



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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

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Akhw

(24430-24427)
TRIAL CHAMBER II

OR: ENG

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

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 JEROME-CLEMENT BICAMUMPAKA'S REQUEST
FOR A SUBPOENA**

Rule 54 of the Rules of Procedure and Evidence

Office of the Prosecutor:

Mr. Paul Ng'arua
Mr. Ibukunolu Babajide
Mr. Justus Bwonwonga
Mr. Elvis Bazawule
Mr. George William Mugwanya
Mr. Shyamlal Rajapaksa

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**

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INTRODUCTION

1. Pursuant to Rule 54 of the Rules of Procedure and Evidence, the Bicamumpaka Defence requests the Trial Chamber to issue a subpoena to compel the appearance of Belgian citizen Mr. Jean Ghiste who, the Defence submits, was the Official Representative of the French Community of Belgium, based in Bujumbura, Burundi, in April 1994.¹
2. The Prosecution does not oppose the Motion.²

DISCUSSION

3. Rule 54 of the Rules bestows a discretionary power upon the Chamber to issue a subpoena where "necessary for the purposes of an investigation or for the preparation or conduct of the trial."
4. According to the jurisprudence of the *ad hoc* Tribunals, subpoenas may only be issued to a prospective witness where (i) reasonable attempts have been made to obtain the voluntary cooperation of the witness; (ii) the witness has information which can materially assist the applicant in respect of clearly identified issues relevant to the trial; and (iii) the witness's testimony is necessary and appropriate for the conduct and fairness of the trial.³ To satisfy these requirements

"the applicant may need to present information about such factors as the position held by the prospective witness in relation to the events in question, any relation the witness may have had with the accused which is relevant to the charges, any opportunity the witness may have had to observe or learn about those events, and any statements the witness made to the Prosecution or others in relation to them. The Trial Chamber is vested with discretion in determining whether the applicant succeeded in making the required showing, this discretion being necessary to ensure that the compulsive mechanism of the subpoena is not abused."⁴

¹ Request for Subpoena, filed 7 September 2007 ("Defence Motion"), paras. 1, 9. The Defence Motion annexes two documents in support of the request for subpoena (Annex A and Annex B). Annex A is an Affidavit from Co-Counsel Mr. Philippe Laroche (then Legal Assistant) attesting to the unwillingness of Mr. Ghiste to come to Arusha to testify. Annex B is a Witness Statement, purportedly signed by Mr. Jean Ghiste, made in Brussels on 3 February 2002. The Witness is on the Defence's Witness List; see Jérôme Bicamumpaka's Amended Witness List, filed 23 May 2007.

² Prosecutor's Response to Mr. Jerome-Clement Bicamumpaka's Request for a Subpoena to Issue for the Attendance of Witness Jean Ghiste, filed 14 September 2007.

³ *Prosecutor v. Krstic*, Case No. IT-98-33-A, Decision on Application for Subpoenas (AC), 1 July 2003 ("Krstic Appeal Decision"), para. 10; *Prosecutor v. Halilovic*, Case No. IT-01-48-AR73, Decision on the Issuance of Subpoenas (AC), 21 June 2004 ("Halilovic Decision"), para. 7; *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Defence Motion for Issuance of Subpoena to Witness T (TC), 8 February 2006, para. 4; *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Request for a Subpoena (TC), 11 September 2006, para. 5; *Bagosora et al.*, Decision on Request for Subpoenas of United Nations Officials (TC), 6 October 2006, para. 3; *Bagosora et al.*, Decision on Request for Subpoena of Amu R. Mpungwe (TC), 19 October 2006, para. 2.

⁴ *Halilovic Decision*, para. 6; *Prosecutor v. Brdanin and Talic*, Case No. IT-99-36-AR73.9, Decision on Interlocutory Appeal (TC), 11 December 2002, para. 31; *Prosecutor v. Milosevic*, Case No. IT-02-54-T, Decision on Assigned Counsel Application for Interview and Testimony of Tony Blair and Gerhard Schröder (TC), 9 December 2005 ("Milosevic Decision"), para. 35; *Bagosora et al.*, Decision on Request for a Subpoena for Major Jacques Biot (TC), 14 July 2006, para. 2.



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5. In considering whether the prospective testimony will materially assist the applicant, "it is not enough that the information requested may be 'helpful or convenient' for one of the parties: it must be of substantial or considerable assistance to the Accused in relation to a clearly identified issue that is relevant to the trial."⁵ In this regard, the Chamber shall consider the specificity with which the prospective testimony is identified and whether the information can be obtained by other means.⁶

Reasonable attempts have been made to obtain the voluntary cooperation of the witness

6. The Defence submits, through Mr Larochelle's Affidavit (Annex A to the Defence Motion), that Mr Ghiste has repeatedly declined to voluntarily appear as a witness for the Defence of Bicomumpaka, citing personal and professional reasons.⁷ The Chamber is, therefore, satisfied that reasonable attempts have been made to obtain the voluntary cooperation of Mr Ghiste.

The witness has information which can materially assist the applicant in respect of clearly identified issues relevant to the trial

7. The Defence submits that Mr Ghiste's testimony would be highly relevant and necessary regarding two issues: i) Mr Bicomumpaka's whereabouts on 16 April 1994; and ii) Mr Bicomumpaka's will to "restore peace as quickly as possible" and to "re-establish a climate conducive to negotiations" in Rwanda.⁸ In support of its request, the Defence has submitted a certified witness statement signed by Mr Ghiste, which is attached as Annex B of the Defence Motion. In his statement, Mr Ghiste claims to have met Mr Bicomumpaka in Bujumbura on 16 and 17 April 1994, and to have discussed the political situation in Rwanda with him.⁹ According to Mr Ghiste's statement, Mr Bicomumpaka expressed his desire to negotiate with the RPF and to bring about a ceasefire.¹⁰ The Chamber is satisfied that the Defence has presented sufficient information on Mr Ghiste's position, his relationship with Mr Bicomumpaka, and his knowledge of events to suggest that his testimony would be relevant to these proceedings and would materially assist the Defence.

The witness's testimony is necessary and appropriate for the conduct and fairness of the trial

8. According to Mr Ghiste's statement, he is in a unique position regarding the matter of Mr Bicomumpaka's alibi for the date of 16 April 1994, which is of central importance to the presentation of his defence. Therefore, the Chamber considers that Mr Ghiste's testimony is necessary and appropriate for the conduct and fairness of the trial.

FOR THESE REASONS, the Chamber

⁵ *Milosevic* Decision, para. 39; *Prosecutor v. Martić*, Case No. IT-95-11, Decision on the Prosecution's Additional Filing Concerning 3 June 2005 Prosecution Motion for Subpoena (TC), 16 September 2005, para. 12; *Krstić* Appeal Decision, para. 11, *Bagosora et al.*, Decision on Request for a Subpoena for Major Jacques Biot (TC), 14 July 2006, para. 2.

⁶ *Hutlovic* Decision, para. 7; *Krstić* Appeal Decision, para. 10; *Milosevic* Decision, paras. 36, 40, *Bagosora et al.*, Decision on Request for a Subpoena for Major Jacques Biot (TC), 14 July 2006, para. 2.

⁷ Defence Motion, Annex A, para. 4.

⁸ Defence Motion, para. 10.

⁹ Defence Motion, Annex B, paras. 3-4.

¹⁰ *Id.*, paras. 5-6.



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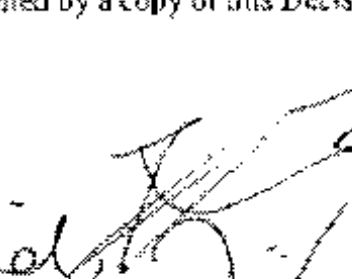
GRANTS the Motion;

ORDERS the Registrar to prepare a subpoena in accordance with this Decision, addressed to Mr Jean Ghisic, requiring his appearance before this Chamber to give testimony in the present case, and to communicate it, with a copy of the present Decision, to the Kingdom of Belgium; and

DIRECTS the Registry to communicate the subpoena to Mr Jean Ghisic through appropriate diplomatic channels, accompanied by a copy of this Decision.

Arusha, 26 September 2007


Khalida Raafiq Khan
Presiding Judge


Lee Gacuga Muzoga
Judge


Emile Francis Short
Judge

[Seal of the Tribunal]

