

ICTR-98-44-T  
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**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**

**TRIAL CHAMBER III**

**ENGLISH  
Original: FRENCH**

Before: Judge Andréia Vaz, presiding  
Judge Flavia Lattanzi  
Judge Florence Rita Arrey

Registry: Adama Dieng

Dated filed: 2 April 2004

**THE PROSECUTOR**

v.

**Edouard KAREMERA  
Mathieu NGIRUMPATSE  
Joseph NZIRORERA  
Andre RWAMAKUBA**

*Case No. ICTR-98-44-T*

2004 JUN 29  
ICTR  
International Criminal Tribunal for Rwanda

**DECISION ON THE PROSECUTOR'S MOTION FOR AN ORDER FOR THE  
TRANSFER OF DETAINED WITNESSES PURSUANT TO RULE 90 BIS  
OF THE RULES OF PROCEDURE AND EVIDENCE**

Office of the Prosecutor:

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Counsel for the Defence:

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Peter Robinson  
David Hooper and Andreas O'Shea

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

**SITTING** in Chamber III (the Chamber), composed of Judge Andréia Vaz, presiding, Judge Flavia Lattanzi and Judge Florence Rita Arrey;

**SEIZED** of an *ex parte* motion entitled “*Prosecutor’s Motion for an Order for the Transfer of Detained Witnesses pursuant to Rule 90bis of the Rules of Procedure and Evidence*”, filed by the Prosecutor on 13 January 2004 (“the Motion”) as amended by the document entitled “*Amendment to Prosecutor’s Motion for an Order for the Transfer of Detained Witnesses Pursuant to Rule 90bis of the Rules of Procedure and Evidence of 13 January 2004*”, filed on 11 March 2004;

**CONSIDERING** the Decision on the Prosecutor’s *ex parte* motion for an order for the transfer of detained witnesses, rendered on 11 December 2003;

**CONSIDERING** the Prosecutor’s inter-office memorandum to the Coordinator of the Court Management Section entitled, “Proposal of re-ordering [o]f witness testimony for the beginning of the second trial session in *The Prosecutor v. Karemera*”, of 14 January 2004;

**CONSIDERING** the Tribunal’s Statute (“the Statute”) and its Rules of Procedure and Evidence (“the Rules”) and, particularly, Rule 90bis of the Rules;

**RULES** as follows, based solely on the Prosecutor’s written submissions, pursuant to Rule 73(A) of the Rules.

**Prosecutor’s submissions**

1. The Prosecutor moves, under Rule 90bis of the Rules, for the transfer of 21 protected witnesses from the Republic of Rwanda to the Detention Facility of the Tribunal to testify in this case, for the duration of their testimony. He specifies that the said witnesses are facing criminal proceedings in Rwanda, that some are under detention while others are on provisional release.<sup>1</sup> He intends to call the 21 witnesses during the second, third and fourth trial sessions.<sup>2</sup> He states that each one of the said witnesses has met the requirements under Rule 90bis (B) of the Rules. He further states that a letter from the Minister of Justice of Rwanda will bear witness thereto. He filed the letter in question on 31 March 2004.<sup>3</sup>

2. Concerning Witnesses GFA, GBU, GIN, ALG, GFJ and UB, who shall be testifying during the second trial session, the Prosecutor hopes that the first two will be transferred on 19 March 2004 at the latest to testify on 29 and 31 March 2004 respectively. He hopes that Witness GIN will be transferred on 26 March 2004 at the latest to testify on 6 April 2004. He

<sup>1</sup> The witnesses concerned are: GFA, GBU, GIN, ALG, GFJ and UB (expected to testify during the second trial session).

<sup>2</sup> The second session will be held from 29 March to 28 May 2004; the third from 28 June to 30 July 2004; the fourth from 30 August to 15 October 2004. A fifth session will be held from 15 November to 15 December 2004.

<sup>3</sup> See “Supplement to Prosecutor’s Motion of 13 January 2004 for an Order for the Transfer of Detained Witnesses Pursuant to Rule 90bis of the Rules of Procedure and Evidence”, filed on 31 March 2004.

also hopes that ALG and GFJ will be transferred on 16 April 2004 at the latest to testify on 26 and 28 April 2004 respectively. Lastly, he hopes that Witness UB will be transferred on 23 April 2004 at the latest to testify on 3 May 2004.

### Deliberations

3. In accordance with Rule 90*bis*(A), (B) and (F) of the Rules,

“(A) Any 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.

(B) The transfer order shall be issued by a Judge or Chamber only after prior verification that the following conditions have been 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) Transfer of the witness does not extend the period of his detention as foreseen by the requested State;

(...)

(F) If, by the end of the period decided by the Tribunal, the presence of the detained witness continues to be necessary, a Judge or a Chamber may extend the period, on the same conditions stated in the Sub-Rule (B).”

4. Based on the letter of the Minister of Justice of Rwanda referred to in paragraph 1 above, the Chamber is satisfied that the above-mentioned requirements under Rule 90*bis* have been met by Witnesses GIN, ALG, GFJ and UB. Furthermore, the Chamber notes that the Minister of Justice specifies that the said witnesses are currently in detention in Rwanda.

5. The Chamber is of the view that these four witnesses are required to appear in Arusha within the periods indicated by the Prosecutor. However, granted that the letter of the Minister of Justice of Rwanda was filed only on 31 March 2004, it is not possible to order that Witness GIN be transferred on 26 April at the latest. He should be transferred as soon as possible, with effect from the date of this decision.

6. The Chamber notes that it has already ordered that Witnesses GFA and GBU be transferred on 5 January 2004 at the latest for a period not exceeding three months from the date of their transfer, and that Witness GFA's testimony is in progress.<sup>4</sup> Therefore, it is not necessary to order the transfer of these witnesses. The Prosecutor can seek the Chamber's leave to extend this period before it expires, if necessary, pursuant to Rule 90*bis*(F). In this

<sup>4</sup> The transfer of Witnesses GFA and GBU was ordered in the Decision on the Prosecutor's *ex parte* motion for an order for the transfer of detained witnesses, rendered on 11 December 2003.

case, it will be incumbent on him to prove that the requirements under Rule 90bis(B) have been met in this respect.

7. Apart from Witnesses GIN, ALG, GFJ and UB, the letter of the Minister of Justice of Rwanda mentions no other witnesses referred to in the motion. It is therefore necessary to reject the application for an order for the transfer of the other witnesses.

**FOR THE FOREGOING REASONS,**

**THE CHAMBER**

**I. ORDERS**, pursuant to Rule 90bis of the Rules, that protected Witnesses GIN, ALG, GFJ and UB be transferred to Arusha and detained at the Detention Facility of the Tribunal, for a period not exceeding three months from the date of their transfer, with effect from the following dates:

- (i) Witness GIN, as soon as possible, with effect from the date of this decision;
- (ii) Witnesses ALG and GFJ, on 16 April 2004, at the latest;
- (iii) Witness UB, on 23 April 2004.

**II. DIRECTS** the Registrar:

- (i) To forward this decision to the Governments of Rwanda and Tanzania;
- (ii) To ensure the proper conduct of the transfer, including the supervision of the witnesses at the Detention Facility of the Tribunal in Arusha;
- (iii) To remain abreast of any changes which might occur regarding the conditions of detention of witnesses in Rwanda, and which may possibly affect the length of their detention and, if necessary, inform the Chamber thereof within the shortest possible time.

**III. REQUESTS** the Government of the Republic of Rwanda to comply with this Order, cooperate with the Prosecutor and the Registrar and take, in collaboration with the Government of the Republic of Tanzania, the Registrar and the Witnesses and Victims Support Section, all necessary measures to conduct the transfer.

IV. **DIMISSES** the Motion in all other respects.

Arusha, 2 April 2004.

[Signed]  
Andrésia Vaz

[Signed]  
Flavia Lattanzi

[Signed]  
Florence Rita Arrey

[Seal of the Tribunal]

