



UNITED NATIONS
NATIONS UNIES

ICTR-00-56-T
7-12-2004
(18812 — 18809)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

TRIAL CHAMBER II

Before: Judge Asoka de Silva, Presiding,
(Designated pursuant to Rule 73(A) of the Rules)

Registrar: Mr Adama Dieng

Date: 7 December 2004

The PROSECUTOR

v.

**Augustin BIZIMUNGU
Augustin NDINDILYIMANA
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU**

Joint Case No. ICTR-2000-56-T

JUDICIAL RECORDS/ARCHIVES
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**DECISION ON PROSECUTOR'S EXTREMELY URGENT MOTION FOR
THE TRANSFER OF DETAINED WITNESSES (Rule 90 bis)**

Office of the Prosecutor:

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Counsel for the Defence:

Mr Gilles Saint-Laurent and Mr Ronnie Mac Donald for **Augustin Bizimungu**
Mr Christopher Black for **Augustin Ndindilyimana**
Mr André Ferran for **François-Xavier Nzuwonemeye**
Mr Fabien Segatwa and Mr Didier Patry for **Innocent Sagahutu**

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

SITTING as Trial Chamber II composed of Judge Asoka de Silva, Presiding, designated by the Trial Chamber pursuant to Rule 73(A) and pursuant to Rule 90 *bis*(B) of the Rules of Procedure and Evidence (the Rules);

BEING SEISED of the "*Requête non contentieuse du Procureur, en extrême urgence, aux fins de transfert de témoins détenus ou placés sous contrôle judiciaire: Articles 54 et 90 bis du Règlement de procédure et de preuve*" of 25 November 2004 (the "Motion")¹;

NOTING the attachments to the Motion:

- i) *Lettre du Ministre de la justice de la République du Rwanda no. 848/04.25 du 14 juin 200;*
- ii) *Lettre du Ministre de la Justice de la République du Rwanda no. 007/04.01.04 du 31 août 2004;*
- iii) *Lettre du Ministre de la justice de la République du Rwanda no. 010/04.01.04 du 13 septembre 2004.*

CONSIDERING the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules") in particular Rule 90*bis*;

NOW DECIDES the matter pursuant to Rule 73(A) on the basis of the written submissions of the Prosecution.

DELIBERATIONS

WHEREAS the Prosecution requests the Chamber, pursuant to Rule 90 *bis*, to order the temporary transfer of Witnesses GAP, AMW, GFR, UB, GFU, ANI/ KEI, KJ, GFB, ANA and GFC from the Republic of Rwanda, where they are detained or provisionally detained under judicial control.

WHEREAS the Prosecution asserts that these witnesses are needed to testify during the second session of the trial which will resume on 10 January 2005.

WHEREAS the Prosecution relies on three letters from the Minister for Justice of the Republic of Rwanda annexed to its Motion and assures the Chamber that:

- i) The presence of the witnesses is not required for any criminal proceedings in the Republic of Rwanda during the period they are required to be present to testify in the present proceedings;
- ii) The transfer of the witnesses will not extend the period of the detention imposed by the Republic of Rwanda;

WHEREAS the Chamber recalls the relevant provisions of Rule 90 *bis*:

¹ Unofficial translation: Extremely Urgent non Contentious Prosecutor's Motion for the Transfer of Detained Witnesses or Provisionally Detained Witnesses Under Judicial Control: Rules 54 and 90 *bis* of the Rules of Procedure and Evidence.

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Rule 90 bis: Transfer of Detained Witnesses

- (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 Trial 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.
- (C) [...]
- (D) [...]
- (E) [...]
- (F) [...]

WHEREAS, the Chamber has reviewed the letters from the Minister for Justice of the Republic Rwanda annexed to the Motion which the Prosecution relied upon to fulfil the requirements under Rule 90bis. The Chamber finds that the requirements set out in Rule 90bis for the temporary transfer of Witnesses GAP, AMW, GFR, UB, GFU, ANI/ KEI, KJ, GFB, ANA and GFC have been met;

WHEREAS the Chamber decides that from the date of transfer, the detained witnesses should remain at the United Nations Detention Facility (the "UNDF") in Arusha for the shortest period practically possible and in any event for a period of time not exceeding one month without further approval of the Chamber.

FOR THE ABOVE REASONS,

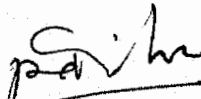
ORDERS, pursuant to Rule 90bis of the Rules, that detained Witnesses GAP, AMW, GFR, UB, GFU, ANI/ KEI, KJ, GFB, ANA and GFC be transferred to the UNDF in Arusha to testify during the trial proceedings resuming on 10 January 2005. Their return travel should be facilitated as soon as possible after their testimony has been heard and no later than one month from the date of transfer to the UNDF;

REQUESTS the Government of the Republic of Rwanda to comply with this Order and to arrange the transfer, in cooperation with the Registrar and the Government of the United Republic of Tanzania;

DIRECTS the Registrar of the Tribunal to cooperate with the authorities of the Governments of the Republic of Rwanda and the United Republic of Tanzania; Ensure proper conduct during transfer and during detention of the witness at the UNDF; Inform the Chamber of any changes in the conditions of detention determined by the Rwanda authorities and which may affect the length of stay in Arusha.

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Arusha, 7 December 2004


Asoka de Silva
Presiding Judge

