

ICTR-01-74-T
9-5-2006
(7409-7407)

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INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CHAMBER I

**HONORABLE JUDGE ERIK MØSE, PRESIDING JUDGE
HONORABLE JUDGE SERGEI ALEKSEEVICH EGOROV
HONORABLE JUDGE FLORENCE RITA ARREY**

REGISTRY: M. ADAMA DIENG

DATE: 9 MAY 2006

ICTR-2001-74-T

THE PROSECUTOR

v.

FRANCOIS KARERA

12006 MAY -9 P 12: 16
ICTR
APPROVED FOR SIGNATURES

**EXTREMELY URGENT RESPONSE TO THE PROSECUTOR'S URGENT
MOTION FOR RECONSIDERATION OF AN APPLICATION TO AJOURN**

*(Defence's Response pursuant to Rule 54, 67(D), 73(E), 89(C)
of the Rules of Procedure and Evidence)*

**OFFICE OF THE PROSECUTOR
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CHARLES ADEOGUN-PHILLIPS
MEMORY MAPOSA
PETER TAFAH
FLORIDA KABASINGA**

**DEFENCE COUNSEL
CARMELLE MARCHESSAULT
STEVEN KELLIHER
ALEXANDRE BERGEVIN
RITA FRANCIS**

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NATURE OF THE APPLICATION:

1. The Prosecutor requests this Honourable Trial Chamber to reconsider its *Decision on Motion for Further Particulars of a Defence Witnesses and for Continuance of Trial*, dated 25 April 2006 [hereinafter, 'the Decision'] or, in alternative, to grant certification, pursuant to Rule 73(B), for the Prosecutor to appeal the Decision.
2. The Defence responds with its consent to the Prosecutor's request for a continuance of the trial now in progress.
3. The Defence position is founded upon Rules 54, 67(D), 73ter(E), 89(C) of the Rules of Procedure and Evidence.

PROCEDURAL HISTORY:

4. The Defence takes no exception to the procedural history as outlined in the Prosecutor's motion in paragraphs 1 through 18 and paragraphs 21 through 24, subject to the accepted qualifications articulated by lead counsel, Carmelle Marchessault, on May 4th 2006, during the status conference of that day.
5. In addition, lead counsel and assistant Alexandre Bergevin recently travelled to Kigali, Rwanda, where unknown and unexpectedly witnesses were named and disclosed which bare directly and probatively on the alleged involvement of the accused, Francois Karera in the counts of the Indictment were discovered.
6. As a result of the said meetings at Kigali, witnesses were identified which resided in Africa and Europe. In total these witnesses number 25. These witnesses were said to be able to account for Francois Karera's activities and whereabouts that materially advance the Defence.

SUBMISSIONS:

7. It is acknowledged that the discovery of so many witnesses at this late dated raises a question about the completeness of the precedent investigation.
8. This is answered by the reality and difficulty of attempting to conduct an investigation from abroad in which investigators are reluctant to either

travel to Rwanda or to remain for sufficient time to follow up all possible prospects. It is emphasized that the security factors in Rwanda make the apparent failing understandable and in the any event not such as to justify the extreme prejudice to the Defence of the accused.

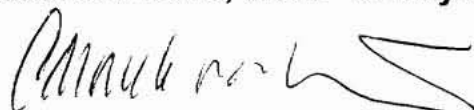
9. It was out of the abundance of caution that lead counsel took the initiative personally to travel to Rwanda to ensure that all that could be done had been done that resulted in the discovery of the said witnesses. While admittedly late in terms of the process, such effort was critical in putting before the Tribunal all of the evidence which would have been an assistance to a fair trial.
10. In conversation with these source witnesses in Rwanda, it became abundantly clear that the evidence of these late discovered witnesses would probably be of critical significance in the full answer and defence of Francois Karera.
11. It is urged upon the Trial Chamber to consider the deficiency of resources available to the Defence in comparison to those accessible to the office of Prosecutor.
12. It is the Defence position that it is contrary to the interests of the justice generally and it is of great prejudice to the interests of a fair trial of Francois Karera that the Defence not be given a reasonable opportunity to interview these witnesses. The defence is also mindful of the implications of protracted litigation implicit in the second branch of the Prosecutor's motion.
13. It is hereby plead that both upon the footings advanced by the Prosecutor, which in the largest measure are acknowledged and accepted, and upon the bases set out by the Defence it is jointly submitted that the administration of justice would be best served by adjourning these proceeding to a time when all evidence reasonably available can be placed before this Tribunal.

RELIEF SOUGHT:

14. **WHEREFORE** the Defence moves with the Prosecution in a joint submission that this trial be adjourned for a reasonable time.

Respectfully submitted,

Dated at Arusha, this 9th of May 2006



Carmelle Marchessault
Lead Counsel for Francois Karera



TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	<input checked="" type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS M. Diop	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afande
From:	<input type="checkbox"/> Chamber (names)	<input checked="" type="checkbox"/> Defence Carmelle Marchessault (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. François KARERA		Case Number: ICTR-01-74-T	
Dates:	Transmitted: 9 MAY 2006		Document's date: 9 MAY 2006	
No. of Pages:	3	Original Language:	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	Extremely Urgent Response to the Prosecutor's Urgent Motion for Reconsideration of an Application to Adjourn (Defence's Response pursuant to Rule 54, 67(D), 73(E), 89 of the Rules of Procedure and Evidence)			
Classification Level:		TRIM Document Type:		
<input type="checkbox"/> Ex-Parte		<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence
<input type="checkbox"/> Strictly Confidential / Under Seal		<input type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal
<input type="checkbox"/> Confidential		<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book
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		<input type="checkbox"/> Submission from non-parties	<input type="checkbox"/> Submission from parties	
		<input type="checkbox"/> Accused particulars		

II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

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CMS SHALL NOT take any action regarding translation. <input type="checkbox"/> Filing Party hereby submits BOTH the original and the translated version for filing, as follows:				
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CMS SHALL NOT take any action regarding translation. <input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s): <input type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda <p style="text-align: center;">KINDLY FILL IN THE BOXES BELOW</p>				
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<input type="checkbox"/> Top priority	COMMENTS	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: