

ICTR-01-76-I
(2751-2749)
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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER I

Before: Judge Dennis C. M. Byron

Registrar: Adama Dieng

Date: 4 August 2004

THE PROSECUTOR

v.

Aloys SIMBA

Case No. ICTR-2001-76-I

2004AUG-14 P. 5: 03
C. H. J. M. J.

ORDER FOR TRANSFER OF WITNESSES

(Pursuant to Rule 90 *bis* of the Rules of Procedure and Evidence)

The Prosecutor
William T. Egbe
Sulaiman Khan
Ignacio Tredici
Amina Ibrahim

The Defence
Sadikou Ayo Alao
Beth Lyons
Francis Dako

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

SITTING as Trial Chamber I, composed of Judge Dennis C. M. Byron, designated in accordance with Rule 28 of the Rules of Procedure and Evidence (the "Rules");

BEING SEIZED of the "Prosecutor's Request for the Transfer of Detained Witnesses Pursuant to Rule 90 *bis* of the Rules of Procedure and Evidence", filed on 2 August 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 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) The 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 fourteen of its witnesses known by the pseudonyms KDD, KEC, KSD, XXG, XXI, YA, KSQ, YH, KEI, YC, YG, ANX and YI, currently detained in Rwanda. In relation to the requirements of Rule 90*bis* (B) (i), the Prosecutor indicates that he has taken necessary steps to ensure that the presence of these witnesses is not required for any criminal proceedings in Rwanda during the period the witnesses are required to be present at the Tribunal as prosecution witnesses¹. Furthermore, relating to the requirement of Rule 90*bis* (B) (ii), the Prosecutor notes that "it is averred that the transfer of the witnesses will not extend the period of his detention, foreseen by the Republic of Rwanda"².

3. The Chamber recalls that the Prosecution has the burden of providing specific information that the conditions in Rule 90*bis* (B) are fulfilled.³ On the other hand, the Chamber notes that, on 22 January 2004, the Prosecutor filed a previous request for the transfer from Rwanda of the eight detained witnesses known by the pseudonyms KDD, KEC, KSD, XXG, YA, YC, YG. In his motion, the Prosecutor stated, among others, that he "had received informal assurances that these witnesses would not be needed for any judicial proceedings in Rwanda between April and the end of June 2004, and that the transfer of the witnesses would not extend their detention". The Chamber accepted that as sufficient evidence to support the required verification. Accordingly, the Chamber was satisfied that the conditions for an order under Rule 90 *bis* (B) were met in relation to these witnesses⁴.

4. In the light of those elements communicated by the Prosecutor in his previous motion as well as given the reiterated assurances of the Prosecution, the Chamber is satisfied, that the conditions for an order under Rule 90 *bis* (B) are met in relation to these witnesses.

¹ The Prosecutor's Request for the Transfer of Detained Witnesses Pursuant to Rule 90 *bis*, at par. 14.

² The Prosecutor's Request for the Transfer of Detained Witnesses Pursuant to Rule 90 *bis*, at par. 15.

³ *Ndindabahizi*, Order for Transfer of Witness CGC (Rule 90*bis*) (TC), 15 September 2003, para. 2.

⁴ Order For Transfer of Witnesses (Rule 90 *bis*) (TC), 24 February 2004.

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FOR THE ABOVE REASONS, THE CHAMBER


ORDERS, pursuant to Rule 90*bis* of the Rules, that the individuals designated under the pseudonyms KDD, KEC, KSD, XXG, XXI, YA, KSQ, KEC, YH, KEI, YC, YG, ANX and YI be transferred no earlier than 9 August 2004 to the Detention Unit in Arusha, and returned to Rwanda no later than the end of September 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;

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, 4 August 2004


Dennis C. Byron
Judge

[Seal of the Tribunal]

