



UNITED NATIONS  
NATIONS UNIES

ICTR-00-56-7  
14-12-2005  
(21981 — 21979)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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OR: ENG

**TRIAL CHAMBER II**

**Before:** Judge Asoka De Silva  
(Designated pursuant to Rule 73 (A) of the Rules)

**Registrar:** Mr Adama Dieng

**Date:** 14 December 2005

**The PROSECUTOR**

v.

**Augustin NDINDILYIMANA**  
**Augustin BIZIMUNGU**  
**François-Xavier NZUWONEMEYE**  
**Innocent SAGAHUTU**

*Case No. ICTR-00-56-T*

2005 DEC 14 11:41:12

**DECISION ON THE PROSECUTOR'S EX-PARTE MOTION FOR THE TRANSFER  
OF WITNESSES DETAINED OR PLACED UNDER COURT SUPERVISION  
PURSUANT TO RULES 54 AND 90 BIS OF THE RULES OF PROCEDURE AND  
EVIDENCE**

**Office of the Prosecutor**

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For A. Bizimungu  
Mr Gilles St-Laurent & Mr. Ronnie MacDonald  
For F-X. Nzuwonemeye  
Mr Charles Taku & Mr Hamuli Rety  
For I. Sagahutu  
Mr Fabien Segatwa & Mr Seydou Doumbia

*[Signature]*

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

**SITTING** as Trial Chamber II, composed of Judge Asoka de Silva, designated pursuant to Rule 73 (A) of the Rules of Procedure and Evidence (the "Chamber");

**BEING SEIZED OF** the "Prosecutor's *Ex-Parte* Motion for the Transfer of Witnesses Detained or Placed Under Court Supervision Pursuant to Rules 54 and 90 *bis* of the Rules of Procedure and Evidence" filed on 6 December 2005 (the "Motion");

**CONSIDERING** the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules"), in particular Rules 54 and 90 *bis* of the Rules;

**NOW DECIDES** the Motion on the basis of the written brief filed by the Prosecution pursuant to Rule 73 (A) of the Rules.

***The Prosecution's Submissions***

1. The Prosecution requests the Chamber to "*urgently*" order the temporary transfer to the Tribunal's Detention Facility in Arusha of six witnesses, all of whom are currently either in detention or under court supervision in Rwanda. The witnesses bear the following pseudonyms: DO, ANF, AOF, GFA, XXQ, and GFQ.
2. The Prosecution submits that the proceedings in this matter "are scheduled to resume on 16 January 2005" (*sic*) and that during the forthcoming session it intends to call all six witnesses to testify. It asserts that in view of the published trial schedule, the witnesses are required to be present in Arusha "no later than 6 January 2005" (*sic*) and to remain at the Detention Facility "for a period not exceeding three months." The Prosecution further submits that the actual length of the witnesses' stay in Arusha "is dependent on the pace of the proceedings and the effective date of their transfer to Arusha."
3. Attached to the Motion are a letter from the Prosecutor to the Rwandan authorities, dated 10 November 2005, requesting the transfer of these witnesses and the reply of the Rwandan Minister of Justice, dated 1 December 2005, confirming that the said witnesses are available to testify before the Tribunal.

**HAVING DELIBERATED**

4. 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:



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- (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 Chamber notes that the reply letter dated 1 December 2005 from the Minister of Justice of the Republic of Rwanda, appended to the Motion, states that the above witnesses will be available to testify before the Tribunal in this matter. However, the letter does not state whether the presence of the proposed witnesses is required for ongoing criminal proceedings in Rwanda during the period the witnesses are required by the Tribunal, nor does it indicate whether or not the transfer of the said witnesses will extend the period of their detention.

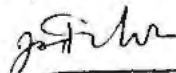
6. The Chamber therefore concludes that the mandatory provisions of Rule 90 *bis* (B) have not been satisfied.

7. Finally, with respect to the "urgent" aspect of the Motion, the Chamber reminds the Prosecution of the need to conduct its work in a diligent and timely manner so as to avoid unnecessary delay in the proceedings.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**DENIES** the Motion as currently formulated without prejudice to the right of the prosecution to file a fresh Motion with the appropriate supporting material.

Arusha, 14 December 2005



Judge Asoka De Silva

