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INTERNATIONAL  
CRIMINAL TRIBUNAL

**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Dennis C. M. Byron, Presiding  
Gberdao Gustave Kam  
Vagn Joensen

**Registrar:** Adama Dieng

**Date:** 30 December 2008

JUDICIAL RECORDS ARCHIVE  
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**THE PROSECUTION**

v.

**Tharisse MUVUNYI**  
*Case No. ICTR-2000-55A-PT*

ICTR-00-55A-PT  
31.12.2008  
(97-195)

**DECISION ON PROSECUTION'S MOTION TO HAVE PROSECUTION WITNESS  
NN TESTIFY BY VIDEO-LINK**

*Rules 54, 75 and 89 of the Rules of Procedure and Evidence*

**Office of the Prosecution:**  
Charles Adeogun-Phillips  
Ibukunolu Alao Babajide

**Defence Counsel for Tharisse Muvunyi**  
Mr. William E. Taylor III

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INTRODUCTION

1. On 10 December 2008, the Prosecution filed a motion requesting that Prosecution Witness NN be allowed to testify by video-link from London, in the United Kingdom or from The Hague in the Netherlands.<sup>1</sup> The Accused opposes the Motion and submits that Prosecution Witness NN should be stricken from the Prosecution's witness list.<sup>2</sup>

DELIBERATIONS

2. Rule 90(A) of the Rules of Procedure and Evidence ("Rules") provides that witnesses shall, in principle, be heard directly by the Chamber. Although the Rules do not expressly provide for the Chamber to hear witnesses via video-link, the Chamber may, pursuant to Rules 54 and 75 of the Rules, authorize witnesses to testify via video-link in the interests of justice, and in the light of the following factors: the importance of the testimony, the witness's inability or unwillingness to appear before the Tribunal and whether or not valid reasons have been adduced for the witness's inability or refusal to appear. When the witness refuses to appear before the Tribunal, his refusal must be genuine and justified, thus giving the Chamber reasons to believe that he will not testify unless the Chamber allows him to do so via video-link.<sup>3</sup> When the Chamber has to rule on such a request, it also takes into account the rights of each party, by ensuring in particular that the witness's appearance on a video screen instead of his/her physical presence in the courtroom does not reduce the parties' ability to evaluate his/her testimony and to cross-examine him/her.

3. Rule 89 (C) provides that "[a] Chamber may admit any relevant evidence which it deems to have probative value". To be admissible, the "evidence must be in some way relevant to an element of a crime with which the Accused is charged."<sup>4</sup> In its Pre-Trial Brief as well as in its Motion, the Prosecution indicated that it is calling Prosecution Witness NN

<sup>1</sup> Prosecutor's Motion to Have Prosecution Witness NN Testify by Closed-Video Link Pursuant to Rules 54 and 71(D) of Rules of Procedure and Evidence, filed on 15 December 2008 ("Motion").

<sup>2</sup> Accused Tharcisse Muvunyi's Response to the Prosecutor's Motion to Have Witness NN Testify by Closed-Video Link Pursuant to Rule 54 and 71(D) of the Rules of Procedure and Evidence, 23 December 2008.


<sup>3</sup> See for example, *The Prosecutor v. Simlon Nchamihigo*, Case No. ICTR-2001-63-T, Decision on the Prosecution Motion to Hear the Testimony of Witness LM by Video-link (TC), 25 January 2007, para. 3; *The Prosecutor v. Édouard Karemera, Mathieu Ndirumpatswe, Joseph Ntirorera*, Case No. ICTR-98-44-T, Decision on Prosecutor's Confidential Motion for Special Protective Measures for Witness ADE (TC), 3 May 2006, para. 4; *The Prosecutor v. Protais Zigiranyiraza*, Case No. ICTR-2001-73-1, Decision on the Defence Motions for Videolink Hearings of Witnesses BNZ104 and JFPR2 (TC), 21 February 2007, para. 5.

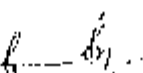
<sup>4</sup> *The Prosecutor v. Bagosora et al.*, Decision on Proposed Testimony of Witness DBY (TC), 18 September 2003, para. 4.

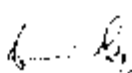
so he "will provide a contextual overview of the prevailing situation in Butare prefecture in April 1994".<sup>5</sup> The Prosecution did not submit at any moment that Witness NN was scheduled to testify on the Gikore meeting which is the object of the retrial of Tharcisse Muvunyi. Consequently the Chamber considers that the Prosecution failed to show how the testimony of NN would be relevant and important to his case in this retrial.

**FOR THE ABOVE MENTIONED REASONS, THE CHAMBER  
DENIES** the Prosecution's Motion in its entirety, and  
**STRIKES** Prosecution Witness NN from the Prosecution's Witness list.

Arusha, 30 December 2008, done in English.

  
Dennis C. M. Byron  
Presiding Judge

  
Gberdao Gustave Kam  
Judge

  
Vagn Joensen  
Judge

[Seal of the Tribunal]



<sup>5</sup> Prosecutor's Pre-Trial Brief, filed on 4 December 2008; Motion, para. 4.