

ICTR-98-42-T
22-06-2007
(12154-12151)

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UNEP/WHO
NATIOS/UNRWA

International Criminal Tribunal for Rwanda
Tribunal penal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Arlette Ramaroson
Judge Solomy Balungi Bossa

Registrar: Mr. Adama Dieng

Date: 22 June 2007

The PROSECUTION

v.

Pauline NYIRAMASUHUKO & Arsène Shalom NTAHOBALI

Joint Case No. ICTR-98-42-T

2007 JUN 22 P 1:27

ORDER FOR THE TRANSFER OF DEFENCE WITNESSES FROM RWANDA

Rule 90bis of the Rules of Procedure and Evidence

Office of the Prosecution

Ms. Silvana Arbia
Ms. Adelaide Whest
Ms. Holo Makwaia
Ms. Althea Alexis Windsor
Ms. Madeleine Schwarz
Ms. Aston Mbow
Ms. Tolulope Olowoye

Defence Counsel for Kanyabashi

Mr. Michel Marchand
Ms. Simone Santerre

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),

SITTING as Trial Chamber II composed of Judges William H. Sekule, Presiding, Arlette Ramaroson and Solomy H. Bossa (the "Chamber");

BEING SEIZED of the confidential "*Requête urgente aux fins de transfert de deux témoins détenus*", filed on 12 June 2007 (the "Motion");

CONSIDERING the

- i. Confidential "Prosecution's Response to the '*Requête urgente aux fins de transfert de deux témoins détenus*'", filed on 14 June 2007 ("Prosecution's Response");
- ii. Confidential "*Réplique de Joseph Kanyabashi à la Réponse du Procureur concernant la Requête urgente aux fins de transfert de deux témoins détenus*", filed on 18 June 2007 ("Kanyabashi's Response");

NOTING the attachments to the Motion and to Kanyabashi's Response:

- i. *Lettre de l'équipe de la défense de Joseph Kanyabashi, en date du 21 avril 2007;*
- ii. *Lettre de Monsieur Karugarama Tharcisse, Ministre de la Justice de la République du Rwanda, no. 0372/11/01/07, du 7 juin 2007.*
- iii. *Lettre de Monsieur Ngoga Martin, Procureur Général de la République du Rwanda, du 7 juin 2007.*
- iv. *Lettre de Monsieur Karugarama Tharcisse, Ministre de la Justice de la République du Rwanda, du 15 mai 2007.*

CONSIDERING the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules") in particular Rule 90*bis* of the Rules;

NOW DECIDES the Motion pursuant to Rule 73 (A) of the Rules on the basis of the written submissions of the Parties.

INTRODUCTION AND SUBMISSIONS

1. On 12 June 2007, the Defence for Kanyabashi requested the Chamber, pursuant to Rule 90 *bis* of the Rules, to order the temporary transfer of Witnesses D-2-5-W and D-2-11-D from the Republic of Rwanda, where they are currently detained, to the Detention Facility of the ICTR in Arusha ("UNDF").
2. On 7 June 2007, the Minister of Justice of Rwanda, indicated the availability of Witnesses D-2-5-W and D-2-11-D to testify before the Tribunal between June and August 2007 (Annex II).
3. The Prosecution does not oppose the Motion but it submits that as the Witnesses may be required for a longer period than the end of August, the order granting their transfers should be extended until the Witnesses' testimony is completed. The Prosecution further requested the Chamber to remind the Defence for Kanyabashi to disclose the judicial records and *gacaca* records for all of its detainee and ex-detainee witnesses.

4. The Defence replied that the transfer order may not exceed the time frame set by the Rwandan Minister of Justice and that it has duly fulfilled its disclosure obligation as set down in Rule 73 *ter* B of the Rules.

DELIBERATION

5. As a preliminary matter, the Chamber observes that if the Prosecution intends to file a motion for disclosure, it should do so using the proper procedural channels but not in a reply to a motion dealing with a separate issue. Therefore, the Chamber will not consider this matter.

6. Pursuant to Rule 90 *bis* (A) of the Rules, “[a]ny detained person whose personal appearance as a witness has been requested by the Tribunal shall be transferred temporarily to the Detention Unit of the Tribunal, conditional on his return within the period decided by the Tribunal”. Rule 90 *bis* (B) requires prior verification of two conditions for such an order:

- (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.

7. The Minister of Justice of Rwanda ascertains that the requirements laid down in Rule 90 *bis* (B) of the Rules are met and that Witnesses D-2-5-W and D-2-11-D are available to testify for the period between June and August 2007.¹ The Chamber is therefore satisfied that the conditions under Rule 90 *bis* (B) are met.

8. However, the Chamber observes that, considering the recent development of the trial proceedings, the timeframe specified may not be sufficient to hear the said witnesses and reminds the Defence to keep this matter under review.

FOR THE ABOVE REASONS, THE CHAMBER

ORDERS, that the detained Witnesses D-2-5-W and D-2-11-D be transferred to the UNDF in Arusha in time for their testimony and be returned no later than 31 August 2007.

OBSERVES that the timeframe specified may not be sufficient to hear the two witnesses and reminds the Defence to keep this matter under review.

INSTRUCTS the Registrar to:

- A) Transmit this decision to the Governments of the Republic of Rwanda and the United Republic of Tanzania;
- D) Cooperate with the authorities of the Governments of the Republic of Rwanda and the United Republic of Tanzania in the implementation of this Order;

¹ *Annexement II: Lettre de Monsieur Karugarama Tharcisse, Ministre de la Justice de la République du Rwanda, no. 0372 11/01/07, du 7 juin 2007; Annexement III: Lettre de Monsieur Ngoga Martin, Procureur Général de la République du Rwanda, du 7 juin 2007.*



- C) Ensure the proper conduct of the transfer, including the supervision of the detention of the witnesses at the UNDF; and
- D) Inform the Chamber of any changes in the conditions which may affect the length of the stay of these witnesses in Arusha.

REQUESTS the Government of the Republic of Rwanda to provide the necessary assistance for the transfer of the detainees in cooperation with the Registrar and the Government of the United Republic of Tanzania.

Arusha, 22 June 2007



Handwritten signature of William H. Sekule in black ink.

William H. Sekule
Presiding Judge

Handwritten signature of Arlette Ramaroson in black ink.

Arlette Ramaroson
Judge

Handwritten signature of Solomy Balungi Dossa in black ink.

Solomy Balungi Dossa
Judge

[Seal of the Tribunal]



TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	<input type="checkbox"/> Trial Chamber I N. M. Diallo	<input checked="" type="checkbox"/> Trial Chamber II R. N. Kouambo	<input type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS M. Diop	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afande
From:	<input checked="" type="checkbox"/> Chamber Verena Haan (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. Pauline Nyiramasuhuko		Case Number: ICTR-98-42-T	
Dates:	Transmitted: 22/06/07		Document's date: 22/06/07	
No. of Pages:	5	Original Language: <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda		
Title of Document:	ORDER FOR THE TRANSFER OF DEFENCE WITNESSES FROM RWANDA			
Classification Level:		TRIM Document Type:		
<input type="checkbox"/> Strictly Confidential / Under Seal		<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence
<input type="checkbox"/> Confidential		<input checked="" type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal
<input checked="" type="checkbox"/> Public		<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book
		<input type="checkbox"/> Judgement	<input type="checkbox"/> Motron	<input type="checkbox"/> Book of Authorities
		<input type="checkbox"/> Submission from non-parties		
		<input type="checkbox"/> Submission from parties		
		<input type="checkbox"/> Accused particulars		

II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

CMS SHALL take necessary action regarding translation.

Filing Party hereby submits only the original, and **will not submit** any translated version.

Reference material is provided in annex to facilitate translation.

Target Language(s):

English French Kinyarwanda

CMS SHALL NOT take any action regarding translation.

Filing Party hereby submits **BOTH** the original and the translated version for filing, as follows:

Original	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

CMS SHALL NOT take any action regarding translation.

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III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	COMMENTS	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: