

ICTR-99-50-T
14-02-2005
(20267-20265)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

20267 *sm/leg*

Or: ENG

TRIAL CHAMBER II

Before: Judge Khalida Rachid Khan, Presiding
Judge Lee Gacuiga Muthoga
Judge Emile Francis Short

Registrar: Mr. Adama Dieng

Date: 14 February 2005

The PROSECUTOR
v.
Casimir BIZIMUNGU
Justin MUGENZI
Jérôme-Clément BICAMUMPAKA
Prosper MUGIRANEZA

Case No. ICTR-99-50-T

JUDICIAL RECORDS/ARCHIVES
ICTR
2005

2005 FEB 14 P 12:31

**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. 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. Ben Gumpert for Justin Mugenzi
Mr. Pierre Gaudreau and Mr. Michel Croteau for Jérôme-Clément Bicamumpaka
Mr. Tom Moran for Prosper Mugiraneza

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

SITTING as Trial Chamber II, composed of Judge Khalida Rachid Khan, Presiding, Judge Lee Gacuiga Muthoga, and Judge Emile Francis Short (the "Trial Chamber");

BEING SEIZED of the "Prosecutor's Extremely Urgent *Ex Parte* Motion for an Order for the Transfer of Two Detained Witness Pursuant to rules 90 *bis* and 73 (A) of the Rules of Procedure and Evidence", filed on 10 February 2005 (the "Motion").

SUBMISSIONS

1. The Prosecution requests the Trial Chamber, pursuant to Rule 90 *bis* of the Rules of Procedure and Evidence (the "Rules"), to order the temporary transfer of Witnesses GJQ and GTC from the Republic of Rwanda, where they are currently detained.
2. The Prosecution provides the following assurances to the Chamber:
 - (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 at the Tribunal as Prosecution Witnesses;
 - (ii) The transfer of the witnesses will not extend beyond the period of their detention as foreseen by the Republic of Rwanda.
3. The Prosecution provides as an Annex a letter from the Ministry of Justice in Rwanda addressed to the Deputy Prosecutor of the Tribunal confirming that Witnesses GJQ and GTC are available to give testimony before the Tribunal, pursuant to the requirements of Rule 90 *bis* of the Rules of Procedure and Evidence.¹

DELIBERATIONS

4. 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.
5. 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:

¹ Confidential letter dated 10 February 2005.



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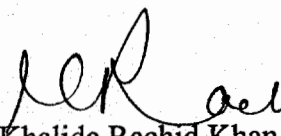
- ii) The presence of the detained witness is not required for any criminal proceedings in progress in the territory of the requested State during the period the witness is required by the Tribunal;
 - iii) Transfer of the witness does not extend the period of his detention as foreseen by the requested State;
6. On the basis of representations made by the Prosecution and the Annex provided, which include a letter from the Ministry of Justice in Rwanda, the Chamber finds that the requirements set out in Rule 90 *bis* of the Rules for the temporary transfer of detained witnesses have been satisfied.
7. 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 considers it 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 (the "UNDF") for the shortest period practically possible to ensure that their testimony is taken, and in any event for a period not exceeding one month without further prior approval.


FOR THE ABOVE REASONS, THE TRIAL CHAMBER

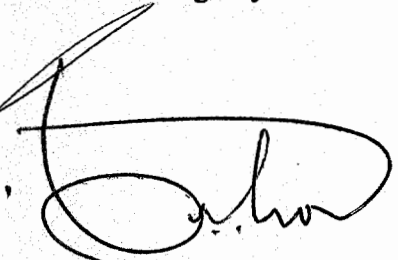
ORDERS the Registry, pursuant to Rule 90 *bis* of the Rules, to temporarily transfer Detained Witnesses GJQ and GTC to the UNDF, at an appropriate time prior to their anticipated testimony during the trial session set to recommence on 1 March 2005. Their return travel should be facilitated as soon as practically possible after the end of their testimony. 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, 14 February 2005


Khalida Rachid Khan
Presiding Judge


Lee Gacuga Muthoga
Judge

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(Seal of the Tribunal)
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Emile Francis Short
Judge