



UNITED NATIONS
NATIONS UNIES

ICTR-99-50-T
27-02-2008
(25772-25768)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before Judges: Khalida Rachid Khan, presiding
Emille France Short
Lee Gacuiya Muthoga

Registrar: Mr. Adama Dieng

Date: 27 February 2008

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

Case No. ICTR-99-50-T

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**DECISION ON URGENT SECOND MOTION OF DEFENDANT
BICAMUMPAKA REGARDING 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 and Mr. Philippe Larochelle for Jérôme-Clément Bicamumpaka
- Mr. Tom Moran and Ms. Cynthia Cline for Prosper Mugiraneza

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INTRODUCTION

1. On 26 September 2007, this Chamber ordered the Registrar to issue a subpoena addressed to Mr. Jean Ghiste,¹ requiring his appearance before the Chamber.² On 26 January 2008, Mr. Ghiste appeared as a witness before this Chamber.
2. By Motion filed on 21 February 2008,³ the Defence for Mr. Bicomumpaka ("Defence") requests the Chamber to issue an order requiring the Government of the Kingdom of Belgium to provide documents regarding a meeting between Mr. Ghiste and Mr. Bicomumpaka on 17 April 1994 in Bujumbura, Burundi. The Defence submits that the documents identified in the Motion are necessary for the presentation of Mr. Bicomumpaka's defence as they contradict Prosecution evidence and corroborate the Defence case that Mr. Bicomumpaka requested Belgian assistance to restore peace in Rwanda.⁴ The Defence further considers that the issue of Mr. Bicomumpaka's willingness to obtain international assistance to restore peace will be supported by Defence Witness Mr. Johann Swinnen.⁵ The said documents are therefore required in advance of Mr. Swinnen's testimony.⁶
3. The Prosecution did not respond to the Motion.

DISCUSSION

4. Article 28 (1) of the Statute of the Tribunal ("Statute") mandates State cooperation with the Tribunal in the "investigation and prosecution of persons accused of committing serious violations of international humanitarian law". Article 28 (2) of the Statute requires States to "comply without undue delay with any" request or order issued by the Trial Chamber for, among other things, the production of evidence⁷ [and] the service of documents.⁸

¹ Mr. Jean Ghiste was the Official Representative of the French Community of Belgium, based in Bujumbura, in April 1994. See Decision on Jerome-Clement Bicomumpaka's Request for a Subpoena, dated 26 September 2007, para. 1.

² Decision on Jerome-Clement Bicomumpaka's Request for a Subpoena, dated 26 September 2007.

³ Urgent Second Supplementary Motion of Defendant Bicomumpaka Regarding Cooperation of the Kingdom of Belgium, filed on 21 February 2008 ("Motion").

⁴ Motion, paras. 11, 12, 13 and 15.

⁵ Former Belgian Ambassador to Rwanda subpoenaed to appear before this Chamber. See Decision on Jerome-Clement Bicomumpaka's Request for a Subpoena, 23 January 2008 ("Decision to Subpoena Mr. Swinnen"), para. 9 and in particular, footnote 9.

⁶ Motion, paras 5 and 15.

⁷ Article 28 (2) (b)

⁸ Article 28 (2) (c)



5. In accordance with the Trial Chamber's jurisprudence, the party seeking an Article 28 order for State cooperation regarding the production of evidence or service of documents must:

- (i) specifically identify, to the extent possible, the documents sought;
- (ii) articulate the documents' relevance to the trial; and
- (iii) show that its efforts to obtain the documents have been unsuccessful.⁹

The documents sought

6. The Motion refers to documents relating to Mr. Ghiste's diplomatic activities with regard to Rwanda and Burundi that are said to confirm Mr. Bicomumpaka's presence in Bujumbura on 17 April 1994, as well as his discussions with Mr. Ghiste.¹⁰ In particular, the Defence submits that Mr. Ghiste's testimony confirms that he provided a report to the Belgian authorities on Mr. Bicomumpaka's visit of 17 April.¹¹ The Chamber therefore considers that the Defence has identified the documents sought from the Belgian authorities with sufficient specificity.

Relevance of the documents to the trial

7. The Defence states that the requested documents are relevant and necessary to Mr. Bicomumpaka's defence. Specifically, the Defence submits that the documents corroborate its alibi that, on 17 April 1994, Mr. Bicomumpaka was not present at a meeting in Ruhango, as claimed by Prosecution Witness GHV, but was rather at a meeting with Mr. Ghiste in Bujumbura.¹²

8. In addition, the documents identified by the Defence are said to corroborate the content of a conversation between Mr. Ghiste and Mr. Bicomumpaka, during which the latter allegedly requested assistance from the Kingdom of Belgium in restoring peace and security in Rwanda.¹³ Related to this issue, the Defence submits that the documents are necessary to assist in preparing for the testimony of Defence Witness Mr. Johann Swinnen, former Belgian Ambassador to Rwanda, tentatively scheduled to testify between 10 and 14 March 2008.¹⁴ The Chamber recalls that the Defence considers Mr.

⁹ 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 Bicomumpaka's Request for Order for Cooperation of the Kingdom of Belgium, 12 September 2007, para. 3.

¹⁰ Motion, para. 7.

¹¹ Motion, para. 8. Further, the Motion quotes from Mr. Ghiste's testimony during which he refers to specific categories of documents, namely, "notes and copies of some reports in the archives....originals to be found in the official Archives of the administration....copies of the reports that were sent to the authorities in Belgium, included but not limited to the 'Head of Administration,' at the time M. Roger Dehaybe, and the *Cabinet of minister*." See Motion, para. 9.

¹² Defence Motion, paras. 11 and 12.

¹³ Defence Motion, para. 14.

¹⁴ Defence Motion, para. 15. See also Decision on Mr. Bicomumpaka's Request for Order for Cooperation of the Kingdom of Belgium, 12 September 2007, requesting the Kingdom of Belgium to provide any

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Swinnen's testimony to be relevant to the issue of Mr. Bicomumpaka's willingness to restore peace and security in Rwanda with the support of the international community.¹⁵

9. The Chamber therefore finds that the documents identified in the Motion are relevant and necessary to the presentation of Mr. Bicomumpaka's defence.

Have Defence efforts to obtain the documents been unsuccessful?

10. As noted in the prior jurisprudence of this Chamber, as a prerequisite to cooperation, the Kingdom of Belgium requires that the Defence obtain an order from the Trial Chamber pursuant to Article 28.¹⁶ Considering Belgian policy, this Chamber has consistently held that it is unnecessary for the Defence to demonstrate unsuccessful efforts to obtain cooperation from the Belgian authorities.¹⁷ In keeping with this practice, the Chamber will not require the Defence to demonstrate such futile efforts in this instance.

Conclusion

11. The Chamber therefore finds that the conditions for an order for State cooperation pursuant to Article 28 have been satisfied. Further, the Chamber notes the urgency of the Defence request as Mr. Swinnen is scheduled to testify between 10 and 14 March 2008. The Chamber thus requests the Registry to immediately communicate this Decision to the Kingdom of Belgium in the terms set out below.

FOR THESE REASONS, the Chamber

GRANTS the Motion;

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

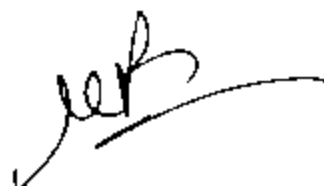
- (i) A copy of the report sent by Mr. Ghiste to the Belgian authorities referring to Mr. Bicomumpaka's visit to Bujumbura on 17 April 1994; and
- (ii) Copies of any report, notes, or minutes in relation to a meeting between Mr. Bicomumpaka and Mr. Ghiste on 17 April 1994;

relevant assistance in facilitating a meeting between the Defence for Mr. Bicomumpaka and Ambassador Johann Swinnen and Decision to Subpoena Mr. Swinnen.

¹⁵ See Decision to Subpoena Mr. Swinnen, footnote 9.

¹⁶ Decision on Mr. Bicomumpaka's Request for Order for Cooperation of the Kingdom of Belgium, 12 September 2007, para. 4; Decision on Mr. Bicomumpaka's Supplementary Request for an Order for the Cooperation of the Kingdom of Belgium, 26 September 2007, para. 6; Decision on Jerome-Clement Bicomumpaka's Request for a Subpoena, 23 January 2008, paras. 7 and 8.

¹⁷ See Decision on Mr. Bicomumpaka's Request for Order for Cooperation of the Kingdom of Belgium, 12 September 2007, footnote 3.

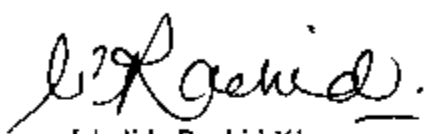


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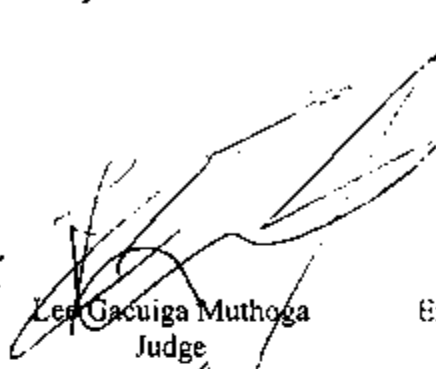
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DIRECTS the Registry to immediately transmit this Decision to the relevant authorities of the Kingdom of Belgium.

Arusha, 27 February 2008



Khalida Rachid Khan
Presiding Judge



Lee Gacuiya Muthoga
Judge



Emile Francis Short
Judge

