



UNITED NATIONS
NATIONS UNIES



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

260/H

[Signature]

ICTR-00-55A-R

28th Sept. 2012

{260/H – 251/H}

IN THE APPEALS CHAMBER

Before:

**Judge Theodor Meron, Presiding
Judge Patrick Robinson
Judge Fausto Pocar
Judge Liu Daqun
Judge Carmel Agius**

Acting Registrar:

Mr. Pascal Besnier

Decision of:

28 September 2012

THARCISSE MUVUNYI

v.

THE PROSECUTOR

Case No. ICTR-00-55A-R

**DECISION ON REQUEST FOR VARIATION OF PROTECTIVE MEASURES AND
REQUEST FOR REVIEW**

Counsel for the Applicant:

Tanoo Mylvaganam

The Office of the Prosecutor:

Hassan Bubacar Jallow
James J. Arguin
Abdoulaye Seye
Sharifah Adong

ICTR Appeals Chamber

Date: 28th Sept. 2012

Action:

Copied To:

*Concerned Judges,
Parties, JPU, LSS, LOS*

[Signature]

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

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ROSETTE MUZIHO-MORRISON

DATE: 28/9/12

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 a Request for Review and a Request for Variation of Protective Measures filed confidentially by Tharcisse Muvunyi ("Muvunyi") on 21 March 2012.¹ The Prosecution filed its response to the Request for Review on 30 April 2012,² to which Muvunyi replied on 15 May 2012.³

I. BACKGROUND

2. In 1994, Muvunyi held the rank of Lieutenant Colonel in the Rwandan army and was stationed at the *École des Sous-Officiers* in Butare Prefecture.⁴ On 12 September 2006, Trial Chamber II of the Tribunal convicted Muvunyi of genocide, direct and public incitement to commit genocide, as well as other inhumane acts as crimes against humanity, and sentenced him to 25 years of imprisonment.⁵ The Appeals Chamber reversed these convictions on 29 August 2008, and ordered a retrial limited to the allegation under count 3 of the indictment that Muvunyi was responsible for direct and public incitement to commit genocide based on a speech he purportedly gave at the Gikore Trade Center in Nyaruhengeri Commune, Butare Prefecture.⁶

3. Following Muvunyi's retrial on this allegation, Trial Chamber III of the Tribunal ("Retrial Chamber") convicted him of direct and public incitement to commit genocide based on his statements in mid to late May 1994 at a public meeting at the Gikore Trade Center and sentenced him to 15 years of imprisonment.⁷ The Appeals Chamber affirmed Muvunyi's conviction and sentence on 1 April 2011.⁸

¹ Accused Tharcisse Muvunyi's Motion for Review of Appeal Judgement of 01 April 2011, confidential, 21 March 2012, pp. 220/A-201/A (Registry pagination) ("Request for Review"); Accused Tharcisse Muvunyi's Motion for Review of Appeal Judgement of 01 April 2011, confidential, 21 March 2012, pp. 224/A-221/A (Registry pagination) ("Request for Variation of Protective Measures").

² Prosecutor's Response to "Tharcisse Muvunyi's Motion for Review of Appeal Judgement of 01 April 2011", 30 April 2012 ("Response"). The Appeals Chamber notes that the Prosecution did not respond to the Request for Variation of Protective Measures despite acknowledging that the Request for Review was filed in two parts. See Response, fn. 2.

³ Accused Tharcisse Muvunyi's Response to Prosecutors's [sic] Response for Motion Review of 30-April-2012 [sic], confidential, 15 May 2012 ("Reply").

⁴ See *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-T, Judgement and Sentence, pronounced on 12 September 2006 and issued in writing on 18 September 2006 ("Trial Judgement of 12 September 2006"), para. 30.

⁵ Trial Judgement of 12 September 2006, paras. 531, 545.

⁶ *Tharcisse Muvunyi v. The Prosecutor*, Case No. ICTR-00-55A-A, Judgement, 29 August 2008, paras. 148, 171.

⁷ *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-T, Judgement, 11 February 2010 ("Trial Judgement of 11 February 2010"), paras. 132, 133, 153.

⁸ *Tharcisse Muvunyi v. The Prosecutor*, Case No. ICTR-00-55A-A, Judgement, 1 April 2011 ("Appeal Judgement of 1 April 2011"), p. 24.

4. On 6 March 2012, the President of the Tribunal granted Muvunyi's application for early release with immediate effect.⁹

II. DISCUSSION

5. Muvunyi requests that the Appeals Chamber initiate a review of the Appeal Judgement of 1 April 2011 pursuant to Article 25 of the Statute of the Tribunal ("Statute") and Rules 120 and 121 of the Rules of Procedure and Evidence of the Tribunal ("Rules") based on alleged new facts,¹⁰ and vary the protective measures granted to Prosecution Witness CCS in this case.¹¹

A. Preliminary Issue: Standing of *Pro Bono* Counsel

6. In its Response, the Prosecution notes that Counsel Tanoo Mylvaganam filed the Request for Variation of Protective Measures and the Request for Review on behalf of Muvunyi, apparently on a *pro bono* basis.¹² The Prosecution submits that it "is not aware of Counsel Mylvaganam's standing to appear before the Tribunal for this application, particularly in view of [Muvunyi's] early release" and questions the validity of the filing of the Request for Variation of Protective Measures and the Request for Review.¹³ Muvunyi replies that the formalities for the appointment of a *pro bono* counsel were complied with and recognized by the Tribunal.¹⁴

7. The Appeals Chamber recalls that an applicant in connection with a request for review may be assisted by counsel on a *pro bono* basis provided that counsel files a power of attorney with the Registrar and satisfies the requirements to appear before the Tribunal.¹⁵ The Appeals Chamber notes that a power of attorney for the representation of Muvunyi on a *pro bono* basis was duly filed with the Registrar by Ms. Mylvaganam on 30 June 2011.¹⁶ The Registrar in turn accepted Ms. Mylvaganam as counsel on a *pro bono* basis to represent Muvunyi in connection with his Request for Review.¹⁷ Accordingly, the Appeals Chamber rejects the Prosecution's argument regarding Ms. Mylvaganam's standing in the present proceedings and considers that the Request for Variation of Protective Measures and the Request for Review were validly filed.

⁹ *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-T, Decision on Tharcisse Muvunyi's Application for Early Release, 6 March 2012, p. 6.

¹⁰ Request for Review, paras. 6 (p. 6), 7 (p. 6), 35. See also Reply, paras. 17-20.

¹¹ Request for Variation of Protective Measures, paras. 2-8 (pp. 222/A, 221/A (Registry pagination)).

¹² Response, para. 1.

¹³ Response, para. 2.

¹⁴ Reply, paras. 2(i), 2(ii).

¹⁵ See *Jean-Bosco Barayagwiza v. The Prosecutor*, Case No. ICTR-99-52A-R, Decision on Jean-Bosco Barayagwiza's Motion of 6 March 2008, 11 April 2008, p. 4; *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. 42.

¹⁶ Power of Attorney signed 30 June 2011.

B. Request for Variation of Protective Measures

8. In his Request for Variation of Protective Measures, Muvunyi notes that, in his Request for Review, he refers to the fact that Prosecution Witness CCS in his case also testified as Prosecution Witness FAH in the *Nyiramasuhuko et al.* case (“Witness CCS/FAH”).¹⁸ Given the concerns about the witness’s identity becoming public and “out of an abundance of caution”,¹⁹ Muvunyi filed the Request for Review confidentially and requests leave pursuant to Rule 75 of the Rules to file his Request for Review as a public document.²⁰

9. The Appeals Chamber observes that the trial chambers seised of the *Muvunyi* and *Nyiramasuhuko et al.* cases ordered the non-disclosure to the public of the name, address, whereabouts, and other identifying information of Witness CCS/FAH.²¹ Although the Request for Review identifies Witnesses CCS and FAH as being the same individual, the Appeals Chamber notes that it does not reveal any information that could lead to the identification of Witness CCS/FAH. The Appeals Chamber also notes that the fact that Witness CCS testified as Witness FAH in the *Nyiramasuhuko et al.* case is also publicly discussed by the Prosecution in its Response.²² Consequently, the Appeals Chamber considers that in this instance the protective measures granted to Witness CCS need not be varied.²³

10. Recalling that all submissions filed before the Tribunal shall be public unless there are exceptional reasons for keeping them confidential,²⁴ and considering that there are no such reasons in the present case, the Appeals Chamber finds that the confidentiality of the Request for Review, the Request for Variation of Protective Measures, and the Reply should be lifted.

¹⁷ E-mail from the Defense Counsel and Detention Management Section to the Appeals Chamber Support Section dated 24 September 2012.

¹⁸ Request for Variation of Protective Measures, paras. 2 (p. 222/A (Registry pagination)), 3 (p. 222/A (Registry pagination)), referring to *The Prosecutor v. Pauline Nyiramasuhuko, Arsène Shalom Ntahobali, Sylvain Nsabimana, Alphonse Nteziryayo, Joseph Kanyabashi, and Élie Ndayambaje*, Case No. ICTR-98-42-T (“*Nyiramasuhuko et al.* case”).

¹⁹ Request for Variation of Protective Measures, para. 4 (p. 222/A (Registry pagination)). See also *ibid.*, paras. 5 (pp. 222/A, 221/A (Registry pagination)), 8 (p. 221/A (Registry pagination)).

²⁰ See Request for Variation of Protective Measures, paras. 5-8 (pp. 222/A, 221/A (Registry pagination)). Muvunyi also “invites” the Appeals Chamber to request the Prosecution to indicate whether the protective measures in place for Witness CCS/FAH remain necessary. See *ibid.*, para. 9 (p. 221/A (Registry pagination)).

²¹ See, e.g., *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-PT, Order Regarding Protective Status of Witnesses, 29 May 2009, p. 3; *The Prosecutor v. Tharcisse Muvunyi and others*, Case No. ICTR-00-55-I, Decision on the Prosecutor’s Motion for Orders for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment, 25 April 2001, p. 9; *The Prosecutor v. Sylvain Nsabimana and Alphonse Nteziryayo*, Case No. ICTR-97-29-I, Decision on the Prosecutor’s Motion for Protective Measures for Victims and Witnesses, 17 June 1999.

²² Response, paras. 4, 9, 12, 13, 19, 20, 22, 23, 25.

²³ The present bench of the Appeals Chamber notes that, as the bench seised of the *Muvunyi* proceedings, it would not have jurisdiction to vary the protective measures ordered in the *Nyiramasuhuko et al.* case. See Rule 75(G) of the Rules.

²⁴ See *Dominique Ntawukulilyayo v. The Prosecutor*, Case No. ICTR-05-82-A, Decision on Prosecution’s Request for Public Filings, 15 April 2011, p. 1, fn. 7, and references cited therein.

C. Request for Review

1. Standard of Review

11. Review proceedings are governed by Article 25 of the Statute and Rules 120 and 121 of the Rules.²⁵ 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.²⁶ 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.²⁷

12. 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.²⁸

13. 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.²⁹ 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 have taken into account in reaching its verdict.”³⁰ Essentially, the moving party must show that the deciding body did not know about the fact in reaching its decision.³¹

2. Alleged New Facts

14. Based primarily on the evidence of Prosecution Witnesses FBX, AMJ, CCP, CCS, and YAI,³² the Retrial Chamber found that, in mid to late May 1994, Muvunyi directly and publicly incited a crowd gathered at the Gikore Trade Center to commit genocide.³³ The Retrial Chamber also found that there was only one public meeting in Gikore in May 1994.³⁴ On the basis of these findings, the Retrial Chamber convicted Muvunyi of direct and public incitement to commit

²⁵ See, e.g., *François Karera v. The Prosecutor*, Case No. ICTR-01-74-R, Decision on Requests for Reconsideration and Review, 26 March 2012 (“*Karera Review Decision*”), para. 9, and references cited therein.

²⁶ See, e.g., *Karera Review Decision*, para. 9, and references cited therein.

²⁷ See, e.g., *Karera Review Decision*, para. 9, and references cited therein.

²⁸ See, e.g., *Karera Review Decision*, para. 10, and references cited therein.

²⁹ See, e.g., *Karera Review Decision*, para. 11, and references cited therein.

³⁰ See, e.g., *Karera Review Decision*, para. 11, and references cited therein.

³¹ See, e.g., *Karera Review Decision*, para. 11, and references cited therein.

³² Trial Judgement of 11 February 2010, paras. 41, 83-114.

³³ Trial Judgement of 11 February 2010, paras. 127, 128, 132, 133.

³⁴ Trial Judgement of 11 February 2010, para. 62.

genocide.³⁵ The Appeals Chamber rejected Muvunyi's allegations of error in relation to these findings and affirmed Muvunyi's conviction based on his speech at the Gikore Trade Center.³⁶

15. Muvunyi seeks review based on the following three alleged new facts which he submits "have arisen following the [*Nyiramasuhuko et al.*] Trial Judgement": (i) more than one meeting took place in Gikore in May 1994; (ii) Witness CCS/FAH's testimony concerning the involvement of Alphonse Nteziryayo ("Nteziryayo") was not credible; and (iii) the *Nyiramasuhuko et al.* Trial Chamber did not find that Nteziryayo, as Butare Prefect, incited the population to kill Tutsis alongside Muvunyi at the Gikore meeting, a crime for which they were jointly indicted.³⁷

16. The Prosecution responds that the findings reached by the *Nyiramasuhuko et al.* Trial Chamber "are not facts *per se*" and do not constitute new information of an evidentiary nature of a fact that was not in issue during the trial or appeal proceedings.³⁸ It also contends that Muvunyi's arguments constitute a mere attempt to re-litigate issues already considered and adjudicated.³⁹ The Prosecution further submits that, even if the findings of the *Nyiramasuhuko et al.* Trial Chamber were to be considered as new facts, Muvunyi does not demonstrate that they could have been a decisive factor in reaching the original decision or that ignoring the new facts would result in a miscarriage of justice.⁴⁰

17. Before turning to the merits of the Request for Review, the Appeals Chamber recalls that review proceedings are not an opportunity to re-litigate unsuccessful appeals⁴¹ and that the Appeals Chamber does not have the power to reconsider its final judgements.⁴² Thus, and in accordance with the standard applicable to requests for review, the Appeals Chamber will not address Muvunyi's allegations of errors unless they are related to the alleged new facts. Accordingly, the Appeals Chamber will not discuss Muvunyi's allegations regarding: (i) the inclusion of Witness CCS/FAH as a Prosecution witness in the retrial;⁴³ (ii) the defective pleading in the indictment of the date of

³⁵ Trial Judgement of 11 February 2010, paras. 132, 133.

³⁶ Appeal Judgement of 1 April 2011, paras. 28, 33-61, p. 24.

³⁷ Request for Review, para. 6 (p. 6), referring to *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Judgement and Sentence, pronounced on 14 June 2011 and issued in writing on 14 July 2011 ("*Nyiramasuhuko et al.* Trial Judgement"). See also Reply, para. 17.

³⁸ Response, paras. 4, 9-15.

³⁹ Response, paras. 4, 16-21.

⁴⁰ Response, paras. 4, 22-25.

⁴¹ See, e.g., *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R, Decision on Fifth Request for Review, public redacted version, 27 January 2010, para. 10.

⁴² See, e.g., *Ferdinand Nahimana v. The Prosecutor*, Case No. ICTR-99-52B-R, Decision on Ferdinand Nahimana's Motion for Reconsideration of the Decision of 27 September 2011 and of his Sentence, 29 June 2012, p. 3; *François Karera v. The Prosecutor*, Case No. ICTR-01-74-R, Decision on Requests for Review and Assignment of Counsel, 28 February 2011, para. 8; *Rutaganda Review Decision*, para. 6.

⁴³ Request for Review, paras. 8-10 (pp. 7-9). See also Reply, para. 6.

the meeting;⁴⁴ (iii) the impermissible shift in the burden of proof with respect to the number of meetings;⁴⁵ and (iv) the standard applied for the assessment of the credibility of the Prosecution witnesses.⁴⁶

(a) Number of Meetings

18. Muvunyi submits that the *Nyiramasuhuko et al.* Trial Chamber found, based on the testimony of Witness CCS/FAH, that there was more than one meeting in Gikore in May 1994.⁴⁷ He also argues that the *Nyiramasuhuko et al.* Trial Judgement: (i) “acknowledges [...] that there were two meetings in Gikore *secteur* in 1994 at which Nteziryayo, Colonel Muvunyi and Ruzindaza incited people to commit genocide”;⁴⁸ and (ii) “determined” that Witness CCS/FAH testified that Muvunyi had spoken not at the first meeting held around the end of May or beginning of June 1994, but at a second meeting held two or three weeks later, in mid to end of June 1994.⁴⁹ Muvunyi contends that these findings are incompatible with the findings of fact made in the Appeal Judgement of 1 April 2011 and, as such, constitute new facts capable of having a decisive impact on the determination made by the Appeals Chamber in his case.⁵⁰

19. The Appeals Chamber notes that Muvunyi submits that the finding in the *Nyiramasuhuko et al.* Trial Judgement that there was more than one meeting in Gikore in May 1994 constitutes a new fact.⁵¹ However, the Appeals Chamber observes that the *Nyiramasuhuko et al.* Trial Chamber did not make such a finding.⁵² Muvunyi also refers to alleged findings in the *Nyiramasuhuko et al.* Trial Judgement regarding a first meeting held “around the end of May or beginning of June 1994” at which Muvunyi did not speak, and a second meeting held “two or three weeks after the first meeting (mid to end of June 1994)” at which he spoke.⁵³ The Appeals Chamber observes that the *Nyiramasuhuko et al.* Trial Chamber did not reach such findings in its judgement. While the

⁴⁴ Request for Review, para. 12.

⁴⁵ Request for Review, para. 12.

⁴⁶ Request for Review, paras. 18, 29, 31.

⁴⁷ Request for Review, paras. 6(i) (p. 6), 19, referring to *Nyiramasuhuko et al.* Trial Judgement, para. 4876.

⁴⁸ Request for Review, para. 14, referring to *Nyiramasuhuko et al.* Trial Judgement, paras. 4893, 4894. See also Request for Review, para. 15, referring to *Nyiramasuhuko et al.* Trial Judgement, paras. 4893-4900.

⁴⁹ Request for Review, paras. 16, 17, referring to *Nyiramasuhuko et al.* Trial Judgement, paras. 4893, 4894, 4898, 4907, 4908.

⁵⁰ Request for Review, paras. 10 (pp. 8, 9), 11-13, 16, 19, referring to *Nyiramasuhuko et al.* Trial Judgement, paras. 4885-4913. See also Request for Review, para. 17. In his Reply, Muvunyi further submits that the new fact was not known by him at the time of the original proceedings and that its discovery was not the result of a lack of due diligence as the *Nyiramasuhuko et al.* Trial Judgement was issued long after the end of the proceedings in his case. See Reply, paras. 15, 16.

⁵¹ See Request for Review, paras. 6(i) (p. 6), 19, referring to *Nyiramasuhuko et al.* Trial Judgement, para. 4876.

⁵² See *Nyiramasuhuko et al.* Trial Judgement, paras. 4907-4914. Moreover, a review of Witness CCS/FAH's testimony in the *Nyiramasuhuko et al.* case reveals that the witness did not testify that two meetings occurred in May 1994. See *Nyiramasuhuko et al.* case, Witness FAH, T. 21 and 22 April 2004.

⁵³ Request for Review, paras. 16, 17, referring to *Nyiramasuhuko et al.* Trial Judgement, paras. 4893, 4894, 4898, 4907, 4908.

Nyiramasuhuko et al. Trial Chamber noted Witness CCS/FAH's evidence that a second meeting attended by Nteziryayo and Muvunyi occurred in June 1994,⁵⁴ it found that the witness's confusion as to the timing of this meeting cast doubt on its occurrence.⁵⁵ It concluded that Witness CCS/FAH's evidence, "standing alone, [was] not sufficiently reliable to ground a finding of fact beyond reasonable doubt that a meeting took place in Gikore *secteur* sometime in June 1994 during which Nteziryayo incited the population to kill Tutsis."⁵⁶

20. The Appeals Chamber therefore finds that the *Nyiramasuhuko et al.* Trial Chamber did not make the findings that Muvunyi alleged it did. Accordingly, the Appeals Chamber concludes that Muvunyi does not demonstrate the existence of a new fact for the purposes of review under Rule 120 of the Rules.

(b) Credibility of Witness CCS/FAH

21. Muvunyi submits that the finding in the *Nyiramasuhuko et al.* Trial Judgement that Witness CCS/FAH's testimony concerning Nteziryayo's involvement was not credible amounts to a new fact for the purposes of review proceedings.⁵⁷ He argues that the determination of the witness's credibility in the *Nyiramasuhuko et al.* Trial Judgement "undermines the integrity of the witness['s] account to such an extent that it would be wrong and unfair to rely on his testimony upon which to uphold [...] Muvunyi's conviction."⁵⁸

22. The Appeals Chamber recalls that new information related to witness credibility may amount to a new fact.⁵⁹ The Appeals Chamber, however, does not consider that the assessment of the reliability of a witness's testimony concerning a discrete incident by a different trier of fact in a separate trial and on the basis of a different evidentiary record constitutes new information of an evidentiary nature in review proceedings. Accordingly, the Appeals Chamber considers that the *Nyiramasuhuko et al.* Trial Chamber's finding regarding the reliability of Witness CCS/FAH's evidence does not amount to a new fact for the purposes of review under Rule 120 of the Rules.

⁵⁴ See *Nyiramasuhuko et al.* Trial Judgement, para. 4907. The Appeals Chamber also notes that Witness CCS/FAH testified in the *Nyiramasuhuko et al.* case that Muvunyi was present and made a speech inciting the killing of Tutsis at both meetings. See *Nyiramasuhuko et al.*, Witness FAH, T. 21 April 2004 pp. 12-16, 19-22. See also *Nyiramasuhuko et al.*, Witness FAH, T. 22 April 2004 pp. 37, 38.

⁵⁵ *Nyiramasuhuko et al.* Trial Judgement, para. 4913.

⁵⁶ *Nyiramasuhuko et al.* Trial Judgement, para. 4914.

⁵⁷ Request for Review, paras. 6(ii) (p. 6), 10 (p. 8), 12, 21, 30, referring to *Nyiramasuhuko et al.* Trial Judgement, paras. 4909, 4910, 4912, 4913. See also Reply, para. 17.

⁵⁸ Request for Review, para. 21. See also *ibid.*, para. 30.

⁵⁹ *Jean de Dieu Kamuhanda v. The Prosecutor*, Case No. ICTR-99-54A-R, Decision on Request for Review, 25 August 2011, para. 26. See also *Rutaganda* Review Decision, para. 17.

(c) Acquittal of Nteziryayo for Direct and Public Incitement to Commit Genocide

23. Muvunyi submits that the fact that the *Nyiramasuhuko et al.* Trial Judgement “failed to include a finding of fact against Alphonse Nteziryayo for the allegation of having committed an incitement as a prefect of Butare alongside the Accused Muvunyi at the Gikore meeting in which they were jointly indicted” constitutes a new fact for the purposes of review.⁶⁰ Muvunyi also contends that it is “of significance” that the Prosecution did not appeal Nteziryayo’s acquittal in this respect.⁶¹

24. The Appeals Chamber notes that Nteziryayo and Muvunyi were not charged with direct and public incitement to commit genocide on the basis of the same factual allegations. While Nteziryayo was charged on the basis of speeches he allegedly gave at a meeting in Gikore sector sometime in *June* 1994 when he was prefect,⁶² Muvunyi was charged on the basis of a speech he purportedly gave at the Gikore Trade Center in Nyaruhengeri commune in *May* 1994.⁶³ Therefore, contrary to Muvunyi’s assertion, Nteziryayo was not acquitted of a charge for which he was jointly indicted with Muvunyi. Furthermore, the Appeals Chamber considers that a finding made by a separate trial chamber on the criminal liability of another accused based on a different evidentiary record does not amount to a new fact for the purposes of review under Rule 120 of the Rules.

(d) Conclusion

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

⁶⁰ Request for Review, para. 6(iii) (p. 6). *See also* Reply, para. 17.

⁶¹ Request for Review, para. 33. *See also* Reply, para. 14.

⁶² *Nyiramasuhuko et al.* Trial Judgement, para. 4890.

⁶³ *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-I, Indictment, 23 December 2003, para. 3.24. The Retrial Chamber found that the meeting took place in mid to late May 1994 and that, despite the variance between paragraph 3.24 of the indictment, which mentioned that the meeting took place in early May 1994, and the evidence, Muvunyi was clearly informed of the meeting in Gikore which was alleged in the indictment. *See* Trial Judgement of 11 February 2010, para. 62. The Appeals Chamber upheld this conclusion. *See* Appeal Judgement of 1 April 2011, para. 29.

III. DISPOSITION

26. For the foregoing reasons, the Appeals Chamber:

DISMISSES the Request for Variation of Protective Measures;

DISMISSES the Request for Review; and


DIRECTS the Registrar to lift the confidential status of the Request for Review, the Request for Variation of Protective Measures, and the Reply.

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

Done this 28th day of September 2012,
At The Hague,
The Netherlands.



[Seal of the Tribunal]


Judge Theodor Meron
Presiding