



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

ORIGINAL: ENGLISH

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Sergei Alekseevich Egorov
Judge Florence Rita Arrey

Registrar: Adama Dieng

Date: 17 January 2008

THE PROSECUTOR

v.

Hormisdas NSENGIMANA

Case No. ICTR-2001-69-I

**DECISION ON PROSECUTION URGENT MOTION FOR THE
TRANSFER OF DETAINED WITNESS BXM**

The Prosecution

Wallace Kapaya
Sylver Ntukamazina
Brian Wallace
Iskandar Ismail
Jane Mukangira

The Defence

Emmanuel Altit
David Hooper

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Sergei Alekseevich Egorov, and Judge Florence Rita Arrey;

BEING SEIZED OF the “Prosecutor’s Urgent Motion for the Transfer of Detained Witness BXM (Under Rule 90 *bis* of the Rules of Procedure and Evidence)”, filed on 13 December 2007;

HEREBY DECIDES the motion.

INTRODUCTION

1. On 17 January 2008 the Trial Chamber informed the parties that the Prosecution request to add Witness BXM to its witness list would be granted with written reasons to be provided later.¹ The current motion is a request for a transfer order to Arusha of that witness, who is currently in detention in Rwanda. The Prosecution submits that the requirements for transfer as set out in Rule 90 *bis* of the Rules of Procedure and Evidence, have been met.² On 11 January 2008, the Prosecution filed a letter from the Rwandan Ministry of Justice confirming that the witness is available to testify. The Defence has not responded to the motion for transfer.

DELIBERATIONS

2. Pursuant to Rule 90 *bis* (A), a Trial Chamber may transfer any detained person, whose personal appearance as a witness is required, temporarily to the Detention Unit of the Tribunal, conditional on his return within the period decided by the Chamber. Such a transfer order may only be issued by the Chamber if the following conditions, set out in Rule 90 *bis* (B), have been met:

- (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. The Chamber is satisfied that the letter from the Rwandan Ministry of Justice is sufficient in relation to the requirements of Rule 90 *bis* (B).³ The Prosecution has requested that Witness BXM be transferred to Arusha on 6 February 2008 so as to be available to testify between 11 and 15 February 2008. The Chamber considers this to be an appropriate period under Rule Rule 90 *bis* (A).

¹ See *Prosecutor v. Nsengimana*, Case No. ICTR-01-69-T, “Prosecutor’s Motion for Varying the Witness List (under Rule 73 *bis* (E) of the Rules of Evidence and Procedure)”, filed on 6 December 2007; Interoffice Memorandum from the Prosecution of 11 January 2008, with enclosure.

² Prosecution Motion, paras. 4, 6.

³ *Prosecutor v. Bagosora*, ICTR-98-41-T, “Decision on the Prosecution’s Request for the Transfer of Detained Witnesses” (TC), 4 June 2003; *Prosecutor v. Bagosora*, ICTR-98-41-T, “Order for Transfer of Witness AAA” (TC), 25 May 2004; *Prosecutor v. Bagosora*, ICTR-98-41-T, “Order for Transfer of Prosecution Witnesses AI and AOM” (TC), 3 September 2004; *Prosecutor v. Rukundo*, Case No. ICTR-01-70-T, “Decision on Defence Motion for Subpoena and Transfer of Detained Witness SJA” (TC), 21 September 2007.

FOR THE ABOVE REASONS, THE CHAMBER

ORDERS, pursuant to Rule 90 *bis* of the Rules, that Witness BXM be transferred on 6 February 2008 to the Detention Unit in Arusha until 15 February 2008 at the latest;

REQUESTS the Government of Rwanda to comply with this order and to arrange for the transfer in cooperation with the Registrar and the Tanzanian Government;

INSTRUCTS the Registrar to:

- a) transmit this decision to the Governments of Rwanda and 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 and which may possibly affect the length of the temporary detention and, with the shortest delay, inform the Trial Chamber of any such change.

Arusha, 17 January 2008

Erik Møse
Presiding Judge

Sergei Alekseevich Egorov
Judge

Florence Rita Arrey
Judge

[Seal of the Tribunal]