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UNITED NATIONS  
NATIONS UNIES

ICTR-00-55A-T  
(21-02-2006  
(3138-3134))  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

**Before:** Judge Asoka de Silva, Presiding  
Judge Flavia Lattanzi  
Judge Florence Rita Arrey

**Registrar:** Mr Adama Dieng

**Date:** 21 February 2006

2006 FEB 21 10 31 55  
ICTR

THE PROSECUTOR

vs.

THARCISSE MUVUNYI

ICTR-2000-55A-T

**DECISION ON MUVUNYI'S SUPPLEMENTAL MOTION TO HAVE DEFENCE  
WITNESS M072 TESTIFY BY CLOSED-VIDEO LINK PURSUANT TO RULES 54  
AND 71 (D) OF THE RULES OF PROCEDURE AND EVIDENCE**

**Office of the Prosecutor**

Mr Charles Adeogun-Phillips, Senior Trial Attorney  
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**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (the "Tribunal"),

**SITTING** as Trial Chamber II composed of Judge Asoka de Silva, Presiding, Judge Flavia Lattanzi and Judge Florence Rita Arrey (the "Chamber");

**BEING SEIZED** of the "Accused Tharcisse Muvunyi's Addendum or Supplemental Motion to Have Defence Witness M072 Testify by Closed-Video Link Pursuant to Rules 54 and 71 (D) of the Rules of Procedure and Evidence" filed on 17 February 2006 (the "Supplemental Motion");

**NOTING** that the Prosecution has not filed a response;<sup>1</sup>

**RECALLING** its "Decision on Muvunyi's Amended Motion to Have Defence Witnesses M005, M015, M036, M046 and M073 Testify by Closed-Video Link Pursuant to Rules 54 and 71(D) of the Rules of Procedure and Evidence" rendered on 7 February 2006 (the "Decision of 7 February 2006");

**NOW DECIDES** the Motion pursuant to Rule 73(A) of the Rules on the basis of written submissions filed by the Defence.

#### **SUBMISSIONS OF THE DEFENCE**

1. The Defence seeks to have Witness M072 added to the list of Defence witnesses authorised by the Chamber to testify via closed-video link in its Decision of 7 February 2006.
2. The Defence requests that the proceedings be closed to the public when the testimony could reveal the witness's identity and when any protective measures are being discussed. The Defence also requests that identifying records of the witness should not be disclosed to the public and that members of the Prosecution team should be prohibited from disclosing any records pertaining to this witness to any individual outside the Prosecution team in this case, including other Prosecutors at this Tribunal. The Defence asserts that it adopts the submissions made by the Prosecution in its motion to have Witnesses QCM and NN testify via closed-video link<sup>2</sup> as well as the ruling rendered by the Chamber in its Decision of 7 February 2006.
3. The Defence submits that Witness M072 resides in Rwanda; that she has been informed of all the security measures and services offered by the Tribunal's Witnesses and Victims Support Section (WVSS); that the witness "recently had a baby and refuses to travel abroad with her newborn baby before the baby is six months old"; that the witness "will agree to testify from Kigali, Rwanda" by video link; and that the witness's testimony is "vital" to the defence of the Accused.
4. The Defence asserts that while protective measures are currently in place at the Tribunal, these measures do not provide adequate protection for the above witness and that recent events in Belgium show that the witness's fears are well-founded. The Defence cites a

<sup>1</sup> In an e-mail communication dated 20 February 2006 in response to a Directive from the Chamber, the Prosecution indicated that it would not be filing a response to the Supplemental Motion.

<sup>2</sup> *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-T, "Prosecution Motion to have Witnesses QCM and NN Testify by Closed-Video Link", 14 April 2005.



press release dated 23 December 2005 posted on the Tribunal's web site, confirming the death in Belgium of indictee and potential Prosecution witness Juvénal Uwilingiyimana. The Defence attaches a sworn affidavit from a Defence investigator confirming that Witness M072 has a newborn baby and is unwilling to travel outside of Rwanda while the baby is still less than six months old, but is willing to testify in Muvunyi's defence via video link from Kigali.

**HAVING DELIBERATED**

- 5. The Chamber recalls Rule 54 of the Rules, pursuant to which it is empowered to issue such orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial; Rule 90 (A) establishing the principle that witnesses should be heard directly unless directed otherwise by the Chamber; and Rule 71 (D) providing for a witness's deposition to be given by means of a video-conference.
- 6. The Chamber is mindful of the jurisprudence of the Tribunal establishing that a witness's testimony may be heard via video-conference in lieu of a physical appearance if it is in the interests of justice.<sup>3</sup> In determining what constitutes the interests of justice for the purposes of a motion for testimony by video-conference, the following factors are taken into consideration: i) the importance of the testimony; ii) the inability or unwillingness of the witness to attend; and iii) whether a good reason can be adduced for that inability or unwillingness.<sup>4</sup>
- 7. The Chamber also recalls its Decisions of 23 May 2005 and 20 June 2005 dealing with the Prosecution's request to introduce the testimonies of Witnesses QCM and NN via closed-video link,<sup>5</sup> as well as its Decision of 7 February 2006 authorising Defence Witnesses M005, M015, M036, M046 and M073 to testify via closed-video link. In all the circumstances, the Chamber determined that it was in the interests of justice to permit the witnesses to testify via video-conference.
- 8. The Chamber has examined the Defence submissions and the accompanying documents and takes note of the assertion that the testimony of Witness M072 is "vital" to the defence of the Accused. The Chamber also notes the reason adduced for the witness's unwillingness to travel to Arusha, namely the recent birth and tender age of her baby.

<sup>3</sup> *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, "Decision on Ntabakuze Motion to Allow Witness DK 52 to Give Testimony by Video-Conference" (TC), 22 February 2005, paras. 4-5.

<sup>4</sup> *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, "Decision on Testimony by Video-Conference" (TC), 20 December 2004; *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, "Decision on Prosecution Request for Testimony of Witness BT via Video-Link" (TC), 8 October 2004; *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, "Decision on Prosecution Motion for Special Protective Measures for Witnesses A and BY" (TC), 3 October 2003; *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, "Decision on the Prosecution Motion for Special Protective Measures for Witness "A" Pursuant to Rules 66 (C), 69 (A) and 75 of the Rules of Procedure and Evidence" (TC), 5 June 2002; *The Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52-I, "Decision on the Prosecutor's Application to Add Witness X to its List of Witnesses and for Protective Measures" (TC), 14 September 2001.

<sup>5</sup> *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-T, "Decision on Prosecutor's Motion to Have Prosecution Witnesses QCM and NN Testify by Closed Video-Link Pursuant to Rules 54 and 71(D) of the Rules of Procedure and Evidence", 23 May 2005; and "Decision on Prosecutor's Extremely Urgent Motion Pursuant to Trial Chamber II Directive of 23 May 2005 for Preliminary Measures to Facilitate the Use of Closed-Video Link Facilities", 20 June 2005.

9. Under these circumstances, the Chamber is satisfied that the minimum conditions for the granting of a motion for video-conference testimony have been met and that it will be in the interests of justice to allow the Supplemental Motion. The Chamber is also satisfied that the Prosecution will have the opportunity during cross-examination to confront the witness and to remedy any potential prejudice.<sup>6</sup>
10. On the Defence request that identifying records of the witness should not be disclosed to the public, the Chamber reminds the Defence that this is already covered by standing orders for protective measures for witnesses.
11. With respect to the Defence request that other prosecutors at this Tribunal who are not members of the Prosecution team in this case should be prohibited from obtaining any records pertaining to these witnesses, the Chamber wishes to draw the attention of the Defence to its Decision of 7 February 2006 and, once again, to an earlier Decision in which the Chamber denied a similar argument.<sup>7</sup>

**FOR THE FOREGOING REASONS, THE CHAMBER**

**GRANTS** the Supplemental Motion in part and

**ORDERS** that:

- i. The testimony of Defence Witness M072 shall be permitted to be introduced via a secure audio-video transmission link from a location in Kigali on Friday, 10 March 2006;
- ii. The Registry shall make all necessary arrangements in respect of the testimony via secure audio-video transmission link of Witness M072;
- iii. The Prosecution shall be prohibited from disclosing the identity, specific whereabouts, or any records pertaining to Witness M072 to anyone outside the Office of the Prosecutor;
- iv. Court proceedings where the testimony of Witness M072 could reveal her identity shall be closed to the public;
- v. Court proceedings where protective measures are considered shall also be closed to the public.
- vi. The Registry shall take immediate steps to ensure the successful implementation of this Order;

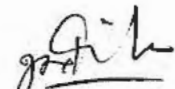
<sup>6</sup> *The Prosecutor v. Casimir Bizimungu et al*, Case No. ICTR-99-50-T, TCIH "Decision on Prosecutor's Extremely Urgent Motion Requesting that the Extraordinarily Vulnerable Witnesses X/006 and 039 Testify by Closed Video Transmission Link with a Location at The Hague and Other Related Special Protective Measures Pursuant to Article 21 of the Statute and Rules 73 and 75 of the Rules of Procedure and Evidence", 4 June 2004, para. 8.

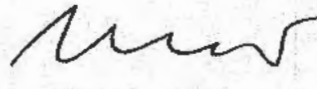
<sup>7</sup> *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-T, "Decision on Tharcisse Muvunyi's Motion for Protection of Defence Witnesses", 20 October 2005. See also *The Prosecutor v. Bagosora et al*, Case No. ICTR-98-41-T (AC), "Decision on Interlocutory Appeal of Decision on Witness Protection Orders", 6 October 2005, paras. 43-46.

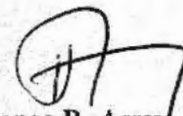


- vii. The Parties shall co-operate with the Registry in the implementation of this Order;
- viii. All examinations of the witness testifying by video-link shall take place from the courtroom in Arusha;
- ix. The Defence shall have one representative in Kigali to prepare the witness for her testimony;
- x. The Parties shall make available to the Registry, not later than 1 March 2006, all exhibits they intend to use during their respective examinations of the witness.
- xi. The specific times of the hearing as well as the venue shall be communicated to all Parties as soon as a determination is made to that effect.

Arusha, 21 February 2006

  
Asoka de Silva  
Presiding Judge

  
Flavia Lattanzi  
Judge

  
Florence R. Arrey  
Judge

[Seal of the Tribunal]

