



UNITED NATIONS
NATIONS UNIES

ICTR-99-50-T
26-04-2007
(24069-24065)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 26 April 2007

CONFIDENTIAL

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

Case No. ICTR-99-50-T

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CONFIDENTIAL

**DECISION ON CASIMIR BIZIMUNGU'S MOTION IN RECONSIDERATION OF
THE TRIAL CHAMBER'S DECISION DATED FEBRUARY 8, 2007, IN RELATION
TO CONDITION (B) REQUESTED BY THE UNITED STATES GOVERNMENT**

Office of the Prosecutor:

Mr. Paul Ng'arua
Mr. Ibakunolu Babajide
Mr. Justus Bwonwonga
Mr. Elvis Bazawule
Mr. Shyam Lal 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. Pierre Gaudreau and Mr. Michel Croteau for Jérôme-Clément Bicamumpaka
Mr. Tom Moran and Ms. Marie-Pierre Poulain for Prosper Mugiraneza

INTRODUCTION

1. On 24 January 2007, this Chamber granted in part a Motion brought by the Defence for Casimir Bizimungu requesting an order that the provisions of Rule 70 of the Rules of Procedure and Evidence shall apply to information provided by Ambassador Robert Flaten, Ambassador of the Government of the United States of America (the "U.S. Government") to Rwanda between 1990 and 1993. The Chamber also granted the following requests:

(a) That two representatives of the U.S. Government be present during the Witness's testimony for the purpose of monitoring the evidence and that they be allowed to address the Chamber should they object to any question put to the Witness;

(c) That inquiry into the credibility of the Witness be permitted, with the proviso that the Witness not be required to reveal confidential information provided under Rule 70; and

(d) That the Chamber limit its discretion, pursuant to Rule 90, to question a witness and to permit enquiry into additional matters, so that, if exercised, it is done so in conformity with Rule 70.¹

2. The Chamber denied condition (b), which requested:

(b) That the scope of direct examination shall be limited to that authorized by the U.S. Government, and that cross-examination shall be limited to the scope of direct examination.

The Chamber's reasons for denying condition (b) were (i) that it must retain the authority to resolve any disputes as to the proper scope of questioning that may arise during the Witness's testimony, and (ii) that without having received any indication of the scope of testimony authorized by the U.S. Government, the Chamber could not grant the condition.²

3. On 8 February 2007, the Chamber denied two Defence motions requesting that the Chamber grant condition (b) on the basis of *additional details regarding* the authorized scope of Ambassador Flaten's proposed testimony. In denying the additional requests related to condition (b), the Chamber reiterated its earlier position, finding that the scope of examination authorized by the U.S. Government remained unclear.³ The Chamber also relied upon the sufficiency of the protections granted in its 24 January 2007 Oral Ruling:

¹ T. 24 January 2007, pp. 45-47 (closed session).

² *Id.*

³ *Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Casimir Bizimungu's Motions in Relation to Condition (B) Requested by the Government of the United States of America (TC), 8 February 2007, para. 6 (the "8 February 2007 Decision").

While the Chamber is not in favour of making an order limiting the direct and cross examination of the Witness to what is authorized by the U.S. Government, the Chamber recalls that in its 24 January 2007 Oral Ruling it granted the U.S. Government significant protections that will ensure no confidential information is revealed. By its terms, Rule 70 prevents the Chamber from ordering the production of additional evidence or from compelling the Witness to answer questions he declines to answer on confidentiality grounds. The same limitations apply to inquiry into the Witness' credibility and to any direct questioning by the Chamber. Moreover, as a further precaution to avoid unwitting disclosure of confidential information by the Witness, the Chamber has allowed the U.S. Government to send two representatives who will be present during the Witness' testimony, and authorized them to address the Chamber should they object to any questions put to the Witness.⁴

The Chamber concluded that the "24 January 2007 Oral Ruling maintains the proper balance between protecting the legitimate confidentiality concerns of the U.S. Government and the Chamber's authority over the proceedings".⁵

4. The Defence for Casimir Bizimungu now seeks reconsideration of the 8 February 2007 Decision on the basis of further information from the U.S. Government regarding the authorized scope of Ambassador Flaten's proposed testimony.⁶

DISCUSSION

Preliminary Matter

5. The Prosecution seeks leave to file its response to the Defence Motion out of time, submitting that the filing of the Defence Motion "moments" before the Easter break was "so unfortunate that the Prosecutor was not able to comply with Rule 7 *ter* in the circumstances as he would have wished to do so".⁷ The Defence replied to the Prosecution's untimely response, asking that it be rejected as untimely.⁸

6. Rule 7 *ter* of the Rules of Procedure and Evidence states public holidays "shall be counted as days" for the purpose of determining time limits. The Prosecution should have sought an extension prior to the passing of the time limit for filing a response. Offering the Easter holiday as the excuse for a late filing shows a complete disregard for the Rules, and, therefore, the Chamber will not consider the Prosecution's untimely response.

⁴ The 8 February 2007 Decision, para. 7.

⁵ *Id.*

⁶ "Casimir Bizimungu's Motion in Reconsideration of the Trial Chamber's Decision Dated February 8, 2007, in Relation to Condition (B) Requested by the United States Government", filed 5 April 2007 (the "Reconsideration Motion").

⁷ "Prosecutor's Urgent Response to Dr. Casimir Bizimungu's Motion in Reconsideration of the Trial Chamber's Decision Dated 8 February 2007 in Relation to Condition (B) Requested by the United States Government", 13 April 2007, paras. 1-3.

⁸ "Casimir Bizimungu's Reply to the Prosecutor's Response on the Motion in Reconsideration in Relation to Condition (B) Requested by the United States Government", filed 16 April 2007.



On the Merits

7. A Chamber has inherent authority to reverse or revise a previous decision where new material circumstances have arisen that did not exist at the time of the decision, or where the decision was erroneous and has caused prejudice or injustice to a party.⁹

8. The Defence for Casimir Bizimungu requests reconsideration on the basis of "detailed new information which it claims clearly defines the scope of the testimony of Ambassador Flaten as authorized by the U.S. Government".¹⁰

9. According to a letter dated 3 April 2007 from representatives of the U.S. Government to the Defence,¹¹ Ambassador Flaten's testimony is to be limited to (i) the will say statement,¹² (ii) Ambassador Flaten's prior testimony before this Tribunal as defined by the transcripts of those proceedings,¹³ and (iii) the contents of the 16 August 2006 letter from Counsel for Casimir Bizimungu to representatives of the U.S. Government, including the character of Casimir Bizimungu.¹⁴ The U.S. Government does not object to the Prosecution challenging the credibility of Ambassador Flaten, but otherwise requests that the subject matter of cross-examination be limited to that of the direct examination.¹⁵ Finally, "Ambassador Flaten may not testify regarding any classified or otherwise sensitive matters".¹⁶

10. The letter does clarify the subject matter of the Ambassador's testimony. However, with regard to whether he can testify about "any classified or otherwise sensitive matters", the Chamber would apply, as appropriate, the provisions of Rule 70 as well as the other guarantees mentioned in its earlier rulings.

11. The present application does not address the Chamber's concerns about retaining authority over the proceedings. Moreover, there is no basis for reconsideration of the Chamber's earlier ruling on this matter.

⁹ *Prosecutor v. Mucic et al.*, Case No. IT-96-21-A, Judgement and Sentence on Appeal (AC), 8 April 2003, para. 49; see *Bizimungu et al.*, Decision on Prosecutor's Consolidated Corrigendum to Prosecutor's Response to Defence Motions for Protection of Defence Witnesses and Request for Reconsideration of Decision on Prosper Mugiraneza's Motion for Protection of Defence Witnesses (TC), 7 July 2005, para. 7; *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Ntabakuze Motion for Reconsideration of Denial of Issuance of Subpoena to a United Nations Official (TC), 12 December 2006, para. 2; *Cf. Prosecutor v. Ndindiliyimana et al.*, Case No. ICTR-00-56-T, Decision on Bizimungu's Motion in Opposition to the Admissibility of the Testimonies of Witnesses LMC, DX/ANM, BB, GS, CJ/ANL and GFO and for Reconsideration of the Chamber's Decision of 13 May 2005 (TC), 24 November 2005, para. 18.

¹⁰ Reconsideration Motion, para. 2.

¹¹ Annex A of the Reconsideration Motion.

¹² Annex C of the Reconsideration Motion.

¹³ See Annex E of the Reconsideration Motion.

¹⁴ *Id.*

¹⁵ 2 April 2007 Letter from U.S. State Department to Defence Counsel for Casimir Bizimungu, Annex B of the Reconsideration Motion.

¹⁶ 3 April 2007 Letter from U.S. State Department to Defence Counsel for Casimir Bizimungu, Annex A of the Reconsideration Motion.

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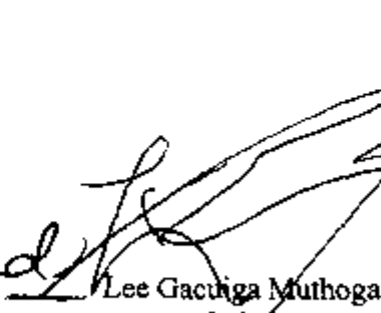
12. The Chamber reiterates that the concerns of the U.S. Government have been adequately addressed by its prior rulings, which applied the protections of Rule 70 to any testimony by Ambassador Flaten, and granted additional protections. The Chamber cannot grant condition (b) and must retain authority over the proceedings.

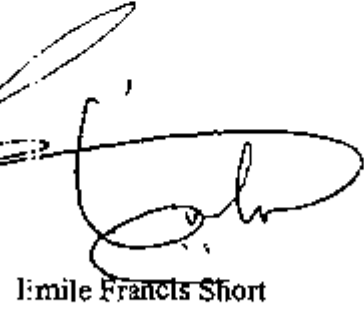
FOR THE FOREGOING REASONS, THE CHAMBER

DENIES the Motion.

Arush , 26 April 2007


K Raedha Raehid Khan
Presiding Judge


Lee Gacunga Muthoga
Judge


Emile Francis Short
Judge





TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	<input type="checkbox"/> Trial Chamber I N. M. Diako	<input checked="" type="checkbox"/> Trial Chamber II R. N. Kouambo	<input type="checkbox"/> Trial Chamber III C. K. Homelowu	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
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From:	<input checked="" type="checkbox"/> Chamber II David Kinnacome (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. Casimir Bizimungu et al.			Case Number: ICTR-99-50-T
Dates:	Transmitted: 26 April 2007		Document's date: 26 April 2007	
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Title of Document:	DECISION ON CASIMIR BIZIMUNGU'S MOTION IN RECONSIDERATION OF THE TRIAL CHAMBER'S DECISION DATED FEBRUARY 8, 2007, IN RELATION TO CONDITION (B) REQUESTED BY THE UNITED STATES GOVERNMENT			
Classification Level:	TRIM Document Type:			
<input type="checkbox"/> Strictly Confidential / Under Seal	<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence	<input type="checkbox"/> Submission from non-parties
<input checked="" type="checkbox"/> Confidential	<input checked="" type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal	<input type="checkbox"/> Submission from parties
<input type="checkbox"/> Public	<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book	<input type="checkbox"/> Accused particulars
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II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

CMS SHALL take necessary action regarding translation.

Filing Party hereby submits only the original, and **will not submit** any translated version.

Reference material is provided in annex to facilitate translation.

Target Language(s):

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CMS SHALL NOT take any action regarding translation.

Filing Party hereby submits **BOTH the original and the translated version** for filing, as follows:

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Translation	in	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

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<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: