



**ICTR-98-41-T**  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
**15-04-2004**  
**(19503-19501)**

**19503**  
**Ivan**

**TRIAL CHAMBER I**

**Before:** Judge Erik Møse

**Registrar:** Adama Dieng

**Date:** 15 April 2004

**THE PROSECUTOR**

**v.**

**Théoneste BAGOSORA**

**Gratien KABILIGI**

**Aloys NTABAKUZE**

**Anatole NSENGIYUMVA**

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

2004 APR 15 A 9:00  
JUDICIAL RECORDS/MACHINES  
RECEIVED  
ICTR

**ORDER FOR TRANSFER OF WITNESSES**

**The Office of the Prosecutor**

Barbara Mulvaney  
Drew White  
Segun Jegede  
Christine Graham  
Rashid Rashid  
Abdoulaye Seye

**Counsel for the Defence**

Raphaël Constant  
Paul Skolnik  
Jean Yaovi Degli  
Peter Erlinder  
André Tremblay  
Kennedy Ogetto  
Gershom Otachi Bw'Omanwa

*[Handwritten signature]*

19502

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

**SITTING** as Trial Chamber I, composed of Judge Erik Møse, designated by the Chamber in accordance with Rule 73(A) of the Rules of Procedure and Evidence;

**BEING SEIZED** of the Prosecution "Motion for an Order for the Transfer of Detained Witnesses", etc., filed on 14 April 2004;

**CONSIDERING** the oral submissions of the parties on 14 April 2004, and an *ex parte* submission of communications by the Prosecution to the Chamber on 14 April 2004;

**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 Union 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 six of its witnesses currently detained in Rwanda, known by the pseudonyms AI, AOM, DR, LAI, XXH and XXQ. In relation to the requirements of Rule 90*bis* (B), the Prosecution has submitted a letter dated 8 March 2004 from the Prosecutor to the Ministry of Justice of Rwanda which requests confirmation that the witnesses will not be required for any criminal proceedings in Rwanda for a three-month period commencing 29 March 2004, and that the transfer will not extend their detention.

3. In the absence of any response from the government of Rwanda, the Prosecution made further *ex parte* submissions to the Chamber to the effect that it had received informal assurances that these witnesses would not be needed for any judicial proceedings in Rwanda during the relevant period, and that the transfer of the witnesses would not extend their detention.

4. The Chamber recalls that the Prosecution has the burden of providing specific information that the conditions in Rule 90*bis* (B) are fulfilled.<sup>1</sup> Though the information provided is less than ideal, the Chamber is satisfied, given the assurances of the Prosecution, that the conditions for an order under Rule 90*bis* (B) are met in relation to these witnesses.<sup>2</sup>

**FOR THE ABOVE REASONS, THE CHAMBER**

**ORDERS**, pursuant to Rule 90*bis* of the Rules, that the individuals designated by the pseudonyms AI, AOM, DR, LAI, XXH, and XXQ be transferred as soon as possible to the Detention Unit in Arusha, and returned to Rwanda no later than 29 June 2004;

**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;

<sup>1</sup> Ndindabahizi, Order for Transfer of Witness CGC (Rule 90*bis*) (TC), 15 September 2003, para. 2.

<sup>2</sup> Simba, Order for Transfer of Witnesses (Rule 90*bis*) (TC), 24 February 2004, para. 4.

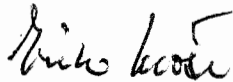
26

19501

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 witnesses 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, 15 April 2004



Erik Mose  
Judge

[Seal of the Tribunal]

