



**Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda**

640/H

DX
ICTR-01-74-R
26th March 2012
{640/H - 630/H}

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mehmet Güney
Judge Liu Daqun
Judge Arlette Ramaroson
Judge Carmel Agius

Registrar: Mr. Adama Dieng

Decision of: 26 March 2012

FRANÇOIS KARERA

v.

THE PROSECUTOR

Case No. ICTR-01-74-R

JUDICIAL RECORDS SECTION
2012 MAR 26 P 314
[Signature]

DECISION ON REQUESTS FOR RECONSIDERATION AND REVIEW

The Applicant:

François Karera, *pro se*

The Office of the Prosecutor:

Hassan Bubacar Jallow
James J. Arguin
George W. Mugwanya
Memory Maposa
Mihary Andrianaivo
Leo Nwoye

ICTR Appeals Chamber
Date: 25th March 2012
Action: R. Jumar
Copied To: All concerned
[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 to Appeal the Decision of 28 February 2011, to Request Review and to File Other Recently Discovered New Facts" filed by François Karera ("Karera") on 15 August 2011 ("Motion").¹ The Prosecution filed its response on 29 August 2011,² and Karera filed his reply on 13 October 2011.³

I. BACKGROUND

2. Karera was born in 1938, in Huro sector, Musasa commune, Kigali prefecture.⁴ On 9 November 1990, Karera was appointed sub-prefect in Kigali prefecture and, on or around 17 April 1994, he was appointed prefect of Kigali prefecture by the Interim Government.⁵

3. 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") of genocide, as well as extermination and murder as crimes against humanity.⁶ The Trial Chamber sentenced him to life imprisonment.⁷

4. 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. 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

¹ The Motion was originally filed in French. The English translation of the Motion was filed on 26 September 2011.

² Prosecutor's Response to the « *Requ[ê]te relative au recours gracieux contre la Décision du 28 f[é]vrier 2011 à la demande en révision et à la déposition d'autres faits nouveaux découverts récemment* », 29 August 2011 ("Response"). The French translation of the Response was filed on 30 September 2011.

³ Reply to the Prosecutor's Response to the "Motion to Appeal the Decision of 28 February 2011, to Request Review and to File Other Recently Discovered New Facts", originally filed in French on 13 October 2011, English translation filed on 14 November 2011 ("Reply"). The Appeals Chamber notes that, in his Reply, Karera objects to the "personalized and direct manner in which the Prosecutor addressed [...] Judge Patrick Robinson" in the Response and requests "that this defect be corrected". See Reply, para. 5. The Appeals Chamber considers that this request is without merit and dismisses it as such.

⁴ *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.

⁵ Trial Judgement, para. 24; Appeal Judgement, para. 2.

⁶ Trial Judgement, paras. 540, 544, 548, 557, 560, 561, 569.

⁷ Trial Judgement, para. 585.

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 1994.⁸

5. On 28 February 2011, the Appeals Chamber denied Karera's requests for the assignment of counsel and review of the Appeal Judgement based on alleged new facts concerning his position as acting prefect of Kigali prefecture, and his involvement in the killings of Joseph Murekezi, Théoneste Gakuru, and Tutsi refugees at Ntarama Church.⁹

II. DISCUSSION

6. In the present Motion, Karera seeks reconsideration of the Review Decision of 28 February 2011 ("Request for Reconsideration"),¹⁰ as well as review of the Appeal Judgement based on alleged new facts ("Request for Review").¹¹ He also submits that the Prosecution breached its disclosure obligations under Rule 68 of the Rules of Procedure and Evidence of the Tribunal ("Rules").¹²

A. Request for Reconsideration

7. Karera requests the Appeals Chamber to reconsider its Review Decision of 28 February 2011, arguing that the Appeals Chamber erred in: (i) refusing to consider an affidavit from a Rwandan lawyer, Dick Munyeshuli, as well as "Judgement No. 102035/SI/BA/Nmta/B.A – RP No. 166/99/CS/Nta/Gde" and an excerpt from a book authored by Yolande Mukagasana; and (ii) rejecting Tharcisse Renzaho's statement.¹³ The Prosecution responds that Karera's Request for Reconsideration has no legal basis and is, in any event, without merit and should be dismissed accordingly.¹⁴ Karera replies that a request for reconsideration falls within the discretionary power of the Appeals Chamber.¹⁵

⁸ Appeal Judgement, para. 398.

⁹ Decision on Requests for Review and Assignment of Counsel, 28 February 2011 ("Review Decision of 28 February 2011").

¹⁰ Motion, paras. 13-17, 36-39, 51-53, 68.

¹¹ Motion, paras. 12, 18-35, 40-50, 54-70.

¹² Motion, paras. 21, 28.

¹³ Motion, paras. 13-17, 36-39, 51-53.

¹⁴ Response, paras. 5-7, 24.

¹⁵ Reply, paras. 6, 7.

8. The Appeals Chamber recalls that decisions rejecting requests for review are final decisions closing the proceedings and, as such, are not subject to reconsideration.¹⁶ Karera's Request for Reconsideration is accordingly dismissed without further consideration.

B. Request for Review

1. Standard of Review

9. Review proceedings are governed by Article 25 of the Statute and Rules 120 and 121 of the Rules.¹⁷ 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.¹⁸ 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 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.¹⁹

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.²⁰

11. A "new fact" refers to new information of an evidentiary nature of a fact that was not in issue during the trial or appeal proceedings.²¹ 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

¹⁶ *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R, Decision on Motion for Reconsideration of Fifth Review Decision, 25 March 2010, para. 5; *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R, Decision on Request for Reconsideration of the Decision on Request for Review, 27 September 2006, pp. 2, 3, quoting *Prosecutor v. Zoran Žigic a/k/a "Ziga"*, Case No. IT-98-30/1-A, Decision on Zoran Žigic's "Motion for Reconsideration of Appeals Chamber Judgement IT-98-30/1-A Delivered on 28 February 2005", 26 June 2006, para. 9.

¹⁷ *Jean de Dieu Kamuhanda v. The Prosecutor*, Case No. ICTR-99-54A-R, Decision on Request for Review, 25 August 2011 ("*Kamuhanda* Review Decision"), para. 17; Review Decision of 28 February 2011, para. 9; *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R, Decision on Fourth Request for Review, public redacted version, 21 April 2009 ("*Niyitegeka* Review Decision"), para. 21; *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. 8.

¹⁸ *Kamuhanda* Review Decision, para. 17; Review Decision of 28 February 2011, para. 9; *Niyitegeka* Review Decision, para. 21; *Rutaganda* Review Decision, para. 8.

¹⁹ *Kamuhanda* Review Decision, para. 17; Review Decision of 28 February 2011, para. 9; *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.

²⁰ *Kamuhanda* Review Decision, para. 17; Review Decision of 28 February 2011, para. 10; *Šljivančanin* Review Decision, pp. 2, 3; *Niyitegeka* Review Decision, para. 21; *Rutaganda* Review Decision, para. 8.

²¹ *Kamuhanda* Review Decision, para. 18; Review Decision of 28 February 2011, para. 11; *Šljivančanin* Review Decision, p. 2; *Niyitegeka* Review Decision, para. 22; *Rutaganda* Review Decision, para. 9.

have taken into account in reaching its verdict.”²² Essentially, the moving party must show that the deciding body did not know about the fact in reaching its decision.²³

2. Alleged New Facts

12. Karera seeks review based on alleged new facts demonstrating that he was not involved in: (a) the murders committed at Ntarama Church on 15 April 1994;²⁴ (b) the murder of Joseph Murekezi at Nyamirambo;²⁵ or (c) the murder of Théoneste Gakuru at Rushashi.²⁶

(a) Ntarama Church

13. The Trial Chamber found that, on 15 April 1994, Karera encouraged a group of *Interahamwe* and soldiers to attack Tutsi refugees at Ntarama Church, which resulted in the death of several hundred Tutsis.²⁷ It also found that Karera was present during the attack and that he participated in it by shooting refugees.²⁸ Based on these findings, the Trial Chamber convicted Karera for genocide, as well as extermination and murder as crimes against humanity.²⁹ The Appeals Chamber affirmed Karera’s convictions for his participation in these killings.³⁰

14. Karera submits that his name was not mentioned in: (i) the investigations, report, and statements of an investigator of the Office of the Prosecutor (referred to as “BNF” by Karera) who carried out investigations in Ntarama, Rushashi, and Nyamirambo;³¹ (ii) the Nyamata *Gacaca* court judgement concerning Djuma Gasana, sub-prefect of Kanazi (“*Gasana* Judgement”);³² or (iii) Jean Hatzfeld’s book “*Dans le nu de la vie*” (“Hatzfeld Book”) which contains testimonies of survivors of the attacks in Nyamata-Ntarama region.³³ Karera contends that he was denied the benefit of the highly important and relevant testimony of BNF, and that the fact that the Prosecution hid such a key trial witness constitutes a new fact, which justifies summoning BNF to testify.³⁴ He also submits that the *Gasana* Judgement and the Hatzfeld Book constitute new facts proving that

²² *Kamuhanda* Review Decision, para. 18; Review Decision of 28 February 2011, para. 11; *Niyitegeka* Review Decision, para. 22; *Rutaganda* Review Decision, para. 9.

²³ *Kamuhanda* Review Decision, para. 18; Review Decision of 28 February 2011, para. 11; *Niyitegeka* Review Decision, para. 22; *Rutaganda* Review Decision, para. 9. See also *Šljivancanin* Review Decision, p. 2.

²⁴ Motion, paras. 12, 18-35, 61-66.

²⁵ Motion, paras. 12, 40-50.

²⁶ Motion, paras. 12, 54-60.

²⁷ Trial Judgement, para. 315. See also *ibid.*, paras. 292-314.

²⁸ Trial Judgement, paras. 314, 315, 542, 543.

²⁹ Trial Judgement, paras. 544, 554, 556, 557, 559-561, 569.

³⁰ Appeal Judgement, paras. 258, 398.

³¹ Motion, para. 19.

³² Motion, para. 26, heading at p. 6.

³³ Motion, paras. 31-33. Karera also refers to a statement by Father Etienne Levie, a curate in Nyamata during the relevant events, that he never saw or heard that Karera was present in the Nyamata-Ntarama region during the events. See Motion, paras. 30, 31. However, Karera does not argue that the statement by Father Etienne Levie constitutes a new fact. See Motion, paras. 18, 30-35.

he did not take part in the Ntarama killings.³⁵ In addition, Karera submits that his name does not appear on the list of persons suspected of genocide or crimes against humanity in Ntarama in any of the reports of *Gacaca* courts disclosed publicly in May 2011 ("*Gacaca* Courts Reports").³⁶

15. The Prosecution responds that Karera's submissions should be summarily dismissed because he fails to provide the Appeals Chamber with the relevant documents containing the alleged new facts.³⁷ The Prosecution further submits that, in any event, Karera's request should fail on the merits as Karera does not establish any new facts warranting review, but merely attempts to re-litigate issues that were already litigated by the Trial Chamber and the Appeals Chamber.³⁸

16. Karera replies, *inter alia*, that the Prosecution's assertion that he did not produce the documents is baseless as the Prosecution is in possession of the documents.³⁹

17. The Appeals Chamber observes that Karera has failed to provide it with any material supporting his contention concerning BNF, as well as the *Gasana* Judgement and the Hatzfeld Book which, he alleges, constitute new facts. Likewise, Karera has failed to provide the Appeals Chamber with the *Gacaca* Courts Reports he relies upon in support of his Request for Review. In the absence of the relevant materials, the Appeals Chamber considers that it is unable to fully assess whether they constitute or establish the existence of "new facts" and, consequently, to properly assess the merits of this part of the Request for Review.⁴⁰ The Appeals Chamber stresses that, as the moving party in this case, it was incumbent on Karera to provide the Appeals Chamber with the material supporting his claims.

18. That being said, the Appeals Chamber does not find it necessary to order Karera to file the material relevant to his contention concerning BNF, the *Gasana* Judgement, the Hatzfeld Book, or the *Gacaca* Courts Reports. The Appeals Chamber reiterates that the issue of Karera's participation in the crimes committed at Ntarama on 15 April 1994 was an issue that was extensively litigated both at trial and on appeal.⁴¹ Consequently, based on what Karera discloses of their contents, BNF's expected testimony, the *Gasana* Judgement, the Hatzfeld Book, or the *Gacaca* Courts Reports could not be considered to provide new information of an evidentiary nature of a fact that was not in issue during the earlier proceedings. Accordingly, the Appeals Chamber finds that, in any event,

³⁴ Motion, paras. 18, 20-25, heading at p. 5.

³⁵ Motion, para. 18. *See also ibid.*, paras. 27, 29, 35.

³⁶ Motion, paras. 61, 64-66.

³⁷ Response, paras. 10-12. *See also ibid.*, para. 24.

³⁸ Response, paras. 10, 13, 14, 19. *See also ibid.*, paras. 20, 22, 23.

³⁹ Reply, paras. 14, 15.

⁴⁰ *Cf. Niyitegeka* Review Decision, para. 46.

⁴¹ *See* Trial Judgement, paras. 293-315; Appeal Judgement, paras. 236-239, 245-258. *See also* Review Decision of 28 February 2011, para. 23.

these documents could not amount to new facts for the purpose of review under Rule 120 of the Rules.

(b) Murder of Joseph Murekezi

19. The Trial Chamber further 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 Nyamirambo.⁴² 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.⁴³

20. In its Review Decision of 28 February 2011, the Appeals Chamber noted that a passage from the book "*La mort ne veut pas de moi*" authored by Joseph Murekezi's wife, Yolande Mukagasana, revealed that "Joseph Murekezi was beaten by three men at a roadblock and his hand was cut off with a machete" ("Mukagasana Excerpt").⁴⁴

21. Karera submits that the fact that Yolande Mukagasana did not mention that "a policeman" or "a young man" was involved in her husband's murder contradicts Witness BMG's testimony at trial and indicates that Witness BMG was one of the killers.⁴⁵ In addition, Karera contends that, by confirming that, from October 1990 to July 1994, Tharcisse Renzaho was the prefect of Kigali-Ville prefecture (which includes Nyamirambo sector), both the Trial Chamber seized of Tharcisse Renzaho's case and the Appeals Chamber acknowledged that Tharcisse Renzaho was the only senior official who had control over the police and the people of Nyamirambo.⁴⁶ According to Karera, the Mukagasana Excerpt and the *Renzaho* Judgements constitute new facts.⁴⁷ Karera also relies on the fact that his name does not appear on the list of persons suspected of genocide or crimes against humanity in Nyamirambo in the *Gacaca* Courts Reports.⁴⁸

⁴² Trial Judgement, paras. 192, 535, 538, 540, 555, 557, 559-561. See also Appeal Judgement, para. 188.

⁴³ Appeal Judgement, paras. 188-199, 360-370, 398.

⁴⁴ Review Decision of 28 February 2011, para. 29. The Appeals Chamber notes that the Mukagasana Excerpt is distinct from the extract it considered in its Review Decision of 28 February 2011. See *idem*.

⁴⁵ Motion, paras. 40-45.

⁴⁶ Motion, paras. 46, 48-50, referring to *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-T, Judgement and Sentence, signed on 14 July 2009, filed on 14 August 2009 ("*Renzaho* Trial Judgement") and *Tharcisse Renzaho v. The Prosecutor*, Case No. ICTR-97-31-A, Judgement, 1 April 2011 (together "*Renzaho* Judgements"). In paragraph 47 of his Motion, Karera also refers to paragraphs 2 and 8 of the "Amended Indictment" against Tharcisse Renzaho attached to a memorandum filed by the Prosecution on 20 September 2004 ("*Renzaho* 20 September 2004 Amended Indictment"). See *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-I, Memorandum from Stephen Rapp, Senior Trial Attorney, entitled "Filing of the Amended Indictment in the matter of The Prosecutor v. Tharcisee [*sic*] Renzaho, ICTR-97-31-I", 20 September 2004. The Appeals Chamber notes that the indictment against Tharcisse Renzaho was subsequently amended. See *Renzaho* Trial Judgement, paras. 831-835.

⁴⁷ Motion, paras. 45, 46.

⁴⁸ Motion, paras. 61, 64-66.

22. The Prosecution responds that Karera's submissions regarding the Mukagasana Excerpt should be dismissed since Karera failed to provide the Appeals Chamber with the relevant book.⁴⁹ The Prosecution also submits that Karera has not established new facts and is attempting to re-litigate matters that failed at trial, on appeal, and in relation to his previous request for review.⁵⁰

23. The Appeals Chamber notes that the Mukagasana Excerpt was cited in its Review Decision of 28 February 2011 and, in these circumstances, considers that it is in a position to examine whether it constitutes a new fact.⁵¹ In this regard, the Appeals Chamber observes that the issue of the identity of the perpetrators of Joseph Murekezi's murder was litigated at trial and on appeal.⁵² The Trial Chamber found that "Witness BMG provided a detailed and consistent first-hand testimony", corroborated by Witness BMU, "describing Kalimba forcing, at gun point, a young man to kill Murekezi at the roadblock in front of Karera's house."⁵³ Furthermore, the Appeals Chamber considers that the fact that Yolande Mukagasana did not specifically mention in her book that "a policeman" or "a young man" was involved in her husband's murder is not necessarily inconsistent with Witness BMG's testimony and the Trial Chamber's findings.

24. Consequently, the Mukagasana Excerpt 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 Mukagasana Excerpt does not amount to a new fact for the purpose of review under Rule 120 of the Rules.

25. Turning to Karera's arguments regarding the *Renzaho* Judgements, the Appeals Chamber notes that the issue of Karera's authority over the communal policemen who were stationed at the roadblock near his house in Nyamirambo, including policeman Kalimba, was litigated at trial and on appeal.⁵⁴ Based on the fact that they lived in Karera's house, received orders from him, referred to him as "boss", and manned a roadblock near his house, the Trial Chamber found that these policemen were under the authority of Karera, not the prefect of Kigali-Ville prefecture.⁵⁵ The Appeals Chamber rejected Karera's challenges to this finding.⁵⁶ Accordingly, the *Renzaho* Judgements 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

⁴⁹ Response, paras. 10-12.

⁵⁰ Response, paras. 10, 15, 16, 19. *See also ibid.*, paras. 21-23.

⁵¹ *See* Review Decision of 28 February 2011, para. 29.

⁵² *See* Trial Judgement, paras. 186-189, 192; Appeal Judgement, paras. 188-196, 199.

⁵³ Trial Judgement, paras. 188, 189.

⁵⁴ Trial Judgement, para. 122; Appeal Judgement, paras. 96-140.

⁵⁵ Trial Judgement, para. 122.

⁵⁶ *See* Appeal Judgement, paras. 96-140.

Renzaho Judgements do not amount to a new fact for the purpose of review under Rule 120 of the Rules.

26. Likewise, the Appeals Chamber considers that the fact that Karera's name was allegedly not mentioned in the *Gacaca* Courts Reports could not be considered to provide new information of an evidentiary nature of a fact that was not in issue during the earlier proceedings, as the issue of Karera's participation in the murder of Joseph Murekezi was litigated at trial and on appeal.⁵⁷ Thus, the Appeals Chamber finds it unnecessary to order Karera to file the *Gacaca* Courts Reports in relation to the murder of Joseph Murekezi,⁵⁸ since, in light of what he discloses of their contents, it finds that, in any event, they could not amount to a new fact for the purpose of review under Rule 120 of the Rules.

(c) Murder of Théoneste Gakuru

27. 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.⁵⁹ 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.⁶⁰

28. Karera submits that the fact that Théoneste Gakuru's name is not mentioned in the list of victims killed in Rushahi established by the local population participating in *Gacaca* proceedings and disclosed publicly in May 2011 ("*Rushashi* Victims List") demonstrates that he was not killed in Kinyari, Rushashi, which is a new fact.⁶¹ Karera further relies on paragraph 2(E) of the *Renzaho* 20 September 2004 Amended Indictment, in which it was alleged that anyone wishing to leave Kigali-Ville needed *Renzaho*'s authorisation to do so.⁶² Karera argues that this demonstrates that Théoneste Gakuru would have requested such authorisation had he left Kigali-Ville.⁶³ In addition, Karera relies on the fact that his name does not appear on the list of persons suspected of genocide or crimes against humanity in Rushashi in the *Gacaca* Courts Reports.⁶⁴

⁵⁷ See Trial Judgement, paras. 186-192; Appeal Judgement, paras. 188-199.

⁵⁸ See *supra*, paras. 17, 18.

⁵⁹ Trial Judgement, paras. 456, 559-561, 569.

⁶⁰ 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 *ibid.*, para. 319.

⁶¹ Motion, paras. 54-56, 60.

⁶² Motion, para. 57. See also *ibid.*, heading at p. 13.

⁶³ Motion, paras. 58, 60.

⁶⁴ Motion, paras. 61, 64-66.

29. The Prosecution responds that Karera's submissions regarding the *Rushashi* Victims List should be dismissed since he fails to provide the Appeals Chamber with the relevant material.⁶⁵ It also argues that the issue of Théoneste Gakuru's murder was examined and decided at trial and on appeal.⁶⁶

30. The Appeals Chamber considers that the *Renzaho* 20 September 2004 Amended Indictment does not constitute material of an evidentiary nature since an indictment simply contains allegations of facts with which the accused is charged, and, as such, has no evidentiary value. Accordingly, the *Renzaho* 20 September 2004 Amended Indictment cannot be considered as a new fact for the purpose of review under Rule 120 of the Rules.

31. The Appeals Chamber further observes that Karera has failed to provide it with the *Rushashi* Victims List which, he argues, constitutes a new fact. In the absence of the relevant material, the Appeals Chamber considers that it is unable to fully assess whether this material would constitute a new fact for the purpose of review and, consequently, to properly assess the merits of this part of Karera's Request for Review.⁶⁷

32. Nonetheless, as with respect to the *Gacaca* Courts Reports,⁶⁸ the Appeals Chamber does not find it necessary to order Karera to file the *Rushashi* Victims List. The Appeals Chamber notes that the issue regarding Théoneste Gakuru's murder was litigated at trial and on appeal.⁶⁹ Therefore, in light of what Karera discloses of their contents, the *Rushashi* Victims List and the *Gacaca* Courts Reports could not be considered to provide new information of an evidentiary nature of a fact that was not in issue during the earlier proceedings. Accordingly, the Appeals Chamber finds that, in any event, these documents could not amount to new facts for the purpose of review under Rule 120 of the Rules.

3. Conclusion

33. For the foregoing reasons, the Appeals Chamber considers that Karera has not identified any new facts and, accordingly, dismisses his Request for Review.

C. Alleged Disclosure Violations

34. Karera submits that the Prosecution violated its disclosure obligations under Rule 68 of the Rules by failing to disclose information concerning BNF's investigations in Nyamirambo and

⁶⁵ Response, paras. 10-12.

⁶⁶ Response, paras. 10, 17-19. See also *ibid.*, para. 23.

⁶⁷ Cf. *Niyitegeka* Review Decision, para. 46.

⁶⁸ See *supra*, paras. 17, 18, 26.

Rushashi and the *Gasana* Judgement.⁷⁰ He submits that had the Trial Chamber and the Appeals Chamber been informed of BNF's investigations and the *Gasana* Judgement, they would have summoned BNF and Djuma Gasana to testify.⁷¹

35. The Prosecution responds that the fact that Karera is not mentioned in BNF's investigations, report, statements, or in the *Gasana* Judgement is irrelevant to justify disclosure under Rule 68 of the Rules.⁷²

36. The Appeals Chamber considers that, in the absence of the relevant documentation, it is not in a position to consider Karera's claim that the Prosecution violated its disclosure obligations. In any event, on the basis of the information before it, the Appeals Chamber is not persuaded that the fact that Karera is not mentioned in BNF's investigations, report, or statements and in the *Gasana* Judgement may "suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence".⁷³ Karera's claim in respect of these documents is therefore dismissed.

III. DISPOSITION

37. For the foregoing reasons, the Appeals Chamber **DISMISSES** the Motion in its entirety.

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

Done this 26th day of March 2012,
at The Hague,
The Netherlands.



[Seal of the Tribunal]

Judge Fausto Pocar
Presiding

⁶⁹ See Trial Judgement, paras. 441-456; Appeal Judgement, paras. 298-323.

⁷⁰ Motion, paras. 21, 28.

⁷¹ Motion, paras. 23, 27.

⁷² Response, paras. 20, 22.

⁷³ See Rule 68(A) of the Rules.