



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

574H

*CA*

ICTR-01-74-R  
28 February 2011  
574/H - 562/H

**IN THE APPEALS CHAMBER**

**Before:** Judge Fausto Pocar, Presiding  
Judge Mehmet Güney  
Judge Liu Daqun  
Judge Theodor Meron  
Judge Carmel Agius

**Registrar:** Mr. Adama Dieng

**Decision of:** 28 February 2011

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
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NAME / NOM: KOFEI KUMELID A. AFANDE  
SIGNATURE: *[Signature]* DATE: 28 Feb. 2011

FRANÇOIS KARERA

v.

THE PROSECUTOR

Case No. ICTR-01-74-R

**DECISION ON REQUESTS FOR REVIEW AND ASSIGNMENT OF  
COUNSEL**

**The Applicant**

François Karera, *pro se*

**Office of the Prosecutor**

Hassan Bubacar Jallow  
Deborah Wilkinson  
Christine Graham  
Abdoulaye Seye

ICTR Appeals Chamber  
Date: 28 Feb. 2011  
Action: R. Summit  
Copied To: Concerned Judges,

Parties, Judicial Archives,  
LOs, WSS *[Signature]*

1. The Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively), is seised of the "Motion for Review of Judgement and for Renewal of Counsel's Mandate" filed on 22 July 2010 ("Request") by François Karera ("Karera").<sup>1</sup> The Prosecution filed its response on 31 August 2010<sup>2</sup> and Karera filed his reply on 15 November 2010.<sup>3</sup>

## I. PRELIMINARY ISSUES

2. Karera opposes the Response on the basis of late filing.<sup>4</sup> However, the Appeals Chamber notes that the Request was filed on 22 July 2010 and the Response on 31 August 2010. Accordingly, the Response was filed within the time-limit of forty days prescribed by Rule 120 (B) of the Rules of Procedure and Evidence of the Tribunal ("Rules").

3. On 10 August 2010, Karera requested that any communication with him concerning his Request be in French, the only working language of the Tribunal which he understands.<sup>5</sup> Rule 3 (A) of the Rules stipulates that French is one of the working languages of the Tribunal. The Appeals Chamber notes that, as requested, Karera was served with French translations of filings relating to the Request.<sup>6</sup> Furthermore, the Appeals Chamber grants Karera's Motion for Communications in French with respect to the translation of this decision.

<sup>1</sup> The Request was originally filed in French. See *Requête de demande en révision du Jugement et de demande de renouvellement du mandat des Conseils*, 22 July 2010.

<sup>2</sup> Prosecutor's Response To "*Requête de demande en révision du Jugement et demande de renouvellement du mandat des Conseils*", 31 August 2010 ("Response").

<sup>3</sup> *Mémoire en Réplique*, 15 November 2010 ("Reply"). Karera received the French translation of the Response on 11 November 2010. See Reply, para. 6. Considering that the Reply was filed within 15 days of the communication to Karera of the French translation of the Response, the Appeals Chamber considers it validly filed.

<sup>4</sup> Reply, paras. 9-13.

<sup>5</sup> *Requête de demande de communication en français, langue de travail du Tribunal que le Requérent, François Karera comprend*, 10 August 2010 ("Motion for Communications in French"). The Prosecution did not file a response.

<sup>6</sup> *Ordonnance portant affectation de Juges devant la Chambre d'appel*, 23 August 2010. The French translation was filed on 12 November 2010. *Réponse du Procureur à la Requête intitulée: « [...] demande en révision du Jugement et demande de renouvellement du mandat des Conseils »*, 31 August 2010. The French translation of the Response was filed on 26 October 2010.

## II. BACKGROUND

4. Karera was born in 1938, in Huro sector, Musasa commune, Kigali prefecture.<sup>7</sup> On 9 November 1990, Karera was appointed sub-prefect in Kigali prefecture and on or around 17 April 1994, he was appointed by the Interim Government as prefect of Kigali prefecture.<sup>8</sup>

5. On 7 December 2007, Trial Chamber I of the Tribunal ("Trial Chamber") convicted Karera pursuant to Article 6(1) of the Statute of the Tribunal ("Statute") for genocide, as well as extermination and murder as crimes against humanity.<sup>9</sup> The Trial Chamber imposed a single sentence of imprisonment for the remainder of Karera's life.<sup>10</sup>

6. On 2 February 2009, the Appeals Chamber allowed Karera's appeal in part, dismissed the majority of the grounds of his appeal, and affirmed his sentence of life imprisonment. The Appeals Chamber affirmed Karera's convictions for: (1) instigating and committing genocide, as well as extermination and murder as crimes against humanity, based on the killings of Tutsi refugees at Ntarama Church on 15 April 1994; (2) ordering murder as a crime against humanity based on the killing of Joseph Murekezi; (3) aiding and abetting murder as a crime against humanity based on the killing of Théoneste Gakuru; and (4) instigating genocide and extermination as a crime against humanity based on his conduct at meetings held in Rushashi commune between April and June 1994.<sup>11</sup>

## III. DISCUSSION

7. In his Request, Karera seeks the review of the Appeal Judgement ("Request for Review"), as well as the renewal of his former counsel's mandate in order to guarantee the fairness of the proceedings ("Request for Assignment of Counsel").<sup>12</sup> The Appeals Chamber notes, however, that *in effect* Karera partly seeks to re-litigate issues already discussed and disposed of at trial or on appeal and to have the Appeals Chamber's findings reconsidered ("Request for Reconsideration").<sup>13</sup>

<sup>7</sup> *The Prosecutor v. François Karera*, Case No. ICTR-01-74-T, Judgement and Sentence, signed on 7 December 2007, filed on 14 December 2007 ("Trial Judgement"), para. 21; *François Karera v. The Prosecutor*, Case No. ICTR-01-74-A, Judgement, 2 February 2009 ("Appeal Judgement"), para. 2. In the Appeal Judgement, the Appeals Chamber found that the Trial Chamber erred in designating the prefecture "Kigali-Rural", as in 1994 it was officially named Kigali prefecture. See Appeal Judgement, paras. 2, 57.

<sup>8</sup> Trial Judgement, para. 24; Appeal Judgement, para. 2.

<sup>9</sup> Trial Judgement, paras. 540, 544, 548, 557, 560, 561, 569.

<sup>10</sup> Trial Judgement, para. 585.

<sup>11</sup> Appeal Judgement, para. 398.

<sup>12</sup> Request, para. 1.

<sup>13</sup> Request, paras. 24-26, 31(b).

### A. Request for Reconsideration

8. The Appeals Chamber recalls that it does not have the power to reconsider final judgements.<sup>14</sup> Thus, and in accordance with the standard applicable in review proceedings, the Appeals Chamber will not address Karera's allegations of errors in the Appeal Judgement unless they are related to the alleged new facts. Accordingly, the Appeals Chamber dismisses without further consideration Karera's contentions of errors relating to: (1) the Trial Chamber's alleged shifting of the burden of proof in relation to Karera's alibi;<sup>15</sup> (2) the Trial Chamber's failure to keep a record of its site visit in Rwanda;<sup>16</sup> (3) the Prosecution's purported violations of disclosure obligations under Rule 68 of the Rules, which were already discussed in Karera's submissions on appeal;<sup>17</sup> and (4) the alleged inadmissibility of the charges of incitement to commit genocide and extermination as a crime against humanity based on the events in Rushashi.<sup>18</sup>

### B. Request for Review

#### 1. Standard of Review

9. The Appeals Chamber recalls that review proceedings are governed by Article 25 of the Statute and Rules 120 and 121 of the Rules.<sup>19</sup> The Appeals Chamber strongly emphasises that review of a final judgement is an exceptional procedure and not an additional opportunity for a party to re-litigate arguments that failed at trial or on appeal.<sup>20</sup> In order for review to be granted, the moving party must show that: (i) there is a new fact; (ii) the new fact was not known to the moving party at the time of the original proceedings; (iii) the lack of discovery of that new fact was not the

<sup>14</sup> *Prosecutor v. Zoran Žigić a/k/a "Ziga"*, Case No. IT-98-30/1-A, Decision on Zoran Žigić's "Motion for Reconsideration of Appeals Chamber Judgement IT-98-30/1-A Delivered on 28 February 2005", 26 June 2006, para. 9. See also *Jean-Bosco Barayagwiza v. The Prosecutor*, Case No. ICTR-99-52A-R, Decision on Jean-Bosco Barayagwiza's Motion for Review and/or Reconsideration of the Appeal Judgement of 28 November 2007, 22 June 2009, para. 20; *Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-R, Decision on Hassan Ngeze's Motions and Requests Related to Reconsideration, 31 January 2008, p. 3; *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Decision on Strugar's Request to Reopen Appeal Proceedings, 7 June 2007, para. 23; *Georges Anderson Nderubumwe Rutaganda v. The Prosecutor*, Case No. ICTR-96-03-R, Decision on Requests for Reconsideration, Review, Assignment of Counsel, Disclosure, and Clarification, 8 December 2006 ("*Rutaganda Review Decision*"), para. 6; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-R, Decision on Prosecutor's Request for Review or Reconsideration, 23 November 2006 (public redacted version), paras. 79, 80.

<sup>15</sup> Request, para. 24.

<sup>16</sup> Request, para. 26.

<sup>17</sup> Request, para. 25. See also Appeal Judgement, paras. 372-374.

<sup>18</sup> Request, para. 31(b).

<sup>19</sup> *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R, Decision on Fourth Request for Review, 21 April 2009 ("*Niyitegeka Review Decision*"), para. 21; *Rutaganda Review Decision*, para. 8.

<sup>20</sup> *Niyitegeka Review Decision*, para. 21; *Rutaganda Review Decision*, para. 8.

result of a lack of due diligence by the moving party; and (iv) the new fact *could* have been a decisive factor in reaching the original decision.<sup>21</sup>

10. In wholly exceptional circumstances, the Appeals Chamber may nonetheless grant review, even where the new fact was known to the moving party at the time of the original proceedings or the failure to discover the fact was the result of a lack of due diligence by the moving party, if ignoring the new fact *would* result in a miscarriage of justice.<sup>22</sup>

11. The Appeals Chamber further recalls that the term “new fact” refers to new information of an evidentiary nature of a fact that was not in issue during the trial or appeal proceedings.<sup>23</sup> The requirement that the fact was not in issue during the proceedings means that “it must not have been among the factors that the deciding body could have taken into account in reaching its verdict.”<sup>24</sup> Essentially, the moving party must show that the Chamber did not know about the fact in reaching its decision.<sup>25</sup>

## 2. Alleged New Facts

12. Karera submits the existence of “new facts” demonstrating that: (a) he was not the acting prefect of Kigali prefecture at the relevant time;<sup>26</sup> (b) he was not involved in the killings that occurred at Ntarama Church on 15 April 1994;<sup>27</sup> (c) he was not involved in the murder of Joseph Murekezi at Nyamirambo;<sup>28</sup> and (d) he was not involved in the murder of Théoneste Gakuru at Rushashi.<sup>29</sup>

### (a) Karera’s Authority as Prefect of Kigali

13. The Trial Chamber found that, before his formal appointment as prefect of Kigali prefecture on or around 17 April 1994, Karera exercised at least some of the authority which would normally have been exercised by the prefect.<sup>30</sup> In so finding, it rejected Karera’s assertion that he only

<sup>21</sup> *Prosecutor v. Veselin Šljivančanin*, Case No. IT-95-13/1-R.1, Decision with Respect to Veselin Šljivančanin’s Application for Review, 14 July 2010 (“*Šljivančanin Review Decision*”), p. 2; *Niyitegeka Review Decision*, para. 21; *Rutaganda Review Decision*, para. 8.

<sup>22</sup> *Šljivančanin Review Decision*, pp. 2, 3; *Niyitegeka Review Decision*, para. 21; *Rutaganda Review Decision*, para. 8. See also *Prosecutor v. Veselin Šljivančanin*, Case No. IT-95-13/1-R.1, Review Judgement, 8 December 2010 (“*Šljivančanin Review Judgement*”), paras. 7, 23.

<sup>23</sup> *Šljivančanin Review Decision*, p. 2; *Niyitegeka Review Decision*, para. 22; *Rutaganda Review Decision*, para. 9.

<sup>24</sup> *Niyitegeka Review Decision*, para. 22; *Rutaganda Review Decision*, para. 9.

<sup>25</sup> *Niyitegeka Review Decision*, para. 22; *Rutaganda Review Decision*, para. 9. See also *Šljivančanin Review Decision*, p. 2.

<sup>26</sup> Request, para. 28.

<sup>27</sup> Request, para. 29.

<sup>28</sup> Request, para. 30.

<sup>29</sup> Request, para. 31(a).

<sup>30</sup> Trial Judgement, paras. 77, 247.

exercised authority as sub-prefect responsible for economic and technical affairs.<sup>31</sup> The Appeals Chamber affirmed these findings, considering that it was open to the Trial Chamber to conclude that Karera exercised, prior to April 1994, powers beyond the capacity of a sub-prefect for economic and technical affairs.<sup>32</sup> In reaching this decision, the Appeals Chamber made reference to the evidence contained in three letters that Karera signed “for the prefect” on 22 September, 21 October, and 25 October 1993.<sup>33</sup>

14. Karera relies on a statement made, on 22 February 2010, by the Presiding Judge of Trial Chamber III of the Tribunal in the *Karemera et al.* case (“*Karemera et al.* Statement” and “*Karemera et al.* Presiding Judge”, respectively) in relation to the 21 October 1993 Letter.<sup>34</sup> During Karera’s testimony in the *Karemera et al.* case, the Prosecution confronted Karera with the 21 October 1993 Letter.<sup>35</sup> The *Karemera et al.* Presiding Judge commented that the 21 October 1993 Letter does not contain any indication that Karera assumed the title of prefect or interim prefect.<sup>36</sup>

15. Karera contends that the *Karemera et al.* Statement is a new fact demonstrating that the Trial Chamber erred in concluding that he acted as prefect of Kigali prefecture before 17 April 1994.<sup>37</sup>

16. The Prosecution responds that Karera’s authority and function as *de facto* prefect of Kigali prefecture is not a “new fact” since the issue was discussed and decided at trial and on appeal.<sup>38</sup>

17. The *Karemera et al.* Statement is a statement of a Judge made in another case about a piece of evidence and, as such, has no evidentiary value. In addition, the *Karemera et al.* Statement concerns a piece of evidence that was specifically considered during the trial and appeal proceedings in Karera’s case on the issue of whether Karera acted with the authority of the prefect before 17 April 1994. As such, it is not new information of an evidentiary nature of a fact that was not in issue during the trial or appeal proceedings. Consequently, the Appeals Chamber finds that

<sup>31</sup> Trial Judgement, paras. 77, 78.

<sup>32</sup> Appeal Judgement, para. 68. See also Appeal Judgement, paras. 65-67, 69-80.

<sup>33</sup> Appeal Judgement, para. 68, referring to letters dated 22 September 1993, 21 October 1993 (“21 October 1993 Letter”), and 25 October 1993 contained in Exhibit P15; Trial Judgement, para. 77. The 21 October 1993 Letter is an invitation to members of the security council of Kigali prefecture to attend a meeting. See *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Transcript, 22 February 2010 (“*Karemera et al.* Transcript of 22 February 2010”), pp. 52, 53.

<sup>34</sup> Request, para. 28, referring to *Karemera et al.* Transcript of 22 February 2010, pp. 52, 53. The relevant letter discussed in the *Karemera et al.* trial proceedings is identical to the 21 October 1993 Letter contained in Exhibit P15. Compare Exhibit P15 with *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Exhibit P437. See also *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Transcript, 23 February 2010, pp. 22, 23, 27.

<sup>35</sup> *Karemera et al.* Transcript of 22 February 2010, p. 52.

<sup>36</sup> *Karemera et al.* Transcript of 22 February 2010, p. 53.

<sup>37</sup> Request, para. 28. See also Reply, paras. 14-18.

<sup>38</sup> Response, paras. 20, 21. See also Response, paras. 19, 22.

the *Karera et al.* Statement is not a new fact for the purpose of review under Rule 120 of the Rules.

(b) Attack at Ntarama Church

18. The Trial Chamber found that, on 15 April 1994, Karera encouraged a group of *Interahamwe* and soldiers to attack the Tutsi refugees at Ntarama Church, which resulted in the death of several hundred Tutsis.<sup>39</sup> The Trial Chamber found that Karera substantially contributed to the attack and thus instigated genocide. Additionally, the Trial Chamber found that Karera was present during the attack and that he participated in it by shooting, thus committing genocide.<sup>40</sup> Based on these findings, the Trial Chamber also found that Karera instigated and committed extermination as a crime against humanity,<sup>41</sup> and instigated murder as a crime against humanity.<sup>42</sup> The Appeals Chamber affirmed the Trial Chamber's finding that Karera instigated and committed genocide and instigated and committed extermination and murder as crimes against humanity in relation to his participation in this attack.<sup>43</sup>

19. Karera submits an affidavit dated 20 April 2009 of Dick Prudence Munyeshuli, a Rwandan lawyer who represented civil parties of the massacres at Ntarama Church in proceedings before the Nyamata Court of First Instance in Rwanda in 2002 ("Munyeshuli Affidavit", "Nyamata Court Proceedings", and "Nyamata Court", respectively).<sup>44</sup> The Munyeshuli Affidavit states that "Karera's name was not mentioned during the preliminary proceedings or in court during the trials. Neither the accused nor the civil parties mentioned the participation of [...] Karera in the crimes or his presence at the crime scenes."<sup>45</sup> Karera submits that the Munyeshuli Affidavit is a new fact showing that he was not involved in the crimes committed at Ntarama Church.<sup>46</sup>

20. The Prosecution responds that the content of the Munyeshuli Affidavit does not constitute a "new fact" since the issue of Karera's presence and involvement in the attack at Ntarama Church was litigated at trial and on appeal, and contends that it could not have had any impact on the final judgement.<sup>47</sup> The Prosecution points to the *Rutaganda* Review Decision in which the Appeals

<sup>39</sup> Trial Judgement, para. 315. *See also* Trial Judgement, paras. 292-314.

<sup>40</sup> Trial Judgement, paras. 541-544.

<sup>41</sup> Trial Judgement, paras. 554, 557.

<sup>42</sup> Trial Judgement, paras. 559, 560.

<sup>43</sup> Appeal Judgement, paras. 258, 398.

<sup>44</sup> Request, para. 29. The Nyamata Court Proceedings have concluded and a judgement was issued on 29 May 2002. *See* Request, para. 29; Munyeshuli Affidavit, para. 4, attached to the Request.

<sup>45</sup> Munyeshuli Affidavit, para. 6, attached to the Request. *See also* Request, para. 29.

<sup>46</sup> Request, para. 29; Reply, paras. 19, 20.

<sup>47</sup> Response, paras. 17, 18.

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Chamber stated that failures of witnesses to discuss an accused's activities in a separate trial involving a different accused do not constitute new facts.<sup>48</sup>

21. In his Reply, Karera argues that the Munyeshuli Affidavit is a new fact that was not in issue before the Trial and the Appeals Chambers, as it was produced two months after the delivery of the Appeal Judgement.<sup>49</sup> Karera also argues that the Munyeshuli Affidavit demonstrates that the four Prosecution witnesses who claimed to be survivors of the Ntarama Church attack and who implicated him in the attack gave false evidence, since their names were not included in the list of survivors accepted by the Nyamata Court.<sup>50</sup> Because Karera advanced this latter argument for the first time in the Reply, depriving the Prosecution of the opportunity to respond to it, the Appeals Chamber declines to consider it.

22. The Munyeshuli Affidavit states that the Nyamata Court Proceedings involved 78 accused and "dealt thoroughly with the killings which occurred between 7 April and 15 May 1994 at various locations in Kanzenze commune, particularly at Ntarama."<sup>51</sup> It further asserts that Karera's name, presence, or participation in the crimes, were never mentioned during the Nyamata Court Proceedings.<sup>52</sup>

23. Karera relies on the Munyeshuli Affidavit to show that his name was not mentioned in Rwandan proceedings in connection with the crimes committed at Ntarama. However, the Appeals Chamber recalls that the Trial Chamber already assessed evidence that none of the prisoners who participated in *Gacaca* proceedings in Rwanda mentioned Karera's presence during the attack at Ntarama Church.<sup>53</sup> The issue of Karera's presence at Ntarama and his participation in the crimes committed there was extensively litigated at trial and on appeal.<sup>54</sup> Consequently, the Munyeshuli Affidavit cannot be considered to provide new information of an evidentiary nature of a fact that was not in issue during the earlier proceedings. The Appeals Chamber therefore finds that the Munyeshuli Affidavit is not a new fact for the purpose of review under Rule 120 of the Rules.

(c) Murder of Joseph Murekezi

24. The Trial Chamber found that between 8 and 10 April 1994, following Karera's order, policeman Kalimba forced a man to kill Joseph Murekezi at a roadblock near Karera's house, in

<sup>48</sup> Response, para. 17, referring to Rutaganda Review Decision, para. 13.

<sup>49</sup> Reply, para. 19(b).

<sup>50</sup> Reply, paras. 19(a), 19(d), referring to Prosecution Witnesses BMI, BMJ, BMK, and BML.

<sup>51</sup> Munyeshuli Affidavit, para. 5, attached to the Request.

<sup>52</sup> Munyeshuli Affidavit, para. 6, attached to the Request.

<sup>53</sup> Trial Judgement, paras. 287, 288, 312-314.

<sup>54</sup> Trial Judgement, paras. 293-315; Appeal Judgement, paras. 236-239, 245, 246, 248-258.

Nyamirambo.<sup>55</sup> In connection with this incident, the Appeals Chamber affirmed Karera's conviction for ordering murder as a crime against humanity, and reversed, *proprio motu*, Karera's convictions for ordering genocide and extermination as a crime against humanity.<sup>56</sup>

25. Karera argues that a statement made by Yolande Mukagasana, Joseph Murekezi's wife, in her book "*La mort ne veut pas de moi*", concerning the circumstances of her husband's death, which she witnessed ("Mukagasana Extract"), constitutes a new fact that contradicts the Trial Chamber's findings and the Prosecution's case at trial.<sup>57</sup> Karera asserts that the Mukagasana Extract does not implicate him, policeman Kalimba, or the unidentified young man who was forced by Kalimba to kill Joseph Murekezi.<sup>58</sup>

26. The Prosecution responds that Karera's reliance on the Mukagasana Extract is impermissible since the Mukagasana Book was published before Karera's arrest and trial. As such, any failure to introduce this fact is attributable to Karera's lack of due diligence.<sup>59</sup> In any case, the Prosecution argues that the identity of the attackers, the involvement of Karera in Joseph Murekezi's murder, and the credibility of the relevant witnesses were already litigated at trial and on appeal.<sup>60</sup>

27. In his Reply, Karera submits that the Prosecution does not challenge the Mukagasana Extract.<sup>61</sup> Karera further argues that: (1) the fact that a member of the Murekezi family survived contradicts the Prosecution evidence;<sup>62</sup> (2) the fact that Joseph Murekezi died in his own house and not on the road contradicts Witness BMG's evidence on which Karera's conviction is based;<sup>63</sup> and (3) the Prosecution violated its Rule 68 disclosure obligation.<sup>64</sup> The Appeals Chamber declines to consider these arguments as they were raised for the first time in the Reply, thereby depriving the Prosecution of the opportunity to respond to them.

28. The Mukagasana Extract reads:

I saw a group of seven or eight soldiers emerge from the bend marching, stamping their feet on the ground with their black boots....The small group proceeded to the roadblock where Joseph was...We heard the following order: Hutus, on one side of the road and Tutsis on the other. I spotted Joseph, he was standing straight and looking the soldiers in the eye...a burst of

<sup>55</sup> Trial Judgement, paras. 192, 535, 538, 540, 555, 557, 559-561. See also Appeal Judgement, para. 188.

<sup>56</sup> Appeal Judgement, paras. 188-199, 360-370, 398.

<sup>57</sup> Request, para. 30, referring to Yolande Mukagasana, *La mort ne veut pas de moi*, Paris: Fixot, 1997 ("Mukagasana Book"), pp. 80-85; Reply, paras. 21, 26.

<sup>58</sup> Request, para. 30; Reply, paras. 26, 27.

<sup>59</sup> Response, para. 24.

<sup>60</sup> Response, paras. 25, 26.

<sup>61</sup> Reply, para. 22.

<sup>62</sup> Reply, para. 21.

<sup>63</sup> Reply, para. 26, referring to Appeal Judgement, para. 195. See also Trial Judgement, para. 186.

<sup>64</sup> Reply, paras. 22-24.

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submachine gun fire rent the air. I saw bodies fall to the ground. One man ran a short distance and then collapsed...I saw a silhouette stagger towards the house. His shoulder was bleeding profusely. I recognized Joseph...He disappeared inside our house...<sup>65</sup>

29. Karera relies on the Mukagasana Extract to contest the identity of the attackers and to show that he was not implicated in Joseph Murekezi's murder. However, the Appeals Chamber notes that the Mukagasana Extract, when read in context, does not describe Joseph Murekezi's death. A later passage in the Mukagasana Book reveals that, after the incident described in the Mukagasana Extract, Joseph Murekezi was beaten by three men at a roadblock and his hand was cut off with a machete.<sup>66</sup> The Appeals Chamber therefore considers that the Mukagasana Extract does not contradict the Trial Chamber's findings.<sup>67</sup>

30. Consequently, the Appeals Chamber finds that the Mukagasana Extract is not a new fact for the purpose of review under Rule 120 of the Rules.

(d) Murder of Théoneste Gakuru

31. The Trial Chamber found that Karera instigated the killing of Théoneste Gakuru at the Kinyari roadblock in Rushashi commune in April or May 1994, and convicted him of instigating and aiding and abetting murder as a crime against humanity.<sup>68</sup> In connection with this incident, the Appeals Chamber affirmed Karera's conviction for aiding and abetting murder as a crime against humanity and reversed his conviction for instigating murder as a crime against humanity.<sup>69</sup>

32. Karera submits that a statement made by Tharcisse Renzaho ("Renzaho") on 11 June 2009 ("Renzaho Statement") amounts to a new fact relevant to this conviction.<sup>70</sup> In essence, in his statement, Renzaho asserts that: (1) Théoneste Gakuru left Kimisange sector on 7 April 1994 with the inhabitants to take refuge in Nyamirambo sector and attended a meeting at the Kigali-Ville prefecture office on 8 April 1994; (2) Théoneste Gakuru was in charge of the refugees in Nyamirambo until the general withdrawal on 3 to 4 July 1994; and (3) Renzaho learned much later, when in exile and at an unspecified time, that Théoneste Gakuru died in Ruhengeri.<sup>71</sup> Karera asserts

<sup>65</sup> Request, para. 30. *See also* Mukagasana Book, pp. 81, 82.

<sup>66</sup> Mukagasana Book, p. 85.

<sup>67</sup> Trial Judgement, paras. 186-192.

<sup>68</sup> Trial Judgement, paras. 456, 559-561, 569.

<sup>69</sup> Appeal Judgement, paras. 319, 323, 325, 398. The Appeals Chamber found that while Karera had informed the *Interahamwe* who later killed Gakuru that he was an "*Inyenzi*" and ordered them to arrest him, the Trial Chamber could not have reasonably concluded that Karera prompted the perpetrators to kill Gakuru. *See* Appeal Judgement, para. 319.

<sup>70</sup> Request, para. 31(a).

<sup>71</sup> Renzaho Statement, paras. 7-9, attached to the Request.

that the Renzaho Statement contradicts the Trial Chamber's finding that Théoneste Gakuru died in April or May 1994.<sup>72</sup>

33. The Prosecution responds that the Renzaho Statement does not constitute a "new fact" since the information originated from another detainee in the same prison and was thus available to Karera during and after his trial. Therefore, any failure to present such facts as evidence would be attributable to Karera's lack of due diligence.<sup>73</sup> Furthermore, the Prosecution responds that the issue of the murder of Théoneste Gakuru has been examined and decided by the Appeals Chamber, and that the Renzaho Statement would not have had an impact on the verdict.<sup>74</sup>

34. In his Reply, Karera argues that the fact that he was detained at the United Nations Detention Facility in Arusha, Tanzania, with Renzaho is irrelevant to the determination of the existence of a new fact.<sup>75</sup>

35. The Appeals Chamber notes that the information in the Renzaho Statement concerning Théoneste Gakuru's death is hearsay, vague and notably lacks details concerning the date and circumstances of Théoneste Gakuru's death. The information in the Renzaho Statement concerning Théoneste Gakuru's activities after 8 April 1994 is also ambiguous and unsubstantiated. The Renzaho Statement is thus of limited probative value. The Appeals Chamber recalls that, while the Trial Chamber did not precisely establish the time of Théoneste Gakuru's death, this issue was litigated at trial and the Trial Chamber found on the basis of eyewitness testimony that the killing occurred in April or May 1994.<sup>76</sup> Consequently, the Renzaho Statement cannot be considered to provide new information of an evidentiary nature of a fact that was not in issue during the earlier proceedings. The Appeals Chamber therefore finds that the Renzaho Statement is not a new fact for the purpose of review under Rule 120 of the Rules.

### 3. Conclusion

36. The Appeals Chamber reiterates that review is an exceptional remedy. In the instant case, Karera has failed to demonstrate that such a remedy is warranted.

#### C. Request for Assignment of Counsel

37. Karera requests, in the context of his Request for Review, that the Appeals Chamber order the renewal of the mandate of his counsel in light of the principle of equality of arms and in order to

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<sup>72</sup> Reply, para. 32.

<sup>73</sup> Response, para. 28.

<sup>74</sup> Response, paras. 29, 30.

<sup>75</sup> Reply, para. 29.

safeguard his right to a fair trial.<sup>77</sup> The Prosecution responds that Karera has failed to demonstrate the necessity of the re-assignment of counsel since his submissions are unsubstantiated, unsupported, and do not amount to exceptional circumstances justifying the assignment of counsel.<sup>78</sup>

38. The Appeals Chamber recalls that review is an exceptional remedy and that an applicant is only entitled to assigned counsel at the Tribunal's expense if the Appeals Chamber authorizes the review or if it deems it necessary to ensure the fairness of the proceedings.<sup>79</sup>

39. As a matter of principle, it is not for the Tribunal to assist a convicted person whose case has reached finality with any new investigation he would like to conduct or any new motion he may wish to bring by assigning him legal assistance at the Tribunal's expense. It is only in exceptional circumstances that a convicted person will be granted legal assistance by the Tribunal after a final judgement has been rendered against him. At the preliminary examination stage of a request for review, such assistance will be granted only if the Appeals Chamber deems it "necessary to ensure the fairness of the proceedings". This necessity is, to a great extent, assessed in light of the grounds for review put forward by the applicant.<sup>80</sup>

40. In the present case, Karera's grounds for review have been denied in their entirety. Accordingly, the Appeals Chamber finds that Karera's Request for Assignment of Counsel is moot.

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<sup>76</sup> Trial Judgement, paras. 452, 454-456, 559.

<sup>77</sup> Request, paras. 1, 32, 33.

<sup>78</sup> Response, paras. 4, 31, 32.

<sup>79</sup> *Niyitegeka* Review Decision, para. 51; *Emmanuel Ndingabahizi v. The Prosecutor*, Case No. ICTR-01-71-R, Decision on Emmanuel Ndingabahizi's Motion for Assignment of Counsel and the Prosecution's Request to Place the Motion Under Seal, 25 September 2008, p. 2; *Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-R, Decision on Hassan Ngeze's Motion to Obtain Assistance From Counsel, 28 February 2008, p. 2; *Rutaganda* Review Decision, para. 41.

<sup>80</sup> *Niyitegeka* Review Decision, para. 52.

**IV. DISPOSITION**

41. For the foregoing reasons, the Appeals Chamber  
**GRANTS** the Motion for Communications in French;  
**DENIES** the Request in its entirety; and  
**DIRECTS** the Registrar to provide Karera with a French translation of this decision as soon as practicable.

Done in English and French, the English text being authoritative.

Done this 28th day of February 2011,  
at The Hague, The Netherlands.



A handwritten signature in black ink, appearing to read "Fausto Pocar", is written over a horizontal line.

Judge Fausto Pocar  
Presiding

[Seal of the Tribunal]