



UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR: ENG

Before: Judge Inés Mónica Weinberg de Roca, Presiding
Judge Khalida Rachid Khan
Judge Lee Gacuiga Muthoga

Registrar: Adama Dieng

Date: 1 March 2007

THE PROSECUTOR

v.

Protais ZIGIRANYIRAZO

Case No. ICTR-2001-73-T

ORDER FOR TRANSFER OF DETAINED WITNESSES

Rule 90 bis of the Rules of Procedure and Evidence

Office of the Prosecutor:

Wallace Kapaya
Charity Kagwi-Ndungu
Silver Ntukamazina
Gina Butler
Iskandar Ismail
Jane Mukangira

Defence Counsel:

John Philpot
Peter Zaduk

INTRODUCTION

1. The Defence requests, in its first application, the First Motion for Transfer, an order for the temporary transfer of four of its witnesses, BBBB, RDP109, RDP69, and RDP13, to the Detention Unit of the Tribunal in Arusha (“UNDF”) for the purpose of testifying before the Chamber.¹ In a Second Motion to Transfer, the Defence moves the Chamber to order the temporary transfer of Witness RDP46.² The five witnesses are detained in Rwanda. The Defence has indicated that Witnesses BBBB and RDP69 are not willing to testify on behalf of the Accused and has filed separate requests for subpoenas for these witnesses. The Defence wishes to call the five witnesses during the trial session that commenced on 26 February 2007 and is scheduled to conclude on 13 April 2007.

DISCUSSION

2. Pursuant to Rule 90 *bis* (B) of the Rules of Procedure and Evidence (the “Rules”), an order to transfer detained witnesses to the UNDF for the purpose of hearing their testimonies may be allowed if (i) “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”; and (ii) the “transfer ... does not extend the period of his detention as foreseen by the requested State”.

3. Annexed to the first Defence Motion is a letter dated 8 February 2007 from the Minister of Justice of Rwanda, the most appropriate authority to guarantee the pertinent information on the status of such detainees. A similar letter, dated 23 February 2007, is annexed to the second Defence Motion. The letters indicate that the five witnesses are not needed for any criminal proceedings during the relevant dates and that transfer would not extend the period of the witnesses’ detention. Both conditions for an order pursuant to Rule 90 *bis* are, therefore, satisfied.

4. Witnesses BBBB and RDP69 have indicated that they are unwilling to testify on behalf of the Defence, and, by decision dated 1 March 2007, the Chamber has declined to subpoena their testimonies because of security concerns resulting from the prior public disclosure of their identities.³ Therefore, an order pursuant to Rule 90 *bis* is not justified for witnesses BBBB and RDP69.

5. The Chamber wishes to express its concern about the confidential filing of motions that deserve to be filed publicly. The transparency of the proceedings is served by the public filing of documents. The present Motions are filed “confidentially”.

¹ “Defence Motion for Transfer of Detained Witnesses BBBB, RDP109, RDP69, RDP13”, 9 February 2007 (the “First Motion for Transfer”).

² “Urgent Defence Motion for Transfer of Detained Witness RDP46”, 28 February 2007 (the “Second Motion for Transfer”).

³ Extremely Confidential Decision on the Defence Motions for Subpoenas of Three Protected Witnesses (TC), 1 March 2007.

Confidential filing should be reserved for exceptional circumstances – for instance, where the protection of a witness is at stake.⁴ In the present case, the Chamber deems that the Annexes to the Motions are confidential because they contain identifying information related to the witnesses, but that the Motions themselves contain no such confidential information.

FOR THE ABOVE REASONS, THE CHAMBER

- I. GRANTS** the First Motion for Transfer in part;
- II. GRANTS** the Second Motion for Transfer;
- III. ORDERS**, pursuant to Rule 90 *bis*(B) of the Rules, that Defence Witnesses RDP109, RDP13 and RDP 46 be transferred to Arusha, no later than 16 March 2007 , 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;
- VI. INSTRUCTS** the Registrar to:
 - A) transmit this decision to the Government of the Republic of Rwanda and the Government of the United Republic of 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 which may affect the timing of the temporary detention, and as soon as possible, inform the Chamber of any such change.

⁴ Decision on the Transfer of Detained Witnesses (TC), 22 September 2005, para 4; *Prosecutor v. Karemera et al.*, 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.

VII. ORDERS that the confidentiality of the Motions be lifted by the Registrar, while all Annexes remain confidential and under seal.

VII. DECLINES to order the transfer of Witnesses BBBB and RDP69.

Arusha, 1 March 2007

Inés Mónica Weinberg de Roca
Presiding Judge

Khalida Rachid Khan
Judge

Lee Gacuiga Muthoga
Judge

[Seal of the Tribunal]