

ICTR-98-44C-1  
9-1-2006  
(1857-1855)

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UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Dennis C. M. Byron, Presiding

**Registrar:** Adama Dieng

**Date:** 9 January 2005

**THE PROSECUTOR**

v.

**André RWAMAKUBA**

**Case No. ICTR-98-44C-R90bis**

2005 JAN -9 P 4: 01  
09-07-2006  
ICTR  
PROSECUTOR'S ARCHIVES

**ORDER FOR THE TRANSFER OF DETAINED WITNESSES FROM RWANDA**

*Rule 90bis of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**

Don Webster  
Dior Fall  
Iain Morley  
Adama Niane  
Tamara Cummings-John

**Defence Counsel**

David Hooper and Andreas O'Shea

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

**SITTING** as Trial Chamber III, composed of Judges Dennis C. M. Byron, (“Chamber”), pursuant to Rule 54 of the Rules of Procedure and Evidence (“Rules”);

**BEING SEIZED** of the “Defence Motion for Order for Transfer of Witnesses Detained in Rwanda”, pursuant to Rule 90*bis* of the Rules of Procedure and Evidence (“Motion”), filed on 3 January 2006;

**NOTING** the resumption of the present trial scheduled on 16 January 2005;

**NOW DECIDES** the Motion pursuant to Rule 73(A) of the Rules:

### **INTRODUCTION**

1. The Defence requests the Chamber, pursuant to Rule 90 *bis* of the Rules, to order the temporary transfer of Witnesses with the pseudonyms 7.3, 4.16 and 9.22 from Rwanda, where they are currently detained, to the United Nations Detention Unit (UNDF) in Arusha, Tanzania, so that they can testify in the present case.

### **DELIBERATIONS**

2. Rule 90*bis*(A) of the Rules gives the Chamber power to make an order to transfer a detained person to the Detention Unit of the Tribunal if his or her presence has been requested. Rule 90*bis*(B) lays out the conditions to be met, as shown by the applicant, before such an order can be made:

(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;

3. The Defence has exhibited a letter from the Minister of Justice in Rwanda dated 28 December 2005 confirming the availability of Witnesses 7.3, 4.16 and 9.22, amongst others, to testify during the indicated period of the upcoming trial session, which is from 16 January 2006 to 10 February 2006. The Chamber is therefore satisfied that these witnesses are not required for criminal proceedings in Rwanda during that time and that the witnesses’ presence at the Tribunal does not extend the period of their detention in Rwanda.

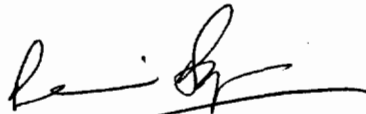
### **FOR THE ABOVE REASONS, THE CHAMBER**

**ORDERS** the Registrar, pursuant to Rule 90 *bis* of the Rules, to temporarily transfer Detained Witnesses known by the pseudonyms 7.3, 4.16 and 9.22 to the UNDF facility in Arusha, at an appropriate time prior to their scheduled dates to testify. Their return travel to Rwanda should be facilitated as soon as practically possible for each witness after the individual’s testimony has ended.

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

**DIRECTS** the Registrar to cooperate with the authorities of the Governments Rwanda and 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.

Arusha, 9 January 2006, done in English.



Dennis C. M. Byron

Presiding Judge

[Seal of the Tribunal]

