

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

SITTING as Trial Chamber III, composed of Judge Dennis C. M. Byron, Presiding Judge, Judge Emile Francis Short and Judge Gberdao Gustave Kam ("Chamber") pursuant to Rule 54 of the Rules of Procedure and Evidence ("Rules");

NOTING the "Prosecutor's Motion for an Order for Temporary Transfer of Witnesses pursuant to Rule 90bis" ("Motion"), filed *ex parte* on 27 April 2005.

INTRODUCTION

- 1. The Separate Indictment against the Accused André Rwamakuba has been filed on 23 February 2005. The trial is scheduled to commence on 9 June 2005.
- 2. On 27 April 2005, the Prosecution filed *ex parte* a Motion seeking that the Chamber orders the temporary transfer of two detained witnesses from the Republic of Rwanda to the Tribunal Detention Facilities in Arusha. The said witnesses would be required to give oral evidence in the present case. The Prosecution contends that the requirements set out by Rule 90bis of the Rules for the said transfer are met. It also indicates that a letter from the Rwandan Minister of Justice will be filed, as soon as it is received, to confirm these representations. To address that Motion, the Chamber is of the view that additional information is necessary.

DELIBERATIONS

- 3. The Chamber notes that the Prosecution did not specify the grounds for the *ex parte* filing of its Motion. As a general rule, Motions must be filed *inter partes*.¹ The Prosecution has not explained why such a procedure could not have been followed in the present Motion, or given any other justification for deviating from the principle of *inter partes* submissions. The Prosecution should therefore provide to the Chamber the reasons in support of its *ex parte* filing.
- 4. In accordance with Rule 90bis(B) of the Rules, the Chamber can issue a transfer order of the two requested witnesses only after prior verification that (i) the presence of the detained witnesses is not required for any criminal proceedings in progress in the territory of Rwanda during the period they are required by the Tribunal, and that (ii) their transfer does not extend the period of their detention in Rwanda. To assist the Chamber in its verification, it is therefore appropriate that the Prosecution files any document that could establish that the requirements set out by Rule 90bis(B) are met in the present case.
- 5. The Chamber observes that the Prosecution intends to file a letter from the Rwandan authorities to support its Motion but without mentioning when it will be filed. The Motion should however be adjudicated by the Chamber as soon as possible since the transfer of the two detained witnesses is requested for the beginning of trial in June 2005. The Prosecution should therefore ensure the filing of the said letter or provide additional information or document in support of its Motion within a very short time.


¹ *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on *Ex Parte* Motion (TC), 10 November 2004, par. 2 ; *Prosecutor v. Edouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-R66, Decision on Motion to Unseal *Ex Parte* Submissions and to Strike Paragraphs 32.4 And 49 from the Amended Indictment (TC), 3 May, par. 11.

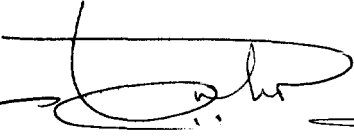
ACCORDINGLY, the Chamber

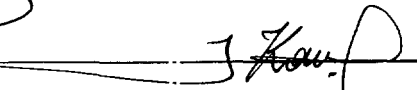
DIRECTS the Prosecution, no later than 16 May 2005,

- to show cause why its Motion should be heard *ex parte*; and
- to provide any document that would support its Motion for temporary transfer of two detained witnesses.

Arusha, 6 May 2005, done in English.


Dennis C. M. Byron


Emile Francis Short


Gberdao Gustave Kam

Presiding Judge



Judge