



UNITED NATIONS  
NATIONS UNIES

**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**

OR: ENG

**TRIAL CHAMBER II**

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

**Registrar:** Mr. Adama Dieng

**Date:** 24 January 2008

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

**Case No. ICTR-99-50-T**

**INTERIM ORDER ON JÉRÔME-CLÉMENT BICAMUMPAKA'S MOTION TO  
REPORT THE MATTER OF FRANCE'S REFUSAL TO COOPERATE TO THE  
SECURITY COUNCIL**

*Article 28 of the Statute of the Tribunal and Rules 7bis, 19, 33B and 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. Michel Croteau and Mr. Philippe Larochelle for **Jérôme -Clément Bicamumpaka**  
Mr. Tom Moran and Ms. Marie -Pierre Poulain for **Prosper Mugiraneza**

## INTRODUCTION

1. The trial in this case commenced in November 2003. To date, the Trial Chamber has heard the case for the Prosecution in its entirety,<sup>1</sup> as well as the defence cases for Accused Justin Mugenzi and Casimir Bizimungu.<sup>2</sup> The defence case for Jérôme-Clément Bicamumpaka is ongoing, and the case for Prosper Mugiraneza is still to be heard. The last trial session in this case ended on 8 November 2007. By virtue of the Trial Chamber's Scheduling Order of 4 December 2007, the next trial session in this case is to commence on 28 January 2008 and to run, almost continuously, until the remaining evidence in the case has been heard.<sup>3</sup>

2. On 26 September 2007, this Chamber granted an order pursuant to Article 28 of the Statute, which formally requested the Republic of France to cooperate with the Bicamumpaka Defence.<sup>4</sup> Specifically, the Chamber requested that the Republic of France provide relevant documents sought by the Bicamumpaka Defence and facilitate meetings between representatives of Mr Bicamumpaka and Ambassadors Jean-Michel Marlaud; Jacques Depaigne; Jean-Bernard Merimee; and Messrs. Dominique Pin; Bruno Delaye; Jean-Marc Rochereau de la Sabliere; and Daniel Leandri ("French officials"). On 11 October 2007, the Order of 26 September 2007 was communicated by the Registrar, in writing and in French, to the Republic of France.<sup>5</sup>

3. By Motion dated 17 December 2007, the Bicamumpaka Defence submits that the Republic of France has not taken any steps to arrange meetings with the French officials and has therefore failed to comply with Article 28 of the Statute and with the Order of 26 September 2007.<sup>6</sup> The Bicamumpaka Defence, pursuant to Rule *7bis*, therefore asks the Chamber to request the President of the Tribunal to report the alleged non-compliance to the Security Council.<sup>7</sup>

4. The Prosecution did not respond to the Motion.

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<sup>1</sup> Although the Prosecution has closed its case, the Chamber has ordered the recall of Prosecution Witness Fidèle Uwizeye for further cross-examination by the Defence on a specific subject matter, see *Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, "Decision on Justin Mugenzi's Motion for the Recall of the Prosecution Witness Fidele Uwizeye for Further Cross-examination" (TC), dated 9 October 2007.

<sup>2</sup> The defence case for Casimir Bizimungu has been closed subject to the hearing of testimony of one remaining witness, and one application to add a witness to its Witness List which is pending before the Trial Chamber.

<sup>3</sup> *Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, Scheduling Order (TC), 4 December 2007. The Scheduling Order was made pursuant to Rule 54 of the Rules of Evidence and Procedure.

<sup>4</sup> *Bizimungu et al.*, "Decision on Mr Bicamumpaka's Request for an Order for the Cooperation of the Republic of France", dated 26 September 2007 ("Order of 26 September 2007").

<sup>5</sup> Letter dated 11 October 2007, from the Registrar to the French Ambassador, Monsieur Jacques Champagne de Labriolle, attaching the Order of 26 September 2007, in French.

<sup>6</sup> Motion of Bicamumpaka asking the Chamber to Request the President to Report the Matter of France's Refusal to Cooperate to the Security Council, filed 18 December 2007 ("Motion"). The Motion is brought pursuant to Article 28 of the Statute of the Tribunal ("Statute") and Rules *7bis*, 19, 33B and 54 of the Rules of Procedure and Evidence ("Rules"). See para. 18.

<sup>7</sup> *Ibid.*, para. 19.

## DISCUSSION

5. Rule *7bis* of the Rules provides that “where a Trial Chamber or a Judge is satisfied that a State has failed to comply with an obligation under Article 28 of the Statute relating to any proceedings before that Chamber or Judge, the Chamber or Judge may request the President to report the matter to the Security Council”.<sup>8</sup>

6. The Chamber recalls that Rule *7bis* confers a discretionary power upon it to decide whether to request the President to report any State’s failure to cooperate with the Tribunal to the Security Council.<sup>9</sup>

7. According to Rule *7bis*, in order to request the President to act under that Rule and to report the Republic of France to the Security Council, the Chamber is required to make a finding that the Republic of France has in fact failed to cooperate with the Order of 26 September 2007.

8. The Chamber considers that it would be premature to make a finding, under Rule *7bis*, based solely on the submissions of the Bicomumpaka Defence. Instead, the Chamber deems it appropriate in the circumstances, to first ascertain what steps, if any, have been taken by the French authorities to comply with its Order of 26 September 2007.<sup>10</sup>

9. Further, to assist in the determination of the issues before it, the Chamber considers it appropriate to hear from the Registry on the communications it has had with the French authorities since the Order of 26 September 2007.

10. Therefore, the Defence Motion will remain pending until such time as the Chamber has heard from the Republic of France, and the Registry, on this issue.

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<sup>8</sup> Article 28 provides: “(1) States shall cooperate with the International Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law. (2) States shall comply without undue delay with any request for assistance or an order issued by the Trial Chamber, including but not limited to: (a) The identification and location of persons; (b) The taking of testimony and the production of evidence; (c) The service of documents; (d) The arrest or detention of persons; (e) The surrender or the transfer of the accused to the International Tribunal for Rwanda.”

<sup>9</sup> See: *Prosecutor v Karemera et al.*, “Decision on Defence Motion to Report Government of a Certain State to United Nations Security Council and on Prosecution Motions under Rule 66(C) of the Rules” (TC), 15 February 2006, para. 12; *Prosecutor v. Tihomir Blaskic*, Case No. IT-95-14-A, “Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997” (AC), 29 October 1997, para. 35.

<sup>10</sup> The Chamber notes that similar courses of action have been taken by other Trial Chambers of this Tribunal when faced with such circumstances. See *Prosecutor v Karemera et al*, Case No. ICTR-98-44-T, “Decision on Joseph Nzirorera’s Third Motion to Report Government of Rwanda to United Nations Security Council”, dated 2 November 2007. *Prosecutor v Karemera et al*, Case No. ICTR-98-44-T, “Decision on Defence Motion to Report Government of Rwanda to United Nations Security Council”, dated 2 October 2006.

**FOR THESE REASONS**, the CHAMBER

- I. REQUESTS** the Republic of France to inform the Chamber, in writing, within 21 days from the communication of this order in French to the relevant French authorities, on the steps which have been taken to comply with the Order of 26 September 2007.
  
- II. DIRECTS** the Registrar to communicate this Order to the Republic of France forthwith.
  
- III. DIRECTS** the Registrar to inform the Chamber, in writing, within 21 days from the communication of this order in French to the relevant French authorities, on the communications which have transpired between the Registry and the Republic of France since the Order of 26 September 2007.

Arusha, 24 January 2008

Khalida Rachid Khan  
Presiding Judge

Lee Gacuiga Muthoga  
Judge

For and on behalf of  
Emile Francis Short  
Judge

[Seal of the Tribunal]