

ICTR-01-73-T
05-11-2007
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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

Before: Judge Inés Mónica Weinberg de Roca, Presiding
Judge Khalida Rachid Khan
Judge Lee Garuiga Muthoga

Registrar: Adama Dieng

Date: 05 November 2007

THE PROSECUTOR

v.

Protais ZIGIRANYIRAZO

Case No. ICTR-2001-73-T

JUDICIAL RECORDS/ARCHIVES
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2007 NOV -5 P 3:51

**DECISION ON DEFENCE MOTION FOR ACCESS TO ICTR INDICTED
PRISONER AUGUSTIN NGIRABATWARE**

Office of the Prosecutor:
Wallace Kapaya
Charity Kagwi-Ndungu
Silver Nukamazina
Iain Morley
Iskandar Ismail
Jane Mukangira

Defence Counsel:
John Philpot
Peter Zaduk

INTRODUCTION

1. Mr Augustin Ngirabatware, a person indicted by this Tribunal, was arrested in Frankfurt, Germany, on 17 September 2007. He is currently being detained there pending the outcome of the Prosecution's request that he be transferred to the Tribunal. The Defence for Mr Zigiranyirazo requests that the Chamber order the Prosecution to request that the German authorities allow the Defence to interview Mr Ngirabatware,¹ and submits that the German authorities are not opposed to the interview.² The Prosecution opposes the interview.³ The Defence has replied to the Prosecution,⁴ and both Parties have subsequently made additional filings regarding the willingness of Mr Ngirabatware to meet with the Defence for Zigiranyirazo.⁵

DISCUSSION

2. The Defence submits that there is no legal basis for the Prosecution to prevent or set conditions on a meeting with Mr Ngirabatware.⁶

3. The Prosecution submits that Mr Ngirabatware has not yet been transferred to the ICTR and remains in the custody and control of the German authorities. Finally, the Prosecution argues that it is not refusing to request that the German authorities allow Defence counsel to interview Mr Ngirabatware, but that such an interview should only take place after the Prosecution has conducted its own interview with him, and that any interview between the Defence and Mr Ngirabatware should be recorded.⁷

4. The Chamber notes that a subsequent filing of the Prosecution shows that Mr Ngirabatware is not willing to meet with the ICTR Prosecution.⁸ As such, this condition has become moot, and the Chamber will not render an opinion on this issue.

¹ Motion for Access to ICTR Indicted Prisoner Augustin Ngirabatware, filed 16 October 2007 ("Defence Motion").

² Additional Submission to Motion for Access to ICTR Indicted Prisoner Augustin Ngirabatware, filed 16 October 2007.

³ Prosecutor's Response to the Defence Motion for Access to ICTR Indicted Prisoner Augustin Ngirabatware and Additional Supplement thereto, filed 19 October 2007 ("Prosecution Response").

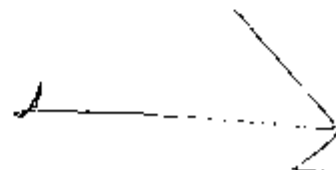
⁴ Reply to Prosecutor's Response Motion for Access to ICTR Indicted Prisoner Augustin Ngirabatware and Additional Supplement Thereto, filed 22 October 2007.

⁵ Prosecutor's New Additional Filing to Defence Motion for Access to ICTR Indicted Prisoner Augustin Ngirabatware and Additional Submission thereto, filed 26 October 2007 ("Additional Prosecution Submission"); Reply to Prosecutor's Additional Filing to Defence Motion for Access to ICTR Indicted Prisoner Augustin Ngirabatware, filed 29 October 2007 ("Defence Reply to Additional Prosecution Submission").

⁶ Defence Motion. The Defence originally requested that the interview be scheduled for 18 or 19 October 2007, but the Defence Motion was not filed and circulated until 16 October 2007. Pursuant to Rule 73 (E), the Prosecution response was not due until 22 October 2007, and the Chamber believed that a Prosecution Response was necessary for a fair determination of the issues raised by the Defence Motion. The Chamber notes that the timing of the Defence Motion did not enable the Chamber to render a decision such that an interview could be arranged to take place on 18 or 19 October 2007.

⁷ Prosecution Response, paras. 4-5, 7.

⁸ Letter from Dr. Wolfgang Köberer dated 12/10/07, Annex A to Additional Prosecution Submission. See also, Defence Reply to Additional Prosecution Submission.



5. The Chamber agrees with the Prosecution's position that Mr Ndirabware is not within its custody or control. As such, the Prosecution has no authority to prevent a meeting between the Defence and Mr Ndirabware. This decision is to be left to the German courts and authorities, as well as to Mr Ndirabware himself and to Dr. Wolfgang Köbberer, his Defence Counsel.

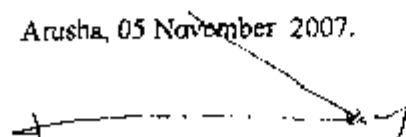
6. The Chamber notes that the Defence should bear in mind that this trial is scheduled to conclude by 14 December 2007 and that no additional time will be allocated to present evidence.

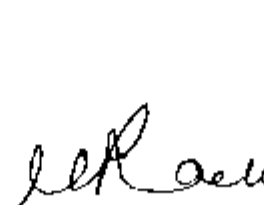
FOR THE FOREGOING REASONS, THE CHAMBER

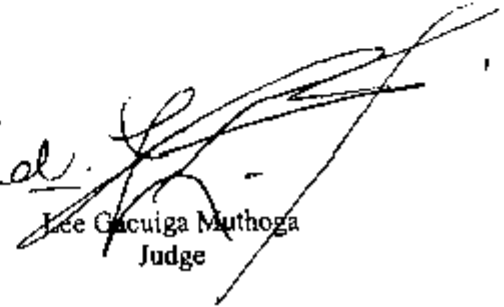
GRANTS the Defence Motion in part;

ORDERS the Prosecution not to interfere with the Defence request to the German Authorities to meet with Mr Ndirabware.

Arusha, 05 November 2007.


Inés Mónica Weinberg de Roca
Presiding Judge


Khalida Rachid Khan
Judge


Lee Cacuiga Muthoga
Judge

