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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

ICTR-98-41-T  
13-08-2003  
(15945-15943)

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S. Nussa

TRIAL CHAMBER I

**Before:** Judge Erik Møse, presiding  
Judge Jai Ram Reddy  
Judge Sergei Alekseevich Egorov

**Registrar:** Adama Dieng

**Date:** 13 August 2003

**THE PROSECUTOR**

v.

**Théoneste BAGOSORA**  
**Gratien KABILIGI**  
**Aloys NTABAKUZE**  
**Anatole NSENGIYUMVA**

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

2003 AUG 13 P 3:58  
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SECRETARIAT

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**ORDER FOR TRANSFER OF WITNESS XBK (Rule 90 bis)**

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**The Office of the Prosecutor**

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

SITTING as Trial Chamber I, composed of Judge Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

BEING SEIZED OF the Prosecution's *ex parte* "Motion for an Urgent Order for the Transfer of Detained Witness Pursuant to Rules 73 and 90 *bis*", filed on 30 July 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." Rule 90 *bis* (B) requires prior verification of two conditions for such an order:

(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.

2. The Prosecution moves the Trial Chamber for an order authorizing the transfer of its witness under the pseudonym XBK, currently detained in the Republic of Rwanda, which it intends to call during the trial session commencing 1 September 2003. The Prosecution affirms that the Rwandan Ministry of Justice has stated in writing that Witness XBK is not required for any criminal proceedings in progress in Rwanda during the period of his transfer, and that the transfer will not extend the period of his detention. A copy of the letter from the Ministry of Justice to the Prosecution is attached to the motion as a confidential annex.

3. By its Decision of 26 June 2003, the Trial Chamber granted leave to the Prosecution to add Witness XBK (as well as five other witnesses) to the list of witnesses that it intends to call to testify.<sup>1</sup>

4. The Chamber is satisfied, given the submissions of the Prosecution, that the conditions for an order under Rule 90 *bis* (B) are met in relation to Witness XBK.

**FOR THE ABOVE REASONS, THE CHAMBER**

**ORDERS**, pursuant to Rule 90 *bis* of the Rules, that the individual designated under the pseudonym XBK be transferred at the latest on 25 August 2003 to the Detention Unit in Arusha for a period not exceeding three 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;

<sup>1</sup> *Prosecutor v. Theoneste Bagosora, Gratién Kabiligi, Aloys Ntabakuze and Anatole Nsengiyumva*, Decision on Prosecution Motion for Addition of Witnesses Pursuant to Rule 73 *bis* (E), 26 June 2003, p. 8.

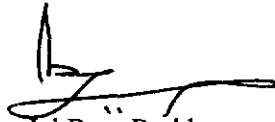
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- B) Ensure the proper conduct of the transfer, including the supervision of the witness in the Tribunal's detention facilities;
- C) Remain abreast of any changes which might occur regarding the conditions of detention provided for by the requested State and which may possibly affect the length of the temporary detention and, as soon as possible, inform the Trial Chamber of any such change.

Arusha, 13 August 2003



Erik Møse  
Presiding Judge



Jai Ram Reddy  
Judge



Sergei Alekseevich Egorov  
Judge

[Seal of the Tribunal]