



ICTR-98-41-T  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
27-02-2006  
(26512-26510)

26512  
Ivan

TRIAL CHAMBER I

**Before:** Judge Erik Møse  
Judge Jai Ram Reddy  
Judge Sergei Alekseevich Egorov

**Registrar:** Adama Dieng

**Date:** 27 February 2006

THE PROSECUTOR

v.

Théoneste BAGOSORA  
Gratien KABILIGI  
Aloys NTABAKUZE  
Anatole NSENGIYUMVA

*Case No. : ICTR-98-41-T*

2006 FEB 27 AM 11:01  
ICTR

ORDER FOR TRANSFER OF DEFENCE WITNESS JEAN KAMBANDA

**The Prosecution**

Barbara Mulvaney  
Drew White  
Christine Graham  
Rashid Rashid

**The Defence**

Raphaël Constant  
Allison Turner  
Paul Skolnik  
Frédéric Hivon  
Peter Erlinder  
André Tremblay  
Kennedy Ogetto  
Gershom Otachi Bw'Omanwa

6h

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

26511

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

BEING SEIZED OF the Bagosora "Requête en Extrême Urgence", etc., filed on 15 February 2006;

HEREBY DECIDES the motion.

1. The Bagosora Defence requests an order for the temporary transfer of one its witnesses, Jean Kambanda, to the Detention Unit of the Tribunal in Arusha for the purpose of testifying before the Chamber. Mr. Kambanda is serving a life sentence of this Tribunal in the Republic of Mali.<sup>1</sup> The Bagosora Defence wishes to call Mr. Kambanda some time after 13 March 2006 and before the end of the present trial session on 7 April 2006. In a letter to Defence Counsel, Mr. Kambanda has indicated his willingness to testify on behalf of the Accused.

2. Rule 90 *bis* (B) sets two conditions for such an order: first, that "the detained witness is not required for any criminal proceedings in the territory of the requested State during the period the witness is required by the Tribunal"; and second, that the "[t]ransfer ... does not extend the period of his detention as foreseen by the requested State". Furthermore, Article 4 (3) of the agreement between the United Nations and the Republic of Mali specifically provides for the temporary transfer of a detained person for the purpose of giving testimony, provided that the detainee is not required for criminal proceedings in Mali.<sup>2</sup>

3. The Chamber has been advised by the Registry that Mr. Kambanda is not required for criminal proceedings in Mali during the proposed period of transfer. The first condition, therefore, is satisfied. As Mr. Kambanda is serving a life sentence, there is no scope for the application of the second condition. On the basis of Mr. Kambanda's expression of willingness to testify on behalf of the Accused, the order is justified.

**FOR THE ABOVE REASONS, THE CHAMBER**

**ORDERS**, conditional upon the agreement of the Government of Mali, that Jean Kambanda shall be temporarily transferred to the Detention Unit in Arusha on or about 10 March 2006, and returned no later than 20 April 2006, pursuant to Rule 90 *bis* of the Rules;

**REQUESTS** the Government of Mali to facilitate the transfer in cooperation with the Registrar and the Tanzanian Government;

**INSTRUCTS** the Registrar to:

- A) transmit this decision to the Governments of Mali and Tanzania;
- B) ensure the proper conduct of the transfer, including the supervision of the witnesses in the Tribunal's detention facilities;
- C) remain abreast of any changes which might occur regarding the conditions of detention provided for by the requested State and which may possibly affect the

<sup>1</sup> *Kambanda*, Judgement (TC), 4 September 1998, p. 28; *Kambanda*, Judgement (AC), 19 October 2000, p. 39.

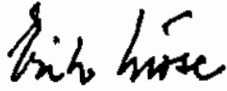
<sup>2</sup> Agreement Between the Government of the Republic of Mali and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for Rwanda, 12 February 1999, registered 4 October 2000 (Reg. No. 36963), <<http://www.ictt.org/ENGLISH/agreements/mali.pdf>>.

6h

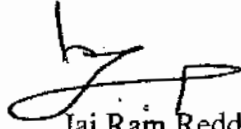
26570

timing of the temporary detention, and as soon as possible, inform the Trial Chamber of any such change.

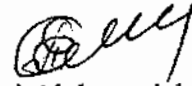
Arusha, 27 February 2006



Erik Møse  
Presiding Judge



Jai Ram Reddy  
Judge



Sergei Alekseevich Egorov  
Judge

[Seal of the Tribunal]

