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INTERNATIONAL  
CRIMINAL  
TRIBUNAL FOR RWANDA

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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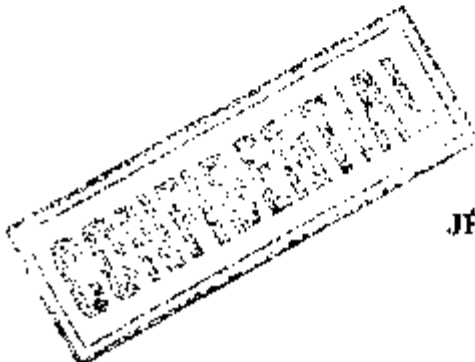
TRIAL CHAMBER II

Before Judges: Khalida Rachid Khan, presiding  
Lee Gacuga Muthoga  
Emile Francis Short

ICTR-99-50-T  
8-02-2007  
(23729-23726)

Registrar: Mr. Adama Dieng

Date: 8 February 2007



THE PROSECUTOR  
v.  
CASIMIR BIZIMUNGU  
JUSTIN MUGENZI  
JÉRÔME-CLÉMENT BICAMUMPAKA  
PROSPER MUGIRANEZA

Case No. ICTR-99-50-T

CONFIDENTIAL

JUDICIAL RECORDS ARCHIVES  
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DECISION ON CASIMIR BIZIMUNGU'S MOTIONS IN RELATION TO  
CONDITION (B) REQUESTED BY THE GOVERNMENT OF THE UNITED  
STATES OF AMERICA

Office of the Prosecutor:

Mr. Paul Ng'arua  
Mr. Ibukunolu Babajide  
Mr. Justus Rwonwonga  
Mr. Elvis Bazawule  
Mr. Shyamlal Rajapaksa  
Mr. Olivier De Schutter  
Mr. William Mubiru

Counsel for the Defence:

Ms. Michelyne C. St. Laurent and Ms. Alexandra Marcil for Casimir Bizimungu  
Mr. Ben Gumpert and Mr. Jonathan Kirk for Justin Mugenzi  
Mr. Pierre Gaudreau and Mr. Michel Croteau for Jérôme-Clément Bicamumpaka  
Mr. Tom Moran and Ms. Marie-Pierre Poulain for Prosper Mugiraneza

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

**SITTING** as Trial Chamber II, composed of Judge Khalida Rachid Khan, presiding, Judge Lee Gacuga Muthoga and Judge Emile Francis Short (the "Trial Chamber");

**BEING SEIZED** of

"Casimir Bizimungu's Confidential and Extremely Urgent Motion in Relation to Condition (B) Requested by the United States Government", filed on 29 January 2007 (the "29 January 2007 Motion"); and

"Casimir Bizimungu's Confidential and Extremely Urgent Motion in Relation to Condition (B) Requested by the United States Government", filed on 30 January 2007 (the "30 January 2007 Motion") (together, the "Motions");

**CONSIDERING** the

"Prosecutor's Urgent Response to Dr. Casimir Bizimungu's Motion in Relation to Condition (B) Requested by the United States Government", filed on 31 January 2007; and

"Justin Mugenzi's Written Submissions in Support of Casimir Bizimungu's Motion in Relation to Condition (B) Requested by the United States Government", filed on 2 February 2007;

**HEREBY DECIDES** the Motion.

#### **INTRODUCTION**

1. On 24 January 2007, this Chamber granted in part a Motion brought by the Defence for Casimir Bizimungu requesting an order that the provisions of Rule 70 of the Rules of Procedure and Evidence shall apply to information provided by a former official (the "Witness") of the Government of the United States of America (the "U.S. Government") during his testimony.

2. At the behest of the U.S. Government, the Defence also requested that the order stipulate:

(a) That two representatives of the U.S. Government be present during the Witness' testimony for the purpose of monitoring the evidence and that they be allowed to address the Chamber should they object to any question put to the Witness;

(b) That the scope of direct examination shall be limited to that authorized by the U.S. Government, and that cross-examination shall be limited to the scope of direct examination;

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(c) That inquiry into the credibility of the Witness be permitted, with the proviso that the Witness not be required to reveal confidential information provided under Rule 70; and

(d) That the Chamber limit its discretion, pursuant to Rule 90, to question a witness and to permit enquiry into additional matters, so that, if exercised, it is done so in conformity with Rule 70.

3. The Chamber ordered that Rule 70 would apply to the Witness' testimony and granted conditions (a), (c) and (d), but denied condition (b). The Chamber's reasons for denying condition (b) were (i) that it must retain the authority to resolve any disputes as to the proper scope of questioning that may arise during the Witness' testimony; and (ii) that without having received any indication of the scope of testimony authorized by the U.S. Government, the Chamber could not grant the condition.<sup>1</sup>

4. By its motions of 29 and 30 January 2007, the Defence for Casimir Bizimungu has provided the Chamber with further information regarding the scope of the Witness' testimony, and requests that the Chamber now grant condition (b) on this basis.

#### DISCUSSION

5. In its 29 January 2007 Motion, the Defence for Casimir Bizimungu claims that the scope of the Witness' testimony is expected to follow the will say statement, disclosed by the Defence on 9 June 2006. In its 30 January 2007 Motion, the Defence submits (i) that the scope of examination-in-chief is the will say statement; (ii) that the U.S. Government has received the will say; and (iii) that the U.S. Government agrees that the scope of the will say "provides the subjects on which the Defence for Casimir Bizimungu will ask questions" of the Witness. Annexed to the 30 January 2007 Motion is an e-mail from an agent of the U.S. Government to the Defence that is consistent with the Defence submissions.

6. The Prosecution argues that the scope of the Witness' testimony remains unclear because the Defence Motions do not state to what extent the will say statement is commensurate to the scope of examination authorized by the U.S. Government. The Chamber agrees that the scope of examination authorized by the U.S. Government remains unclear. For example, it is not clear from the Defence submissions that the U.S. Government has authorized the parties to question the Witness on all topics discussed in the Witness' July 2005 testimony before another Trial Chamber of this Tribunal.

7. While the Chamber is not in favour of making an order limiting the direct and cross examination of the Witness to what is authorized by the U.S. Government, the Chamber recalls that in its 24 January 2007 Oral Ruling it granted the U.S. Government significant protections that will ensure no confidential information is revealed. By its terms, Rule 70 prevents the Chamber from ordering the production of additional

<sup>1</sup> T. 24 January 2007, pp. 45-47 (closed session).



evidence or from compelling the Witness to answer questions he declines to answer on confidentiality grounds.<sup>2</sup> The same limitations apply to inquiry into the Witness' credibility and to any direct questioning by the Chamber. Moreover, as a further precaution to avoid unwitting disclosure of confidential information by the Witness, the Chamber has allowed the U.S. Government to send two representatives who will be present during the Witness' testimony, and authorized them to address the Chamber should they object to any questions put to the Witness. The 24 January 2007 Oral Ruling maintains the proper balance between protecting the legitimate confidentiality concerns of the U.S. Government and the Chamber's authority over the proceedings.

8. The Prosecution also objects to the content of the Witness' will say statement, which it claims contains "opinion evidence". This complaint is premature. The appropriate time and method of dealing with such admissibility issues is by contemporaneous objection during the Witness' testimony.

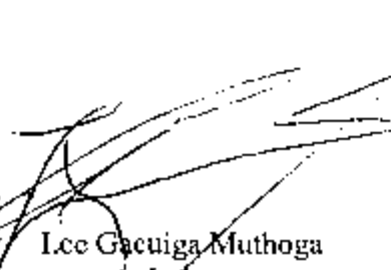
**FOR THE FOREGOING REASONS, THE CHAMBER**

**DENIES** the Motions.

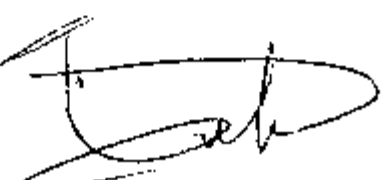
Arusha, 8 February 2007



Khalida Rachid Khan  
Presiding Judge

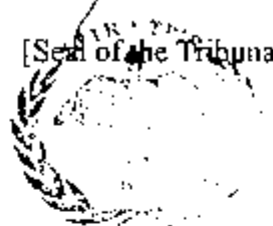


Lee Gacuga Muthoga  
Judge



Emile Francis Short  
Judge

[Seal of the Tribunal]



<sup>2</sup> Rule 70 (C) and (D) of the Rules of Procedure and Evidence.



## TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

**COURT MANAGEMENT SECTION**  
(Art. 27 of the Directive for the Registry)

### I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

<b>To:</b>	<input type="checkbox"/> Trial Chamber I N. M. Diallo	<input checked="" type="checkbox"/> Trial Chamber II R. N. Kouambo	<input type="checkbox"/> Trial Chamber III C. K. Homelouwu	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
	<input type="checkbox"/> Chief, CMS J.-P. Fomtété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS K. K. A. Afande	<input type="checkbox"/> Appeals Chamber / The Hague R. Burriss
<b>From:</b>	<input checked="" type="checkbox"/> Chamber II David Kinnecome (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
<b>Case Name:</b>	The Prosecutor vs. Casimir Bizimungu et al.		<b>Case Number:</b> ICTR-99-50-T	
<b>Dates:</b>	Transmitted: 8 February 2007		Document's date: 8 February 2007	
<b>No. of Pages:</b>	4		<b>Original Language:</b> <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda	
<b>Title of Document:</b>	DECISION ON CASIMIR BIZIMUNGU'S MOTIONS IN RELATION TO CONDITION (B) REQUESTED BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA			
<b>Classification Level:</b>	<b>TRIM Document Type:</b>			
<input type="checkbox"/> Strictly Confidential / Under Seal	<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence	<input type="checkbox"/> Submission from non-parties
<input checked="" type="checkbox"/> Confidential	<input checked="" type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal	<input type="checkbox"/> Submission from parties
<input type="checkbox"/> Public	<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book	<input type="checkbox"/> Accused particulars
	<input type="checkbox"/> Judgement	<input type="checkbox"/> Motion	<input type="checkbox"/> Book of Authorities	

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**CMS SHALL** take necessary action regarding translation.

Filing Party hereby submits only the original, and **will not submit** any translated version.

Reference material is provided in annex to facilitate translation.

Target Language(s):

English  French  Kinyarwanda

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Filing Party hereby submits **BOTH the original and the translated version** for filing, as follows:

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Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

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Filing Party **will be submitting the translated version(s)** in due course in the following language(s):

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### III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	<b>COMMENTS</b>	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: