

-0549

ICTR-99-46-T  
17-2-2002  
(3502-3499)

3502  
HM



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: English

**TRIAL CHAMBER III**

**Before:** Judge Lloyd G. Williams, Q.C. presiding  
Judge Yakov Ostrovsky  
Judge Pavel Dolenc

**Registrar:** Adama Dieng

**Date:** 17 February 2003

**THE PROSECUTOR**

v.

**ANDRE NTAGERURA  
EMMANUEL BAGAMBIKI  
SAMUEL IMANISHIMWE**

**Case No. ICTR-99-46-T**

JUDICIAL RECORDS ARCHIVES  
ICTR  
2003 FEB 17 11 A 9:39  
[Signature]

---

**DECISION ON BAGAMBIKI'S MOTION TO TRANSFER AN ACCUSED  
FROM THE ICTR DETENTION FACILITY TO TESTIFY FOR THE DEFENCE  
(PURSUANT TO RULES 73 AND 54)**

---

**Office of the Prosecutor:**

Richard Karegyesa  
Andra Mobberley  
Holo Makwaia

**Defence Counsel:**

Benoît Henry  
Hamuli Rety  
Vincent Lurquin  
Seydou Doumbia  
Marie Louise Mbida  
Jean Pierre Fofé

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (the "Tribunal")

**SITTING** as Trial Chamber III, composed of Judges Lloyd G. Williams, Q.C., presiding, Yakov Ostrovsky and Pavel Dolenc (the "Chamber");

**BEING SEIZED** of Emmanuel Bagambiki's "Requête de la défense d'Emmanuel Bagambiki en vue de l'obtention d'une ordonnance d'extraction d'un prévenu du quartier pénitentiaire du Tribunal Pénal International pour le Rwanda afin qu'il puisse déposer comme témoin a décharge conformément aux articles 73 et 54 du Règlement de procédure et de preuve" (the "Motion") filed 29 January 2003;

**CONSIDERING** "The Prosecutor's Response to the Defence motion for a removal order of the accused [BOE] currently detained at the United Nations Detention Facility to appear as a Defence witness for Emmanuel Bagambiki pursuant to Rules 54 and 73 of the Rules of Procedure and Evidence" (the "Response") filed 3 February 2003;

**HAVING HEARD** the submissions of the parties in closed session on 13 February 2003;

**NOW DECIDES** the Motion:

**Submissions of the Defence**

1. The Defence for Bagambiki wishes to call BOE, an accused currently detained pending trial at the United Nations Detention Facility ("the UNDF"), as Defence witness. BOE appears in the Defence witness list under pseudonym and his statement has been filed with the Chamber. His testimony is scheduled for 17 February 2003.

2. The Defence submits that the anticipated evidence of BOE is essential to its case and is necessary to challenge the testimony of Prosecution witnesses LAI and Andre Guichaoua. BOE is expected to testify about the security situation in Cyangugu prefecture, the insecurity related to the war and terrorism, political assassinations, the events from 7 April to 30 May 1994, and the measures taken by the administrative authorities. The Defence also expects BOE to describe the role played by the gendarmerie in Cyangugu, and the collaboration between its commander Bavugamenshi and Prefet Bagambiki.

3. BOE has confirmed in writing his willingness to testify as a Defence witness. He has, however, expressed his wish to be assisted by his counsel while he is on the witness stand.

**Response of the Prosecution**

4. The Prosecutor does not object to the appearance of BOE as a witness for the Defence, but submits that his evidence should be limited to those matters that are relevant and pertinent to the proceedings.



5. The Prosecution does not oppose the presence of counsel for BOE on a watching brief, but opposes his active participation in the proceedings by way of rendering oral submissions or objections.

### **Deliberations**

6. Pursuant to Rule 54 of the Rules of Procedure and Evidence (the "Rules"), the Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of the conduct of the trial.

7. In determining whether to issue an order for transfer, the Chamber has considered the Defence submissions concerning the anticipated evidence of BOE and notes that the Prosecutor does not contest the relevance of the anticipated testimony. The Chamber also takes into account that BOE has expressed his willingness to testify with the assistance of counsel.

8. The Rules do not specifically provide for counsel to assist a witness. The Chamber has therefore considered the rules which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law, pursuant to Rule 89(B). In determining whether an Accused person should be afforded the assistance of his own counsel while testifying in another case, the Chamber has also considered the rights of the accused person who wishes to appear as a witness, and the interests of justice relating to his pending case.

9. The Chamber considers that, although the assistance of a witness by counsel is not the usual practice in domestic systems, the exceptional circumstances of this testimony warrant that counsel be allowed to assist BOE while he is on the witness stand. In reaching this conclusion the Chamber has considered that the potential witness is an accused facing serious charges before this Tribunal, that his testimony might be related to the charges against him, and that the presence of his counsel holding a watching brief may be of great importance in advising him as to his rights set out in Article 20 of the Statute and Rule 90(E).

10. The Chamber emphasizes that the assisting counsel is not a party to the proceedings. Interventions and objections of the assisting counsel will be limited to areas that implicate the rights of the witness as an accused person, and particularly to those questions which pose a risk of incriminating the witness.



11. The Chamber therefore:

- (a) **GRANTS** the Defence Motion;
- (b) **ORDERS** the Registry to facilitate the transfer BOE from the UNDF to the Tribunal on a date to be specified to the WVSS-D for the purposes of testifying in this case.

Arusha, 17 February 2003



Lloyd G. Williams, Q.C  
Presiding Judge



Yakov Ostrovsky  
Judge



Pavel Dolenc  
Judge

Seal of the Tribunal

