

ICTR-00-60-I
03-02-2003
(513-509)

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INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

TRIAL CHAMBER II

Before: Trial Chamber II
Registry: Adama Dieng
Date filed: Monday, 23 December 2002

PAUL BISENGIMANA

v.

THE PROSECUTOR
Case No. ICTR-2001-60-I

JUDICIAL RECORDS/ARCHIVES
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ICTR
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**MOTION FOR COMPLETE AND ACCURATE TRANSLATION INTO THE
WORKING LANGUAGES**

(RULE 3 (E) OF THE RULES OF PROCEDURE AND EVIDENCE
ARTICLE 20(4)(a) OF THE STATUTE AND RULE 73 (D) OF THE RULES OF PROCEDURE AND EVIDENCE)

AND FOR RESPECT FOR THE RIGHTS OF THE ACCUSED
(ARTICLE 20 OF THE STATUTE)

Office of the Prosecutor:

Barbara Mulvaney
Drew White
Segun Jegede
Christine Graham
Rashid Rashid

Counsel for the Defence:

Catherine Mabilie

Translation certified by LSS, ICTR

DII02-0074 (E)

Motion

Whereas on 23 July 2002, the Prosecutor served the Defence with the English copy of the motion for protective measures for victims and witnesses; **whereas** in support of her motion, the Prosecutor attached thereto a number of materials in English;

Whereas Paul Bisengimana's Counsel requested translation into French of the motion and supporting materials, since the Accused spoke and understood only French; **whereas** on 3 October 2002, he was served with a translation of the motion; **whereas** by letter of 14 October 2002, he reiterated that he had not yet been served with the translation of the said materials;

Translation of materials

Whereas on 16 December 2002 a French translation was served on the Accused and his Counsel; **whereas** only some of the documents had been translated;

Whereas, in particular, the nine documents of annex H in support of the motion are untranslated and illegible;

Whereas Counsel cannot therefore, in the circumstances, respond to the Prosecutor's motion;

Whereas regarding the non-translated documents, the Prosecutor has an alternative:

- Either withdraw them from the court proceedings;

- Or have them translated;

Whereas the issue here is respect for the rights of the Accused and the right to a fair trial; **whereas** the documents must be disclosed to the Accused; **whereas** he must be in a position to fully understand them;

Discrepancy between the English version and the French translation as to the identity of witnesses to be protected

Whereas paragraph 11 of the French translation of the affidavit of Commander Alfred Kwende in support of the Prosecutor's motion for an order for protective measures for victims and witnesses states as follows:

"Les témoins désignés sous les pseudonymes VA, VB, VD, VI, VJ, VP, VS, VT, VAI, VAZ, VAZI, VAZ2, VAZ3, VAZ5, VAZ7, VAZ8, VAZ9, VH, VM, VAE, VAL, VAQ, VFI, VV, VX, VW, ZB, ZC, CE, AX, ED qui résident tous dans la commune de Gikoro et

des environs, vivent les situations décrites dans la présente déclaration sous serment et méritent que leur soit accordées les mesures de protection ordonnées par la Chambre de première instance en vertu du Règlement de procédure et de preuve du TPIR."

Whereas the English version of this same paragraph states as follows:

"That witnesses under pseudonyms VA, VB, VD, VI, VJ, VP, VS, VT, VC, VAI, VAZ, VAZ1, VAZ2, VAZ3, VAZ5, VAZ6, VAZ7, VAZ8, VAZ9, VH, VM, VAE, VAL, VAQ, VFI, VV, VX, ZB, ZC, CE, AX, ED being residents of Gikoro commune and its environs, are subjected to the situation described in this affidavit and therefore they deserve protective measures stipulated by the Honourable Trial Chamber in accordance with the provisions of ICTR Rules of Procedure and Evidence."

Whereas the Tribunal will easily note two manifest errors:

(A) There are 31 Witnesses in the French translation and 33 in the English. The two Witnesses missing in the French translation are VC and VAZ6;

(B) The French translation indicates that the Witnesses are all residents of Gikoro *commune*, while the English version simply states that they are residents, to such an extent that the Prosecutor in paragraph 18, page 3 of the Prosecutor's motion, states "being mainly residents of Gikoro", that is, residing mainly in Gikoro.

Whereas the Defence cannot therefore respond to the Prosecutor's motion as long as it does not know precisely the witnesses for whom protection is sought and justified;

Whereas Rule 73(D) of the Rules of Procedure and Evidence provides that a responding party shall, thereafter, file any reply within five days from the date on which Counsel received the motion;

Whereas the Defence is seeking a fresh time-limit, to start running from the time it receives the complete and accurate translation of documents in support of the Prosecutor's motion, since, it is presently not in a position to respond, for the reasons stated above;

Whereas the Defence requests the Chamber to order the Prosecutor to:

- Seek complete translation of documents in support of the Motion for protective measures for victims and witnesses, or withdraw the non-translated documents from the proceedings; and
- Indicate precisely the list of witnesses to be protected, by ensuring that the French translation is faithful to the English version, so that the Defence can properly accomplish its mission.

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For the foregoing and all other reasons

May it please the Trial Chamber,

Considering Rule 75(D) of the Rules of Procedure and Evidence,

Considering Rule 3 of the Rules of Procedure and Evidence and Article 20(4)(a) of the Statute,

To confirm to the Defence that the translation of documents in support of the Prosecutor's motion for protective measures for victims and witnesses is, as of this day, incomplete and inaccurate,

To find that the five-day time-limit granted to the Defence will start to run from the date on which it receives a complete and accurate translation,

Considering Article 20 of the Statute,

To order the Prosecutor to produce during the hearing a complete and accurate translation of documents in support of the Prosecutor's motion for protective measures for victims and witnesses, or to purely and simply withdraw the non-translated documents from the proceedings,

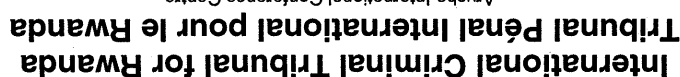
To order the Prosecutor to indicate precisely the list of witnesses to be protected, by ensuring that the French translation is faithful to the English version, so that the Defence can properly accomplish its mission.

**With all proper reserves
and justice shall be done**

(Signed)

Documents in support of the Motion for a complete translation (Article 3(E) of the Rules of Procedure and Evidence *et seq*)

- (1) English version of the affidavit of Commander Alfred Kwendu;
- (2) French translation of the said affidavit;
- (3) English version of the Prosecutor's motion for protective measures for victims and witnesses.



PROOF OF SERVICE – ARUSHA
PREUVE DE NOTIFICATION – ARUSHA

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