



INTERNATIONAL  
CRIMINAL TRIBUNAL  
FOR RWANDA

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

ICTR-99-50-T

23-01-2008

(25130-25127)

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 23 January 2008

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

Case No. ICTR-99-50-T

UNICTR  
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# DECISION ON PROSPER MUGIRANEZA'S REQUEST FOR A SUBPOENA

*Rule 54 of the Rules of Procedure and Evidence*

## Office of the Prosecutor:

Mr. Paul Ng'arua  
Mr. Bukonolu Dabajide  
Mr. Justus Ewonwonga  
Mr. Elvis Bazawule  
Mr. George William Mugwanya  
Mr. Shyamal Rajapaksa  
Mr. William Mubiru  
Mr. Olivier De Schutter

## Counsel for the Defence:

Ms. Micheline C. St. Laurent and Ms. Alexandra Marcil for Casimir Bizimungu  
Mr. Ben Gumpert and Mr. Jonathan Kirk for Justin Mugenzi  
Mr. Michel Croteau and Mr. Philippe Larochelle for Jérôme-Clément Bicamumpaka  
Mr. Tom Moran and Ms. Marie-Pierre Poulin for Prosper Mugiraneza

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## INTRODUCTION

1. Pursuant to Rule 54 of the Rules of Procedure and Evidence, the Defence for Prosper Mugiraneza requests the Trial Chamber to issue a subpoena to compel the appearance of a Witness in Rwanda who, the Defence submits, refuses to appear voluntarily before the Trial Chamber to give testimony.<sup>1</sup>
2. The Prosecution has not responded to the motion.

## 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 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.<sup>2</sup> 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."<sup>3</sup>

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

<sup>1</sup> Prosper Mugiraneza's Motion for Subpoena of Witness, filed 31 October 2007 ("Defence Motion"). The Defence Motion attaches as Exhibit A an affidavit from Cynthia J Cline filed 30 October 2007 documenting the Witness's refusal to appear voluntarily before the Trial Chamber.

<sup>2</sup> *Prosecutor v. Krstic*, Case No. JT-98-33-A, Decision on Application for Subpoenas (AC), 1 July 2003, para. 10 ("Krstic Appeal Decision"); *Prosecutor v. Halilovic*, Case No. IT-01-48-AR73, Decision on the Issuance of Subpoenas (AC), 21 June 2004, para. 7 ("Halilovic Decision"); *Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Jerome-Clement Bicanumpaka's Request for a Subpoena (TC), dated 26 September 2008, para. 4; *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 Ami R. Mpungwe (TC), 19 October 2006, para. 2.

<sup>3</sup> *Halilovic Decision*, para. 6; *Bizimungu et al.*, Decision on Jerome-Clement Bicanumpaka's Request for a Subpoena (TC), dated 26 September 2008, para. 4; *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, para. 35 ("Milosevic Decision"); *Bagosora et al.*, Decision on Request for a Subpoena for Major Jacques Biot (TC), 14 July 2006, para. 2.



25/12/8

clearly identified issue that is relevant to the trial."<sup>4</sup> 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.<sup>5</sup> The Chamber recalls that "subpoenas should not be issued lightly" and that it must consider "not only... the usefulness of the information to the applicant, but its overall necessity in ensuring that the trial is informed and fair."<sup>6</sup>

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

6. The Defence submits, through an attached Affidavit, that the Witness declined on three occasions during meetings between the Witness and the Defence to appear voluntarily before the Trial Chamber.<sup>7</sup> The Chamber is satisfied that the Defence has adequately shown that it was unable to obtain the voluntary testimony of the Witness despite its reasonable efforts.

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

7. The Chamber notes from the Defence submissions that the Witness is expected to testify on a number of issues central to Mr. Mugiraneza's defence. In particular, the Witness is expected to refute that meetings were held at Mr. Mugiraneza's home to recruit *Interahamwe*, and to testify that parties held there were attended by Hutus and Tutsis who were members of several different political parties. The Witness is also expected to provide evidence intended to impeach the testimony of, among others, Prosecution Witness GJR. Finally, the Witness is expected to refute Prosecution evidence that Mr. Mugiraneza was present (i) in Kibungo after 6 April 2007, and (ii) at the Cyamuribwa market in Gasetza on 7 April 1994. The Chamber is satisfied that the Defence has presented sufficient information on the Witness's position, her relationship with Mr. Mugiraneza, her knowledge of a number of Prosecution witnesses, and of events to suggest that her testimony would be relevant to the proceedings and would materially assist the Defence.<sup>8</sup>

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

8. Given her background, the Witness is in a unique position to testify on the subject of her proposed testimony. The Chamber is satisfied that the Witness's evidence cannot be reasonably obtained elsewhere and is therefore necessary and appropriate for the conduct and fairness of the trial.

**FOR THESE REASONS, the Chamber**

<sup>4</sup> *Krstic* Appeal Decision, para. 11; *Bizimungu et al.* Decision on Jerome-Clement Bicamumpaka's Request for a Subpoena (TC), dated 26 September 2008, para. 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; *Bagosora et al.*, Decision on Request for a Subpoena for Major Jacques Biot (TC), 14 July 2006, para. 2.

<sup>5</sup> *Halilovic* Decision, para. 7; *Krstic* Appeal Decision, para. 10; *Bizimungu et al.* Decision on Jerome-Clement Bicamumpaka's Request for a Subpoena (TC), dated 26 September 2008, para. 5; *Milosevic* Decision, paras. 36, 40; *Bagosora et al.*, Decision on Request for a Subpoena for Major Jacques Biot (TC), 14 July 2006, para. 2.

<sup>6</sup> *Halilovic* Decision, paras. 6-7.

<sup>7</sup> Defence Motion, Exhibit A, Affidavit in support of Prosper Mugiraneza's Motion for Subpoena for Witness, filed 30<sup>th</sup> October 2007.

<sup>8</sup> Defence Motion, paras. 4-6.




25/27


**GRANTS** the Motion;

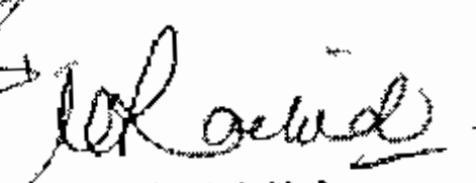
**ORDERS** the Registrar to prepare a subpoena in accordance with this Decision, addressed to the Witness requiring appearance before this Chamber to give testimony in the present case, and to communicate it, with a copy of the present Decision, to the Republic of Rwanda; and

**DIRECTS** the Registry to communicate the subpoena to the Witness through appropriate diplomatic channels, accompanied by a copy of this Decision.

Kigali, 23 January 2003

  
Khalida Rachid Khan  
Presiding Judge

  
Le Gacuzi Muthoga  
Judge

  
For and on behalf of  
Emile Francis Shari  
Judge

(Seal of the Tribunal)