



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

## TRIAL CHAMBER I

**Before:**

Judge Erik Møse, presiding  
Judge Khalida Rashid Khan  
Judge Solomy Balungi Bossa

**Registrar:** Adama Dieng

**Date:** 2 October 2003

### THE PROSECUTOR

v.

**Emanuel NDINDABAHIZI**

*Case No. : ICTR-2001-71-I*

---

### ORDER FOR TRANSFER OF DEFENCE WITNESSES DC, DM, DN, DO, and DR, PURSUANT TO RULE 90bis

---

**The Office of the Prosecutor**

Charles Adeogun-Phillips  
Wallace Kapaya  
Peter Tafah

**The Defence**

Pascal Besnier  
Guillaume Marçais

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

**SITTING** as Judge Erik Møse, designated by the Trial Chamber, pursuant to Rule 73 of the Rules of Procedure and Evidence of the Tribunal (“the Rules”);

**BEING SEIZED** of the Defence “Requête de la Défense en transfert de témoins détenus”, filed on 24 September 2003;

**HEREBY DECIDES** the request.

1. The Defence requests an order from the Chamber authorizing the transfer, for a period not exceeding one month, of its witnesses under the pseudonyms DC, DM, DN, DO, and DR, said to be currently detained at two different prisons in the Republic of Rwanda, whom it intends to call during the trial session commencing 20 October 2003. 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. In an attempt to verify the existence of these conditions, the Defence submits that it sent a letter to the Attorney General of Rwanda, dated 1 September 2003, requesting the attendance of these five witnesses in Arusha. The Witness and Victims Support Section (WVSS) reports that the Government of Rwanda has authorized, in writing, Registry officials in Kigali to commence the formal procedure for the transfer of the five witnesses to Arusha. WVSS reports that such permission implies, according to past experience, that the two conditions set out in Rule 90*bis* are satisfied. The Chamber observes that at the status conference on 30 September 2003, it was decided that the Defence case commence on 27 October 2003.

3. In these circumstances, the Chamber is satisfied, given the submissions of the WVSS, that the conditions for an order under Rule 90*bis* (B) are met in relation to the witnesses.

**FOR THE ABOVE REASONS, THE CHAMBER**

**ORDERS**, pursuant to Rule 90*bis* of the Rules, that the individuals designated by the Defence as Witnesses DC, DM, DN, DO and DR be transferred to the Detention Unit in Arusha on or about 20 October 2003 for a period not to exceed one month;

**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) 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, 2 October 2003

Erik Møse  
Judge

[Seal of the Tribunal]