

ICTR-99-50-T  
27-5-2004  
(13603-13600)

13603  
Dieng



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

Or: ENG

**TRIAL CHAMBER II**

**Before:** Judge Khalida Rachid Khan, Presiding

**Registrar:** Mr. Adama Dieng

**Date:** 27 May 2004

**The PROSECUTOR**

v.

**Casimir BIZIMUNGU**  
**Justin MUGENZI**  
**Jerome BICAMUMPAKA**  
**Prosper MUGIRANEZA**

**Case No. ICTR-99-50-T**

ICTR  
INTERNATIONAL RESOURCES  
2004 MAY 27 P 5:02

**ORDER FOR THE TRANSFER OF DETAINED WITNESSES FROM RWANDA**  
**(RULE 90 bis)**

**Office of the Prosecutor:**

Mr. Paul Ng'arua  
Mr. Ibukunolu Babajide  
Mr. Justus Bwonwonga  
Mr. Elvis Bazawule  
Mr. George William Mugwanya  
Mr. Shyamlal Rajapaksa  
Mr. William Mubiru  
Mr. Olivier De Schutter

**Counsel for the Defence:**

Ms. Michelyne C. St. Laurent and Ms. Alexandra Marcil for Casimir Bizimungu  
Mr. Howard Morrison and Mr. Ben Gumpert for Justin Mugenzi  
Mr. Pierre Gaudreau and Mr. Michel Croteau for Jérôme Bicomumpaka  
Mr. Tom Moran and Mr. Christian Gauthier for Prosper Mugiraneza

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

**SITTING** as Trial Chamber II, composed of Judge Khalida Rachid Khan, Presiding, assigned to decide this Motion pursuant to Rule 73(A) of the Rules of Procedure and Evidence, (the “Chamber”);

**BEING SEIZED** of the “Prosecutor’s Extremely Urgent *Ex Parte* Motion for an Order for the Transfer of Detained Witnesses Pursuant to rules 90 *bis* and 73 (A) of the Rules of Procedure and Evidence”, filed on 1 April 2004 (the “Motion”);

**NOTING** the “Prosecutor’s Filings Pursuant to Trial Chamber II Orders of 19 May 2004” containing the Prosecutor’s consolidated and final list of witnesses and the calling order of witnesses for the next session scheduled to start on 7 June 2004, filed on 24 May 2004 (the “Prosecutor’s Final Witness List”); the “Prosecutor’s Very Urgent Motion Pursuant to Rule 73bis(E) for Leave to Vary the Prosecutor’s list of Witnesses filed on 20<sup>th</sup> October 2003”, filed on 24 May 2004 (the “Motion to vary Witness List”); the Corrigendum to the Prosecutor’s Very Urgent Motion Pursuant to Rule 73bis(E) for Leave to Vary the Prosecutor’s list of Witnesses filed on 20<sup>th</sup> October 2003”, filed on 25 May 2004 (the “Prosecutor’s Corrigendum”);

#### **SUBMISSIONS**

1. The Prosecution requests the Trial Chamber, pursuant to Rule 90 *bis*, to order the temporary transfer of witnesses XXQ, GKD, GTD, AMD, ALY, GLW, GKJ (the “witnesses”) from the Republic of Rwanda, where they are currently detained. The request further specifies that the witnesses are needed by Tuesday 4 May 2004, ready for the recommencement of proceedings in this case.
2. The Prosecution provides an affidavit from a Commander of Investigations working for the Officer of the Prosecutor, which states that an official request has been sent to the Rwandan Government enquiring whether the witnesses are required for any criminal proceedings in progress in the territory of the requested State during the period the witness is required by the Tribunal.

#### **DELIBERATIONS**

3. The Chamber notes that the Prosecution had initially requested that the witnesses be transferred to Arusha no later than 4 May 2004. However, due to the postponement of the hearing in this case, that date passed without any need to transfer the witnesses. The Trial is now set to recommence on 7 June 2004.
4. The Chamber notes that although in the Motion the Prosecution requests the transfer of Witness XXQ, AMD, ALY and GLW, their pseudonyms do not appear anywhere on the Prosecution Final Witness List. Only the pseudonyms of Witnesses GKD, GTD and GKJ appear both in the Motion and the Prosecution



Final Witness List. Thus, the Chamber considers the Motion only in so far as it relates to these three witnesses: GKD, GTD and GKJ.

5. The Trial Chamber notes that pursuant to the provisions of Rule 90 *bis* (A) of the Rules:
  - i) 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.
6. Pursuant to Rule 90 *bis* (B) of the Rules, a Trial Chamber shall issue a transfer order only after prior verification that the following conditions are met:
  - ii) 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;
  - iii) Transfer of the witness does not extend the period of his detention as foreseen by the requested State;
7. On the basis of representations made by the Prosecution, including the Affidavit received, the Chamber infers that the presence of Witnesses GKD, GTD and GKJ will not be required for any criminal proceedings in Rwanda during the relevant period of time when they are to be transferred to Arusha to give testimony before the Tribunal, during the trial session scheduled to recommence on 7 June 2004. Similarly, on the basis of the same representations, the Chamber infers that the Government of Rwanda does not foresee that the transfer of the witnesses to Arusha will extend their period of detention.
8. The Chamber is aware that the Registry requires significant advance notice in order to properly facilitate the transfer of detained witnesses from Rwanda to Arusha, and also some flexibility in the timing, which must be worked out in consultation with the Governments of Rwanda and Tanzania. The Chamber thus views it as appropriate that such flexibility be incorporated into the order for transfer, whilst remaining strictly within the maximum limits allowed. From the date of transfer, the Chamber decides that the detained witnesses to be transferred should remain at the United Nations Detention Facility in Arusha for the shortest period practically possible in order to allow for their testimony to be heard, and in any event a period of time not exceeding one month without further prior approval.

**FOR THE ABOVE REASONS, THE TRIAL CHAMBER**

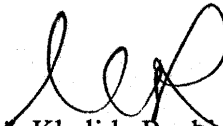

**ORDERS** the Registry, pursuant to Rule 90 *bis* of the Rules, to temporarily transfer Detained Witnesses GKD, GTD and GKJ to the United Nations Detention Facility in Arusha (UNDF), at an appropriate time prior to their anticipated testimony during the trial session set to recommence on 7 June 2004. Their return travel should be facilitated



as soon as practically possible after their testimony has ended. In any event, without prior approval from the Chamber, their return into Rwandan custody should be facilitated at a time not later than one month from the date of transfer to the UNDF;

**REQUESTS** the Governments of Rwanda and Tanzania to cooperate with the Registry in the implementation of this Order.

Arusha, 27 May 2004

  
Khalida Rachid Khan  
Presiding Judge  
  
(Seal of the Tribunal)