



ICTR-2000-60-I  
7. 3. 2003  
(521—518)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

521  
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OR: ENG

TRIAL CHAMBER II

**Before:** Judge William H. Sekule, Presiding  
Judge Winston C. Matanzima Maqutu  
Judge Arlette Ramaroson

**Registrar:** Adama Dieng

**Date:** 7 March 2003

The PROSECUTOR  
v.  
Paul BIENGIMANA  
Case No. ICTR-2002-60-I

JUDICIAL RECORDS/ARCHIVES  
RECEIVED  
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2003 MAR -7 P 1:47  
*Adama Dieng*

**DECISION ON BIENGIMANA'S MOTION FOR COMPLETE AND ACCURATE  
TRANSLATION INTO WORKING LANGUAGES OF THE TRIBUNAL AND  
RESPECT FOR THE RIGHTS OF THE ACCUSED**

**Office of the Prosecutor**  
Charles Adeogun-Philips  
Wallace Kapaya

**Counsel for the Defence**  
Catherine Mabilille

*AMS*

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (the "Tribunal"),

**SITTING** as Trial Chamber II composed of Judges William H. Sekule, Presiding, Winston C. Matanzima Maqutu and Arlette Ramarason (the "Chamber");

**BEING SEIZED** of the "Motion for Complete and Accurate Translation into the Working Languages (Rule 3(E) of the Rules of Procedure and Evidence, Article 20(4)(a) of the Statute and Rule 73(D) of the Rules of Procedure and Evidence) and for Respect for the Rights of the Accused (Article 20 of the Statute)" filed on 23 December 2002 (the "Motion");

**HAVING RECEIVED AND READ** the "Prosecutor's Response to Defence Motion for Complete and Accurate Translation into the Working Languages and for Respect for the Rights of the Accused - Rules 3(E) and 73(D) of the Rules of Procedure and Evidence and Article 20(4)(a) of the Statute," filed on 8 February 2003 (the "Prosecutor's Response");

**THE CHAMBER** is satisfied with the written submissions of the parties so far. It will not be necessary for the Defence to file a reply to the Prosecutor's Response;

**CONSIDERING** the Statute of the Tribunal (the "Statute"), specifically Article 20(4)(a) of the Statute, the Rules of Procedure and Evidence (the "Rules"), in particular Rule 3(E) and 73(D) of the Rules, and the Directive for the Registry of the International Criminal Tribunal for Rwanda (the "Directive for the Registry") in particular Article 13(6);

**NOW DECIDES** the Motion solely on the basis of the written briefs filed by the Parties, pursuant to Rule 73(A) of the Rules.

#### **SUBMISSIONS OF THE PARTIES**

##### *Defence Submissions*

1. The Defence submits that on 16 December 2002 it was served with a French translation of the "Prosecutor's Motion for Protective Measures for Victims and Witnesses," filed on 23 July 2002 (the "Prosecutor's Motion for Protective Measures.") The Defence submits the following discrepancies:

- (i) That annex H, which is an attachment to the Prosecutor's Motion for Protective Measures, is not translated and is illegible;
- (ii) That para. 11 of the French translation of the affidavit of Commander Alfred Kwende states that the witnesses whose pseudonyms are outlined all reside in the commune of Gikoro; whereas in the English version the said witnesses are said to reside in Gikoro commune and its environs;
- (iii) That para. 11 of the French translation of Commander Alfred Kwende's affidavit enumerates the pseudonyms of thirty-one (31) witnesses whereas in the English version thirty-three (33) pseudonyms of witnesses are enumerated. The Defence submits that the two witnesses not enumerated in the French translation are VC and VAZ6.

2. The Defence argues that it cannot respond to the Prosecutor's Motion for Protective Measures within the prescribed deadline of five (5) days after being served with the French

translation, because it has no precise information with regard to the prosecution witnesses for whom protection is sought and justified. In order to preserve the rights of the Accused as provided for under Article 20(4) of the Statute, the Defence seeks a fresh time limit, to start running from the time it receives the complete and accurate translation of documents in support of the Prosecutor's Motion for Protective Measures.

*Prosecution Response*

3. In requesting that the Motion be dismissed, the Prosecution recalls the provisions of Rule 3(E) of the Rules and Article 13(6) of the Directive for the Registry, which places on the Registrar the responsibility of overseeing translation of documents for filing.

4. In the interests of justice, the Prosecution formally withdraws from her list of annexes all those materials in annex H, which have not been translated [and/ or] are illegible, so that they will not be relied upon in support of the Prosecutor's Motion for Protective Measures.

5. Regarding the omission of witnesses VC and VAZ6 in the French translation of the Prosecutor's Motion for Protective Measures and in the affidavit of Commander Alfred Kwende, the Prosecution submits that the Defence understands both English and French and is able to work in both languages. The Prosecution thus argues that as these are translation errors, the Defence and other interested parties should not act on the French text of the said documents for purposes of the number of witnesses for whom protection is sought. Rather, reliance may only be placed on the English texts of the said documents, which the Prosecution considers authoritative. Similarly, regarding reference to the residence of the enumerated witnesses, the Prosecution suggests that the Defence and other interested parties should treat the English text of para. 18 of the Prosecutor's Motion for Protective Measures and para. 11 of Commander Alfred Kwende's affidavit as authoritative.

**HAVING DELIBERATED**

6. The Chamber notes that, in order to respond properly to the Prosecutor's Motion for Protective Measures, the Defence requests an accurate translation of said Motion and its annexes. The Chamber recalls the provisions of Rule 3(E) of the Rules that, "[t]he Registrar shall make any necessary arrangements for interpretation and translation of the working languages." Article 13(6) of the Directive for the Registry specifically provides that, "[w]hen a document is filed with the Court Management Section the Section shall make the appropriate arrangements for its translation into the working languages of the Tribunal."

7. In the instant case, the Prosecution filed its Motion with the Court Management Section. The latter then proceeded to oversee its translation and subsequently served the resulting French translation on the Defence. It is evident, as acknowledged by the Defence, that the discrepancies in the French translation of the Prosecutor's Motion resulted from its translation: to wit, the non-translated and illegible parts of Annex H, as well as the discrepancies identified in the Prosecutor's Motion for Protective Measures and the affidavit of Commander Alfred Kwende.

8. On this matter, the Chamber takes note of the fact that the Prosecution has formally withdrawn from her list of annexes all those materials in annex H, which have not been translated [and/ or] are illegible, no longer seeking to rely on them in support of its Motion. Regarding the discrepancies in the French translation relating to the number of witnesses for



whom protection is sought and their residence, the Prosecution submits that the English version of the Prosecutor's Motion for Protective Measures is the authoritative version.

9. Considering that the Prosecution filed its Motion for Protective Measures in English, considering also the interests of justice and the needs of judicial economy in the circumstances, the Chamber rules that the English version of the Prosecutor's Motion for Protective Measures remains the authoritative version in the event of any discrepancy.

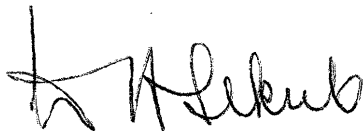
10. On this basis therefore, the Chamber grants the Defence Motion and issues fresh deadlines for filing its Response. The Chamber directs the Defence to file a Response to the Prosecutor's Motion within five (5) days from the date of notification of this Decision so that the Prosecution may file its Reply, if it so wishes, five (5) days thereafter.

**FOR THE ABOVE REASONS, THE TRIBUNAL**

**GRANTS** the Defence Motion and issues fresh deadlines for filing its Response;

**DIRECTS** the Defence to file a Response to the Prosecutor's Motion within five (5) days from the date of notification of this Decision so that the Prosecution may file its Reply, if it so wishes, five (5) days thereafter.

Arusha, 7 March 2003



William H. Sekule  
Presiding Judge



Winston C. Matanzima Maqutu  
Judge



Arlette Ramarason  
Judge

