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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-99-50-T
26-09-2007

(24422 - 24419)

OR:
ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 26 September 2007

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 AN ORDER FOR THE
COOPERATION OF THE REPUBLIC OF FRANCE**

Article 28 of the Statute of the Tribunal

Office of the Prosecutor:

Mr. Paul Ng'arua
Mr. Ibukunolu Alao 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. Michel Croteau for **Jérôme-Clément Bicamumpaka**
Mr. Tom Moran and Ms. Marie-Pierre Poulain for **Prosper Mugiraneza**

INTRODUCTION

1. The Defence for Mr Bicomumpaka asks the Chamber to issue a request to the Government of France to facilitate interviews with seven French nationals, diplomats and civil servants, with whom Mr Bicomumpaka allegedly met between April and May 1994.¹ According to the Defence the purpose of the interviews of Ambassador Jean-Michel Marlaud, Ambassador Jaques Depaigne, Ambassador Jean-Bernard Merimee, Ms Dominique Pin, Mr Bruno Delaye, Mr Jean-Marc Rochereau de la Sabliere and Mr Daniel Leandri is to corroborate the references to meetings and conversations set out in the alibi notice. The Prosecution does not oppose the Defence Motion.²

2. The Defence for Mr Bicomumpaka also asks the Chamber to issue a request to the Government of France to provide certain documents which it says are highly relevant to Mr Bicomumpaka's defence. These documents are as follows:

- All correspondence concerning meetings between Mr Bicomumpaka and Ambassadors Marlaud, Depaigne et Merimee;
- All correspondence concerning meetings between Mr Bicomumpaka and Ms Dominique Pin, Mr Bruno Delaye, Mr Renaud de la Sabliere and Mr Daniel Leandri;
- All general correspondence by the French Government concerning the Interim Government and/or Mr Bicomumpaka;
- All documents concerning Mr Bicomumpaka's visa application in Kinshasa on or about 23 April 1994;
- All documents concerning Mr Bicomumpaka's presence on Air France flights between Kinshasa and Paris on 24 April and 22 May 1994.³

DISCUSSION

3. Article 28 of the Statute mandates State co-operation 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 co-operation must set forth the nature of the information or assistance sought, demonstrate its relevance to the proceedings, and show that efforts to obtain the information or assistance have been unsuccessful.⁴

¹ Urgent Motion of Defendant Bicomumpaka Requesting Cooperation from France, filed 6 September 2007 ("Defence Motion").

² Prosecutor's Response to Jerome Bicomumpaka's Urgent Motion Requesting Cooperation from France, filed 7 September 2007.

³ Defence Motion, para 4.

⁴ Decision on Mr. Bicomumpaka's Request for Order for Cooperation from the Kingdom of Belgium, 12 September 2007, para. 3; Decision on Casimir Bizimungu's Requests for Disclosure of the Bruguiere Report and the Cooperation of France (TC), 25 September 2006, para. 25.

4. The Defence for Mr Bicomumpaka has adequately set forth the nature of the assistance and information sought as well as its relevance to refuting prosecutorial allegations and to the presentation of Mr Bicomumpaka's proposed alibi defence. The former ambassadors, diplomats, and French officials named in the Defence Motion all allegedly met with Mr Bicomumpaka on different occasions between April and May 1994. The dates of these meetings are relevant to Mr Bicomumpaka's alibi defence. In addition, the Defence submits that Ambassador Marlaud can confirm that Mr Bicomumpaka attempted to secure French military assistance to restore peace. The documents requested by the Defence may serve to confirm the occurrence and dates of these meetings, and to corroborate the content of discussions held during those meetings.

5. Annex A to the Defence Motion contains a list of correspondence among the Defence, the Registry and the French authorities dating from 15 October 2002 to 15 May 2007, requesting authorization to meet the individuals in question, and providing questionnaires and lists of the documents sought. To date, these requests have not been granted by the French authorities. Therefore, the conditions under Article 28 have been satisfied.

6. The Chamber notes that the present trial session is scheduled to run until 9 November 2007 and that the Defence for Mr Bicomumpaka will likely require a few additional weeks after the close of this session to complete the presentation of its case. This trial is tentatively scheduled to resume on 21 January 2008. Should the Defence for Mr Bicomumpaka wish to call any of the above-mentioned French officials as witnesses, it should plan to do so at that time.

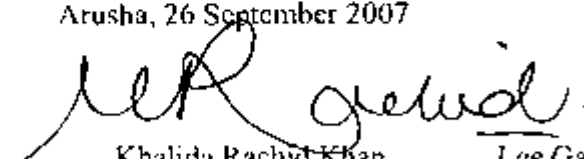
FOR THESE REASONS, the Chamber

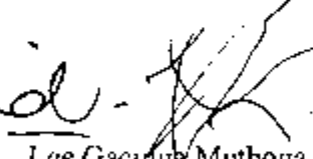
RESPECTFULLY REQUESTS the Republic of France to provide the relevant documents as set out above to the Defence for Mr Bicomumpaka and to facilitate meetings between the Defence for Mr Bicomumpaka and Ambassador Jean-Michel Marlaud, Ambassador Jacques Depaigne, Ambassador Jean-Bernard Merincee, Ms Dominique Pin, Mr Bruno Delaye, Mr Jean-Marc Rochereau de la Sabliere and Mr Daniel Leandri:

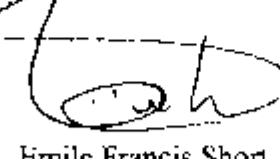
RESPECTFULLY REQUESTS the Government of France to complete the procedures prescribed by its own laws as expeditiously as possible, with a view to facilitating possible testimony of the above-mentioned ambassadors and French officials in early 2008;

DIRECTS the Registry to transmit this Decision to the relevant authorities of the Republic of France, and to report back to the Chamber on its implementation.

Arusha, 26 September 2007


Khalida Rachid Khan
Presiding Judge


Lee Gacungu Muthoga
Judge


Emile Francis Short
Judge

[Seal of the Tribunal]

