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UNITED NATIONS
SECURITY COUNCIL

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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

(24426-24423)

OR:
ENG

TRIAL CHAMBER II

Before Judges: Khalida Rachid Khan, presiding

Registrar: Mr. Adama Dieng

Date: 26 September 2007

PROSECUTOR


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

Case No. ICTR-99-50-T

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

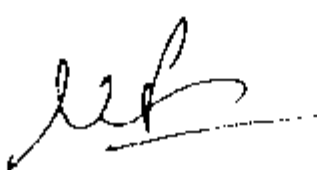
Article 28 of the Statute of the Tribunal

Office of the Prosecutor:

Mr. Paul Ng'arua
Mr. Ibukunolu Babajide
Mr. Justus Bwonwonga
Mr. Elvis Bazawule
Mr. Shyamal 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. On 12 September 2007, Judge Khalida Rachid Khan, acting on behalf of the Trial Chamber pursuant to Rules 54 and 73 (A) of the Rules of Procedure and Evidence, issued a Decision requesting the Government of the Kingdom of Belgium to facilitate an interview between representatives of the Defence for Mr Bicamumpaka and Ambassador Johann Swinnen.¹

2. The Defence for Mr Bicamumpaka now asks the Chamber to issue a request to the Government of the Kingdom of Belgium to provide certain identified documents related to Ambassador Swinnen's diplomatic activities with regard to Rwanda. According to the Defence, these documents "can provide evidence to confirm that Mr Bicamumpaka was in his presence on 9 April 1994 around 15:00 hours."²

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 criteria to be satisfied by the party seeking an order for State cooperation with the production of evidence or service of documents under Article 28 of the Statute are: (i) the party seeking the material must specifically identify, to the extent possible, the documents sought; (ii) the party must articulate the documents' relevance to the trial; and (iii) the party must show that its efforts to obtain the documents have been unsuccessful.³

4. The Defence has identified the documents sought as follows:

- Copy of the report or Telex of the 9 April 1994 meeting between Ambassador Swinnen and Mr Bicamumpaka;
- Copy of the reports or of the Telex sent by Ambassador Swinnen to the Belgian Minister of Foreign Affairs;
- Minutes of the hearings of 13 March 1997, 21 March 1997 and 20 June 1997 of the "Commission d'enquête parlementaire concernant les événements du Rwanda", during which Ambassador Swinnen testified;
- Documents presented by Ambassador Swinnen during the hearings of 13 March 1997, 21 March 1997 and 20 June 1997 of the "Commission d'enquête parlementaire concernant les événements du Rwanda";

¹ Decision on Mr Bicamumpaka's Request for Order for Cooperation of the Kingdom of Belgium, 12 September 2007.

² Urgent Supplementary Motion of Defendant Bicamumpaka Regarding Cooperation of the Kingdom of Belgium, filed 21 September 2007 ("Defence Motion").

³ 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* Decision on Mr Bicamumpaka's Request for Order for Cooperation of the Kingdom of Belgium, 12 September 2007, para. 3.



- Minutes of the hearing of 7 May 2007 where Ambassador Swinnen testified in the Ntuyahaga case in Brussels.⁴

5. The Defence for Mr Bicomumpaka explains that the requested documents are a necessary complement to the requested interview with and possible testimony of Ambassador Swinnen, who the Defence alleges was meeting with Mr Bicomumpaka at a time that would demonstrate the falsity of allegations made against Mr Bicomumpaka by Prosecution Witness GHY. In addition, the Defence alleges these documents will corroborate the content of the conversation between Mr Bicomumpaka and Ambassador Swinnen, during which Mr Bicomumpaka allegedly requested Belgium's assistance in restoring peace and security in Rwanda.⁵

6. The Defence for Mr Bicomumpaka has adequately identified the documents sought as well as their relevance to the presentation of Mr Bicomumpaka's defence, including his alibi defence. Annexed to the Defence Motion is a copy of a facsimile communication between the Belgian authorities and the Registry indicating that they cannot comply with the Defence request for documents because this request was not expressly included in the Chamber's 12 September 2007 Decision and Belgian law requires the Defence to obtain a specific order from the Trial Chamber as a prerequisite to any cooperation.⁶ The conditions for an order for State cooperation pursuant to Article 28 have, therefore, been satisfied.

FOR THESE REASONS, the Chamber

RESPECTFULLY REQUESTS the Kingdom of Belgium to provide the following documents to the Defence for Mr Bicomumpaka:

- Copy of the report or Telex of the 9 April 1994 meeting between Ambassador Swinnen and Mr Bicomumpaka;
- Copy of the reports or of the Telex sent by Ambassador Swinnen to the Belgian Minister of Foreign Affairs;
- Minutes of the hearings of 13 March 1997, 21 March 1997 and 20 June 1997 of the "Commission d'enquête parlementaire concernant les événements du Rwanda", during which Ambassador Swinnen testified;
- Documents presented by Ambassador Swinnen during the hearings of 13 March 1997, 21 March 1997 and 20 June 1997 of the "Commission d'enquête parlementaire concernant les événements du Rwanda";
- Minutes of the hearing of 7 May 2007 where Ambassador Swinnen testified in the Ntuyahaga case in Brussels;

⁴ Defence Motion, para. 3.

⁵ Defence Motion, paras. 4-6.

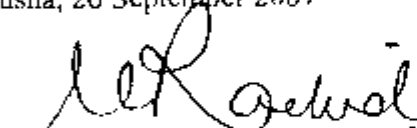
⁶ Defence Motion, Annex B.

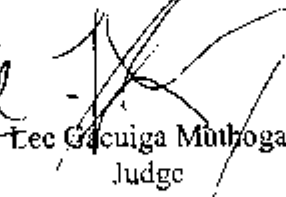
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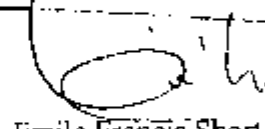
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DIRECTS the Registry to transmit this Decision to the relevant authorities of the Kingdom of Belgium.

Arusha, 26 September 2007


Khalida Rachid Khan
Presiding Judge


Lec Gacuiya Muthoga
Judge


Emile François Short
Judge

[Seal of the Tribunal]

