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06-10-2010
(3505-3503)

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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Lee Gacuiga Muthoga, *Presiding*
Seon Ki Park
Robert Fremr

Registrar: Adama Dieng

Date: 6 October 2010

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THE PROSECUTOR

v.

Ildephonse NIZEYIMANA

CASE NO. ICTR-2000-55C-PT

**DECISION ON PROSECUTOR'S MOTION TO FOR
TESTIMONY VIA VIDEO-LINK**

Rules 54, 71 and 75 of the Rules of Procedure and Evidence

Office of the Prosecutor:

Drew White
Kirsten Gray
Yasmine Chubin
Zahida Virani
Astou Mbow

Defence Counsel for Ildephonse Nizeyimana:

John Philpot
Cainnech Lussiaà-Berdou
Myriam Bouazdi

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INTRODUCTION

1. On 17 August 2010, the Prosecution filed a motion requesting the testimony of one of its witnesses via video-link ("Motion")¹. Ildephonse Nizeyimana opposes the Motion.²

DELIBERATIONS

2. The Chamber notes the factors previously considered in deciding whether to authorise testimony by video-link include: the importance of the testimony, the inability or unwillingness of the witness to attend, and whether good reason has been adduced for the inability or unwillingness to attend.³ When a witness refuses to appear, this refusal must be justified and genuine, giving a Chamber reason to believe that he or she will not testify unless a Chamber allows the witness to do so via video-link.⁴ Further, the Chamber notes that the Appeals Chamber in the *Zigiranyirazo* case, while in a different context, found that the Chamber must examine the possibility that additional security measures might allay any security threat were the witness brought to Arusha.⁵

3. The Prosecution contends that the witness (the identity of whom is disclosed in *ex parte* and *confidential* Annex A to this Decision) requires protective measures through the use of video-link testimony and has concerns about personal security and protection that arise partly out of prior experience regarding testimony before the Tribunal.⁶ Moreover, the witness has refused to testify in person at the seat of the Tribunal in Arusha and has previously communicated this position to the Witness and Victims Support Section ("WVSS") of the Tribunal.⁷

4. The Chamber notes that in the *ex parte* submission the Prosecution has not provided an affidavit from the proposed witness attesting to his fears and refusal to testify at the Tribunal's seat in Arusha. Furthermore, while the Prosecution indicates that it has had recent contact with the witness, it notes that WVSS had communication with the proposed witness regarding security measures over five years ago, and it has not indicated whether WVSS has

¹ Prosecutor's Motion for Testimony via Video-Link, filed on 17 August 2010 ("Motion").

² Defence Response to Prosecutor's Motion for Testimony via Video-Link, filed on 23 August 2010 ("Response").

³ *Karemera et al.*, Decision on Édouard Karemera's Motion to Allow Defence Witnesses to Testify via Video-Link, 2 April 2008, para. 2.

⁴ *Id.*

⁵ *Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-AR73, Decision on Interlocutory Appeal (AC), 30 October 2006, para. 18 and footnote 60.

⁶ Motion, para. 5.

⁷ Motion, para. 6.

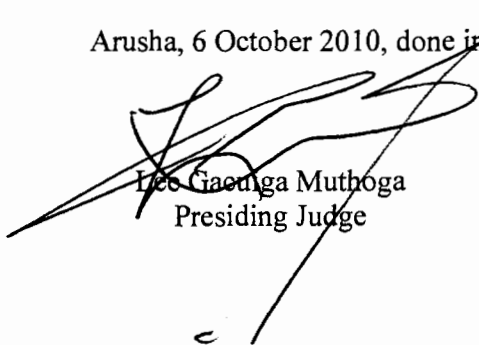
done so recently. While the Chamber is not opposed to witnesses who have a real fear and who are unwilling or unable to testify in Arusha appearing via video-link, pursuant to the *Zigiranyirazo* Appeals Chamber Decision, the Chamber must make certain that all appropriate alternatives have been explored other than to hear the witness via video-link.

5. Since the Chamber does not have an affidavit from the witness describing his fears, nor has recent contact been made by WVSS the Chamber is not yet certain that the video-link is the only appropriate alternative to hearing the witness' testimony in the present case and therefore denies the Motion.

FOR THE ABOVE REASONS, THE CHAMBER

DISMISSES the Prosecution's Motion.

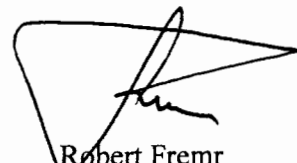
Arusha, 6 October 2010, done in English.



Les Gacuga Muthoga
Presiding Judge



Seon Ki Park
Judge



Robert Fremr
Judge

[Seal of the Tribunal]

