



UNITED NATIONS  
NATIONS UNIES

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

OR:  
ENG

**TRIAL CHAMBER II**

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

**Registrar:** Mr. Adama Dieng

**Date:** 8 May 2007

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

**Case No. ICTR-99-50-T**

**DECISION ON DW2's URGENT REQUEST TO LIMIT THE CROSS-  
EXAMINATION OF DW2 BEFORE TRIAL CHAMBER II AND TO PERMIT  
DW2 TO BE ACCOMPANIED BY COUNSEL**

**Office of the Prosecutor:**

Mr. Paul Ng'arua  
Mr. Ibukunolu Babajide  
Mr. Justus Bwonwonga  
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**

## INTRODUCTION

1. On 4 May 2007 the Defence for Witness DW2, an accused person before this Tribunal and a witness for the Defence of Casimir Bizimungu scheduled to testify in these proceedings on 9 and 10 May 2007, requested that the Trial Chamber (i) allow his Defence Counsel to be present in the courtroom when he testifies; (ii) allow DW2 to consult with his Defence Counsel before responding to questions that he believes may lead him to incriminate himself; (iii) allow Defence Counsel for DW2 to address the Chamber if necessary to protect his client's right against self-incrimination; and (iv) to prevent the Prosecutor from cross-examining DW2 on matters relevant to the Indictment against him. The Prosecutor opposes DW2's request. These filings have been re-classified as confidential.

## DISCUSSION

2. Defence Counsel for DW2 submits that indictments at the ICTR are complex and that a non-lawyer may have difficulty understanding all the complexities, and, consequently may not understand all legal consequences of a question posed during cross-examination. The Defence for Witness DW2 further submits that there is precedent for allowing accused persons to be represented by Defence Counsel when they testify as witnesses in cases before this Tribunal other than their own and for limiting questions going to their indictment.

3. The Prosecution opposes DW2's Request, arguing that (i) the Chamber itself and the various parties to the proceedings are tasked with and capable of protecting DW2's right against self-incrimination, and therefore Defence Counsel need not be present; (ii) that allowing DW2 to consult with Defence Counsel during his testimony risks contamination of the witness's testimony; and (iii) DW2's request to limit cross-examination is contrary to Rules 90 (G)(i) & (ii).

4. The Chamber is satisfied that the presence of Defence Counsel for DW2 in the courtroom during his testimony will assist it in protecting DW2's right against self-incrimination enshrined in Article 20 (4)(g) of the Statute and Rule 90 (E) of the Rules of Procedure and Evidence. Defence Counsel for DW2 shall be allowed to address the Chamber as necessary to protect his client's right against self-incrimination but will not be allowed to consult with his client during DW2's testimony. These arrangements are sufficient to protect DW2's right against self-incrimination and the Chamber will handle specific objections to questions on the ground that they call for a self-incriminating answer on an individual basis.

5. Without having heard direct examination and mindful of sub-Rules 90 (G)(i) & (ii), the Chamber is not inclined to issue a blanket order preventing cross-examination on any issues arising from DW2's Indictment.<sup>1</sup> Keeping in mind the rights of DW2 and in the interest of judicial economy, the Chamber notes, however, that the phrase "case for the cross-examining party" in sub-Rules 90 (G)(i) & (ii) refers to the Prosecution case

---

<sup>1</sup> Cf., *Prosecution v. Bagosora et al.*, Case No. ICTR-98-41-T, T. 6 July 2005, pp. 33-44.

against the co-accused in these proceedings—*The Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50-T—and not the Prosecution’s case against Witness DW2 in separate proceedings before this Tribunal.

**FOR THESE REASONS**, the Chamber

**GRANTS** the Motion in part;

**ORDERS** that Defence Counsel for DW2 may be present during DW2’s testimony in these proceedings and may address the Chamber as necessary to protect his client’s right against self-incrimination;

**DENIES** the rest of the Motion.

Arusha, 8 May 2007

Khalida Rachid Khan  
Presiding Judge

Lee Gacuiga Muthoga  
Judge

Emile Francis Short  
Judge

[Seal of the Tribunal]