



UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

ICTR-01-63-1  
07-12-2006  
(1749-1747)

1749  
VB

Or: ENG

TRIAL CHAMBER III

**Before Judges:** Dennis C. M. Byron, Presiding  
Gberdao Gustave Kam  
Robert Fremr

**Registrar:** Adama Dieng

**Date:** 7 December 2006

2006 DEC - 11 P 5: 22  
JUDICIAL RECORDS/ARCHIVES  
UNICTR  
07/12/06

THE PROSECUTOR

v.

Siméon NCHAMIHIGO

Case No. ICTR-2001-63-90bis

ORDER FOR THE TRANSFER OF DETAINED WITNESSES

*Rule 90bis of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**

Alphonse Van  
Lloyd Strickland  
Madeleine Schwarz  
Adama Niane

**Defence Counsel:**

Denis Turcotte  
Benoît Henry

1. The first trial session in this case took place from 25 September to 20 October 2006. The next trial session is scheduled to begin on 9 January 2006 for the completion of the Prosecution's case. On 1 December 2006, the Prosecution submitted a Confidential Urgent Motion for an Order for the Temporary Transfer of Witnesses Pursuant to Rules 73(A) and 90bis of the Rules of Procedure and Evidence. It asked that the witnesses listed in Annex A, who are currently detained and awaiting trial in Rwanda, be transferred to the United Nations Detention Facilities ("UNDF") in Arusha so that they can testify as Prosecution witnesses in the next trial session.

2. In order for a detained person to be transferred to UNDF so that he/she can testify before the Tribunal, the Chamber must be satisfied that the requirements pursuant to Rule 90bis have been met. The applicant must show that:

- (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. In support of his Motion, the Prosecution filed two letters from the Rwandan Minister of Justice dated 22 November and 28 November 2006 confirming that the ten requested witnesses, currently detained in Rwanda will be available from 2 January to 28 February 2007 to testify in this case. The Chamber is therefore satisfied that the standard pursuant to Rule 90bis has been met insofar as these witnesses are not required for criminal proceedings in Rwanda during that time, and that the witnesses' presence at the Tribunal does not extend the period of their detention in Rwanda.

4. The Chamber notes that the Prosecution submitted a Motion for an Order for the Temporary Transfer of Detained Witnesses on 21 September 2006, which included one of the detainees who is subject to the present Motion. The letter from the Rwandan Minister of Justice in support of that Motion dated 20 September 2006, but only distributed to the Chamber and the Parties on 26 October 2006, confirmed the availability of the two named detainees only for the time-period referred to in the Prosecution's letter of request, being from 25 September to 20 October 2006. Consequently, the Chamber does not find that the requirements pursuant to Rule 90bis have been met for that Motion.

**FOR THOSE REASONS, THE CHAMBER**

**I. GRANTS** the Prosecution Motion of 1 December 2006;

**II. REQUESTS** the Registrar, pursuant to Rule 90bis of the Rules, to temporarily transfer the ten detained witnesses indicated in the letters from the Rwandan Minister of Justice dated 22 November and 28 November 2006 to the United Nations Detention Facilities (UNDF) in Arusha, at an appropriate time prior to their scheduled dates to testify. Their return travel to Rwanda should be facilitated as soon as practically possible for each witness after the individual's testimony has ended.

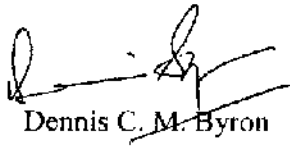
**III. REQUESTS** the Governments of Rwanda and Tanzania to cooperate with the Registrar in the implementation of this Order.

**IV. REQUESTS** the Registrar to cooperate with the authorities of the Governments Rwanda and Tanzania; Ensure proper conduct during transfer and during detention of the witness at

the UNDF; Inform the Chamber of any changes in the conditions of detention determined by the Rwandan authorities and which may affect the length of stay in Arusha.

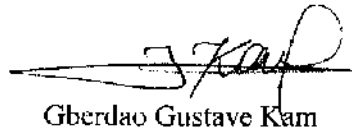
V. **DENIES** the Prosecution's Motion on the same issue of 21 September 2006.

Arusha, 7 December 2006, done in English.



Dennis C. M. Byron

Presiding Judge



Gberdao Gustave Kam

Judge



Robert Fremr

Judge

[Seal of the Tribunal]

