

ICTR-01-63-T
8-8-2007
(2106-2103)

2106
mm



LES TRIBUNAUX
INTERNATIONAUX

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding

Registrar: Adama Dieng

Date: 8 August 2007

THE PROSECUTOR

v.

SIMÉON NCHAMIHIGO

Case No. ICTR-2001-63-T

Document of the Prosecution
Case No. ICTR-2001-63-T
Page 13

2007 Aug - 8 PD 5:13

ORDER FOR THE TRANSFER OF DEFENCE WITNESS FROM RWANDA

Rules 54 and 90bis of the Rules of Procedure and Evidence

Office of the Prosecutor:

Alphonse Van
Lloyd Strickland
Madeleine Schwarz
Adama Niane
Marlize Keefer

Defence Counsel for Siméon Nchamihigo

Denis Turcotte
Benoit Henry
Yann Evima Vouma

INTRODUCTION

1. The trial in this case started on 25 September 2006. The Prosecution closed its case on 29 January 2007. The Defence case commenced on 23 April 2007 until 3 May 2007. The next trial session is scheduled to resume on 27 August 2007 for a period of approximately four weeks.¹ On 27 July 2007, the Defence wrote a correspondence to the Chamber requesting it to render, *proprio motu*, an order for the transfer of Defence Witness RAN from Rwanda.²

DISCUSSION

2. As a preliminary matter, the Chamber notes that although the Defence seeks a Chamber's Order for the transfer of Witness RAN, it has not filed a motion to that effect but brought the matter to the attention of the Chamber through a simple correspondence. A proper way to seize the Chamber of such a request would have been to file a motion under Rule 90bis of the Rules of Procedure and Evidence ("Rules"). However, in view of the circumstances of the case and given the discretion invested in the Chamber to issue any order necessary for the conduct of the trial³, the Chamber will rule on the Defence's request seeking the Trial Chamber to issue an order for the transfer of Witness RAN.

3. According to Rule 90bis of the Rules of Procedure and Evidence ("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.

4. According to a letter from the Rwandan Minister of Justice attached to the Defence correspondence, Witness RAN is identified as a detained witness. The Defence submits that the presence of Witness RAN is not required in any trial or judicial proceeding in Rwanda during the period when Witness RAN will be expected to testify before this Trial Chamber,

¹ Prosecutor v. Siméon Nchamihigo, Case No. ICTR-2001-63-T, Scheduling Order (TC), 22 May 2007.

² Letter by Defence Counsel, *Témoignage dans l'affaire Procureur c. Siméon Nchamihigo* ICTR-2001-63-T, filed Strictly Confidential, dated 27 July 2007.

³ Rule 54 of the Rules reads: At the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

381

from 27 August 2007 through 21 September 2007, and that the witness's transfer to Arusha will not prolong the person's detention in Rwanda.

5. The Defence also indicates that it has addressed a letter to the Rwandan Minister of Justice on 11 May 2006 requesting confirmation of the availability of the said witness. The Defence further points out that it received a communication via the Witness and Victims Support Section ("WVSS") indicating that a response from the General Prosecutor of the Republic of Rwanda would soon to be submitted to the WVSS sub-office in Kigali. The General Prosecutor of the Republic of Rwanda has failed to respond to Defence concerted efforts through the WVSS sub-office in Kigali to ascertain the confirmation of the availability of Witness RAN for his transfer to Arusha.

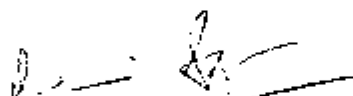
6. In view of these particular circumstances and in order to minimize any delay in the resumption of the trial of the Accused person, the Chamber deems it necessary that a transfer order of Witness RAN is immediately issued so that WVSS may start consulting with the relevant Rwandan authorities in order to ensure the presence of the witness for the forthcoming trial session scheduled to commence from 27 August 2007 through 21 September 2007. This, however, will be subject to confirmation by the Rwandan authorities that the witness is not required in any trial or judicial proceedings in Rwanda during the aforementioned period, and that the witness's transfer to Arusha will not prolong the individual's detention in Rwanda.

FOR THESE REASONS, the CHAMBER

- I. **ORDERS**, pursuant to Rule 90bis of the Rules, the temporary transfer of detained witness known by the pseudonym RAN to the UNDF facility in Arusha, at an appropriate time prior to the witness's scheduled dates to testify during the period of 27 August through 21 September 2007;
- II. **REQUESTS** the Registrar to make the necessary arrangements in view of the transfer Order;
- III. In doing so, **REQUESTS** the Registrar to ascertain, in coordination with the Defence and the relevant Rwandan authorities, that Witness RNA is not required in any trial or judicial proceedings in Rwanda during the aforementioned period, and that the witness's transfer to Arusha will not prolong his detention in Rwanda;

- IV. **ORDERS** the Defence to provide the Chamber and the Defence, as soon as possible, with any additional supporting material or information as to the availability of Witness RAN in accordance with the requirements set out by Rule 90bis (B).
- V. **REQUESTS** the Registrar to ensure that the return travel of detained witness known by the pseudonym RAN to Rwanda is facilitated as soon as practically possible for the witness after the individual's testimony has ended;
- VI. **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;
- VII. **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 witness at the UNDF; inform the Chamber of any changes in the conditions which may affect the length of stay in Arusha.

Arusha, 8 August 2007, done in English.



Dennis C. M. Byron

Presiding 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 type="checkbox"/> Trial Chamber II R. N. Kouambo	<input checked="" type="checkbox"/> Trial Chamber III C. K. Hometowo	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
	<input type="checkbox"/> Chief, CMS J.-P. Fométo	<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. Alande
From:	<input checked="" type="checkbox"/> Chamber Hussein Mohamed (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. Siméon NCHAMIHIGO		Case Number: ICTR-2001-63	
Dates:	Transmitted: 8 August 2007		Document's date: 8 August 2007	
No. of Pages:	4		Original Language: <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda	
Title of Document:	Decision on the Defence Motion to Hear the Testimony of Witness RLN by Video-Link			
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"/> Submission from non-parties
<input type="checkbox"/> Confidential	<input checked="" type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal	<input type="checkbox"/> Submission from parties
<input checked="" type="checkbox"/> Public	<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book	<input type="checkbox"/> Accused particulars
	<input type="checkbox"/> Judgement	<input type="checkbox"/> Motion	<input type="checkbox"/> Book of Authorities	

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.

Filing Party will be submitting the translated version(s) in due course in the following language(s):

English French Kinyarwanda

KINDLY FILL IN THE BOXES BELOW

<input type="checkbox"/> The OTP is overseeing translation. The document is submitted for translation to: <input type="checkbox"/> The Language Services Section of the ICTR / Arusha. <input type="checkbox"/> The Language Services Section of the ICTR / The Hague. <input type="checkbox"/> An accredited service for translation; see details below: Name of contact person: Name of service: Address: E-mail / Tel. / Fax:	<input type="checkbox"/> DEFENCE is overseeing translation. The document is submitted to an accredited service for translation (fees will be submitted to DCDMS): Name of contact person: Name of service: Address: E-mail / Tel. / Fax:
---	--

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 checked="" type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: