

ICTR-00-60-I
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(1380-1378)

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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before: Judge Arlette Ramaroson, Presiding
Judge William H. Sekule
Judge Solomy B. Bossa

Registrar: Mr Adama Dieng

Date: 3 February 2006

The PROSECUTOR

v.

Paul BIENGIMANA

Case No. ICTR-00-60-S

**DECISION ON THE DEFENCE MOTION FOR THE ADMISSION OF A WRITTEN
STATEMENT IN LIEU OF ORAL TESTIMONY IN ACCORDANCE WITH Rule 92
bis (A) AND (B) OF THE RULES OF PROCEDURE AND EVIDENCE**

Office of the Prosecutor:

Mr Charles Adeogun-Phillips
Ms Adesola Adcboyejo
Mr Peter Tafah
Mr Memory Maposa
Ms Florida Kabasinga

Counsel for the Defence:

Ms Catherine Mabile

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the “Tribunal”),

SITTING as Trial Chamber II, composed of Judge Ariette Ramaroson, Presiding, Judge William H. Sekule and Judge Solomy Balungi Bossa (the “Chamber”);

BEING SEIZED OF the Accused Bisengimana’s *«Requête de la Défense aux fins d’admission de l’attestation du commandant du quartier pénitentiaire des Nations-Unies en lieu et place d’un témoignage oral conformément à la Règle 92 bis (A) et (B) du Règlement de Procédure et de Preuve»*,¹ filed on 20 January 2006 (the “Motion”);

NOTING that the Prosecutor did not file any Response;

CONSIDERING the Statute of the Tribunal (the “Statute”), and the Rules of Procedure and Evidence (the “Rules”), in particular Rule 92*bis* of the Rules;

HEREBY DECIDES the Motion on the basis of the written submissions of the Defence, pursuant to Rule 73(A) of the Rules;

RECALLING that during the Pre-Sentencing Hearing held on 19 January 2006, the Chamber invited the Defence to comply with the Provisions of Rule 92*bis* of the Rules, in particular, Sub-Rules (A) and (B), if it wished to have admitted the Declaration of 22 December 2005, allegedly made by the Commander of the United Nations Detention Facilities (the “UNDF”), relating to the Accused’s behaviour while in detention;²

CONSIDERING that the Defence brings the Motion pursuant to Rule 92*bis* (A) of the Rules, which provides as follows:

Rule 92*bis*: Proof of Facts Other Than by Oral Evidence

(A) “A Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement in lieu of oral testimony which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment.

(i) Factors in favour of admitting evidence in the form of a written statement include, but are not limited to, circumstances in which the evidence in question:

(...)

(e) relates to issues of the character of the Accused; or

(f) relates to factors to be taken into consideration in determining sentence

(...)”;

¹ “Defence Motion for the admission of the written statement made by Commander of UNDP in lieu of oral testimony in accordance with Rule 92*bis* (A) and (B)”, attached to which are: (1) a Decision by the Registrar dated 23 January 2006 appointing Mr. Matar Diop as the President Officer to witness the declaration dated 22 December 2005 made by Mr. Saidou Guindo, Commander of UNDF; (2) the Attestation dated 26 January 2006 in conformity with Rule 92*bis* (B), attesting that Mr. Saidou Guindo, in the presence of Mr. Matar Diop, confirmed that the contents of the declaration dated 22 December 2005 are true and correct to the best of his knowledge; (3) a Declaration by the Witness dated 26 January 2006 that the declaration he made on 22 December 2005 is true to the best of his knowledge; and (4) the declaration dated 22 December 2005 by Mr. Saidou Guindo concerning the character of the Accused Paul Bisengimana while he was in detention at the UNDF (the “Declaration of 22 December 2005”).

² T. of 19 January 2006, pp. 32, 41.

CONSIDERING the Defence submissions that the Declaration of 22 December 2005 meets the criteria for admissibility under Rule 92 *bis* of the Rules as identified above, in particular because the witness declared, in the presence of an authorised official appointed by the Registrar of the Tribunal, that the contents of the requested statement are true and correct to the best of his knowledge and belief;

ALSO CONSIDERING that the Defence requests the Chamber to admit the Declaration of 22 December 2005 into evidence, taking into account its relevance and probative value in support of mitigating the sentence to be passed against the Accused especially as it bears on the good character of the Accused while in detention and as it will enlighten the Chamber in arriving at a fair and equitable sentence.

DELIBERATIONS

NOTING that the Defence request falls squarely within the ambit of Rule 92 *bis* of the Rules since the Declaration of 22 December 2005 satisfies the threshold requirements that the evidence sought to be adduced goes to proof of a matter other than the acts and conduct of the Accused as charged in the Indictment and that it in fact relates to factors to be taken into consideration in determining sentence;

NOTING ALSO that the Declaration of 22 December 2005 is accompanied by a duly witnessed declaration by the Commander of the UNDF, Mr. Saidou Guindo himself, indicating that the contents of the Declaration are true and correct to the best of his knowledge, the Chamber finds the Declaration of 22 December 2005 to be admissible under Rule 92*bis* of the Rules.


FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Motion and admits the Declaration of 22 December 2005 in lieu of the oral testimony of the Commander of the UNDF, Mr. Saidou Guindo.

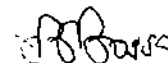
Arusha, 3 February 2006



Arlette Ramaroson
Presiding Judge



William H. Sekule
Judge



Solomy Balungi Bossa
Judge

[Seal of the Tribunal]