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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
pursuant to Rule 54 of the Rules of Procedure and Evidence

Registrar: Adama Dieng

Date: 26 July 2005

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THE PROSECUTOR

v.

Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-R90bis(B)

DECISION ON TRANSFER OF DETAINED WITNESSES

Rules 90bis(B) of the Rules of Procedure and Evidence

Office of the Prosecutor:

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[Signature]

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

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

BEING SEIZED of the "Prosecutor's Motion for an Order for the Temporary Transfer of Witnesses pursuant to Rule 90bis" ("Motion"), filed *ex parte* on 25 April 2005;

NOTING the "Submission in Support of Prosecutor's Motion for an Order for the temporary transfer of Witnesses Pursuant to Rule 90bis", filed *ex parte* on 18 July 2005;

HEREBY DECIDES the Motion

INTRODUCTION

1. On 25 April 2005, the Prosecutor filed *ex parte* a Motion seeking an Order for the temporary transfer of five detained witnesses from the Republic of Rwanda to the United Nations Detention Facilities in Arusha. The five Witnesses are required to give oral evidence in the instant case and their presence will be needed in Arusha at various dates during the first trial session. They are expected to remain in Arusha for the periods specified in Annexure A or until such time that the Trial Chamber considers that their presence is no longer required. The Prosecutor contends that the requirements set out by Rule 90bis of the Rules for the said transfer are met. The Prosecutor has provided additional information regarding the availability of the five witnesses by filing *ex parte* a letter from the Rwandan Minister of Justice confirming these representations.¹

DELIBERATIONS*On the ex parte Filing*

2. The Chamber recalls the Decision of 23 May 2005 in the *Rwamakuba* Case where the issue of *ex parte* filing was discussed, and the Chamber adopts the reasoning in that Decision.² The submission filed by the Prosecutor on 18 July 2005 contains information about the Witnesses that could jeopardize the protective measures granted to them if disclosed. Accordingly, the Chamber accepts the *ex parte* filing of the Prosecutor's submission dated 18 July 2005.

3. The Chamber notes that the Prosecutor has not provided any reasons in support of its *ex parte* filing of the Motion of 25 April 2005. Further, the Chamber considers that an *inter partes* filing of this Motion would not cause any unfair prejudice to the requested witnesses or the Prosecutor. This Motion should therefore be disclosed to the Defence. However, the Chamber does not consider it necessary to await any defence response before disposing of the Motion. The Chamber will therefore examine the Motion on its merits.

On the Request to Order Transfer of Detained Witnesses

4. Pursuant to Rule 90bis(B) of the Rules, the Chamber shall issue a transfer order only after verifying that the following two conditions are met:

¹ *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-PT, Submission in Support of Prosecutor's Motion for an Order for the Temporary Transfer of Witnesses Pursuant to Rule 90bis, filed *ex parte*, 18 July 2005.

² *The Prosecutor v. André Rwamakuba*, Case No. ICTR-98-44C-R90bis, Decision on Prosecutor's Motion for and Order for Temporary Transfer of Witnesses Pursuant to Rule 90bis

“(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.”

5. The letter from the Rwandan Minister of Justice, dated 18 July 2005, filed by the Prosecutor, indicates that Witnesses ALG, AWD, AWE, HH and UB are available to testify before the Tribunal. Considering that the Government of Rwanda is well aware of the requirements of Rule 90bis(B) since they have been seized on numerous occasions with requests on its basis, the Chamber considers that the availability of the detained witnesses means that they are not required for any criminal proceedings in progress in Rwanda during their stay in Arusha and thus will not extend their detention in Rwanda. Accordingly, the Chamber is satisfied that the requirements set out by Rule 90bis(B) of the Rules are met for Witnesses ALG, AWD, AWE, HH and UB in the present case.

FOR THE ABOVE REASONS, THE CHAMBER

I. **DIRECTS** the Registrar to disclose to the Defence the “Prosecutor’s Motion for an Order for the Temporary Transfer of Witnesses pursuant to Rule 90bis”, filed *ex parte* on 25 April 2005.

II. **ORDERS** pursuant to Rule 90bis(B) of the Rules that detained witnesses ALG, AWD, AWE, HH and UB be transferred to the United Nations Detention Facilities in Arusha at the appropriate times to testify during the first trial session of *the Prosecutor v. Karemera et al.* set to commence on 5 September 2005;

III. **REQUESTS** the Government of Rwanda to comply with this Order and to arrange for the transfer of detained witnesses ALG, AWD, AWE, HH and UB in cooperation with the Registrar and the relevant Tanzanian Authorities;

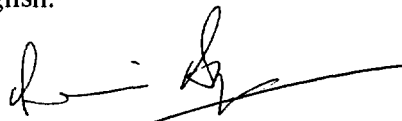
IV. **DIRECTS** the Registrar to:

(i) Transmit this Decision to the Governments of Rwanda and the United Republic of Tanzania;

(ii) Ensure the proper conduct of the transfer in accordance with its usual procedures, including the supervision of the detained witness at the United Nations Detention Facilities in Arusha;

(iii) Remain abreast of any changes which may occur regarding the conditions of detention provided for by the requested State and which may affect the length of the temporary detention and, as soon as possible, inform the Trial Chamber of any such change.

Arusha, 26 July 2005, done in English.


Dennis C. M. Byron
Presiding Judge

[Seal of the Tribunal]

