

Before Judges: Khalida Rachid Khan, presiding

Registrar:

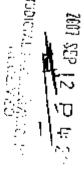
Date:

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12 September 2007

Mr. Adama Dieng

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



Case No. ICTR-99-50-T

# 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. Eivis 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. 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. Bicamumpaka, 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.<sup>1</sup> 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. Bicamumpaka.

#### 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.<sup>2</sup>

4. The Defence for Mr. Bicamumpaka has adequately set forth the nature of the assistance sought as well as its relevance to the presentation of Mr. Bicamumpaka's proposed alibit 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.<sup>3</sup> The conditions under Article 28 have, therefore, been satisfied.

# FOR THESE REASONS, the Chamber

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<sup>&</sup>lt;sup>3</sup> Urgent Motion of Defendant Bicamumpaka Requesting an Order Directed at the Kingdom of Belgium, filed 31 August 2007 ("Defence Motion").

<sup>&</sup>lt;sup>2</sup> 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; Bagasora 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; Bagasora 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. Ndindiliyimana 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.

<sup>&</sup>lt;sup>3</sup> 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. Bicamumpaka and Ambassador Johann Swinnen;

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

Arusha, 12 September 2007

wd Khalida Rachi

Presiding Judge



12 September 2007

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

Arusha 12 September 2007

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Presiding Judge

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12 Sept-mber 2007