



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-99-50-T
12-09-2007

24361

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(24361 - 24359)

OR:
ENG

TRIAL CHAMBER II

Before Judges: Khalida Rachid Khan, presiding

Registrar: Mr. Adama Dieng

Date: 12 September 2007

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

Case No. ICTR-99-50-T

Judicial
2007 SEP 12 P 4:30
OFFICE OF THE REGISTRAR

**DECISION ON MR. BICAMUMPAKA'S REQUEST FOR ORDER FOR
COOPERATION OF THE KINGDOM OF BELGIUM**

Article 28 of the Statute of the Tribunal

Office of the Prosecutor:

Mr. Paul Ng'arua
Mr. Ibukunolu Babajide
Mr. Justus Bwonwonga
Mr. Elvis Bazawule
Mr. Shyam Lal 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. Michel Croteau for Jérôme-Clément Bicamumpaka
Mr. Tom Moran and Ms. Marie-Pierre Poulain for Prosper Mugiraneza

INTRODUCTION

1. Pursuant to Rules 54 and 73 (A) of the Rules of Procedure and Evidence, Judge Khalida Rachid Khan has been designated to decide this Motion on behalf of the Trial Chamber.
2. The Defence for Mr. Bicomumpaka asks the Chamber to issue a request to the Government of Belgium to permit an interview with Mr. Johann Swinnen, Belgian Ambassador to Rwanda in April 1994.¹ According to the Defence, the purpose of the interview is to determine whether to call him as a witness. The Defence submits that former Ambassador Swinnen may be able to testify as an alibi witness for Mr. Bicomumpaka.

DISCUSSION

3. Article 28 of the Statute mandates State cooperation with the Tribunal in the "investigation and prosecution of persons accused of committing serious violations of international humanitarian law". The party seeking an order for State cooperation must set forth the nature of the information or assistance sought, its relevance to the proceedings, and that efforts to obtain the information or assistance have been unsuccessful.²
4. The Defence for Mr. Bicomumpaka has adequately set forth the nature of the assistance sought as well as its relevance to the presentation of Mr. Bicomumpaka's proposed alibi defence. Annexed to the Defence Motion is a communication from the Registry indicating that Belgian law requires the Defence to obtain an order from the Trial Chamber as a prerequisite to any cooperation.³ The conditions under Article 28 have, therefore, been satisfied.

FOR THESE REASONS, the Chamber

¹ Urgent Motion of Defendant Bicomumpaka Requesting an Order Directed at the Kingdom of Belgium, filed 31 August 2007 ("Defence Motion").

² Decision on Casimir Bizimungu's Requests for Disclosure of the Bruguiere Report and the Cooperation of France (TC), 25 September 2006, para. 25; *see also* *Prosecutor v. Blaskic*, Judgement on the Request of the Republic of Croatia for Review of the Decision of the Trial Chamber II of 18 July 1997 (AC), 29 October 1997; *Bagosora et al.*, Request to the Government of Rwanda for Cooperation and Assistance Pursuant to Article 28 of the Statute (TC), 10 March 2004, para. 4; *Bagosora et al.*, Decision on Request to the Republic of Togo for Assistance Pursuant to Article 28 of the Statute (TC), 31 October 2005, para. 2; *Prosecutor v. Nindiyimana et al.*, Decision on Nzuwonemeye's Motion Requesting the Cooperation of the Government of Ghana Pursuant to Article 28 of the Statute (TC), 13 February 2006, para. 6.

³ Defence Motion, Annex A. It is clear from the Registry's communication that Defence efforts to obtain the assistance sought would be futile without an order from the Trial Chamber. Under these circumstances, the Trial Chamber does not require that the Defence show that it has made unsuccessful efforts to obtain cooperation.



RESPECTFULLY REQUESTS the Kingdom of Belgium to provide any relevant assistance in facilitating a meeting between the Defence for Mr. Bicanumpaka and Ambassador Johann Swinnen;

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DIRECTS the Registry to transmit this Decision to the relevant authorities of the Kingdom of Belgium.

Arusha, 12 September 2007


Khalida Rachid Khan
Presiding Judge



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Arusha 12 September 2007


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Presiding Judge

[Seal of the Tribunal]