



UNITED NATIONS
NATIONS UNIES

ICTR-2001-73-P1
22-9-2005
(3502 - 3500)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

3502
Duffy

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Karin Hökberg
Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 22 September 2005

THE PROSECUTOR

v.

Protais ZIGIRANYIRAZO

Case No. ICTR-2001-73-R90bis

C. A. Duffy
22 9 2005

DECISION ON THE TRANSFER OF DETAINED WITNESSES

Rule 90bis of the Rules of Procedure and Evidence

Office of the Prosecutor:

Wallace Kapaya
Gina Butler
Iskandar Ismail
Jane Mukangira

Defence Counsel:

John Philpot
Peter Zaduk

Duffy

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

SITTING as Trial Chamber III, composed of Judges Dennis C. M. Byron, Presiding, Karin Hökberg, and Gberdao Gustave Kam, (“Chamber”);

SEIZED of the “Prosecutor’s Urgent Motion for the Transfer of Detained Witnesses: AVY and ATN (under Rule 90 *bis* of the Rules of Procedure and Evidence)” (“Motion”), filed on 14 September 2005 as a Confidential Submission;

CONSIDERING the Statute of the Tribunal (“Statute”) and the Rules of Procedure and Evidence (“Rules”), especially Rule 90*bis* of the Rules;

HEREBY DECIDES the Motion as follows, solely on the basis of the written brief and documents attached thereto.

DISCUSSIONS

1. The Prosecutor requests the Chamber to order, pursuant to Rule 90*bis* of the Rules, the transfer of his Witnesses AVY and ATN, currently detained in Rwanda, who are scheduled, respectively, to testify in the instant case during the first (3 to 7 October 2005) and the third week (17 to 21 October 2005) of the first session. The Prosecutor attached to the Motion a letter from the Minister of Justice of Rwanda dated 12 September 2005. Responding to the Prosecution request, the Minister confirmed, in the letter, that the witnesses concerned are available for their testimony at the Tribunal.

2. Rule 90*bis*(B) of the Rules stipulates in its first two paragraphs that:

(B) The transfer order shall be issued by a Judge or Trial Chamber only 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;
- (ii) Transfer of the witness does not extend the period of his detention as foreseen by the requested State.

3. The Chamber notes and adopts the reasoning of the Trial Chamber in *Seromba* Case when it decides on a similar motion.¹ Since the conditions for ordering a transfer of a detained witness are not specified in the Rules, the Judge or the Chamber enjoys a large discretion to consider the elements presented in the Motion. In that regard, the Chamber is of the view that a letter from the Minister of Justice of Rwanda, the most appropriate authority to guarantee the pertinent information on the status of the detainees, read with the request submitted by the Prosecutor,² fully meets both requirements as prescribed, namely, that the detainees whom the Prosecutor wishes to call are not required for any criminal proceedings in Rwanda during the said period, and that their stay at the Tribunal will not extend the period of their detention. The Motion falls therefore to be granted.

¹ *Le Procureur c. Athanase Seromba*, Affaire No. TPIR-2001-66-I, Ordonnance de transfert temporaire de témoins détenus (Ch.), 19 août 2004, para. 3.

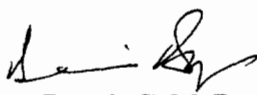
² Letter dated 23 August 2005, filed on 22 September 2005 by the Prosecutor upon the request of the Trial Chamber through the Coordinator of Court Management Section. In his letter to the Rwandan Minister of Justice, the Prosecutor anticipated “that the presence of each listed detainees will not be required in Arusha for a period that should not exceed 1 week.”

4. The Chamber is concerned about the confidential filing of this motion. The Chamber recalls the reasoning of the Trial Chamber in *Karemera et al.* case in relation with *ex parte* filing.³ It is the Chamber's view that the transparency of the proceedings are served by the filing of documents as public documents; the confidentiality should be reserved for exceptional circumstances, for instance where the protection of a witness is at stake. In the present case, the Chamber considers that only the letter from the Minister of Justice could be deemed to be confidential because it contains identifying information related to the witnesses. The Chamber therefore considers that the confidentiality shall attach to the letter only, not the motion itself.

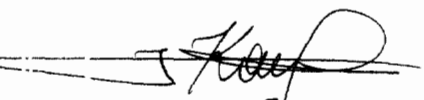
FOR THE ABOVE REASONS, THE CHAMBER

- I. **ORDERS** that the confidentiality of the Motion is lifted by the Registrar while the letter from the Minister of Justice of Rwanda remains confidential and under seal;
- II. **ORDERS**, pursuant to Rule 90bis(B) of the Rules, that Prosecution Witness AVY be transferred to Arusha, before 3 October 2005 and for a period not exceeding one week;
- III. **ORDERS**, pursuant to Rule 90bis(B) of the Rules, that Prosecution Witness ATN be transferred to Arusha, before 17 October 2005 and for a period not exceeding one week;
- IV. **ORDERS** the Registrar to ensure that their conditions of detention in Arusha are at least the same as their conditions of detention in Rwanda;
- V. **Consequently, REMINDS** the Registrar of his obligations under Rule 90bis of the Rules;
- VI. **Further, REQUESTS** the Government of the Republic of Rwanda, in accordance with this Order, to cooperate with the Prosecutor and the Registrar and, in conjunction with the Government of the United-Republic of Tanzania, the Registrar and the Witnesses and Victims Support Section of the Tribunal, to take the necessary measures to implement the present decision.

Arusha, 22 September 2005, done in English.


Dennis C. M. Byron
Presiding Judge


Karin Holmberg
Judge



Gilbertao Gustave Kamukama
Judge

³ *The Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse, 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 2005, para. 11.