

ICTR-00-56-T
(18-08-2005)
(20511 - 20509)

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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before: Judge Seon Ki Park

Registrar: Mr Adama Dieng

Date: 18 August 2005

2005 AUG 18 A 11:25
S-11-V-007

The PROSECUTOR
v.
Augustin BIZIMUNGU
Augustin NDINDILYIMANA
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU

Case No. ICTR-00-56-T

**DECISION ON THE PROSECUTOR'S NON-CONTENTIOUS MOTION FOR THE
TRANSFER OF WITNESSES IN DETENTION OR UNDER COURT SUPERVISION
PURSUANT TO RULE 90 *BIS* OF THE RULES OF PROCEDURE AND EVIDENCE**

Office of the Prosecutor

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For A. Ndindiliyimana
Mr Christopher Black
For F-X. Nzuwonemeye
Mr Charles Taku
For I. Sagahutu
Mr Fabien Segatwa

Panda

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

SITTING as Trial Chamber II, composed of Judge Seon Ki Park, designated pursuant to Rule 73 (A) of the Rules of Procedure and Evidence (the “Chamber”);

BEING SEIZED OF the « *Requête non contentieuse du Procureur aux fins de transfert de témoins détenus ou placés sous contrôle judiciaire: article 90 bis du Règlement de procédure et de preuve* »¹ filed on 2 August 2005 (the “Motion”);

NOTING that the Defence has not filed a response to the Motion;

CONSIDERING the necessity of preserving the published trial schedule;

HEREBY DECIDES the Motion.

1. The Prosecutor requests Trial Chamber II (or the designated judge) to issue an order authorising the transfer to the Tribunal of Witnesses ANH, DR, HAF and AOF, all of whom are currently either in detention or under court supervision in Rwanda.
2. The Prosecutor submits that he intends to call all four witnesses to testify in this matter during the fourth session, which is scheduled to commence on Monday, 29 August 2005 and to conclude by Friday, 28 October 2005.
3. Attached to the Motion are the Prosecutor’s letter to the Rwandan authorities, dated 28 June 2005, requesting the transfer of these detained witnesses and the reply of the Rwandan Minister of Justice, dated 14 July 2005, indicating that the said witnesses will be available to testify before the Tribunal.
4. The Prosecutor further states that the transfer of these witnesses to Arusha will not prolong the period of their detention as foreseen by the Rwandan judicial authorities and requests the Chamber to issue an order stating that the witnesses shall be remanded to the custody of the Rwandan authorities no later than 30 October 2005, unless the Trial Chamber decides otherwise.
5. The Chamber recalls Rule 90 *bis* (B) of the Rules, which requires that an order for the transfer of witnesses in custody only be issued 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;

¹ “The Prosecutor’s Non-Contentious Motion for the Transfer of Witnesses in Detention or Under Court Supervision Pursuant to Rule 90 *bis* of the Rules of Procedure and Evidence.”

Park

- (ii) Transfer of the witness does not extend the period of his detention as foreseen by the requested State;

6. The Chamber takes due note of the reply letter dated 14 July 2005 from the Minister of Justice of the Republic of Rwanda, appended to the Motion and is satisfied that the Rule 90 *bis* (B) conditions have been met in respect of Witnesses ANH, DR, HAF and AOF.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Motion and:

ORDERS, pursuant to Rule 90 *bis* of the Rules, that Witnesses ANH, DR, HAF and AOF be transferred, at the earliest opportunity, to the United Nations Detention Facility in Arusha, for a period not exceeding three months from the date of their transfer;

DIRECTS the Registrar:

- (a) To transmit the instant Decision to the Governments of Rwanda and of Tanzania;
- (b) To ensure the proper conduct of the transfer, including the supervision of the witnesses at the United Nations Detention Facility in Arusha;
- (c) To ensure that the said witnesses are remanded to the custody of the Rwandan authorities no later than 30 October 2005, unless the Chamber decides otherwise; and
- (d) To remain abreast of any changes which might occur regarding the conditions of detention of the witnesses in Rwanda which may possibly affect the length of their detention, and to inform the Chamber as promptly as possible; and

REQUESTS the Government of the Republic of Rwanda to comply with this Order, to co-operate with the Prosecutor and the Registrar and to take the necessary steps to effect the said transfer, in collaboration with the Republic of Tanzania, the Registrar and the ICTR Witness and Victims Support Section.

Arusha, 18 August 2005

[Signed]
Judge Seon Ki Park

