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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
NATIONS UNIES

OR: ENG

TRIAL CHAMBER III

Before Judges: Solomy Balungi Bossa, Presiding
Bakhtiyor Tuzmukhamedov
Mparany Rajohnson

Registrar: Adama Dieng

Date: 20 September 2010

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JUDICIAL RECORDS/ARCHIVES
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THE PROSECUTOR

v.

Callixte NZABONIMANA
Case No. ICTR-98-44D-T

**CONSOLIDATED DECISION ON NZABONIMANA'S SECOND MOTION TO VARY
HIS LIST OF WITNESSES AND NZABONIMANA'S MOTION TO SUSPEND
"SECOND MOTION TO VARY HIS LIST OF WITNESSES"
(Rules 73 ter (E) of the Rules of Procedure and Evidence)**

Office of the Prosecutor
Paul Ng'arua
Memory Maposa
Simba Mawere
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Defence Counsel
Vincent Courcelle-Labrousse
Philippe Larochelle

INTRODUCTION

1. On 18 February 2010, the Trial Chamber issued a Decision in which it provided comprehensive protective measures for all Defence witnesses scheduled to testify in the instant proceedings who had not affirmatively waived their right to such measures.¹
2. On 26 March 2010, the Trial Chamber issued a Decision in which it ordered the Defence to file, no later than 31 March 2010, a list of 30 Defence witnesses ("26 March Order").²
3. On 31 March 2010, the Defence filed a list of 184 witnesses, as well as information concerning the facts and points in the Indictment to which most of those witnesses would testify ("Proofing Chart").³ The Defence also filed a separate list of 30 witnesses, which purported to comply with the 26 March Order ("List of 30 Witnesses").⁴
4. Witness T36 was one of the Defence witnesses included in the List of 30 Witnesses. According to the Proofing Chart, T36 would testify with respect to 29 paragraphs of the Indictment,⁵ with a particular emphasis on allegations pertaining to Nyabikenke *commune*.⁶ While Witness T37 was not included in the List of 30 Witnesses, according to the Proofing Chart, that witness, if called, would testify to virtually identical paragraphs of the Indictment as T36,⁷ again with a particular emphasis on allegations concerning Nyabikenke *commune*.⁸
5. On 19 May 2010, the Defence filed a Motion in which it alleged T36 had been intimidated by Prosecution Witness CNAI and an unnamed Rwandan national and dissuaded from testifying for the Defence in the instant proceedings ("Contempt Motion").⁹ The Defence requested the Trial Chamber to appoint an *amicus curiae* to investigate whether contempt

¹ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Decision on Urgent Defence Motion for Protective Measures, 18 February 2010, para. 20 and disposition.

² *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Consolidated Decision on Prosecutor's Second and Third Motions to Compel Defence to Comply with Trial Chamber Decision of 3 February 2010, 26 March 2010, paras. 16, 26 and disposition.

³ Annexe I (strictement confidentielle) – Au 31 mars 2010, contained in confidential email from Philippe Laroche dated 31 March 2010.

⁴ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Nzabonimana's Filing in Compliance with the 26 March 2010 Trial Chamber Decision, 31 March 2010.

⁵ Paras. 8-12, 15-20, 22, 26, 30-31, 33, 35-37, 39, 41, 43, 45, 50-54.

⁶ Proofing Chart, pp. 3, 6.

⁷ The Proofing Chart indicated that T37 would testify to the same paras. of the Indictment as T36, with the exception of paras. 53 and 54, for a total of 27 paras.

⁸ Proofing Chart, pp. 3, 6.

⁹ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Nzabonimana's Urgent Motion for Appointment of an *Amicus Curiae* to Investigate Contempt by Witness CNAI and for Supplementary Protection Measures for Witness T36, 19 May 2010.

proceedings should be initiated against members of the Prosecution, persons acting on its behalf, or other members of the Tribunal in view of the alleged violation of the protective measures afforded T36 by this Chamber.¹⁰ The Defence further requested the imposition of additional protective measures for T36, who, the Defence submitted, was reluctant to testify for the Defence due to the allegations contained in the Contempt Motion.¹¹

6. On 4 June 2010, the Trial Chamber issued a Decision allowing the Defence to vary its list of witnesses, increasing the total number of witnesses the Defence is permitted to call in the instant proceedings from 30 to 38 ("Variation Decision").¹² In allowing the Defence to increase its witness list, the Trial Chamber imposed restrictions on the paragraphs of the Indictment to which the witnesses added by that Decision could testify.¹³ A subsequent Defence Motion requesting Reconsideration of or Certification to Appeal the restrictions imposed by the Variation Decision was denied in substantial part by the Trial Chamber in a Decision issued on 14 July 2010 ("Reconsideration Decision").¹⁴
7. On 9 July 2010, the Trial Chamber issued a Decision on the Contempt Motion, in which it concluded that the Defence had provided insufficient information to warrant the appointment of an *amicus curiae* at that juncture ("Contempt Decision").¹⁵ In that Decision, the Chamber did not rule out the possibility of appointing an *amicus curiae* to investigate the allegations raised by the Defence, but rather gave the Defence explicit directives to furnish information the Chamber deemed necessary to render a conclusive pronouncement on the issue.¹⁶
8. On 26 July 2010, rather than follow the directives imposed by the Trial Chamber in the Contempt Decision and re-file a Motion seeking to appoint an *amicus curiae* before this Chamber, the Defence elected to file a Notice of Appeal with respect to that Decision before

¹⁰ Contempt Motion, paras. 10-11, 13, 19-26 and prayer for relief.

¹¹ Contempt Motion, paras. 9, 12, 14, 27, 31-33.

¹² *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Decision on Nzabonimana's Motion for the Variation of its List of Witnesses, 4 June 2010, para. 40.

¹³ Variation Decision, paras. 40-41 and disposition.

¹⁴ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Decision on Nzabonimana's Motion for Reconsideration/and or Certification of the "Decision on Nzabonimana's Motion for the Variation of its List of Witnesses", Rendered on 4 June 2010, 14 July 2010.

¹⁵ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Decision on Nzabonimana's Urgent Motion for Appointment of Amicus Curiae to Investigate Contempt by Witness CNAI and for Supplementary Protective Measures for Witness T36, 9 July 2010, para. 19.

¹⁶ Contempt Decision, para. 15.

the Appeals Chamber.¹⁷ The Defence subsequently filed an Interlocutory Appeal of the Contempt Decision on 10 August 2010 ("Interlocutory Appeal").¹⁸

9. On 30 July 2010, the Defence filed a proposed order of appearance for the witnesses it intends to call during the next trial session in the instant proceedings, which is scheduled for 11-22 October 2010 ("Order of Appearance").¹⁹ The Defence listed T37 as the last witness to appear during the session,²⁰ "subject to approval by the Chamber",²¹ and announced that it would subsequently file a Motion to replace T36 with T37 on its witness list.²²
10. On 5 August 2010,²³ the Defence filed a Motion to vary its list of witnesses, requesting the Trial Chamber to allow the Defence to replace T36 with T37 ("Instant Motion").²⁴
11. On 10 August 2010, the Prosecution filed a Response to the Instant Motion ("Instant Response").²⁵
12. On 16 August 2010, the Defence filed a Reply to the Instant Response ("Instant Reply").²⁶
13. On 13 September 2010, the Defence filed a Motion requesting the Trial Chamber to suspend its Decision in relation to the Instant Motion ("Motion to Suspend").²⁷

¹⁷ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Notice of Appeal on the Decision on Nzabonimana's Urgent Motion for Appointment of *Amicus Curiae* to Investigate Contempt by Witness CNAI and for Supplementary Protective Measures for Witness T36, 26 July 2010.

¹⁸ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Interlocutory Appeal on the Decision on Nzabonimana's Urgent Motion for Appointment of *Amicus Curiae* to Investigate Contempt by Witness CNAI and for Supplementary Protective Measures for Witness T36, 10 August 2010.

¹⁹ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Nzabonimana's Proposed Order of Appearance for Witnesses to Be Called During the Session of 11-22 October 2010, 30 July 2010.

²⁰ Order of Appearance, para. 2.

²¹ Order of Appearance, para. 3.

²² Order of Appearance, para. 3.

²³ The Instant Motion was dated 4 August 2010 and was received by the Court Management Section of the Tribunal that same day at 10:47 p.m., Arusha time. Because the Motion was filed after close of business on 4 August 2010, it was deemed to have been filed the following day, in accordance with the established practice of the Tribunal.

²⁴ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Nzabonimana's Second Motion to Vary His SeList [sic] of Witnesses, 4 August 2010 [sic].

²⁵ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Prosecutor's Response to Nzabonimana's Second Motion to Vary His List of Witnesses, 10 August 2010.

²⁶ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Reply to Prosecutor's Response to Nzabonimana's Second Motion to Vary His List of Witnesses, 13 August 2010 [sic].

²⁷ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Nzabonimana's Motion to Suspend "Second Motion to Vary His List of Witnesses", 13 September 2010.

14. On 15 September 2010, the Prosecution filed a Response to the Motion to Suspend (“Response to Motion to Suspend”).²⁸

15. On 17 September 2010, the Defence filed a Reply to the Response to Motion to Suspend (“Reply to Motion to Suspend”).²⁹

SUBMISSIONS OF THE PARTIES

Instant Motion

16. The Defence requests that the Trial Chamber allow it to remove T36 from its witness list, and replace that witness with T37, who, the Defence avers, “will testify exclusively to some of the paragraphs of the Indictment that would have been addressed by Witness T36”.³⁰ The Defence argues that this substitution is made necessary by the current reluctance³¹ and/or inability³² of T36 to testify in the instant proceedings, “[f]ollowing the incident described in his affidavit [appended to the Contempt Motion]”.³³ The Defence submits that it has shown “good cause” and that it is in the “interests of justice” for the Trial Chamber to permit the requested substitution, because “[a] request to substitute unavailable or uncooperative witnesses with new witnesses who would testify to the same aspects of an indictment is an accepted justification for proposals to vary witness lists, especially where the proposed substitutions are on a witness-for-witness basis.”³⁴

17. The Defence argues that because “[t]he scope of the testimony of Witness T37 is similar to that of Witness T36”³⁵ and “narrower than what was initially announced by the Defence”,³⁶ the replacement of T36 with T37 will not complicate the instant proceedings, but rather simplify them.³⁷ Moreover, the Defence contends that the Prosecution will not suffer any prejudice because the Defence provided ample notice of its proposed variation, because the Defence acted “as diligently as possible” under the circumstances.³⁸

²⁸ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Prosecutor’s Response to Nzabonimana’s Motion to Suspend “Second Motion to Vary His List of Witnesses”, 15 September 2010.

²⁹ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Reply to Prosecutor’s Response to Nzabonimana’s Motion to Suspend “Second Motion to Vary His List of Witnesses”, 17 September 2010.

³⁰ Instant Motion, para. 7.

³¹ Instant Motion, para. 7.

³² Instant Motion, para. 10.

³³ Instant Motion, para. 7.

³⁴ Instant Motion, para. 9. (internal citations omitted)

³⁵ Instant Motion, para. 13.

³⁶ Instant Motion, para. 13.

³⁷ Instant Motion, para. 13.

³⁸ Instant Motion, paras. 14-16.

Instant Response

18. The Prosecution opposes the Instant Motion,³⁹ arguing that the Defence “in effect seeks to request the Trial Chamber to vary its [prior Decisions] as to which witnesses will be called”,⁴⁰ and that the Instant Motion “does not meet the threshold set by Rule 73terE or by the Tribunal jurisprudence in allowing a motion for variation”.⁴¹ Specifically, the Prosecution “notes that witness T37 testifies on identical paragraphs to witness T36 with the exception of paragraphs 53 and 54 which are not covered by T37”,⁴² and provides a chart⁴³ that purports to illustrate how the paragraphs that T37 would testify about are already supported by abundant Defence evidence.⁴⁴
19. For these reasons, contends the Prosecution, the Defence has not demonstrated the “probity”, “materiality” or “relevance” of T37’s prospective testimony in these regards,⁴⁵ and the exclusion of T37 would not occasion the Defence “any prejudice or injustice whatsoever”.⁴⁶ Finally, the Prosecution “recalls that this Defence situation is not unique”, because “[t]he Prosecutor in the present case commenced with over 40 potential witnesses which was then revised down to 26 witnesses and finally 19 witnesses”.⁴⁷ When some of its witnesses “became uncooperative, the Prosecutor was able to assess the necessity of their replacement and opted not to, to avoid further unnecessary and undue delays”,⁴⁸ and thus “it is entirely possible for the Defence to do the same”.⁴⁹

Instant Reply

20. The Defence replies that the Prosecution’s characterisation of the Instant Motion as an attempt to alter the prior edicts of the Trial Chamber regarding permissible Defence witness testimony is “erroneous”⁵⁰ and “simply without merit”.⁵¹ In this regard, the Defence stresses that the relief sought in the Instant Motion is merely to substitute an existing, reluctant witness, rather than to add a witness to its list,⁵² and distinguishes the precedents cited by the

³⁹ Instant Response, “Overview”, p. 2.

⁴⁰ Instant Response, paras. 16-18.

⁴¹ Instant Response, paras. 19, 30.

⁴² Instant Response, para. 26.

⁴³ Instant Response, pp. 11-13.

⁴⁴ Instant Response, paras. 27-28, 33-34., 37-38, 40-41

⁴⁵ Instant Response, paras. 38, 42.

⁴⁶ Instant Response, para. 42.

⁴⁷ Instant Response, para. 43. (internal citation omitted)

⁴⁸ Instant Response, para. 44.

⁴⁹ Instant Response, para. 45.

⁵⁰ Instant Reply, para. 11.

⁵¹ Instant Reply, para. 14. See also para. 17.

⁵² Instant Reply, paras. 8, 9, 13.

Prosecution as relating to situations where witnesses were added, rather than replaced.⁵³ The Defence reiterates that the proposed variation would streamline the instant proceedings rather than hinder them,⁵⁴ submits that the Prosecution has not shown how it would suffer any prejudice from the proposed variation,⁵⁵ and argues that the Defence case should not be adversely impacted by the loss of a witness the Defence has “consistently insisted” to have testify before the Trial Chamber.⁵⁶

Motion to Suspend

21. In its Motion to Suspend, the Defence avers that since it filed the Instant Motion, T37 has expressed “the possibility of renouncing to testify due to security reasons”,⁵⁷ and that “he must imperatively discuss with members of his family before deciding whether or not to testify for the Defence.”⁵⁸ The Defence further attaches a signed declaration outlining the motives for T37’s reticence.⁵⁹ In light of these developments, the Defence “asks the Chamber to suspend its deliberation on the [Instant Motion]”,⁶⁰ so that the Defence Team may visit T37’s country of residence “in September 2010 in order to speak with [him]”.⁶¹ The Defence also undertakes “to inform the Chamber whether it wishes the Chamber to resume deliberation on the Motion or to withdraw the Motion”,⁶² and “further undertakes to inform as soon as possible the Prosecutor and the Chamber whether or not Witness T37 will testify during the October session”.⁶³

Response to Motion to Suspend

22. The Prosecution objects to the Defence’s Motion to Suspend, based primarily “on the excessive repetitiveness of the [Defence] testimony in the face of other similar testimony given”.⁶⁴ The Prosecution further reasons that “both parties to this matter are now *functus-officio*; and the Defence has no further right or legal competence by which it can request the Chamber to suspend necessary action on the First motion while the cause of action is live”.⁶⁵

⁵³ Instant Reply, paras. 18-19.

⁵⁴ Instant Reply, para. 12.

⁵⁵ Instant Reply, para. 21.

⁵⁶ Instant Reply, paras. 22-26.

⁵⁷ Motion to Suspend, para. 3.

⁵⁸ Motion to Suspend, para. 3.

⁵⁹ Motion to Suspend, para. 4, citing Annex 1.

⁶⁰ Motion to Suspend, para. 5.

⁶¹ Motion to Suspend, para. 5.

⁶² Motion to Suspend, para. 6.

⁶³ Motion to Suspend, para. 7.

⁶⁴ Response to Motion to Suspend, para. 9.

⁶⁵ Response to Motion to Suspend, para. 11.

Moreover, the Prosecution submits that the Motion to Suspend "has no basis in law" that would allow it to "interrupt due process".⁶⁶ Finally, the Prosecution argues that no prejudice will be occasioned by a refusal to grant the Motion to Suspend and that the ultimate revelation as to whether T37 is willing to testify is a "contingency" that should not "pre-empt" the adjudicative function of the Trial Chamber.⁶⁷

Reply to Motion to Suspend

23. The Defence counters the Prosecution objection by recalling that the Defence has requested the Trial Chamber to suspend consideration of a motion in the past, to which the Prosecution did not object.⁶⁸ The Defence further submits that the Motion to Suspend is envisaged by the discretion afforded the Trial Chamber under Rule 54 of the Rules of Procedure and Evidence ("Rules").⁶⁹ The Defence argues that the Prosecution's objection is "premature" and would be more appropriately raised if the Defence were to ultimately file a motion to withdraw the Instant Motion.⁷⁰ The Defence concedes that the Accused will not be prejudiced if the Trial Chamber declines to grant its Motion to Suspend, but rather insists that the Motion to Suspend was submitted "with the view of preventing prejudice to the Chamber, should the [need to substitute T36 with T37] indeed be moot", as "[t]he Defence wanted to avoid unnecessary expenditure of time and resources".⁷¹ Finally, the Defence offers its regrets for "all efforts already expended by the Chamber and the Prosecutor"⁷² should future investigations reveal that T37 is unable to testify.

DELIBERATIONS

Applicable Law

24. Rule 73 *ter* (E) (ii) provides that

[a]fter commencement of the Defence 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.

⁶⁶ Response to Motion to Suspend, paras. 12-13, 15-17.

⁶⁷ Response to Motion to Suspend, paras. 18-21.

⁶⁸ Reply to Motion to Suspend, para. 3.

⁶⁹ Reply to Motion to Suspend, paras. 3-6.

⁷⁰ Reply to Motion to Suspend, paras. 7-8.

⁷¹ Reply to Motion to Suspend, para. 9.

⁷² Reply to Motion to Suspend, para. 9.

Variations to a witnesses list must be supported by “good cause” and be in “the interests of justice”.⁷³ The jurisprudence of this Tribunal has consistently held that the following factors are relevant to this analysis:

- 1) the materiality and probative value of the testimony in relation to existing witnesses and allegations in the indictment; 2) the complexity of the case; 3) any potential prejudice to the opposing party; 4) the justifications offered for the late variation of the witness list; 5) the timing of the late disclosure; and 6) any delays in the proceedings occasioned by the proposed variation.⁷⁴

Analysis

25. At the outset, the Trial Chamber concurs that it possesses the discretion to suspend its deliberations and to delay the issuance of a pending Decision, where good cause is shown. However, for the reasons outlined below, the Chamber declines to exercise such discretion with respect to the Instant Motion.

26. First and foremost, while the Trial Chamber notes the Defence’s professed desire to avoid unnecessary expenditure of time and judicial resources, the Chamber wishes to underscore the reality that the Defence has filed its Motion to Suspend less than one month prior to the resumption of the forthcoming trial session, approximately two-and-a-half months after it first indicated that it wished to replace T36 with T37, and mere days before the Trial Chamber was to issue a Decision on the merits of the Instant Motion after having conducted considerable deliberations on the matter. Thus, the Chamber laments to inform the Defence that any efforts it has undertaken to alleviate undue burden to the Chamber have been in vain, and accepts the Defence’s regrets in that regard. Moreover, the Chamber observes that the Defence has provided no concrete timeframe in which it expects to complete its investigations regarding T37’s reluctance to testify, leaving both this Chamber and the Prosecution in the dark with only a vague notion as to when the Defence expects to illuminate all relevant parties as to T37’s intentions.

⁷³ See e.g., *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Bagosora Motion to Present Additional Witnesses and Vary its Witness List, 17 November 2006, para. 2; *Prosecutor v. Bizimungu et al.*, ICTR-99-50-T, Decision on Casimir Bizimungu’s Motion to Vary Witness List; and to Admit Evidence of Witness in Written Form in lieu of Oral Testimony, 1 May 2008, para. 12.

⁷⁴ See e.g., *Prosecutor v. Rukundo*, ICTR-2001-70-T, Decision on the Defence Motions for Additional Time to Disclose Witnesses’ Identifying Information, to Vary its Witness List and for Video-Link Testimony, and on the Prosecution’s Motion for Sanctions, 11 September 2007, para. 10; *Prosecutor v. Ndindiliyimana et al.*, ICTR-00-56-T, Decision on Nzuwonemeye’s Request to Vary his Witness List, 31 January 2008, para. 31; *Prosecutor v. Muvunyi*, ICTR-2000-55A-T, Decision on Accused’s Motion to Expand and Vary the Witness List, 28 March 2006, para. 11; *Bizimungu*, para. 13; *Prosecutor v. Zigiranyirazo*, ICTR-2001-73-T, Decision on the Defence Motion to Vary the Defence Witness List, 28 March 2007, para. 3; *Prosecutor v. Kalimanzira*, ICTR-05-88-T, Consolidated Decision on Prosecution Oral Motion to Reduce Defence Witness List and Defence Motion to Vary Witness List, 16 January 2009, para. 7.



27. In view of this uncertainty, the Trial Chamber is deeply concerned about the timing of the Motion to Suspend, especially given the pendency of an Interlocutory Appeal filed by the Defence challenging the Trial Chamber's declination to appoint an *amicus curiae* with respect to T36. If the Interlocutory Appeal—which was expressly predicated on T36's professed refusal to testify after learning of the Contempt Decision⁷⁵—were to be granted, such a material change of circumstances could plausibly nullify the very basis for the Instant Motion. Moreover, given that a final trial session is scheduled to be held in the instant proceedings before this Chamber from 28 February – 25 March 2011,⁷⁶ the Trial Chamber is hard-pressed to understand the Defence's initial rush to replace T36, a witness whose testimony “the Defence has consistently insisted... be heard by the Trial Chamber”.⁷⁷
28. Bearing in mind these factors, as well as the relevant jurisprudence cited above, the Trial Chamber finds unacceptable the present Defence request that the Chamber submit to a state of indefinite limbo relating to T37's ability to testify in the instant proceedings. The Chamber recalls that 25 of the Defence's 38 witnesses have already testified in this trial, and that during the forthcoming trial session, in addition to T37, the Defence proposes to call 6 other witnesses. Thus, in addition to T36 or T37, the Defence still possesses another 6 witnesses on its list, and has provided no reason whatsoever why any of these witnesses are incapable of testifying during the next trial session.
29. For these reasons, the Trial Chamber concludes that the Defence request for the Chamber to suspend issuance of a Decision in relation to the Instant Motion as it awaits further developments regarding T37's willingness to testify would constitute a very late revelation by the Defence that is not adequately justified, which would cause material prejudice to the Prosecution and which could occasion delays in the instant proceedings. Therefore, the Trial Chamber denies the Defence request to suspend issuance of a Decision regarding the Instant Motion and orders the Defence to call another witness from the remainder of its list to testify as the last witness during the forthcoming trial session.

⁷⁵ Instant Motion, para. 16.

⁷⁶ Variation Decision, para. 15.

⁷⁷ Instant Reply, para. 24. Indeed, it is apparent to the Trial Chamber that the Defence, in electing to include T36, rather than T37, among its original List of 30 Witnesses, believed T36's testimony to be more valuable to the Defence case than that of T37, and the Chamber sees nothing in the Instant Motion to indicate that this position has changed. In fact, the present request for variation is premised entirely upon the assertion that T36 is reluctant or unable to testify due to fear for his personal safety, rather than any indication that upon further investigation or analysis by the Defence, T37 represents a greater evidentiary asset to the Defence case.

FOR THESE REASONS, THE CHAMBER

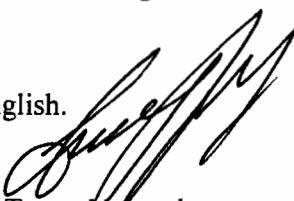
DENIES the Instant Motion as well as the Motion to Suspend;

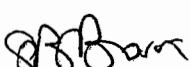
ORDERS the Defence to file, within 5 days, an Amended Order of Appearance, which must be identical to the Order of Appearance filed 30 July 2010, except that T37 must be substituted with another witness from the Defence witness list who has not yet testified; and

FURTHER ORDERS that the new witness added by the Amended Order of Appearance testify as the last witness during the forthcoming trial session.

Arusha, 20 September 2010, done in English.


Solomy Balungi Bossa
Presiding Judge


Bakhtiyor Tuzmukhamedov
Judge


(Read and approved)
Mparany Rajohnson

Judge
(Absent at the time of
signature)

[Seal of the Tribunal]

