



UNITED NATIONS  
NATIONS UNIES

**ICTR-98-41-T**  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
**04-06-2003**  
**(13498-13496)**

**13498**

**-0625**

**Before:** Judge Erik Møse, President

**Registrar:** Adama Dieng

**Date:** 4 June 2003

**THE PROSECUTION**

v.

**Théoneste BAGOSORA**

**Gratien KABILIGI**

**Aloys NTABAKUZE**

**Anatole NSENGIYUMVA**

*Case No.: ICTR-98-41-T*

2003 JUN -4 A 11:24  
JUDICIAL RECORDS/ARCHIVES  
ICTR

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**DECISION ON THE PROSECUTION'S REQUEST FOR THE TRANSFER OF  
DETAINED WITNESSES**

**To: The Republic of Rwanda and the Republic of Tanzania**

**Rules 73 and 90 *bis* of the Rules of Procedure and Evidence**

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**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (“the Tribunal”),

**BEING** seized of the “Prosecutor’s Motion for an Order for the Transfer of a Detained Witnesses Pursuant to Rules 73 and 90 *bis*”, filed on 29 May 2003 (“the motion”);

**SITTING** as Judge Møse, President of the Tribunal, pursuant to Rule 19(A) of the Rules of Procedure and Evidence (“the Rules”), according to which “the President shall ... co-ordinate the work of the Chambers”, and pursuant to Rule 90 *bis* (B) of the Rules, pursuant to which a “transfer order [under that Rule] shall be issued by a Judge or Trial Chamber”;

**HAVING** heard the Prosecutor, *ex parte* and *in camera*, on 4 June 2003;

**HEREBY DECIDES** the motion.

1. Pursuant to Rule 90 *bis* (A) of the Rules, “[a]ny detained person whose personal appearance as a witness has been requested by the Tribunal shall be transferred temporarily to the Detention Unit of the Tribunal, conditional on his return within the period decided by the Tribunal.”
2. The trial in the present case is scheduled for 9 June 2003 in a period to follow. Considering the limited time available before that date, the Prosecution requests the Chamber, pursuant to Rule 90 *bis*, to urgently order the temporary transfer of protected witnesses DO, XBG, XBH, XBK, XBM and XXN from the Republic of Rwanda, where they are currently imprisoned or where, released on parole, they are currently residing. The transfer is requested for a period not exceeding four months.
3. In an *ex parte* and confidential annex to the motion, the Prosecution sets out the names and details of the six witnesses concerned.
4. Pursuant to Rule 90 *bis* (B) of the Rules, a Trial Chamber may issue an order for the transfer of a detained witness only after verifying that the following conditions are 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) The transfer of the witness does not extend the period of his detention as foreseen by the requested State.
5. No formal response has been received by the Prosecution from the Rwandan authorities to their request for confirmation that the criteria under Rule 90 *bis* (B) are met. The Prosecution submits, however, that it has received informal indications from the Rwandan authorities that these criteria are met for an order under Rule 90 *bis*, for a period not exceeding four months, in respect of all of the witnesses concerned.
6. The Chamber met *in camera* and *ex parte* with the Prosecutor on this issue and is satisfied that the relevant criteria are met in relation to the following four witnesses: DO, XBG, XBH, and XBM.

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**FOR THE ABOVE REASONS THE TRIBUNAL**

**ORDERS**, pursuant to Rule 90 *bis* of the Rules, that the individuals designated under the pseudonyms DO, XBG, XBH and XBM be transferred at the latest on 8 June 2003 to the UNDF in Arusha for a period not exceeding four months from the date of transfer;

**REQUESTS** the Government of Rwanda to comply with this order and to arrange for the transfer in cooperation with the Registrar and the Tanzanian Government;

**INSTRUCTS** the Registrar to:

- a) Transmit this decision to the Governments of Rwanda and Tanzania;
- b) Transmit, to the Rwandan authorities exclusively, a copy of the confidential annex to the Motion, Registry page No. 13482, a document which shall at all times be kept strictly confidential by those authorities;
- c) Ensure the proper conduct of the transfer, including the supervision of the witnesses in the Tribunal's detention facilities;
- d) Remain abreast of any changes which might occur regarding the conditions of detention provided for by the requested State and which may possibly affect the length of the temporary detention and, with the shortest delay, inform the Trial Chamber of any such change.

Arusha, 4 June 2003



Erik Møse  
Judge

Seal of the Tribunal