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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

1998 MAR 31 A 9 28

CHAMBER I - CHAMBRE I

OR : FR

Before: Judge Laïty Kama, Presiding Judge
Judge Lennart Aspegren
Judge Navanethem Pillay

Registry: Mr. Antoine Kesia-Mbe Mindua

Decision: 9 March 1998

THE PROSECUTOR
VERSUS
JEAN-PAUL AKAYESU

Case No.: ICTR-96-4-T

~~DECISION ON A DEFENCE MOTION~~
FOR THE TRANSFER, APPEARANCE AND PROTECTION
OF THIRTEEN DETAINED WITNESSES

Office of the Prosecutor:

Mr. Pierre-Richard Prosper

Counsel for the Defence:

Mr. Nicolas Tiangaye

Case No.: ICTR 96-4-T

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (The "TRIBUNAL"),

SITTING as Trial Chamber I, composed of Judge Laïty Kama, presiding, Judge Lennart Aspegren and Judge Navanethem Pillay;

HAVING RECEIVED from the Defence a motion dated 4 March 1998 (the "motion") for the transfer, appearance and protection of thirteen detained persons as witnesses for the Defence; all these persons, referred to in the motion by the pseudonyms "DPX", "DQX", "DUX", "DVX", "DWX", "DXX", "DXY", "DXZ", "DAT", "DBT", "DCT", "DDT" and "DET", are currently detained in Rwandan prisons;

HAVING HEARD the parties during the hearing held to that effect on 6 March 1998;

TAKING NOTE of the Prosecutor's objection to the Defence motion expressed orally during the said hearing;

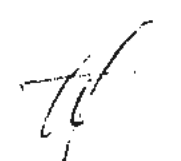
CONSIDERING the provisions of Article 20 of the Statute of the Tribunal and Rule 90 *bis* of the Rules of Procedure and Evidence (the "Rules"), regarding the transfer of a detained witness;

AFTER HAVING DELIBERATED,

WHEREAS, in support of its motion, the Defence argued that the hearing of the thirteen aforesaid defence witnesses, in respect of whom it has provided information concerning their respective identities, addresses and previous functions that they occupied, is undoubtedly material for the discovery of the truth and that since these witnesses are currently detained, it is incumbent upon the Tribunal to order their appearance, pursuant to Rule 90 *bis* of the Rules;

WHEREAS the Prosecutor objects to the said motion, on the grounds that, namely:

- a) the Defence has failed to show that the conditions laid down in Rule 90 *bis* of the Rules have been met;
- b) the Defence has not demonstrated that it has taken prior steps to contact the said witnesses;
- c) the Defence could have requested the appearance of the said witnesses several months ago, since it had prior knowledge of them, the names of five of them having been disclosed during the trial and the other eight having worked directly under the authority of the accused when he was Bourgmestre of Taba Commune;



WHEREAS the Defence requests that an order be issued for the transfer of the detained witnesses pursuant to the provisions of Rule 90 *bis*, without, however, having first demonstrated to the Tribunal that it has, in this instance, met the conditions stipulated in Paragraph (B) of the said Rule, which provides that :

"The transfer order shall be issued by a Judge or Trial Chamber only after prior verification that the following conditions have been met:

- (i) the presence of 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;
- (ii) transfer of the witness does not extend the period of his detention as foreseen by the requested State;"

WHEREAS the Tribunal is of the view that the conditions stipulated in Rule 90 *bis* are *sine qua non* and that if they are not complied with, the requested transfer order cannot, consequently, be issued;

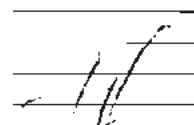
WHEREAS, moreover, the Tribunal recalls that in its decision of 26 February 1998, delivered in the present case, the Defence was informed that each motion for summonses must be supported by information pertaining to steps that the Defence may have taken to contact potential witnesses, and information as regard to any prior investigations it may have conducted on the latter;

WHEREAS the Defence stated during the hearing that it had not taken such steps, on the grounds that it was impossible for it to send investigators into Rwandan prisons;

WHEREAS the Tribunal, although aware of the difficulties that the Defence may have encountered in its investigations, notes that it did not even provide, in support of its request, information showing that it has at least tried to contact the Rwandan authorities concerning the said thirteen detained witnesses, and, furthermore, notes that the Defence also failed to take advantage of the assistance offered by the Prosecutor to that end;

WHEREAS in the absence of such steps, the Defence is not in a position to demonstrate to the Tribunal, firstly, how the appearance of each of the thirteen witnesses is undoubtedly material to the discovery of the truth in the present case, nor, secondly, that each of the thirteen witnesses agrees to testify as a defence witness before this Tribunal;

For all these reasons, the Tribunal holds that the Defence motion for the appearance, transfer and protection of the aforesaid thirteen witnesses should be dismissed;



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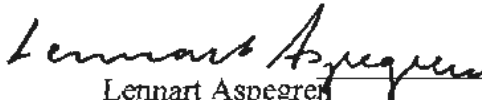
FOR THESE REASONS,

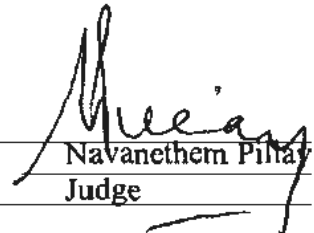
THE TRIBUNAL,

DISMISSES the Defence motion, dated 4 March 1998, for the appearance, transfer and protection of thirteen detained witnesses.

Arusha, 9 March 1998,


Faiz Kama
Presiding Judge


Lennart Aspegren
Judge


Navanethem Pillay
Judge

(Seal of the Tribunal)

