



**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: 20 November 2008

The PROSECUTOR v. Arsène Shalom NTAHOBALI
Case No. ICTR-97-21-T

The PROSECUTOR v. Joseph KANYABASHI

Case No. ICTR-96-15-T

The PROSECUTOR v. Sylvain NSABIMANA

Case No. ICTR-97-29-T

Joint Case No. ICTR-98-42-T

**DECISION ON DEFENCE MOTIONS FOR RECALL AND FURTHER
CROSS-EXAMINATION OF PROSECUTION WITNESS QCB**

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the “Tribunal”),

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

BEING SEIZED of the:

- i. “*Requête de Arsène Shalom Ntahobali en rappel du témoin QCB*,” filed confidentially on 30 September 2008 (“Ntahobali’s Motion”);
- ii. “*Requête de Joseph Kanyabashi afin que le témoin QCB soit rappelé*,” filed confidentially on 17 October 2008 (“Kanyabashi’s Motion”);
- iii. “*Requête de Sylvain Nsabimana en rappel du témoin QCB*,” filed confidentially on 21 October 2008 (“Nsabimana’s Motion”);

CONSIDERING the:

- i. “Prosecutor’s Response to the ‘*Requête de Arsène Shalom Ntahobali en rappel du témoin QCB*,’” filed confidentially on 10 October 2008 (“Prosecution’s Response to Ntahobali’s Motion”);
- ii. “*Réponse de Sylvain Nsabimana à la ‘Requête de Arsène Shalom Ntahobali en rappel du témoin QCB’ contenant requête reconventionnelle en rappel du même témoin*,” filed confidentially on 10 October 2008 (“Nsabimana’s Response to Ntahoabli’s Motion”);
- iii. “Alphonse Nteziryayo’s Response to the ‘*Requête de Arsène Shalom Ntahobali en rappel du témoin QCB*,’” filed confidentially on 10 October 2008 (“Nteziryayo’s Response to Ntahobali’s Motion”);
- iv. “*Réplique de Ntahobali à la réponse du Procureur à sa requête en rappel du témoin QCB*,” filed confidentially on 13 October 2008 (“Ntahobali’s Reply”);
- v. “Prosecutor’s Response to the ‘*Requête de Joseph Kanyabashi afin que le témoin QCB soit rappelé*,’” filed confidentially on 21 October 2008 (“Prosecution’s Response to Nsabimana’s Motion”);
- vi. “*Réponse de Joseph Kanyabashi à la requête de Sylvain Nsabimana en rappel du témoin QCB*,” filed confidentially on 23 October 2008 (“Kanyabashi’s Response to Nsabimana’s Motion”);
- vii. “Prosecutor’s Response to the ‘*Requête de Sylvain Nsabimana en rappel du témoin QCB*,’” filed confidentially on 23 October 2008 (“Prosecution’s Response to Nsabimana’s Motion”);
- viii. “*Réplique de Joseph Kanyabashi à la réponse du Procureur concernant sa requête afin que le témoin QCB soit rappelé*,” filed confidentially on 27 October 2008 (“Kanyabashi’s Reply”);
- ix. “*Réplique de Sylvain Nsabimana à la Response du Procureur à sa requête en rappel du témoin QCB*,” filed confidentially on 27 October 2008 (“Nsabimana’s Reply”);

- x. “Prosecutor’s Rejoinder to the ‘*Réplique de Sylvain Nsabimana à la Réponse du Procureur à sa requête en rappel du témoin QCB*,’” filed confidentially on 29 October 2008 (“Prosecution’s Rejoinder”);
- xi. “*Réplique de Sylvain Nsabimana* ‘Prosecutor’s Rejoinder to the *Réplique de Sylvain Nsabimana à la Réponse du Procureur à sa requête en rappel du témoin QCB*,’” filed confidentially on 30 October 2008 (“Nsabimana’s Reply to the Rejoinder”);

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

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. Prosecution Witness QCB testified before the Chamber from 20 March to 3 April 2002. Witness QCB also gave tape-recorded statements to the Royal Canadian Mounted Police (RCMP) investigators on 16 October 2000, 22 September 2003 and 27 February 2004 and testified before a rogatory commission of the Canadian court in the trial against Désiré Munyaneza on 6 and 7 February 2007. Copies of the trial transcripts and the RCMP statements were provided to the Parties through the Office of the Prosecutor.

2. On 30 September 2008, and 17 and 21 October 2008, the Defence for Ntahobali, Kanyabashi and Nsabimana filed their respective Motions for recall and further cross-examination of Witness QCB on topics relating to his testimony in the trial against Désiré Munyaneza and his statements to the RCMP. Copies of the trial transcripts and the RCMP statements were attached to the Motions. The copies of the RCMP transcripts were Word documents bearing track changes. On request of the Chamber, the Parties verified with the Canadian authorities that these documents were indeed copies of the final versions of the RCMP transcripts.¹

3. The Chamber notes that the requests submitted in Nsabimana’s Motion are identical to those submitted in his Response to Ntahobali’s Motion; therefore the Response will not be reflected as such in this Decision.

4. Finally, recalling the Appeals Chamber Decision of 21 August 2007 and its own Decision of 2 July 2008, the Chamber will not consider any Rejoinder or Counter-Rejoinder filed by any of the Parties.²

¹ See *The Prosecutor v Joseph Kanyabashi*, Case No. ICTR-96-15-T, Information a la Chambre suite a la Requête de Kanyabashi afin que le témoin QCB soit rappelé,” filed confidentially on 14 November 2008; *The Prosecutor v Ntahobali*, Case No. ICTR-98-42-T, Réponse de la Chambre relative aux transcriptions due témoin QCB en vue de son exclusion ou de son rappel, filed confidentially on 16 November 2008; *The Prosecutor v Nyiramasuhuko et al*, Case No. ICTR-98-42-T, ICTR-42-98-T, Prosecutor’s observation on the final version of the Desiré Munyaneza transcripts received from Canada relating to Defence motions to exclude evidence and/ or recall witnesses, 19 November 2008.

² *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 2007 concerning the Dismissal of Motions to Vary his Witness List, 21 August 2007, para. 2; *The Prosecutor v. Nyiramasuhuko et al.*, Case No ICTR-98-42-T, Decision on Kanyabashi’s Motion to re-open his case and to recall Prosecution Witness QA, 2 July 2008.

SUBMISSIONS OF THE PARTIES

Ntahobali's Motion

5. The Defence for Ntahobali requests to recall Witness QCB and cross-examine him on the roadblock where Léopold Ruvurajabo is alleged to have been killed. The Defence submits that in his testimony before this Chamber, Witness QCB testified that Ruvurajabo was killed at the roadblock located in front of Ntahobali's house. However, in his statements before the RCMP, Witness QCB asserted that Ruvurajabo was killed at the roadblock at Amandin Rugira's house.

6. The Defence requests to cross-examine Witness QCB on his prior knowledge of Désiré Munyaneza and Pierre-Célestin Halindintwali and their presence at the roadblocks near Ntahobali's house [Roadblock No. 6] and near Rugira's house [Roadblock No. 5]. The Defence submits that in his testimony before this Chamber, Witness QCB asserted that the only persons he recognised at the roadblocks near Rugira's and Ntahobali's respective houses were Shalom (Ntahobali) and Munyanziza, nicknamed Minitrap. In his statements to the RCMP, Witness QCB asserted that the roadblock where Ruvurajabo was killed was manned by Shalom (Ntahobali), Désiré (Munyaneza), and (Pierre-Célestin) Halindintwali.

7. The Defence requests to cross-examine Witness QCB on events at the IRST on 21 April 1994. The Defence submits that in his testimony before this Chamber, Witness QCB asserted that when he went to the IRST, he was chased away by a group coming from the roadblock at Rugira's house. However, Witness QCB asserted to the RCMP that Désiré Munyaneza, accompanied by Shalom, told him to leave the area.

8. The Defence requests to cross-examine Witness QCB on the allegation regarding the participation of Ntahobali, Munyaneza and Halindintwali in the killings of Tutsi. The Defence submits that before this Chamber, Witness QCB stated that he identified Shalom, Désiré and Pierre-Célestin as attackers at the IRST. During Désiré Munyaneza's trial, Witness QCB testified to having seen Shalom Ntahobali, Désiré Munyaneza and Pierre-Célestin Halindintwali killing Tutsi at the IRST. However, Witness QCB told the RCMP that he never saw Ntahobali, Désiré or Pierre-Célestin kill anyone.

9. The Defence requests to cross-examine Witness QCB on the use of a Peugeot on 21 April 1994 to transport Tutsi to the IRST. The Defence states that Witness QCB testified before this Chamber that the Tutsi who were brought to the IRST to be killed were put in a white Daihatsu truck, which was accompanied only by one Peugeot. However, during Désiré Munyaneza's trial, Witness QCB asserted that a second Peugeot accompanied the Daihatsu truck.

10. The Defence requests to cross-examine Witness QCB on the alleged presence of Ntahobali at the *préfecture* office on 25 April 1994, and the facts surrounding this event. According to the Defence, Witness QCB testified before this Chamber that he went to the *préfecture* office on 25 April 1994, but did not mention having seen Ntahobali, nor did he testify about any abduction from that location. Instead, Witness QCB testified before this Chamber about an abduction which took place on 28 April 1994 involving Ntahobali and Désiré. However, in his statements to the RCMP, Witness QCB asserted that on 25 April Ntahobali arrived at the *préfecture* office driving a Peugeot to abduct Tutsi.

Prosecution's Response to Ntahobali's Motion

11. The Prosecution objects to the recall of Witness QCB and submits that the filing of the Motion lacks due diligence. On 28 July 2007, the Prosecution received a letter from the Public Prosecutions Services of Canada dated 10 July 2007. The letter was copied to the Defence. Attached to the letter were two CDs containing the unedited transcripts of recorded interviews and testimonies of witnesses, including those of Witness QCB. The Prosecution disclosed the CDs to the Defence on 30 July 2007. While the disclosure covered 2,669 pages, only 227 pages directly concern Witness QCB.³ The Prosecution states that the Defence has given no satisfactory explanation for why it took 14 months to file the Motion.

12. Alternatively, the Prosecution submits that the Trial Chamber may find it necessary to recall Witness QCB to explain the contradiction regarding the location of Ruvurajabo's alleged killing. In that case, a time limit should be imposed on any further cross-examination.

13. The Prosecution objects to the further cross-examination of Witness QCB on the alleged physical participation of Shalom Ntahobali, Munyaneza and Halindintwali in the killing of Tutsi. According to the Prosecution, the Defence had adequate opportunity to cross-examine the Witness on that matter when he testified before this Chamber.

14. The Prosecution objects to the further cross-examination of Witness QCB on the use of a Peugeot on 21 April 1994 to transport Tutsi to the IRST. According to the Prosecution, an omission by a witness to mention a third vehicle does not warrant his recall and the Defence had adequate opportunity to cross-examine Witness QCB on the number of vehicles involved.

15. The Prosecution objects to the further cross-examination of Witness QCB on the alleged presence of Shalom Ntahobali on 25 April 1994 at the *préfecture* office and the facts surrounding this event. According to the Prosecution, the Defence had adequate opportunity to cross-examine Witness QCB on these events.

Nteziryayo's Response

16. The Defence for Nteziryayo supports the Motion and submits that the inconsistencies in Witness QCB's testimonies may have an impact on the evidence of other witnesses on various subjects in the context of a joint trial.

Ntahobali's Reply

17. The Defence for Ntahobali submits that the Motion was filed with due diligence. The Defence further states that the Prosecution failed to cite any jurisprudence showing that the recall of a witness may be denied because of the late filing of a motion.

Kanyabashi's Motion

18. The Defence for Kanyabashi requests to recall Witness QCB and cross-examine him about Kanyabashi's presence at Rango Market on 21 April 1994. While Witness QCB

³ Statement of 16 October 2000 - 52 pages; Statement of 22 September 2003 - 32 pages; Statement of 27 February 2004 - 66 pages; Testimony of 6 February 2007 - 34 pages; Testimony of 7 February 2007 - 43 pages.

testified before this Chamber that Kanyabashi was present at Rango Market on the morning of 21 April 1994 and that, in the presence of Muvunyi, he asked the refugees of Kanyamanza to move to Kabakobwa, Witness QCB stated before the RCMP on 16 October 2000 that, on that day, Kanyabashi was present at the *communal* office and not at Rango Market.

19. The Defence further requests to cross-examine Witness QCB about the presence of *communal* police officers during the Kabakobwa attack and about a letter from Kanyabashi ordering civilians, including Witness QCB, to attack. The Defence submits that Witness QCB testified before this Chamber that Mathias Nsanzabahizi, a police driver, arrived at Kabakobwa on a motorcycle carrying a letter from Kanyabashi, which he began to read aloud. This letter asked the population to join the military and police in attacking the refugees who had gathered at Kabakobwa. When the military allegedly opened fire on the refugees at Kabakobwa, police officers from Ngoma commune and civilians joined in the attack on the survivors. According to the Defence, Witness QCB gave a different account of these events in his testimony before the Canadian court during which he did not mention Kanyabashi's letter or the presence of *communal* police officers.

20. Additionally, Witness QCB testified before this Chamber that he did not know Major Rusigariye, whereas before the Canadian court, Witness QCB stated that the order for civilians to attack was given by Major Rusigariye.

Prosecution's Response to Kanyabashi's Motion

21. The Prosecution objects to the cross-examination of Witness QCB on his prior statement of 16 October 2000 before the RCMP. The Prosecution submits that the document attached to the Motion and purported to be the 16 October 2000 Statement is not signed and does not appear to be an official translation or transcription. Furthermore, the reading of the transcription does not reveal any apparent contradiction.

22. The Prosecution submits that the Chamber may grant the request for the cross-examination of Witness QCB on apparent inconsistencies in his respective testimonies before this Chamber and before the Canadian court relating to the Witness' knowledge of Major Rusigariye.

Kanyabashi's Reply

23. The Defence submits that it received Witness QCB's statement of 16 October 2000 from the Prosecution. In addition, referring to the Chamber's Decisions of 15 May 2006 and July 2007, the Defence submits that statements not bearing a signature can be put to a witness in cross-examination. The Defence submits that Witness QCB confirmed having been examined by the Canadian police on 16 October 2000 during his testimony before the Canadian court in 2007.

Nsabimana's Motion

24. The Defence for Nsabimana requests to cross-examine Witness QCB on Nsabimana's presence at Kabakobwa during the burial of corpses on 23 April 1994. The Defence submits that Witness QCB testified before this Chamber that when he and other persons buried the corpses of Tutsi who had been killed the previous evening, Kanyabashi and Nsabimana came to Kabakobwa. While Kanyabashi enquired as to whether all corpses had been buried,

Nsabimana remained silent. However, Witness QCB testified before the Canadian court that the burial of the bodies at Kabakobwa took place two days after the killings and that both Kanyabashi and Nsabimana enquired about the burial of the corpses.

25. The Defence requests to cross-examine Witness QCB on his presence at Butare *préfecture* office on 25 April 1994. According to the Defence, Witness QCB testified before this Chamber that when he was at Butare *préfecture* office to receive authorisation for buying petrol, he saw Nsabimana arriving at the *préfecture*. He did not testify about any abduction or the presence of Shalom (Ntahobali), Désiré Munyaneza or Pierre-Célestin. However, before the RCMP, the Witness stated that he assisted with the abduction of persons at Butare *préfecture* office.

26. The Defence requests to cross-examine Witness QCB on the events at Butare *préfecture* office on 28 April 1994. The Defence submits that before this Chamber, the Witness testified that he recognised a colleague among the refugees at the *préfecture* on 28 April 1994. However, according to his statements to the RCMP, Witness QCB did not recognise any refugee at the *préfecture* office on 28 April 1994.

27. The Defence requests to cross-examine Witness QCB on the fact that refugees were abducted from the *préfecture* office on 28 April 1994. According to the Defence, Witness QCB testified before this Chamber that refugees who were confined at the *gendarmérie* and those who were staying at the *préfecture* courtyard were transported from the *préfecture* on 28 April 1994. Witness QCB also testified about the presence of two vehicles at the *préfecture* that day: a Daihatsu driven by Désiré and a vehicle driven by Shalom (Ntahobali). However, before the RCMP, Witness QCB said that only those refugees who were in confinement at the *gendarmérie* were taken from the *préfecture* on 28 April 2008. He also said that he saw three vehicles at the *préfecture* that day: a Daihatsu, a minibus belonging to *Groupe Scolaire* and a third vehicle driven by Shalom (Ntahobali).

Kanyabashi's Response to Nsabimana's Motion

28. The Defence for Kanyabashi requests to cross-examine Witness QCB on any topic that the Chamber may authorise regarding Nsabimana's Motion.

Prosecution's Response to Nsabimana's Motion

29. The Prosecution objects to the further cross-examination of Witness QCB on Nsabimana's presence at the Kabakobwa burials. It submits that there is no contradiction between Witness QCB's respective testimonies before this Chamber and before the Canadian court because he testified both times that Nsabimana was present at the burial. Furthermore, Witness QCB did not allege before this Chamber that Nsabimana never spoke at the burial. Rather, he stated only that Nsabimana did not say anything at a particular moment in time during the burial.

30. The Prosecution objects to the cross-examination of Witness QCB on his presence at the *préfecture* office on 25 April 1994. The Prosecution submits that the fact that a witness may, in response to certain questions, offer details on events about which he did not testify before this Chamber should not result in an automatic recall. The Defence failed to show why this alleged abduction, which does not appear to concern Nsabimana, is of significant probative value to his case.

31. The Prosecution objects to the request to cross-examine Witness QCB about whether or not he recognised any refugees at the *préfecture* office on 28 April 1994 because the Defence failed to show how this issue may prejudice Nsabimana.

32. The Prosecution objects to the request to cross-examine Witness QCB on refugees who were boarded onto vehicles at the *préfecture* office on 28 April 1994. The Prosecution submits that Witness QCB's omission to mention the presence of a minivan at the *préfecture* office on 28 April 1994 in his testimony before this Chamber does not warrant the Witness' recall.

Nsabimana's Reply

33. The Defence submits that the inconsistencies in the Witness' testimonies about the events at the *préfecture* on 25 April 1994 and about his alleged recognition of a colleague among the refugees on 28 April 1994 may relate to Witness QCB's credibility.

DELIBERATIONS

34. The Chamber notes that Prosecution Witness QCB testified before the Chamber in March and April 2002; that Witness QCB allegedly gave statements to the RCMP on 16 October 2000, 22 September 2003 and 27 February 2004 and that he testified in the trial against Désiré Munyaneza on 5, 6 and 7 February 2007. Copies of the trial transcripts and the RCMP statements were distributed to the Parties on 30 July 2007. Therefore, the evidence originating in Canada could not have been presented during Witness QCB's testimony. However, the Chamber considers that the Defence has not explained sufficiently why it filed the motion over one year after receipt of the documents. In the interests of a fair and expeditious trial, it should have addressed the matter with more diligence. The Chamber expects the Defence in future to address its matters in a more timely manner.

35. A Chamber may recall a witness where good cause is demonstrated by a moving party. The two factors to be taken into account are the purpose for which the witness will testify and the party's justification for not offering such evidence when the witness originally testified.⁴ The recall of a witness should be granted only in the most compelling of circumstances where further evidence is of significant probative value and not of a cumulative nature, such as to explore inconsistencies between a witness' testimony and a declaration obtained subsequently. In case of inconsistencies, the Defence may request the recall of a witness if prejudice can be shown from its inability to put these inconsistencies to that witness. If there is no need for the witness' explanation of the inconsistency, because it is minor or its nature is self-evident, then the witness will not be recalled.⁵

36. Recalling the Parties's correspondences,⁶ the Chamber notes that the transcripts of the RCMP statements of 16 October 2000, 22 September 2003 and 27 February 2004 disclosed by the Parties are Word documents containing track changes and do not bear the Witness'

⁴ *The Prosecutor v. Nyiramasuhuko et al., Case No. ICTR-98-42-T, Decision on Ntahobali's Strictly Confidential Motion to Recall Witnesses TN, QBQ and QY For Additional Cross-examination, 3 March 2006, para. 32.*

⁵ *Prosecutor v. Nyiramasuhuko et al., Case No. ICTR-98-42-T, Decision on Kanyabashi's motion to re-open his case and to re-call Prosecution Witness QA, 2 July 2008, para. 33.*

⁶ See above Fn. 1

signature. In addition, in the 10 October 2000 Statement several Kinyarwandan words were apparently not translated into French. The Chamber considers that these RCMP statements lack sufficient indicia of reliability for proving the authenticity of the documents. Therefore, their content will be assessed with caution and in the context of Witness QCB's testimony before the Canadian court.

Ntahobali's Requests

1. Testimony about the Roadblock where Ruvurajabo was Allegedly Killed

37. The Chamber considers that Witness QCB's testimony before this Chamber and his RCMP statement of 16 October 2000 appear to be inconsistent regarding the place where Ruvurajabo was allegedly killed. While Witness QCB testified before this Chamber that the killing took place on the roadblock in front of Ntahobali's house,⁷ he appears to have stated before the RCMP on 16 October 2000 that Ruvurajabo was killed at a roadblock near Rugira's residence. However, as stated previously, the Chamber considers that the 16 October 2000 Statement lacks sufficient indicia of reliability.⁸ In addition, Witness QCB's subsequent RCMP statements⁹ and his testimony before the Canadian court¹⁰ seem to accord with his testimony before this Chamber regarding the location of Ruvurajabo's death. Therefore, the Chamber denies the request to recall and cross-examine Witness QCB on this issue.

2. Testimony about Persons Manning Roadblocks

38. Regarding the Defence request to cross-examine Witness QCB on Désiré Munyaneza's and Pierre-Célestin Halindintwali's presence at the roadblocks near Rugira's and Ntahobali's houses (roadblocks Nos. 5 and 6, respectively), the Chamber considers that Witness QCB's testimony before this Chamber and his RCMP statements do not appear to be contradictory. Before this Chamber, Witness QCB testified that he identified Shalom Ntahobali and *Interahamwe* at the roadblock near Ntahobali's house (No 6)¹¹ and that he saw Shalom Ntahobali and Munyanziza, nicknamed MINITRAP, and *Interahamwe* at the roadblock near Rugira's house (No. 5).¹² The Witness was not asked about the presence of Pierre-Célestin Halindintwali or Désiré Munyaneza at these roadblocks and did not testify on that issue. Before the RCMP, Witness QCB stated that the respective roadblocks near Ntahobali's and Rugira's houses were manned by Shalom Ntahobali, Célestin Halindintwali and Désiré Munyaneza along with *Interahamwe*.¹³ The Chamber considers that omitting to mention Pierre-Célestin Halindintwali and Désiré Munyaneza, without having been specifically asked about their presence, does not amount to an inconsistency which would require the recall of the Witness. Therefore, the Chamber denies the request to recall and cross-examine Witness QCB on this issue.

⁷ Testimony before this Chamber, T. 20 March 2002, pp. 60, 61.

⁸ Statement of 16 October 2000, pp. 36, 37.

⁹ Statement of 22 September 2003, pp. 4, 5; Statement of 27 February 2004, pp. 6-8.

¹⁰ Testimony before the Canadian court, T. 5 February 2007, p. 1430.

¹¹ Testimony before this Chamber, T. 25 March 2002, p. 37.

¹² Testimony before this Chamber, T. 25 March 2002, pp. 155, 156.

¹³ Statement of 16 October 2000, p. 37; Statement of 27 February 2004, pp. 5-7.

3. Testimony about Alleged Events at the IRST on 21 April 1994

39. The Chamber considers that Witness QCB's testimony before this Chamber and his RCMP statement regarding the events at IRST on 21 April 1994 do not appear to be contradictory. Witness QCB testified before this Chamber that at the IRST a group of persons from the roadblock near Rugira's residence told him to join the killings or leave the area. The Witness was not asked to specify who these persons were.¹⁴ Previously, the Witness had testified before this Chamber that he had seen Shalom Ntahobali at the roadblock near Rugira's.¹⁵ Before the RCMP, the Witness stated that Pierre-Célestin Halindintwali, Shalom Ntahobali and Désiré Munyaneza, whom he had seen at the roadblock near Rugira's,¹⁶ asked him to join the killings or leave the area.¹⁷ The Chamber considers that while the Witness' statement before the RCMP may be more specific, it does not appear to amount to an inconsistency which would require the recall of the Witness. Therefore, the Chamber denies the request to recall and cross-examine Witness QCB on this issue.

4. Testimony about the Alleged Participation in Killings by Ntahobali, Munyaneza and Halindintwali

40. The Chamber considers that Witness QCB's testimony before this Chamber and his RCMP statements and testimony before the Canadian court regarding whether or not Ntahobali, Munyaneza and Halindintwali physically perpetrated killings do not appear to be contradictory. In the extract of the Witness' testimony before this Chamber cited by the Defence, the Witness did not specify whether or not he saw Ntahobali, Munyaneza or Halindintwali physically kill anyone at the IRST; instead, he stated that he identified them among the attackers and heard Ntahobali issuing orders and therefore assumed that he was leading the attack.¹⁸ In his 16 October 2000 Statement before the RCMP, the Witness appears to have stated that he did not see any of these three persons kill anyone at a roadblock; he only saw them issuing orders.¹⁹ Apart from the fact that this statement lacks sufficient indicia of reliability, it does not appear to be inconsistent with the Witness' testimony before this Chamber. Before the Canadian court, Witness QCB appears to have stated that he saw Ntahobali, Munyaneza and Halindintwali killing people at the IRST. Again, this does not appear to be inconsistent with the Witness' testimony before this Chamber.²⁰ For these reasons, the Chamber denies the request to recall and further cross-examine Witness QCB on this issue.

5. Testimony about Vehicles Allegedly Present at the IRST on 21 April 1994

41. The Chamber considers that there does not appear to be any inconsistency between the Witness' respective testimonies before this Chamber and before the Canadian court regarding the use of a second Peugeot to transport Tutsi to the IRST on 21 April 1994. While the Witness testified before this Chamber that he saw a white Daihatsu accompanied by one Peugeot driven by Ntahobali, he was not asked about the presence of a second car and he did not deny its presence.²¹ Before the Canadian court, the Witness testified that the white

¹⁴ Testimony before this Chamber 20 March 2002, pp. 87-92.

¹⁵ Testimony before this Chamber 20 March 2002, p. 80.

¹⁶ Statement of 16 October 2000, p. 37.

¹⁷ Statement of 27 February 2004, pp. 19-22; Statement of 27 February 2004, pp. 23, 24.

¹⁸ Testimony before this Chamber, T. 20 March 2002, pp. 84, 85.

¹⁹ Statement of 16 October 2000, p. 51.

²⁰ Testimony before the Canadian court, T. 5 February 2007, pp. 1437, 1438.

²¹ Testimony before this Chamber, T. 20 March 2002, pp. 78, 83, 84.

Daihatsu was accompanied by a second Peugeot.²² While the Witness' testimony before the Canadian court may be more detailed, the mere omission to mention a vehicle without having been asked about it, does not amount to an inconsistency which would prejudice the Accused and warrant the recall of the Witness. For these reasons, the Chamber denies the request to recall and cross-examine Witness QCB on this issue.

6. Testimony on Ntahobali's Alleged Presence at the Préfecture Office on 25 April 1994

42. The Chamber considers that there does not appear to be any inconsistency between Witness QCB's testimony before this Chamber and his RCMP statement concerning Ntahobali's alleged presence at the *préfecture* office on 25 April 1994. On both occasions, Witness QCB stated that on 25 April 1994, he went to the *préfecture* to obtain authorisation to buy fuel.²³ The questions put to Witness QCB before this Chamber were focused on the receipt of authorisation for fuel; he was not asked whether or not he had seen Ntahobali at the *préfecture* that day. Before the RCMP, when specifically asked about Ntahobali and Munyaneza, Witness QCB gave further evidence that he saw Ntahobali and Munyaneza abduct refugees from the *préfecture* office that day.²⁴ The Chamber considers that the mere omission to testify about an incident, without having been asked about this incident, does not amount to an inconsistency which would warrant the recall of the Witness.

43. Furthermore, the Chamber does not accept the Defence suggestion that Witness QCB's testimony before this Chamber to the effect that an abduction took place on 28 April 1994 would contradict his RCMP statement in which he stated that an abduction took place on 25 April 1994. The Chamber notes that before this Chamber, Witness QCB testified about an abduction at the *préfecture* involving Ntahobali, Munyaneza and Nsabimana, which allegedly took place on 28 April 1994. In his RCMP statement, the Witness also mentioned this alleged abduction of 28 April 1994 in addition to an alleged abduction of 25 April 1994.²⁵ For these reasons, the Chamber denies the request to recall and cross-examine Witness QCB on this issue.

Kanyabashi's Requests

1. Testimony about Kanyabashi's Alleged Presence at Rango Market on 21 April 1994

44. The Chamber considers that Witness QCB's respective testimonies before this Chamber and before the Canadian court concerning Kanyabashi's alleged presence at Rango Market on 21 April 1994 do not appear to be contradictory. Before this Chamber,²⁶ as well as before the Canadian court,²⁷ Witness QCB testified that Kanyabashi went to Rango Market on 21 April 1994. While Witness QCB seems to assert in his 16 October 2000 Statement that Muvunyi went to Rango Market unaccompanied by Kanyabashi,²⁸ it remains unclear whether the Witness is referring to the same event as he did not specify the date of the event.²⁹ In addition, as noted above, the 16 October 2000 Statement lacks sufficient indicia of reliability.

²² Testimony before the Canadian court, T. 5 February 2007, pp. 1433-1438.

²³ Testimony before this Chamber, T. 21 March 2002 p. 41.

²⁴ Statement of 22 September 2003, pp. 14, 15.

²⁵ Statement of 22 September 2003, pp. 20-23.

²⁶ Testimony before this Chamber, T. 20 March 2002, pp. 90-99.

²⁷ Testimony before the Canadian court, T. 7 February 2007, p. 1647.

²⁸ Statement of 16 October 2000, pp. 3-5.

²⁹ Statement of 16 October 2000, p. 3.

Therefore, the Chamber denies the request to recall and cross-examine Witness QCB on this issue.

2. Testimony about the Kabakobwa Attack

45. The Chamber considers that there may be inconsistencies between Witness QCB's respective testimonies before this Chamber and before the Canadian court regarding the events at Kabakobwa. Witness QCB testified before this Chamber that on 22 April 1994, at around 3 p.m., Mathias Nsanzabahizi arrived at Kabakobwa on a motorcycle and began reading aloud a letter from Kanyabashi that asked the population to join with the military and police in attacking the refugees at Kabakobwa. When the military allegedly opened fire on the refugees at Kabakobwa, Nsanzabahizi told civilians to join in the attack.³⁰ Witness QCB testified before this Chamber that he did not know Major Rusigariye.³¹ Before the Canadian court, Witness QCB did not mention the arrival of Nsanzabahizi, or the letter written by Kanyabashi. Instead, the Witness stated that he arrived at Kabakobwa at 3.30 p.m., and that Major Rusigariye ordered the civilians to take part in the killings at Kabakobwa.³² The Chamber considers that these apparent discrepancies may relate to Witness QCB's credibility and could be of significant probative value. For these reasons, the Chamber grants the Defence request to recall and cross-examine Witness QCB about the arrival of Nsanzabahizi at Kabakobwa on 22 April 1994, the letter allegedly written by Kanyabashi and his knowledge about Mayor Rusigariye.

46. The Chamber considers that there does not appear to be any contradiction between Witness QCB's respective testimonies before this Chamber and before the Canadian court regarding the participation of the police during the Kabakobwa attack. In his testimony before the Chamber, Witness QCB testified that policemen participated in the Kabakobwa attack.³³ In his testimony before the Canadian court, the Witness does not appear to deny the participation of policemen, but states that *gendarmes* led them to the attack at Kabakobwa.³⁴ For these reasons the Chamber denies the recall and cross-examination of Witness QCB on this issue.

Nsabimana's Requests

1. Nsabimana's Presence at Kabakobwa Burial on 23 April 1994

47. The Chamber considers that Witness QCB's respective testimonies before this Chamber and before the Canadian court regarding the date of the burials or Nsabimana's alleged role during the burials do not appear to be contradictory. Before this Chamber, Witness QCB stated that the burials took place the day after the killings;³⁵ that Nsabimana and Kanyabashi came to the grave sites and that, while Nsabimana remained silent, Kanyabashi asked whether all corpses had been buried.³⁶ Before the Canadian court, the Witness testified that the burials took place around two days after the killings. Furthermore, while the Witness testified that Nsabimana and Kanyabashi gave orders to bury the bodies at

³⁰ Testimony before this Chamber, T. 20 March 2002, pp. 121-125.

³¹ Testimony before this Chamber, T. 28 March 2002, pp. 31, 32 (ICS).

³² Testimony before the Canadian court, T. 5 February 2007, pp. 1407-1412.

³³ Testimony before this Chamber, T. 20 March 2002, pp. 121-125.

³⁴ Testimony before the Canadian court, T. 5 February 2007, pp. 1406.

³⁵ Testimony before this Chamber, T. 21 March 2002, pp. 5, 6.

³⁶ Testimony before this Chamber, T. 21 March 2002, pp. 16, 17.

the grave site, he does not appear to specify whether both or only one of them spoke at the site.³⁷ The Chamber considers that while Witness QCB's testimony before the Canadian court may be less detailed than his testimony before this Chamber, it does not appear to contain inconsistencies which would warrant the recall of the Witness. For these reasons, the Chamber denies the request to recall and cross-examine the Witness on these issues.

2. Events at Butare Préfecture Office on 25 April 1994

48. As discussed above at Paragraph 42, there does not appear to be any inconsistency between Witness QCB's testimony before this Chamber and his RCMP statement concerning an alleged abduction at the *préfecture* office on 25 April 1994. Therefore, the Chamber denies the request to recall and cross-examine Witness QCB on this issue.

3. Witness QCB's Knowledge about Refugees at Butare Préfecture on 28 April 1994

49. The Chamber considers that there may be an inconsistency between Witness QCB's respective testimonies before this Chamber and before the Canadian court regarding his knowledge about refugees at the Butare *préfecture* office on 28 April 1994. Before this Chamber, the Witness testified that he recognised one of the refugees that day.³⁸ Before the Canadian court, the Witness appears to have testified that he did not recognise any of the refugees at the *préfecture* on that day.³⁹ However, the Chamber considers that this alleged inconsistency appears to be minor and that no prejudice seems to result from the Defence's inability to put this inconsistency to the Witness. Therefore, the Chamber denies the request to recall and further cross-examine the Witness on this issue.

4. Events at Butare Préfecture on 28 April 1994

50. The Chamber considers that there may be inconsistencies between Witness QCB's testimony before this Chamber and his statement before the RCMP regarding events at the *préfecture* office on 28 April 1994. While Witness QCB testified before this Chamber that refugees were abducted from the compound of the *préfecture* and from the premises of the *gendarmerie*,⁴⁰ the Witness appears to have stated before the RCMP that only persons who were within the *gendarmerie* premises were abducted; before the Canadian court, the Witness testified that persons at the *gendarmerie* premises were abducted, leaving it unclear whether these were the only refugees abducted.⁴¹ In view of the fact that there may be doubts regarding the reliability of the RCMP statements, the Chamber considers that the apparent discrepancy would not amount to an inconsistency which would warrant the recall of the Witness. For these reasons, the Chamber denies the request to recall and cross-examine Witness QCB on this issue.

51. The Chamber considers that Witness QCB's testimony before this Chamber and his RCMP statement appear to contain inconsistencies regarding the number of cars at the *préfecture* on 28 April 1994. Before the Chamber, Witness QCB testified that, aside from Nsabimana's car, he saw only two vehicles arrive at the *préfecture*: a Peugeot driven by

³⁷ Testimony before the Canadian court, T. 5 February 2007, pp. 1412, 1413.

³⁸ Testimony before this Chamber, T. 27 March 2002, pp. 47-48.

³⁹ Testimony before the Canadian court, T. 7 February 2007, pp. 1654, 1655.

⁴⁰ Testimony before this Chamber, T. 21 March 2002, pp. 50-54.

⁴¹ Statement of 22 September 2003, p. 22; Testimony before the Canadian court, T. 6 February 2007, pp. 1511, 1512.

Shalom Ntahobali and a Daihatsu pick-up driven by Désiré Munyaneza, onto which the refugees were forced to embark.⁴² Before the RCMP, the Witness appears to have stated that three vehicles were involved in the abduction: a car driven by Shalom, the Daihatsu and a Minibus. The Witness did not specify onto which of the cars the refugees were loaded.⁴³ However, as pointed out above, the RCMP statements lack sufficient indicia of reliability. In addition, Witness QCB's testimony before this Chamber appears to accord with his testimony before the Canadian court, where the Witness mentioned the presence of only two cars: a Peugeot driven by Shalom and a Daihatsu driven by Désiré onto which the refugees were forced to embark.⁴⁴ Therefore, any discrepancy with the RCMP statement does not amount to an inconsistency which would prejudice the Accused and require the recall of the Witness. Therefore, the Chamber denies the request to recall and cross-examine Witness QCB on this issue.

FOR THE ABOVE REASONS, THE TRIBUNAL

DENIES Ntahobali's and Nsabimana's Motions in their entirety;

GRANTS Kanyabashi's Motion in part;

ORDERS the recall of Prosecution Witnesses QCB so that the Defence may cross-examine and the Prosecution may re-examine him exclusively on specific contradictions concerning the arrival of Nsanzabahizi at Kabakobwa on 22 April 1994; a letter by Kanyabashi allegedly read aloud at Kabakobwa on 22 April 1994; and on the Witness' knowledge of Major Rusigariye;

DENIES Kanyabashi's Motion in all other respects.

Arusha, 20 November 2008

William H. Sekule
Presiding Judge

Arlette Ramaroson
Judge

Solomy Balungi Bossa
Judge

[Seal of the Tribunal]

⁴² Testimony before this Chamber 21 March 2002, pp. 52-54.

⁴³ Statement of 22 September 2003, pp. 24, 25.

⁴⁴ Testimony before the Canadian court, T. 6 February 2007, pp. 1511, 1512.