



UNITED NATIONS  
NATIONS UNIES

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

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Dennis C. M. Byron, Presiding  
Gberdao Gustave Kam  
*sitting pursuant to Rule 15 bis of the Rules of Procedure and Evidence*

**Registrar:** Adama Dieng

**Date:** 26 April 2007

**THE PROSECUTOR**

v.

**Édouard KAREMERA  
Mathieu NGIRUMPATSE  
Joseph NZIRORERA  
Case No. ICTR-98-44-T**

**ORDER FOR THE TRANSFER OF PROSECUTION WITNESSES FROM RWANDA**

*Rules 15bis(F) and 90bis of the Rules of Procedure and Evidence*

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## INTRODUCTION

1. The trial in this case started on 19 September 2005 before Trial Chamber III composed of Judges Dennis C. M. Byron, presiding, Emile Francis Short and Gberdao Gustave Kam. The fourth trial session concluded on 13 December 2006.
2. On 6 December 2006, in view of the following trial session, the Prosecution filed a request seeking an order for the transfer of some Prosecution witnesses.<sup>1</sup> The Chamber, however, could not rule on that request in light of Judge Short's decision to withdraw from the case.<sup>2</sup> The remaining Judges decided on the continuation of the proceedings with a substitute judge,<sup>3</sup> however the proceedings had to be suspended until the Appeals Chamber ruled on the appeals filed against that decision by Mathieu Ngirumpatse and Joseph Nzirorera.<sup>4</sup> On 20 April 2007, the Appeals Chamber dismissed their applications and affirmed the Trial Chamber's decision to continue the proceedings with a substitute judge.<sup>5</sup>
3. On 23 April 2007, the Prosecution decided to withdraw his previous transfer request and make a renewed request for this Trial Chamber to order the temporary transfer of Witnesses ANU, AWD, AWE and FH.<sup>6</sup>

## DISCUSSION

4. According to Rule 15 *bis* (D) of the Rules of Procedure and Evidence, the substitute judge can join the bench only after he has certified that he or she has familiarised himself or herself with the record of the proceedings. The Chamber is also currently consulting with the parties as to the most suitable time-frame for the next trial session. A time-frame between 28 May and end of July 2007 is currently considered.

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<sup>1</sup> Requête du Procureur pour l'émission d'une ordonnance de transfert de certains témoins détenus, filed on 5 December 2006 and see also Prosecutor's Supplemental Filing, filed on 18 December 2006.

<sup>2</sup> See *Prosecutor v. Edouard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera*, Case No. ICTR-98-44-T, Decision on Continuation of the Proceedings (TC), 6 March 2007.

<sup>3</sup> *Ibidem*.

<sup>4</sup> See Rules of Procedure and Evidence, Rule 15 *bis* (D): "If, in the circumstances mentioned in the last sentence of paragraph (C), the accused withholds his consent, the remaining Judges may nonetheless decide to continue the proceedings before a Trial Chamber with a substitute Judge if, taking all the circumstances into account, they determine unanimously that doing so would serve the interests of justice. This decision is subject to appeal directly to a full bench of the Appeals Chamber by either party. If no appeal is taken or the Appeals Chamber affirms the decision of the Trial Chamber, the President shall assign to the existing bench a Judge, who, however, can join the bench only after he or she has certified that he or she has familiarised himself or herself with the record of the proceedings. Only one substitution under this paragraph may be made."

<sup>5</sup> *Prosecutor v. Edouard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera*, Case No. ICTR-98-44-AR15bis.3, Decision on Appeals Pursuant to Rule 15 *bis* (D) (AC), 20 April 2007.

<sup>6</sup> Prosecutor's Renewed Request for Temporary Transfer of Witnesses ANU, AWD, AWE and FH pursuant to Rule 90bis, filed confidential on 23 April 2007.

5. While the consultations with the parties are still ongoing, there is an urgent need to take some preparatory steps in order to organize the resumption of the trial. In particular, the Chamber is informed that the Witnesses and Victims Support Section (WVSS) generally requires an average of two months to be able to organize the presence of witnesses in Arusha.<sup>7</sup> Since the President of the Tribunal authorized the Trial Chamber, composed of Judges Byron and Kam, to conduct routine matters, such as the delivery of decisions, in the absence of the substitute judge,<sup>8</sup> a decision on the transfer of some Prosecution witnesses may be delivered at this stage.

6. According to Rule 90*bis* of the Rules, a Trial Chamber may issue an order for the temporary transfer of any detained person whose personal appearance has been requested to the Detention Unit of the Tribunal, after prior verification that the following conditions have been met:

- a. 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;
- b. Transfer of the witness does not extend the period of his detention as foreseen by the requested State.<sup>9</sup>

7. In the present motion, the Prosecution submits that the presence of Witnesses ANU, AWD, AWE and FH is not required in any trial or judicial proceedings in Rwanda during the period when they will be expected to testify before this Trial Chamber, from 14 May 2007 through 20 July 2007, and that their transfer to Arusha will not prolong their detention in Rwanda.

8. The Prosecution also indicates that it has addressed a letter to the Rwandan Minister of Justice requesting confirmation of the availability of the said witnesses. It further undertakes to make another supplemental filing with appropriate confirmation and assurances from the Ministry of Justice as soon as it is received.

9. The Chamber notes that in a letter dated 13 December 2006 provided in support of the prior Prosecution application,<sup>10</sup> the Rwandan Prosecutor General informs the Rwandan

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<sup>7</sup> See *Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-T, Observations du Greffier relatives à la Décision de la Chambre en date du 19 mars 2007 ordonnant la comparution des témoins de la Défense à compter du 23 avril 2007, filed on 17 April 2007.

<sup>8</sup> See Rules of Procedure and Evidence, Rule 15 *bis* (F); and Interoffice Memorandum from the President to Judge Byron, filed on 13 March 2007.

<sup>9</sup> Rules of Procedure and Evidence, Rules 90 *bis* (A) and (B).

<sup>10</sup> Prosecutor's Supplemental Filing of 18 December 2006.

Minister of Justice that Witness ANU is “free” and available to come to testify before the Tribunal. In its application, the Prosecution also mentions that ANU was *formerly* detained in a prison in Rwanda. In the Chamber’s view, such information may lead to the conclusion that ANU cannot be considered as a detained witness. Therefore, an order under Rule 90 *bis* to transfer and detain the witness at the Detention Unit would not be warranted.

10. The Chamber considers that before issuing any transfer order for Witness ANU, the Prosecution should supplement its application and specify whether the witness is currently detained and if not, why the witness should be detained at the Detention Unit of the Tribunal.

11. Conversely and according to the same letter of 13 December 2006 from the Rwandan Prosecutor General, the Chamber is satisfied, at this stage, that Witnesses AWD and AWE are detained witnesses. The Chamber also accepts, at this stage and due to the urgency of the matter, the Prosecution’s contention that Witness FH is also a detained witness.

12. In order to minimize any delay in the resumption of the trial of the Accused persons, the Chamber considers that a transfer order of Witnesses AWD, AWE and FH is immediately warranted so that WVSS may start consulting with the relevant Rwandan authorities in order to ensure the presence of Prosecution witnesses for the forthcoming trial session to be scheduled during the period 28 May through 3 August 2007. This, however, will be subject to confirmation by the Rwandan authorities that these witnesses are not required in any trial or judicial proceedings in Rwanda during the aforementioned period, and that their transfer to Arusha will not prolong their detention in Rwanda.

**FOR THESE REASONS, the CHAMBER**

**I. GRANTS** the Prosecution Motion as follows:

**II. REQUESTS**, pursuant to Rule 90*bis* of the Rules, the Registrar to make the necessary arrangements in view of the temporary transfer of detained witnesses known by the pseudonyms AWD, AWE and FH to the UNDF facility in Arusha, at an appropriate time prior to their scheduled dates to testify during the period 28 May through 3 August 2007;

**III.** In doing so, **REQUESTS** the Registrar to ascertain, in coordination with the Prosecutor and the relevant Rwandan authorities, that these witnesses are not required in any trial or judicial proceedings in Rwanda during the aforementioned period, and that their transfer to Arusha will not prolong their detention in Rwanda;

**IV. ORDERS** the Prosecution to provide the Chamber and the Defence, as soon as possible, with any additional supporting material or information as to the availability of Witnesses AWD, AWE and FH in accordance with the requirements set out by Rule 90 *bis* (B), and to file additional submissions as to the current status of Witness ANU and the reasons why the witness should be transferred to the Detention Unit of the Tribunal;

**IV. REQUESTS** the Registrar to ensure that the return travel of detained witnesses known by the pseudonyms AWD, AWE and FH to Rwanda is facilitated as soon as practically possible for each witness after the individual's testimony has ended;

**V. REQUESTS** the Governments of the Republic of Rwanda and the United-Republic of Tanzania to cooperate with the Registrar in the implementation of this Order;

**IV. REQUESTS** the Registrar to cooperate with the authorities of the Governments of Rwanda and the United-Republic of Tanzania; to ensure the proper conduct of the transfer and detention of the witnesses at the UNDF; to inform the Chamber of any changes in the conditions which may affect the length of stay in Arusha;

**V. RESERVES** its ruling as to the Prosecution request for a transfer order of Witness ANU.

Arusha, 26 April 2007, done in English.

Dennis C. M. Byron  
Presiding Judge

Gberdao Gustave Kam  
Judge

[Seal of the Tribunal]