

UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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ICTR-99-50-T
04-09-2007
(24298-24296)

OR:
ENG

TRIAL CHAMBER II

Before Judges: Khalida Rachid Khan, presiding
Registrar: Mr. Adama Dieng
Date: 4 September 2007

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

JUDICIAL RECORDS/ARCHIVE
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2007 SEP -4 P 3:56

Case No. ICTR-99-50-T

ORDER FOR TRANSFER OF DETAINED WITNESSES FROM RWANDA

Rules 54, 73 and 90 bis 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. Shyamlal 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 for **Jérôme-Clément Bicamumpaka**
Mr. Tom Moran and Ms. Marie-Pierre Poulain for **Prosper Mugiraneza**

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INTRODUCTION

1. Pursuant to Rules 54 and 73 (A) of the Rules of Procedure and Evidence, Judge Khalida Rachid Khan has been designated to decide this Motion on behalf of the Trial Chamber.
2. The Defence for Mr. Bicomumpaka requests an order for the temporary transfer of seven witnesses—OC-1, TK-1, OK-2, OK-3, NE-2, VF-1, and LD-1—to the Detention Facility of the Tribunal in Arusha (“UNDF”) for the purpose of testifying before the Chamber.¹ The seven witnesses are detained in Rwanda. The Defence wishes to call the seven witnesses during the trial session scheduled to commence on 17 September 2007.

DISCUSSION

3. Pursuant to Rule 90 *bis* of the Rules of Procedure and Evidence (the “Rules”), an order to transfer detained witnesses to the UNDF for the purpose of hearing their testimonies may be allowed if (i) “the detained witness is not required for any criminal proceedings in progress in the territory of the requested State during the period the witness is required by the Tribunal”; and (ii) the “transfer ... does not extend the period of his detention as foreseen by the requested State.”
4. Annexed to the Defence Motion is a letter dated 23 August 2007 from the Minister of Justice of Rwanda indicating that the seven witnesses are not needed for any criminal proceedings during the relevant dates and that transfer would not extend the period of detention for any of the witnesses. Both conditions for an order pursuant to Rule 90 *bis* are, therefore, satisfied.²
5. The Trial Chamber is concerned about the confidential filing of motions that deserve to be filed publicly. The transparency of the proceedings is served by the public filing of documents. Confidential filing should be reserved for exceptional circumstances – for instance, where the protection of a witness is at stake.³ In the present case, the Trial Chamber deems that the separately-filed Annex to the Defence Motion is confidential because it contains identifying information related to the witnesses, but that the Defence Motion itself contains no such confidential information and therefore should have been filed as a public document.

FOR THESE REASONS, the Chamber

GRANTS the Defence Motion;

¹ Jérôme Bicomumpaka’s Confidential and Extremely Urgent Motion for the Transfer of Detained Defence Witnesses from Rwanda, filed 30 August 2007 (“Defence Motion”).

² Order for the Transfer of a Detained Witness from Rwanda (Rule 90 *bis*), 13 April 2007, para. 16.

³ See e.g., *Prosecutor v. Zigiranyirazo*, Case No. ICTR-2001-73-T, Decision on the Transfer of Detained Witnesses (TC), 22 September 2005, para 4; *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Motion to Unseal Ex Parte Submissions and to Strike Paragraphs 32.4 and 49 from the Amended Indictment (TC), 3 May 2005, para. 13.

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ORDERs, pursuant to Rule 90 *bis* of the Rules, that Defence Witnesses OC-1, TK-1, OK-2, OK-3, NE-2, VF-1, and LD-1 be transferred to the UNDF in Arusha no later than 17 September 2007, until as soon as practically possible after each individual's testimony has ended;

REQUESTS the Government of the Republic of Rwanda, in accordance with this Order, to cooperate with the Prosecutor and the Registrar and, in conjunction with the Government of the United Republic of Tanzania, the Registrar and the WVSS, to take the necessary measures to implement the present decision;

INSTRUCTS the Registrar to:

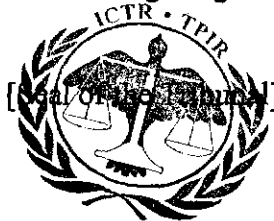
- A) transmit this decision to the Government of the Republic of Rwanda and the Government of the United Republic of Tanzania;
- B) ensure the proper conduct of the transfer, including the supervision of the witnesses in the Tribunal's detention facilities;
- C) remain abreast of any changes which might occur regarding the conditions of detention provided for by the requested State which may affect the timing of the temporary detention, and as soon as possible, inform the Trial Chamber of any such change;

ORDERs that the confidentiality of the Defence Motion be lifted by the Registrar, while the Annex remains confidential and under seal.

Arusha, 4 September 2007



Khalida Rachid Khan
Presiding 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. Diallo	<input checked="" type="checkbox"/> Trial Chamber II R. N. Kouambo	<input type="checkbox"/> Trial Chamber III C. K. Hometownu	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS K. K. A. Afande	<input type="checkbox"/> Appeals Chamber / The Hague R. Burriss
From:	<input checked="" type="checkbox"/> Chamber II David Kinnecome (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: 4 September 2007		Document's date: 4 September 2007	
No. of Pages:	3	Original Language: <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda		
Title of Document:	ORDER FOR TRANSFER OF DETAINED WITNESSES FROM RWANDA			
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"/> Confidential		<input checked="" type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal
<input checked="" type="checkbox"/> Public		<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book
		<input type="checkbox"/> Judgement	<input type="checkbox"/> Motion	<input type="checkbox"/> Book of Authorities
		<input type="checkbox"/> Submission from non-parties		
		<input type="checkbox"/> Submission from parties		
		<input checked="" type="checkbox"/> Accused particulars		

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):

English French Kinyarwanda

CMS SHALL NOT take any action regarding translation.

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

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

CMS SHALL NOT take any action regarding translation.

Filing Party **will be submitting the translated version(s)** in due course in the following language(s):

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<input type="checkbox"/> The OTP is over-seeing translation. The document is submitted for translation to: <input type="checkbox"/> The Language Services Section of the ICTR / Arusha. <input checked="" type="checkbox"/> The Language Services Section of the ICTR / The Hague. <input type="checkbox"/> An accredited service for translation; see details below: Name of contact person: Name of service: Address: E-mail / Tel. / Fax:	<input type="checkbox"/> DEFENCE is over-seeing translation. The document is submitted to an accredited service for translation (fees will be submitted to DCDMS): Name of contact person: Name of service: Address: E-mail / Tel. / Fax:
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III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	COMMENTS	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: