

ICTR-01-73-T  
23-03-2007  
(6531 - 6529)

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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:** Inés Mónica Weinberg de Roca, Presiding  
Khalida Rachid Khan  
Lee Gacuga Muthoga

**Registrar:** Mr Adama Dieng

**Date:** 23 March 2007

THE PROSECUTOR  
v.  
Protais ZIGIRANYIRAZO

*Case No. ICTR-2001-73-T*

JUDICIAL FILES/ARCHIVES  
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2007 MAR 23 : P 12: 19

DECISION ON THE CONFIDENTIAL DEFENCE MOTION REQUESTING A  
SUBPOENA FOR WITNESS BN742

**Office of the Prosecutor:**

Wallace Kapaya  
Charity Kagwi-Ndungu  
Silver Ntukamazina  
Gina Butler  
Iain Morley  
Iskandar Ismail  
Jane Mukangira

**Defence Counsel:**

John Philpot  
Peter Zaduk

## INTRODUCTION

1. The Defence requests that the Trial Chamber issue a subpoena to hear the testimony of Witness BNZ42.<sup>1</sup>

## DISCUSSION

2. Rule 54 of the Rules empowers the Chamber to issue, *inter alia*, subpoenas "as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial."

3. An application for a subpoena must show that (i) reasonable attempts have been made to obtain the voluntary cooperation of the witness; (ii) the witness's testimony can materially assist the applicant in respect of clearly identified issues; and (iii) the witness's testimony must be necessary and appropriate for the conduct and fairness of the trial.<sup>2</sup> The Appeals Chamber has cautioned that "subpoenas should not be issued lightly, for they involve the use of coercive powers and may lead to the imposition of a criminal sanction".<sup>3</sup>

4. The Defence has shown that despite several attempts, it has been unable to obtain the voluntary cooperation of Witness BNZ42, and that BNZ42's testimony is necessary to contradict Prosecution Witness AVY and to show the complete details surrounding Mr. Stanislas Sinibagiwe's death.

## FOR THE ABOVE REASONS, THE CHAMBER

**GRANTS** the Defence Motion;

**ORDERS** the Registrar to prepare a subpoena in accordance with this decision, addressed to the witness designated by the pseudonym BNZ42;

**ORDERS** the Registrar to communicate the subpoena to the aforementioned witness by the most practicable means, which may include communication of the subpoena to the Government of Rwanda, for the purpose of service on the witness;


<sup>1</sup> "Confidential Defence Motion Requesting a Subpoena for Witness BNZ42," March 14, 2007.

<sup>2</sup> *Prosecutor v. Karemera et al.*, Decision on Nzirorera's Ex Parte Motion for Order for Interview of Defence Witnesses NZ1, NZ2, and NZ3 (TC), 12 July 2006, para. 9; *Prosecutor v. Krstić*, Case No. IT-98-33-A, Decision on Application for Subpoenas (AC), 1 July 2003, para. 10; *Prosecutor v. Milosević*, Case No. IT-02-54-T, Decision on Assigned Counsel Application for Interview and Testimony of Tony Blair and Gerhard Schroder (TC), 9 December 2005, para. 36.

<sup>3</sup> *Prosecutor v. Halilović*, Case No. IT-01-48-AR73, Decision on the Issuance of Subpoenas (AC), 21 June 2004, para. 7.

**REQUESTS** the Government of Rwanda to serve the subpoena on the addressee as soon as practicable, and to provide any other assistance that may be requested by the Registry to facilitate the witness's attendance, as soon as practicable, during the course of this session.

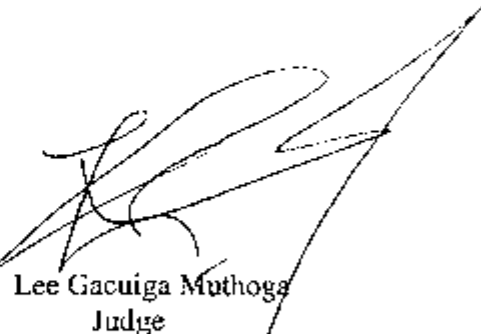
Arusha, 23 March 2007, done in English.



Inés Mónica Weinberg de Roca  
Presiding Judge



Khalida Raehid Khan  
Judge



Lee Gacuiya Muthoga  
Judge





## 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 type="checkbox"/> Trial Chamber II R. N. Kouambo	<input checked="" type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Telon
	<input checked="" type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS M. Diop	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afando
<b>From:</b>	<input checked="" type="checkbox"/> Chamber TC3 Christopher Rassi (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. Protais Zigiranyirazo			<b>Case Number:</b> ICTR-2001-73
<b>Dates:</b>	Transmitted: 23 3 2007		Document's date: 23 3 2007	
<b>No. of Pages:</b>	3		<b>Original Language:</b> <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda	
<b>Title of Document:</b>	DECISION ON THE CONFIDENTIAL DEFENCE MOTION REQUESTING A SUBPOENA FOR WITNESS BNZ42			
<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 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 checked="" type="checkbox"/> Public	<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book	<input type="checkbox"/> Accused particulars
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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 checked="" type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

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

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<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date.
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: