

ICTR-01-72-PT  
14-09-2006  
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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 Judge:** Inés Mónica Weinberg de Roca, Presiding  
**Registrar:** Adama Dieng  
**Date:** 14 September 2006

**THE PROSECUTOR**

v.

**Simon BIKINDI**

*Case No. ICTR-2001-72-PT*

JUDICIAL RECORDS/ARCHIVES  
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**DECISION ON TRANSFER OF DETAINED WITNESSES AND PROTECTIVE  
MEASURES FOR PROSECUTION WITNESSES**

*Article 21 of the Statute and  
Rules 33 (B), 54, 69, 73, 75 and 90 bis of the Rules of Procedure and Evidence*

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INTRODUCTION

1. Pursuant to Rules 90 bis, 54, 73(A) and 73 bis (B) of the Rules of Procedure and Evidence (the "Rules"), the Prosecution requests, in its Motion for Transfer and in its Corrigendum, (i) an order temporarily transferring Witnesses BKW, ALQ, BHI, AEY and AHP, who are currently detained in Rwanda, to the Detention Facility of the Tribunal in Arusha, (ii) an order that the Registrar of the Tribunal transmit the order of transfer to the authorities of Rwanda, (iii) an order that these persons be returned at a time that the Chamber so decides to the Rwandan authorities and (iv) any other order that the Chamber deems fit and proper.<sup>1</sup>

2. The Prosecution estimates (a) that the presence of Witness BKW will be required by the Prosecution the week of 9 October 2006; and (b) that the presence of Witnesses ALQ, BHI, AEY and AHP will be required by the Prosecution the week of 16 October 2006.<sup>2</sup>

3. The Prosecution submits that it has complied with the provisions of Rule 90 bis (B)(i) to ensure that the presence of these witnesses is not required for any criminal proceedings in progress in Rwanda during the period the witnesses are required to be present at the Tribunal.<sup>3</sup>

4. The Prosecution also moves the Chamber, in its Motion for Protective Measures, under Article 21 of the Statute of the Tribunal (the "Statute") and Rules 54, 69, 73, and 75 of the Rules, to issue protective orders in identical terms to those ordered by the Chamber in its Decision of 4 September 2006<sup>4</sup> for Witnesses AHQ, AHO, BGU, and AJP.<sup>5</sup> The Prosecution submits that Witnesses AHQ, AHO and BGU appeared in the Prosecution's Submission of 17 January 2006,<sup>6</sup> but were unavailable in Rwanda at the time the Witnesses and Victims Support Section (the "WVSS") acted pursuant to the Chamber's Decision of 7 June 2006.<sup>7</sup> Further, Witness AJP was recently added to the Prosecution witness list to replace a deceased witness. The Prosecution asks the WVSS to make contact with these witnesses and make a recommendation about their protective status to the Chamber.<sup>8</sup>

DELIBERATIONS

5. 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:

<sup>1</sup> "The Prosecutor's [Confidential] Request for An Order Transferring Detained Witnesses Pursuant to Rule 90 bis of the Rules of Procedure and Evidence", 5 September 2006, para. 1 (the "Motion for Transfer"); "Corrigendum to the Prosecutor's [Confidential] Request for an Order Transferring Detained Witnesses Pursuant to Rule 90 bis of the Rules of Procedure and Evidence", 7 September 2006 (the "Corrigendum").

<sup>2</sup> See the confidential "Revised Schedule of Prosecution Witnesses", 14 September 2006; see also the Motion for Transfer, para. 12 and the Corrigendum.

<sup>3</sup> The Motion for Transfer, para. 5.

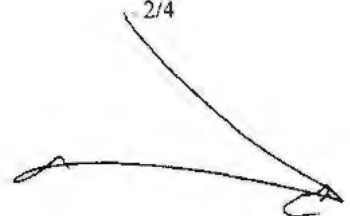
<sup>4</sup> "Decision on Protective Measures for Prosecution Witnesses", 4 September 2006 (the "Decision of 4 September 2006").

<sup>5</sup> "The Prosecutor's [Confidential] Request for a Protective Measures Order for Witness AHQ, AHO, BGU and AJP", 11 September 2006, para. 1 (the "Motion for Protective Measures").

<sup>6</sup> "Prosecutor's [Confidential] Motion for Protective Measures: Revised Request for Measures", 17 January 2006 (the "Submission of 17 January 2006").

<sup>7</sup> "Decision on the Prosecutor's Motion for Protective Measures", 7 June 2006 (the "Decision of 7 June 2006").

<sup>8</sup> The Motion for Protective Measures, para. 3.



- (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.

6. The conditions for ordering the transfer of a detained witness are not specified in the Rules, and therefore the Judge or the Chamber enjoys large discretion in considering the elements presented in the Motion for Transfer.<sup>9</sup> The Chamber is of the view that the letter dated 5 September 2006 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, fully meets both requirements as prescribed in Rule 90 *bis* (B), 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.

7. The Chamber considered the submissions of the Registrar concerning the situation in Rwanda, as well as his recommended protective measures for witnesses in its Decision of 4 September 2006. The Chamber further considers the current Motion for Protective Measures, which requests that identical protective measures be extended to Prosecution Witnesses AHQ, AHO, BGU and AJP. The Chamber also notes that Witnesses BKW, ALQ, BHI, AEY and AHP, who are subjects of the Motion for Transfer, also affirmatively requested protective measures, as stated in the Prosecution's Submission of 17 January 2006.<sup>10</sup> The Chamber reaffirms its conclusion stated in the Decision of 4 September 2006 that the fears expressed by the potential Prosecution witnesses for their own safety or the safety of their family members, in and outside Rwanda, are justified. Furthermore, as the trial is set to begin on 18 September 2006, the Chamber extends the protective measures contained in its Decision of 4 September 2006 to Prosecution Witnesses AHQ, AHO, BGU, AJP, BKW, ALQ, BHI, AEY and AHP.

8. The Chamber is concerned about the confidential filing of this Motion for Transfer. 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.<sup>11</sup> 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.

<sup>9</sup> *The Prosecutor v. Protais Zigiranyirazo*, Decision on the Prosecutor's Motion for the Transfer of Detained Witnesses AVY and ATN (TC), 17 January 2006; *The Prosecutor v. Athanase Seromba*, Order for the Temporary Transfer of Detained Witnesses (TC), 19 August 2004, para. 3.

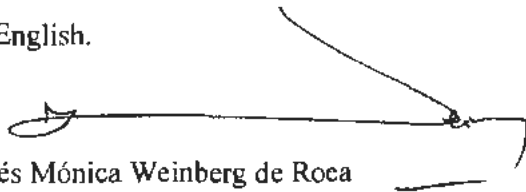
<sup>10</sup> The Submission of 17 January 2006.

<sup>11</sup> *The Prosecutor v. Protais Zigiranyirazo*, Decision on the Transfer of Detained Witnesses (TC), 22 September 2005, para 4; *The Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse, Joseph Nzirorera*, 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. 13.

**FOR THE ABOVE REASONS, THE CHAMBER**

- I. ORDERS** that the confidentiality of the Motion for Transfer be lifted by the Registrar while the letter from the Minister of Justice of Rwanda remain confidential and under seal;
- II. ORDERS**, pursuant to Rule 90 *bis* (B) of the Rules, that Prosecution Witness BKW be transferred to Arusha, before 9 October 2006, until as soon as practically possible after the individual's testimony has ended;
- III. ORDERS**, pursuant to Rule 90 *bis* (B) of the Rules, that the presence of Witnesses ALQ, BHI, AEY and AHP will be required by the Prosecution the week of 16 October 2006, until as soon as practically possible after each individual's testimony has ended;
- IV. REMINDS** the Registrar of his obligations under Rule 90 *bis* of the Rules;
- V. 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 WVSS, to take the necessary measures to implement the present decision; and
- VI. ORDERS** that the protective measures, as previously ordered in its Decision of 4 September 2006, be extended to Witnesses AHQ, AHO, BGU, AJP, BKW, ALQ, BHI, AEY and AHP.

Arusha, 14 September 2006, in English.

  
Inés Mónica Weinberg de Roca  
Presiding Judge

[Seal of the Tribunal]

