It requests the Chamber to instruct Kanyabashi's Defence to file a definite witness list with the anticipated order of appearance before the resumption of the next session starting on 21 January 2008.

10. The Prosecution points out that a Rule 92*bis* motion concerning the four witnesses mentioned in Kanyabashi's motion would lead to an extension of the number Kanyabashi's Witnesses beyond the 30 witnesses allowed by the Appeals Decision of 21 August 2007.

Ntahobali's Response

11. The Defence for Ntahobali submits that it does not oppose Kanyabashi's motion regarding the removal of 12 witnesses.

12. Regarding the addition of witnesses, the Defence underscores that the proposed witnesses' testimony will not add any new elements to Kanyabashi's Defence case; the expected evidence is covered either by the witnesses who have already testified or by the six remaining witnesses who have yet to testify. The topics of the expected testimony are largely repetitive.

13. The Defence further submits that in its Decision of 26 August 2005,⁴ the Chamber denied Ntahobali the right to add certain witnesses to its Defence case and strictly limited its number of witnesses after having analysed the expected testimony of each new proposed witness.

14. The Defence also indicates that it started preparing for Kanyabashi's Defence on 31 December 2004; therefore it would be unfair for Kanyabashi to substantially amend his witness list at this late stage of his defence case.

15. In conclusion, the Defence requests the Chamber to limit the number of proposed witnesses according to their importance to Kanyabashi's Defence and to reduce the redundant evidence.

Nyiramasuhuko's Response

16. The Defence for Nyiramasuhuko opposes the Motion and submits that in its Decision of 21 March 2007, the Chamber denied the addition of eleven of the twelve proposed witnesses; the Decision was confirmed by the Appeals Chamber on 21 August 2007.

17. The Defence submits that a motion filed by Kanyabashi under Rule 92*bis* would infringe on the Appeals Chamber decision of 21 August 2007 which set a limit of 30 witnesses for Kanyabashi.

18. The Defence further submits that by virtue of the equality of arms principle amongst co-Accused in a joint trial, Kanyabashi is no longer entitled to amend his witness list after the Decision of 21 March 2007. It concludes that Nyiramasuhuko, who was the first to present her Defence case, did not have the opportunity to improve her investigations after the Prosecution case rested.

Kanyabashi's Reply

19. In its consolidated reply, the Defence for Kanyabashi submits that it met with proposed witnesses D-2-20-K and D-9-GG respectively in December 2006 and July 2007.

20. With regard to Nyiramasuhuko's Response, the Defence asserts that provided the conditions set out therein are met, Rule 73*ter* (E) permits the Defence to vary its witness list at any time after the commencement of the Defence case. The Trial Chamber allowed

⁴ *The Prosecutor v. Nyiramasuhuko, et al.*, Case No. ICTR-98-42-T, Decision on the defence motion to modify the list of defence witnesses for Arsène Shalom Ntahobali, 26 August 2005.

variations of Kanyabashi's co-Accused's witness list after the start of the Defence case and authorised the addition of several witnesses after the start of Nyiramasuhuko's case on 31 January 2005.⁵ The Defence further submits that the Chamber's Decision of 21 March 2007 does not prevent Kanyabashi from requesting the modification of his witness list, bearing in mind the maximum number of 30 witnesses.

21. The Defence submits that contrary to Ntahobali's assertion regarding the repetitious nature of the proposed witnesses' evidence, the proposed witnesses will testify on additional aspects which are relevant to Kanyabashi's Defence. The Defence points out that in its Decision of 26 August 2005, the Chamber refused Ntahobali's request to vary his witness list only in a very restrictive manner regarding specific repetitive elements.

22. The Defence finally asserts that if the Chamber limits the scope of the examination-in-chief of the proposed witnesses, the same should apply to the cross-examination: the remaining Parties should be limited to test the credibility of the witnesses and to support their case only on the basis of the facts covered by the examination-in-chief.

Kanyabashi's Additional Information Following the Chamber's Scheduling Order of 22 January 2008

23. The Defence for Kanyabashi seeks to remove the twelve witnesses mentioned in the Motion for the following reasons:

- D-2-UUU, D-8-N D-2-14-T, and D-20-J are unwilling to testify;
- D-2-QQQQ should be removed because D-2-YYYY and D-2-5-I have already testified on Kabakobwa events from the same perspective;
- D-9-O's expected testimony is of limited relevance given that the Defence is restricted to calling 30 Witnesses and the Defence will choose another witness instead.

24. The Defence for Kanyabashi submits that three of the witnesses currently listed are sought to be substituted by three witnesses:

- The Defence seeks to substitute D-2-9-B with D-2-16-P. Both witnesses are Tutsi and are expected to testify on the Kabakobwa events,⁶ but the Defence expects D-2-16-P's testimony to be more detailed and to cover more aspects than that of D-2-9-B.
- The Defence seeks to replace D-2-13-K with D-2-19-F, who is expected to provide a global view of the Kabakobwa events⁷ and to give a more comprehensive account than D-2-13-K; D-2-19-F will also address additional issues.

⁵ The Defence refers among others to *Prosecutor v. Nyiramasuhuko, et al.*, Case No. ICTR-98-42-T, Decision on Alphonse Nteziryayo's motion to modify his witness list, 14 July 2006.

⁶ Both Witnesses are Tutsi who were present in Kabakobwa on 22 April 1994. Their testimony is expected to cover the following aspects: Kanyabashi did not discriminate against the Tutsi; Kanyabashi held a meeting at Rango market shortly before the start of the killings; resistance at Mukura Bridge; movements towards Kabakobwa; the removal to Nyaruhengeri; and the challenge of the power of the Nkubi *conseiller*.

⁷ The expected testimonies of both witnesses relate to the Kabakobwa events: Kanyabashi's meeting in Rango before the start of the killings; the beginning of the troubles in Rango; the movement of people to Kibilizi and their return to Kabakobwa; and the perpetrators of the massacres.

- The Defence seeks to replace D-8-N with D-9-GG. Both witnesses were expected to describe the role of the military in Ngoma *commune* between April and July 1994 and the menacing attitude of soldiers toward Kanyabashi. D-9-GG's expected testimony adds a number of aspects.

25. The Defence submits that the remaining nine witnesses who are sought to be removed from the list shall not be substituted by any witness; nevertheless, the expected testimony of the additional witnesses will cover several issues on which the currently listed witnesses were scheduled to testify:

- D-2-QQQQ was scheduled to testify about the *bourgmestre's* actual power,⁸ Kanyabashi's reputation,⁹ the nickname *Kanyabatutsi*,¹⁰ the refugees in Rango,¹¹ and incitements via a megaphone;¹²
- D-2-UUU was scheduled to testify on Witness QA's allegations concerning the meeting by Kanyabashi at Ngoma *secteur*; he will not be substituted by any of the additional witnesses;
- D-2-14-T was expected to testify on the Matyazo massacre, on Kanyabashi's reputation,¹³ and on the fact that Kanyabashi provided him with a fake identity card;
- D-9-O's was expected to testify about the power of the military and *Interahamwe*,¹⁴ Kanyabashi's reputation,¹⁵ and threats made by soldiers against Kanyabashi;
- D-20-J was expected to testify on Kanyabashi's state of mind when he learnt of the death of his in-laws, on his understanding of the 19 April 1994 speech, on the nickname *Kanyabatutsi*,¹⁶ on the power of the soldiers,¹⁷ and on the roadblocks in Butare town;¹⁸
- D-22-A and D-30-S were expected to testify on Kanyabashi's reputation and on the letters of 25 May 1994 from particular privileged perspectives;¹⁹
- None of the twelve proposed witnesses are scheduled to be a substitute for the representative of African Rights and the representative of the Rwandan judicial system;

26. The Defence submits that the following additional witnesses will introduce new elements save for D-2-20-K, who will corroborate D-2-15-N's testimony:

⁸ To be covered by additional Witnesses D-2-15-V, D-2-16-L, D-2-17-I, D-2-17-K, D-2-17-M and D-9-GG.

⁹ To be covered by additional Witnesses D-2-16-L, D-2-17-I, D-2-17-K, and D-2-17-M.

¹⁰ To be covered by additional Witnesses D-2-16-L, D-2-17-A, and D-2-17-K.

¹¹ To be covered by additional Witnesses D-2-10-Y, D-2-16-P, and D-2-19-F.

¹² To be covered by additional Witnesses D-2-17-A, D-2-17-I, D-2-17-K, D-2-17-M, and D-9-GG.

¹³ To be covered by additional Witnesses D-2-16-L, D-2-17-I, D-2-17-K, and D-2-17-M.

¹⁴ To be covered by additional Witnesses D-2-15-V, D-2-16-L, D-2-17-I, D-2-17-K, D-2-17-M and D-9-GG.

¹⁵ To be covered by additional Witnesses D-2-16-L, D-2-17-I, D-2-17-K and D-2-17-M.

¹⁶ To be covered by additional Witnesses D-2-16-L, D-2-17-A and D-2-17-K.

¹⁷ To be covered by additional Witnesses D-2-15-V, D-2-16-L, D-2-17-I, D-2-17-K, D-2-17-M and D-9-GG.

¹⁸ To be covered by additional Witnesses D-2-10-Y, D-2-15-V, D-2-17-I, D-2-17-K, D-2-17-M and D-9-GG.

¹⁹ To be covered by additional Witnesses D-2-16-L, D-2-17-I, D-2-17-K and D-2-17-M.

- D-2-10-Y, will testify on the living and security conditions of the Rango refugees.²⁰ D-2-10-Y is the only witness who was actually among the refugees who will testify on the Kabakobwa massacre from an angle that is different from D-2-13-D and D-2-14-D.
- D-2-15-V is the only witness to testify mainly about the role played by the *Interahamwe* in Butare town. His brother, a member of *Interahamwe*, gave him a precise account regarding the threats against Kanyabashi.
- D-2-16-L is the only witness who will testify on the Kabuga refugees and contradict Witness QCB's allegations. Furthermore he is the only witness who will give a first hand account based on his privileged position on the discrimination against southerners within the army, and the perception of inhabitants of Butare as "*Inkotanyi*".
- D-2-17-A and D-2-17-I are expected to contradict respectively Prosecution Witnesses QI and TK's allegations regarding the incitements via megaphone.
- D-2-17-K and D-2-17-M are expected to contradict Prosecution Witnesses' QI allegations regarding incitements via megaphone; both will also testify on the events at the hotel Faucon roadblock and D-2-17-K will furthermore testify on a "clearing operation" in which he participated at the beginning of June 1994.
- D-2-20-F is expected to be the sole witness challenging Prosecution Witnesses QG regarding Cyarwa events if D-2-15-S is not called. D-2-20-F will also testify about a meeting held by Kanyabashi at Cyarwa and the beginning of the Civil Defence in these *secteurs*.
- D-2-16-P who will replace D-2-9-B, is expected to testify that Kanyabashi was present in Rango for a second time before the beginning of the killings; that the witness passed through Kanyamanza on his return from the Mukura blockage after the intervention of the soldiers; that the *conseiller* of Nkubi provided him with a false identity card; that he heard people say that Kanyabashi helped a person with machete injuries; that Semwiza had been arrested; and that the refugees of Rango fetched water and that their security was cared for.
- D-2-19-F who will replace D-2-13-K, is expected to testify on the flight toward Burundi; on the interception at the roadblock at Kibilizi where several people were killed and the others had to return to Kabakobwa; on the function of the *gacaca* judicial system in Nkubi; that the killings started with the dismantling of the Mukura roadblock; on the burial of the victims; on the killing of Rukimbira; on the challenge of the Nkubi *conseiller's* power; that refugees at Rango fetched water; and on the Witness's knowledge of Prosecution Witness QP.
- D-9-GG who will replace D-8-N is expected to testify that the *commune* was divided in three military zones before the start of the killings; on the degree of soldiers' animosity towards Kanyabashi; that the witness underwent military training for two weeks, and civil authorities were not involved in such training; that he did not hear Kanyabashi incite people via megaphone; and that he fought against the PRF in the north of the *préfecture*.

²⁰ Already covered by D-2-YYYY and may be part of D-2-9-B's and D-2-13-K's expected testimony.

27. The Defence submits that the expected testimony of the twelve additional witnesses will corroborate or add to certain subject matters on which so far only one Defence witness testified²¹ or which are essential to Kanyabashi's Defence.²²

Nyiramasuhuko's Response to Kanyabashi's Additional Information

28. The Defence for Nyiramasuhuko restates that it opposes the Motion for the reasons stated in Nyiramasuhuko's Response.

DELIBERATIONS

Rule 73ter (E) Principles

29. Rule 73ter (E) provides that "[a]fter commencement of [its] case, the Defence, if it considers it to be in the interests of justice, may move the Trial Chamber for leave to reinstate the list of witnesses or to vary its decision as to which witnesses are to be called".

30. The Chamber recalls its jurisprudence concerning Rule 73ter requests. It is usual practice to evaluate such requests in terms of: the materiality of the testimony; the complexity of the case; the prejudice to the Parties, including elements of surprise, on-going investigations, replacements and corroboration of evidence; and the presentation of the best available evidence. This must be balanced against the right of the accused to have adequate time and facilities to prepare their Defence and their right to be tried without undue delay.²³

31. Further, the Chamber recalls the need to closely analyse each proposed witness, including the sufficiency and time of disclosure of witness information; the probative value of the proposed testimony in relation to existing witnesses and allegations in the indictments; and the justification offered for the addition of the witnesses.²⁴ Other factors to be considered include the stage the proceedings have reached, and the reasons for the late discovery of the witnesses.²⁵

²¹ Issues include: the killing of Rukimbira, the roadblock near Rwanza market, Cyarwa's events and the meeting held by Kanyabashi and *préfet* Habyarimana before the start of the killings at which threats were made by soldiers against Kanyabashi and Nsabimana.

²² Issues include: the actual power of the *bourgmestre*, threats against Kanyabashi, Kabakobwa events and the megaphone incident.

²³ *The Prosecutor v. Nyiramasuhuko, et al.*, Case No. ICTR-98-42-T, Decision on the defence motion to modify the list of defence witnesses for Arsène Shalom Ntahobali, 26 August 2005, para. 31, citing *Bagosora et al.*, Decision on Prosecution Motion for Addition of Witnesses Pursuant to Rule 73bis (E) (TC), 26 June 2003, paras. 14-22; *The Prosecutor v. Nyiramasuhuko, et al.*, Case No. ICTR-98-42-T, Decision on Alphonse Nteziryayo's motion to modify his witness list, 14 July 2006 para 27; *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.

²⁴ *The Prosecutor v. Nyiramasuhuko, et al.*, Case No. ICTR-98-42-T, Decision on the defence motion to modify the list of defence witnesses for Arsène Shalom Ntahobali, 26 August 2005, para. 32, citing *Bagosora et al.*, Decision on Prosecution Motion for Addition of Witnesses Pursuant to Rule 73bis(E) (TC), 26 June 2003, paras. 14-22.

²⁵ *The Prosecutor v. Nyiramasuhuko, et al.*, Case No. ICTR-98-42-T, Decision on the defence motion to modify the list of defence witnesses for Arsène Shalom Ntahobali, 26 August 2005, paras. 31, 32, citing *Bagosora et al.*, Decision on Prosecution Motion for Addition of Witnesses Pursuant to Rule 73bis(E) (TC), 26 June 2003, paras. 14-22.

32. Recalling its Decisions of 30 March 2004 and 26 August 2006, the Chamber reiterates that it is vested with the ultimate authority to rule on the modification of witnesses and that the final decision as to whether it is in the interests of justice to allow the Defence to vary its list of witnesses rests with the Chamber.²⁶

Timeliness of the Motion

33. The Chamber notes that the Motion was filed four months after Kanyabashi's Defence started whereas, as submitted in the Motion, the Defence had met all of the proposed witnesses no later than December 2006, six months before his Defence started. Additionally, the Chamber recalls that in a motion filed on 22 December 2006, Kanyabashi had already requested the addition of eleven of the currently proposed twelve witnesses. These circumstances indicate that Kanyabashi would have been in a position to seek the variation of his witness list at an earlier stage. There is no adequate explanation for this belated action.

34. The Chamber notes that, so far, the Defence for Kanyabashi has called about 15 witnesses out of the thirty listed witnesses and is expected to be completed by April 2008.²⁷ The Chamber considers that the Motion seeks a massive variation of Kanyabashi's witness list at a very advanced stage of the proceedings. The first Defence case started on 31 January 2005 and all Parties have been preparing on the basis of the information provided in the Pre-Defence briefs filed on 31 December 2004. The Chamber considers that, at this stage of the proceedings, a variation may only be justified if the Defence has shown good cause for its request and if there is no material prejudice to the other Parties.

35. The Chamber recalls that it is its duty to ensure the fairness and expeditiousness of trial proceedings and that it is within its discretion to reduce the number of witnesses to be called. The Chamber will also assess the expected evidence of the witnesses pursuant to Rules 73ter (C) and (D) of the Rules. In that respect, the Chamber recalls its Decision that calling numerous witnesses to testify on the same factual allegations is unnecessary.²⁸ The Appeals Chamber confirmed that such decision was well within the trial Chamber's reasonable exercise of its discretion in the management of the trial proceedings.²⁹

36. In deciding the Motion, the Chamber will consider the following issues:

- (i) The request to substitute three currently listed witnesses D-8-N, D-2-9-B and D-2-13-K with witnesses D-9-GG, D-2-16-P and D-2-19-F respectively.

²⁶ *The Prosecutor v. Nyiramasuhuko, et al.*, Case No. ICTR-98-42-T, Decision on Prosecutor's motion to drop and add witnesses, 30 March 2004, para. 28; *The Prosecutor v. Nyiramasuhuko, et al.*, Case No. ICTR-98-42-T, Decision on the defence motion to modify the list of defence witnesses for Arsène Shalom Ntahobali, 26 August 2005, para. 33.

²⁷ T. 12, December 2007, p. 34.

²⁸ *The Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Joseph Kanyabashi's Motions for Modification of his Witness List, the Defence Responses to the Scheduling Order of 13 December 2006 and Ndayambaje's Request for Extension of Time within which to Respond to the Scheduling Order of 13 December 2006, 21 March 2007, para. 35.

²⁹ *The Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-AR73, Decision on Joseph Kanyabashi's Appeal against the Decision of Trial Chamber II of 21 March concerning the Dismissal of Motions to Vary his Witness List, 21 August 2007 para. 16.

(ii) The request to remove nine witnesses³⁰ and to add nine witnesses.³¹ The Chamber will focus on assessing the relevance of the expected testimony and the potential prejudice to the other Parties.

(i) Request to Substitute D-8-N, D-2-9-B, D-2-13-K with D-9-GG, D-16-P, D-19-F

Substitution of D-8-N with D-9-GG

37. It appears that D-8-N has refused to testify for various reasons explained in the Motion. The Chamber considers that a witness' refusal to come to testify may be a valid reason to justify a variation of the witness list in the interests of justice.

38. After having compared D-8-N's and D-9-GG's expected testimonies, the Chamber considers that D-9-GG's expected testimony appears to match that of D-8-N on the following points: the alleged role of the soldiers in Butare, particularly soldiers in Butare initiating the killings in Ngoma *commune* and soldiers threatening Kanyabashi. The Chamber considers that several witnesses have already been heard on the alleged presence and role of soldiers in Butare³² and on soldiers allegedly threatening Kanyabashi.³³ The Chamber further notes that it has already heard evidence and is expected to hear further testimony on other elements listed in D-9-GG's will-say.³⁴ Therefore, it would not be in the interests of justice to hear another witness on these elements.

39. With respect to the elements which appear to be new such as the separation of the *commune* in three military zones, the witness' alleged fighting against the RPF in the north of the *préfecture* of Butare and the participation in a military training in Butare, the Chamber is not convinced that the Defence has demonstrated that these elements may be essential to Kanyabashi's case. Moreover, the introduction of new elements at this stage of the trial is belated and may be prejudicial to the other Parties. For these reasons, and pursuant to Rule 73ter (E), the Chamber grants the removal of D-8-N and denies the request for substitution of D-8-N with D-9-GG.

Substitution of D-2-9-B with D-2-16-P

40. The Chamber notes that the Defence seeks to substitute D-2-9-B with D-2-16-P because while both Tutsi witnesses were allegedly present in Kabakobwa on 22 April 1994, D-2-16-P's testimony is expected to contain additional aspects and to be more detailed.

³⁰ D-2-14-T, D-20-J, D-2-UUU, D-2-QQQQ, D-9-O, D-22-A, D-30-S, the representatives of African Rights and of the Rwandan Judicial system.

³¹ D-2-10-Y, D-2-15-V, D-2-16-L, D-2-17-A, D-2-17-K, D-2-17-I, D-2-17-M, D-2-10-F and D-2-20-K.

³² D-2-13-D, D-2-YYYY, D-2-14-D, D-2-13-O, D-2-5-W, Reyntjens and D-2-5-I have testified on that matter.

³³ D-1-O, D-2-YYYY, D-2-5-I, D-2-5-W, D-2-13-D, D-2-13-O, D-9-U and Bernadette Kamanzi, have testified on that matter.

³⁴ D-2-YYYY, Bernadette Kamanzi and D-2-13-O have testified with respect to alleged incitements of Kanyabashi to kill Tutsi; D-2-YYYY has testified that Kanyabashi was ill-treated at roadblocks; D-2-YYYY, D-2-13-D, D-2-14-D, D-2-13-O, Filip Reyntjens, D-2-5-W and D-2-5-I have already testified and D-13-D, D-2-13-K and D-2-14-V are scheduled to testify on the alleged arrival and presence of Interahamwe in Butare; D-2-YYYY, D-2-13-D, D-2-5-W, D-2-13-O have given and D-13-D is scheduled to give evidence on roadblocks in Butare town; D-2-13-D and D-2-YYYY have testified on soldiers allegedly threatening communal police and about the alleged role of policemen in Ngoma *commune*; D-2-YYYY, D-2-5-I, D-2-13-D, D-2-13-O, D-2-14-D and D-9-U and D-2-14-W have already testified and D-2-14-V and D-13-D are expected to testify on megaphone incidents.

41. The Chamber notes that D-2-16-P's will-say contains elements which appear to be new, such as Kanyabashi being present in Rango for a second time before the beginning of the killings; that Nkubi's *conseiller* provided the Witness with a false identity card; that people said that Kanyabashi helped a person with machete injuries; and that Semwiza was arrested. The Chamber considers that these elements may be relevant to Kanyabashi's Defence. Moreover, the Chamber notes that the particulars of this witness were disclosed on 11 and 21 December 2007 and that it is unlikely that hearing such evidence would prejudice any of the other Parties.

42. For these reasons and pursuant to Rule 73ter (E), the Chamber grants the request to call D-2-16-P to testify instead of D-2-9-B on the elements currently listed on the will-say.

Substitution of D-2-13-K with D-2-19-F

43. The Defence seeks to substitute D-2-13-K with D-2-19-F because D-2-19-F had a more comprehensive view of the Kabakobwa events and would add more information. The Chamber notes that D-2-13-K appears to be willing to testify, that the Defence met D-2-19-F in January 2006 and it has not explained why it requests the substitution at such a late stage of the proceedings. The Chamber further notes that it has already heard evidence on the elements listed in D-2-19-F's will-say.³⁵

44. The Chamber is of the view that the Defence has not provided good cause for the substitution requested at this stage of the proceedings. Pursuant to Rule 73ter (E), the Chamber denies the request for substitution of D-2-13-K with D-2-19-F. Therefore, D-2-13-K remains on the witness list.

(ii) Request to Remove Nine Witnesses and to Add Nine Witnesses to the List

Witness Removal

D-2-14-T, D-20-J and D-2-UUU

45. The Defence alleges that D-2-14-T, D-20-J and D-2-UUU have refused to testify for various reasons explained in the Motion. The Chamber considers that a witness' refusal to come to testify may be a valid reason to justify a variation of the witness list in the interests of justice. This variation is unlikely to prejudice any of the other Parties and could significantly expedite the proceedings and enhance judicial economy. Therefore, the Chamber grants the request to remove D-2-14-T, D-20-J and D-2-UUU.

D-22-A, D-30-S, the Representative of African Rights and the Representative of the Rwandan Judicial System

46. The Chamber notes that the request to remove D-22-A, D-30-S, the representative of African Rights and the representative of the Rwandan judicial system is accompanied by a possible request at a later stage for the admission of these witnesses' written statements

³⁵ D-2-YYYY and D-2-13-D and D-2-15-I have testified on Mukura roadblock; D-2-14-D has testified about the burial of victims; D-2-13-D has testified on the killing of Rukimbira; D-2-13-D, D-2-14-D have testified on *conseiller* of Nkubi. D-2-YYYY has testified about refugees at Rango fetching water; D-2-YYYY, D-2-13-D, D-2-13-O, D-2-14-D, Reyntjens have testified on *gacaca* proceedings; D-2-YYYY, D-2-13-D, D-2-14-D and D-2-5-1 have already testified on Kabakobwa events.

pursuant to Rule 92bis. The Chamber notes that it is not yet seized of a motion under Rule 92bis, but it considers that the request to remove these four witnesses is unlikely to prejudice any of the other Parties and could significantly expedite the proceedings. The Chamber, in the interests of justice, therefore grants the request to remove D-22-A, D-30-S, the representative of African Rights and the representative of the Rwandan judicial system.

D-2-QQQQ

47. D-2-QQQQ is sought to be removed because D-2-YYYY and D-2-5-I have testified on the Kabakobwa events. The Chamber considers that hearing D-2-QQQQ on the Kabakobwa events would be unnecessarily repetitious and that the withdrawal of the witness would not prejudice the other Parties. Pursuant to Rule 73ter, the Chamber grants the request to remove D-2-QQQQ from the witness list.

D-9-O

48. According to the Defence, D-9-O is sought to be removed because of the limited relevance of his expected testimony. The Chamber considers that the Defence has determined that the testimony is of limited relevance and as such, the Witness should not be called to testify. The removal of that Witness is unlikely to prejudice any of the other Parties and could significantly expedite the proceedings and enhance judicial economy. Therefore, the Chamber grants the request to remove D-9-O from the witness list.

Expert Witness Munyarugerero

49. The Chamber notes that Witness Munyarugerero appeared on the witness lists of 8 and 23 November 2007 but that on the witness list of 11 February 2008 the Defence indicated that it no longer intends to call him. The Chamber reminds the Defence for Kanyabashi that the proper procedure would have been to move the Chamber pursuant to Rule 73ter (E) to vary the witness list. Nevertheless, in order to expedite the proceedings and in the interests of justice, the Chamber grants the removal of Munyarugerero from the witness list.

Witness Addition

D-2-10-Y

50. D-2-10-Y is expected to testify on the refugees at Rango and on the Kabakobwa events from a refugee's perspective. The Defence alleges that so far only D-2-YYYY has testified on the Rango events but not from a refugee's perspective and that D-2-13-D, D-2-14-D, D-2-YYYY and D-2-5-I have testified on the Kabakobwa events, but not from a refugee's perspective. The Chamber considers that a refugee's perspective on both elements may be relevant to Kanyabashi's case and may have probative value. The Chamber notes that the information relating to the witness was disclosed on 11 December 2007 and that hearing this witness on the said element is unlikely to prejudice any of the Parties. The Chamber grants the Defence's request to call D-2-10-Y to testify on the living and security conditions of Rango refugees and the Kabakobwa events only.

51. With respect to the other elements from the expected testimony of D-2-10-Y, the Chamber notes that it has already heard testimony on elements listed in D-2-10-Y's will-

say.³⁶ It would be unnecessarily repetitious and contrary to the interests of justice to hear another witness on these elements. Pursuant to Rule 73ter (E), the Chamber therefore denies the Defence's request to call D-2-10-Y to testify on elements beyond the ones listed above. The Chamber directs the Defence to file a revised will-say and to reduce the duration of the examination-in-chief accordingly.

D-2-16-L

52. The Chamber notes that D-2-16-L's account of refugees in Kabuga is expected to contradict Prosecution Witness QCB's allegations. The Chamber considers that this element may be relevant to Kanyabashi's Defence; that the information relating to the witness was disclosed on 11 December 2007, and that hearing this witness on the said element is unlikely to prejudice any of the Parties. The Chamber grants the request to call D-2-16-L to testify on this specific element, in the interests of justice.

53. With regard to the remaining points listed in D-2-16-L's will-say, the Chamber notes that it has already heard evidence on these elements and does not consider it to be in the interests of justice to hear another witness on the said elements.³⁷

54. For these reasons, and pursuant to Rule 73ter (E), the Chamber grants the Defence's request to add D-2-16-L to its witness list to testify about the refugees in Kabuga. The Chamber denies the Defence's request to call D-2-16-L to testify on any other element. The Chamber directs the Defence to file a revised will-say and to reduce the duration of the examination-in-chief accordingly.

D-2-15-V

55. The Chamber notes that it has already heard evidence on elements listed in D-2-15-V's will-say.³⁸

56. D-2-15-V is said to have privileged knowledge about the alleged role played by the *Interahamwe* in Butare town and alleged threats against Kanyabashi. The Chamber considers that it has heard several witnesses on alleged threats against Kanyabashi and that it would not

³⁶ D-1-0, D-2-YYYY, D-2-5-1, D-2-5-W, D-2-13-D, D-2-13-O, D-9-U and Bernadette Kamanzi have already testified about alleged threats against Kanyabashi; D-2-YYYY, D-2-13-D and D-2-5-1 have testified about the Mukura roadblock; D-2-YYYY, D-2-5-1, D-2-11-D, D-2-13-D, D-2-13-O, and Bernadette Kamanzi have testified about the roadblock near Hotel Ihutiro; D-2-YYYY, D-2-13-D, Bernadette Kamanzi, D-2-14-D and D-2-5-1 have testified about Mathias Nsanjabahizi.

³⁷ D-2-13-D, D-2-YYYY, D-2-14-D, D-2-13-O, D-2-5-W, Reynjens and D-2-5-1 have testified on the alleged presence and role of soldiers in Butare; D-1-0, D-2-YYYY, D-2-5-1, D-2-5-W, D-2-13-D, D-2-13-O, D-9-U and Bernadette Kamanzi have testified on alleged threats against Kanyabashi; Reynjens, D-1-0, D-2-YYYY, D-2-5-1, Bernadette Kamanzi, and D-2-15-N have testified on Kanyabashi's good reputation. D-2-YYYY, D-2-13-D and D-2-14-D have already testified about Rango before the start of the killings; D-2-YYYY, Bernadette Kamanzi, D-2-5-W, D-1-0, Filip Reynjens, D-2-13-O, D-2-5-1, D-9-U and D-21-B have testified about the nickname *Kanyabatutsi*; D-2-YYYY, D-2-5-1, D-2-13-D, D-2-13-O, D-2-14-D, D-9-U and D-2-14-W have already testified on the megaphone incident.

³⁸ D-2-YYYY and D-2-13-D have testified about the roadblock at the University; D-2-YYYY, D-2-13-D and D-2-14-D have already testified on Rango before the start of the killings; D-2-YYYY, D-2-13-D, D-2-14-D, D-2-13-O, Filip Reynjens, D-2-5-W and D-2-5-1 have already testified about the alleged role of soldiers and *Interahamwe* in Butare; D-2-YYYY, D-2-5-1, D-2-11-D, D-2-13-D, D-2-13-O and Bernadette Kamanzi have already testified about the alleged roadblock near Hotel Ihutiro.

be in the interests of justice to hear another witness on these elements.³⁹ For these reasons, the Chamber denies the Defence's request to add D-2-15-V to its witness list.

D-2-17-K and D-2-17-M

57. The Chamber notes that it has already heard several witnesses on the elements listed in D-2-17-K's and D-2-17-M's will-says.⁴⁰ With respect to Defence's submission that D-2-17-K may testify about "another point not yet covered, i.e. a clearing operation in which he took part in early June"⁴¹, the Chamber notes that this element is not mentioned in D-2-17's statements and will-say disclosed on 11 December 2007. In any event, several witnesses have given evidence on that element.⁴²

58. For these reasons and pursuant to Rule 73ter (E), the Chamber denies the Defence's request to add D-2-17-K and D-2-17-M to its witness list.

D-2-17-I

59. The Chamber considers that D-2-17-I's expected testimony on the meeting at Huye Stadium may be relevant to Kanyabashi's case and that so far only D-2-14-W appears to have testified about that element. Considering that D-2-17-I's particulars and will-say were disclosed on 11 and 21 December 2007, hearing this testimony is unlikely to prejudice any of the other Parties. The Chamber grants the request to hear D-2-17-A on the said element in the interests of justice.

60. The Chamber further notes that it has already heard several witnesses on the remaining elements listed in D-2-17-I's will-say.⁴³ The Chamber does not consider it to be in the interests of justice to hear another witness on these remaining elements.

61. For these reasons, and pursuant to Rule 73ter (E), the Chamber grants the Defence's request to add D-2-17-I to its witness list and to call him to testify on the meeting at Huye Stadium only. The Chamber denies the Defence's request to call D-2-17-I to testify on any other element. The Chamber directs the Defence to file a revised will-say and to reduce the duration of the examination-in-chief accordingly.

³⁹ D-1-O, D-2-YYYY, D-2-5-I, D-2-5-W, D-2-13-D, D-2-13-O, D-9-U and Bernadette Kamanzi have already testified on this issue.

⁴⁰ Witnesses D-2-YYYY, D-2-13-D, Bernadette Kamanzi, D-1-O and D-2-11-D have testified on the Faucon roadblock; Witness D-2-YYYY has testified on Karenzi's body at the Faucon roadblock and that Kanyabashi was searched and mistreated at Faucon roadblock; Witnesses D-2-YYYY, Bernadette Kamanzi, D-2-15-N, D-1-O, D-2-13-O, D-2-5-I, D-9-U have testified on Kanyabashi was accompanied by policemen; Witnesses D-1-O, D-2-YYYY, D-2-5-I, D-2-5-W, D-2-13-D, D-2-13-O, D-9-U and Bernadette Kamanzi have already testified on soldiers allegedly threatening Kanyabashi; Witnesses D-2-13-D has testified on soldier's attitude towards police; D-2-YYYY, D-2-5-I, D-2-13-D, D-2-13-O, D-2-14-D, D-9-U and D-2-14-W have testified on the megaphone incident; D-2-5-W and D-2-5-I and D-9-U have testified about an airplane landing in Butare shortly before the killing started; D-2-13-D, D-2-11-D, D-2-13-O, D-2-YYYY have testified on roadblocks at Butare town.

⁴¹ Kanyabashi's Additional Information, para. 25.

⁴² D-2-5-I, D-2-13-O, D-2-14-W and D-2-YYYY have testified about clearance operations.

⁴³ D-2-YYYY, D-2-13-D, D-2-14-D, D-2-13-O, Filip Reyntjens, D-2-5-W and D-2-5-I have already testified on the alleged arrival and presence of *Interahamwe* and soldiers in Butare; D-2-YYYY, D-2-5-I, D-2-13-D, D-2-13-O, D-2-14-D, D-2-14-W and D-9-U have already testified on the megaphone incident; D-2-13-D, D-2-11-D, D-2-13-O and D-2-YYYY have testified on roadblocks at Butare town; D-2-YYYY has already testified and D-2-14-V is scheduled to testify on the alleged role of communal policemen in Ngoma during 1994.

D-2-17-A

62. The Chamber notes that certain elements of D-2-17-A's expected testimony appear to be new, namely that Prosecution Witnesses QI and TG did not hide inside the mill located within Uwariraye's premises and the policeman Marc did not kill anyone at EER contrary to QI's allegations. The Chamber further notes that only D-21-B is expected to testify on the events at Uwariraye's residence. These elements may be relevant to Kanyabashi's Defence. Considering that D-2-17-A's particulars and will-say were disclosed on 6 November 2007, hearing this testimony is unlikely to prejudice any of the other Parties and the Chamber grants the motion to hear D-2-17-A on the said elements in the interests of justice.

63. The Chamber further notes that it has already heard evidence and that it is scheduled to hear additional testimony on the remaining elements listed in D-2-17-A's will-say.⁴⁴ The Chamber does not consider it to be in the interests of justice to hear the Witness on these remaining elements.

64. For these reasons, and pursuant to Rule 73ter (E), the Chamber grants the Defence's request to add D-2-17-A to its witness list and to call him to testify on the events at Uwariraye's premises, to contradict Prosecution Witnesses QI and TG's testimony about the mill located within Uwariraye's premises and to contradict QI's testimony regarding the policeman Marc only. The Chamber denies the Defence's request to call D-2-17-A to testify on any other element. The Chamber directs the Defence to file a revised will-say and to reduce the duration of the examination-in-chief accordingly.

D-2-20-K

65. The Chamber considers that D-2-10-K's expected testimony on the events at Rwanza roadblock and Rwanza market alleged to contradict Prosecution Witness RK may be relevant to Kanyabashi's case.⁴⁵ The Chamber notes that thus far, it appears that only D-2-15-N has testified at length about the events at Rwanza.

66. Considering that D-2-20-K's particulars were disclosed on 11 and 21 December 2007, the Chamber is of the opinion that hearing D-2-20-K on these elements is unlikely to prejudice the other Parties. For these reasons, the Chamber grants the Defence's request to add D-2-20-K to the witness list and to call him to contradict Prosecution Witness RK regarding the events at Rwanza roadblock and Rwanza market only. The Chamber directs the Defence to file a revised will-say and to reduce the duration of the examination-in-chief accordingly.

⁴⁴ D-2-YYYY has testified about Karenzi's body at the Faucon roadblock; Bernadette Kamanzi has testified about the roadblock near Rugira Amandin; D-2-YYYY, D-2-5-I, D-2-13-D, D-2-13-O, D-2-14-D, D-2-14-W and D-9-U have already testified about the megaphone incident; 2-YYYY, D-2-5-I, D-2-11-D, D-2-13-D, D-2-13-O, and Bernadette Kamanzi have already testified on the roadblock near Hotel Ihuliro and the alleged presence of and control by Ntahobali; D-2-YYYY, D-2-13-D, Bernadette Kamanzi, D-2-14-D and D-2-5-I have testified about Mathias Nsanzababizi; D-2-13-O has testified that Ntahobali allegedly drove around with a vehicle belonging to Rwamukwaya, who had been killed.

⁴⁵ D-2-20-K is expected to corroborate D-2-15-N's testimony and to contradict Prosecution Witness RK's testimony. In particular, D-2-20-K will testify: that Rwagatore did not talk about Kanyabashi during a *gacaca* trial; about the Rwanza roadblock; that Kanyabashi went to Rwanza market on one occasion between April and July 1994; and that Kanyabashi drove himself and was accompanied by a policeman.

D-2-20-F

67. The Chamber notes that the Defence seeks to call D-2-20-F if D-2-15-S is not called. The Chamber notes that D-2-15-S appeared on the witness lists of 8 and 23 November 2007 but that on the witness list of 11 February 2008 the Defence indicated that it no longer intends to call D-2-15-S. The Chamber reminds the Defence for Kanyabashi that the proper procedure would have been to move the Chamber pursuant to Rule 73ter (E) to vary the witness list. Nevertheless, to expedite the trial proceedings and in the interests of justice the Chamber grants the removal of D-2-15-S from the witness list.

68. The Chamber further notes that D-2-20-F's expected testimony appears to be similar to that of D-2-15-S; both are expected to testify on the events at Cyarwa *secteur*.⁴⁶ These elements may be relevant to Kanyabashi's case and may not prejudice the other Parties to the extent that they match the expected testimony of D-2-15-S. For these reasons, the Chamber grants the Defence's request to add D-2-20-F to the witness list and to call him to testify about similar elements to those that were disclosed in D-2-15-S's will-say regarding the events at Cyarwa *secteur*. The Chamber directs the Defence to file a revised will-say and to reduce the duration of the examination-in-chief accordingly.

Conclusion Regarding the Defence Request under Rule 73ter (E)

69. Accordingly, the revised witness list will be composed of the following eleven witnesses: D-13-D (partly heard), D-21-B (partly heard), D-2-14-V, D-2-13-K, D-2-10-Y, D-2-16-P, D-2-16-L, D-2-17-I, D-2-17-A, D-2-20-K and D-2-20-F.

FOR THE ABOVE REASONS, THE TRIBUNAL

GRANTS the Motion to remove Witnesses D-8-N, D-2-UUU, D-2-14-T, D-20-J, D-22-A, D-30-S, the Representative of African Rights, the Representative of the Rwandan Judicial System, D-2-QQQQ and D-9-O from the witness list;

GRANTS the Motion to substitute Witness D-2-9-B with Witness D-2-16-P and to call D-2-16-P to testify about all elements currently listed in the will-say;

GRANTS the Motion to call Witness D-2-10-Y to testify about the living and security conditions of the refugees in Rango and about the Kabakobwa events only;

GRANTS the Motion to call Witness D-2-16-L to testify about the refugees from Kabuga only;

GRANTS the Motion to call Witness D-2-17-I to testify about the meeting at Huye Stadium only;

GRANTS the Motion to call Witness D-2-17-A to testify about the events Uwariraye's premises, to contradict Prosecution Witnesses QI and TK's testimony about the mill located

⁴⁶According to the will-say, D-2-20-F is expected to testify on: a meeting held by Kanyabashi at the secteur office of Cyarwa; that Kanyabashi was accompanied by a policeman [to contradict QG]; that Kanyabashi was called an accomplice; about the beginning of unrest in Cyarwa.

within Jwariraye's premises and to contradict QI's testimony regarding the policeman Marc only;

GRANTS the Motion to call Witness D-20-K to contradict Prosecution Witness RK regarding the events at Rwanza roadblock and Rwanza market only;

GRANTS the Motion to call D-2-20-F to testify on the events at Cyerwa *secteur* only;

DENIES the Motion in all other respects;

DIRECTS the Defence to remove Witnesses D-2-15-S and Witness Munyarugerero from the witness list.

DIRECTS the Defence to file a new list of witnesses indicating their order of appearance and revised will-says and to reduce the duration of the examination-in-chief accordingly, immediately and in any case no later than 22 February 2008.

Arusha, 15 February 2008


William H. Sekule
Presiding Judge



Arlette Kamarason
- Judge



Solomy Balungi Bossa
Judge

[Seal of the Tribunal]