

ICTR-2001-64-I
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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

Original: English

Trial Chamber III

Before Judges: Andrésia Vaz, Presiding Judge
 Jai Ram Reddy
 Sergey A. Egorov

Registrar: Mr. Adama Dieng

Decision of: 11 July 2003

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JUDICIAL RECORDS/ARCHIVES
ICTR

THE PROSECUTOR

vs

SYLVESTRE GACUMBITSI

Case N° ICTR-2001-64-I

**DECISION CONCERNING THE PROSECUTOR'S MOTION FOR THE TRANSFER
OF WITNESSES DETAINED IN RWANDA**

Rule 90 bis of the Rules of Procedure and Evidence

Office of the Prosecutor:

Mr. Richard Karegyesa
Mr. Khaled Ramadan

Defence of Mr. Gacumbitsi:

Ms. Kouengoua

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

SITTING in the person of Judge Jai Ram Reddy, designated by Trial Chamber III pursuant to Rule 73(A) of the Rules of Procedure and Evidence (“the Rules”) for purposes of reviewing the “Prosecutor’s Motion for the Transfer of Detained Witnesses Pursuant to Rule 90 *bis*”, filed on 23 June 2003;

CONSIDERING the *Réplique de la Défense à la requête du Procureur aux fins de transfert de témoins détenus au Rwanda en vertu de l’Article 90 bis du Règlement de procédure et de preuve* (“the Reply”), dated 8 July 2003;

CONSIDERING the Prosecutor’s Brief in Reply to a Defence Response to a Motion for an Order for the Transfer of Detained Witnesses Pursuant to Rule 90 *bis*, dated 9 July 2003;

CONSIDERING the *Réplique de la défense à la duplique du Procureur à la requête aux fins de transfert des témoins détenus au Rwanda en Vertu de l’article 90 bis du RPP*, filed 11 July 2003 ;

CONSIDERING the letter from the Minister of Justice and Institutional Relations of the Rwandan Government, dated 8th July 2003, filed by the Prosecutor on the same date, supporting her *Motion for the Transfer of Detained Witnesses Pursuant to Rule 90 bis*;

DECIDES the Motion:

INTRODUCTION

1. The trial of the Accused will start on Monday 28 July 2003 before the Chamber, composed of Judges Andréia Vaz, presiding, Jai Ram Reddy , and Sergey A. Egorov.
2. The Prosecutor intends to call protected witnesses TBG, TBH, TBI, TBJ, and TBK who were, according to the Prosecutor, detained in Kibungo prison and who have been provisionally released.¹ The Prosecutor requests that the transfer of these persons to the Tribunal be ordered for the purposes of their testimony in the present case from 21 July 2003. The Prosecutor specifies that these witnesses have agreed to testify for the purposes of the present case.

DELIBERATIONS

3. Pursuant to Rule 90 *bis* (B) of the Rules, the transfer order shall be issued only after prior verification that the following conditions have been met:
 - (i) The presence of the detained witnesses is not required for any criminal proceedings in progress in the territory of Rwanda during the period the witnesses are required by the Tribunal;
 - (ii) Transfer of the witnesses does not extend the period of their detention as foreseen by the Rwandan authorities.

¹ These witnesses are protected pursuant to the “Decision concerning the Prosecutor’s motion for the provisions of protective measures for the victims and the witnesses” rendered in this case on 20 May 2003 by Trial Chamber III, composed of Judges Lloyd G. Williams Q.C., presiding, Yakov Ostrovsky and Pavel Dolenc.

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4. The Prosecutor has stated that She needs four weeks of trial for the presentation of his case, which commences on 28 July 2003.² She has requested the presence of the witnesses in Arusha beginning 21 July 2003. Therefore, the Prosecutor appears to be requesting the presence of witnesses TBG, TBH, TBI, TBJ, and TBK between 21 July and 28 August 2003.

5. On the basis of the confirmation made by the Rwandan Minister of Justice in his letter of 8 July 2003, the Chamber is satisfied that the requirements of Rule 90 *bis* (B) of the Rules are fulfilled for the period mentioned in the preceding paragraph. The Chamber dismisses the Defence's application for further and other particulars (in the Response of 8 July 2003, Paras. (a) to (d)) because they are not matters in respect of which the Prosecutor is obliged to furnish such particulars under Rule 90 *bis* (A) and (B) of the Rules.

FOR THE FOREGOING REASONS,

THE TRIBUNAL

ORDERS, pursuant to Rule 90 *bis* of the Rules, the transfer of witnesses TBG, TBH, TBI, TBJ, and TBK from Rwanda where they are detained, to the seat of the Tribunal in Arusha, Tanzania, from no later than 21 July 2003 to no later than 28 August 2003; and further

ORDERS the Registrar of the Tribunal:

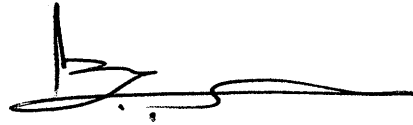
- (i) To ensure, with the co-operation of the Prosecutor and of the Government of the Republic of Rwanda, that the transfer of witnesses TBG, TBH, TBI, TBJ, and TBK is done in a timely and proper manner;
- (ii) To ensure that witnesses TBG, TBH, TBI, TBJ, and TBK who are remanded on provisional release from Kibungo Prison, reside, under the responsibility of the Tribunal, in conditions which take into account their situation regarding the judicial proceedings in Rwanda;
- (iii) To arrange to be kept informed of all the changes that might intervene concerning the conditions of detention provided for these witnesses by the Government of the Republic of Rwanda and which are likely to influence the length of the provisional detention and to keep the Chamber informed forthwith, if necessary;
- (iv) To provide the Government of the Republic of Rwanda and the Government of the United Republic of Tanzania with a copy of the present order; and further

REQUESTS the Government of the Republic of Rwanda to comply with the present order, to co-operate with the Prosecutor and the Registrar and to take, in collaboration with the Government of the United Republic of Tanzania, the Registrar and the Victims and Witnesses Support Unit of the Tribunal, the necessary provisions enabling the ordered transfer to be completed.

² Fax from the co-ordinator of Court Management Section, for Trial Chamber III, dated 25 June 2003, Ref. ICTR/JUD-11-6-3-03/036, para. 1.

Arusha, 11 July 2003

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Jai Ram Reddy, Judge



Seal of the Tribunal