

ICTR-00-55B-PT
15-1-2009
(1291-1289)

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UNITED NATIONS
NATIONS UNIES

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

OR: ENG

TRIAL CHAMBER III

Before Judges: Khalida Rachid Khan, presiding
Lee Gacuiga Muthoga
Emile Francis Short

Registrar: Adama Dieng

Date: 15 January 2009

THE PROSECUTOR

v.

ILDEPHONSE HATEGEKIMANA

Case No. ICTR-00-55B-PT

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**DECISION ON PROSECUTION REQUEST FOR THE TRANSFER OF
DETAINED WITNESSES**

Rule 90 bis of the Rules of Procedure and Evidence

Office of the Prosecutor:

William Egbe
Peter Tafah
Sulaiman Khan
Adama Niane
Guilain Disengi Mugeyo
Amina Ibrahim

Defence Counsel:

A.R. Dovi
Ata-Quam-Dovi-Avouyi

INTRODUCTION

1. The trial in this matter is scheduled to commence on 26 January 2009.¹ The Prosecution seeks an order that Prosecution witnesses BTG and BYR, who are currently detained by the Republic of Rwanda in Karubande prison, Butare, be transferred to Arusha to testify in these proceedings.²

2. The Defence did not respond to the Motion within the time limit prescribed by the Rules.

DISCUSSION

3. Pursuant to Rule 90 *bis* of the Rules of Procedure and Evidence, an order to transfer detained witnesses to the United Nations Detention Facility ("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

4. The Prosecution submits that it has received informal assurances that witnesses BTG and BYR will not be required for any criminal proceedings in Rwanda from 26 January until the end of February 2009, and avers that transfer of the witnesses will not extend their periods of detention as foreseen by Rwanda.

5. The Prosecution bears the burden of showing that the conditions set out in Rule 90 *bis* (B) have been met. Though the informal assurances provided by the Prosecution in this instance are less than ideal, the Chamber is satisfied, based on the Prosecution's assurances, that the conditions have been met with respect to witnesses BTG and BYR.

FOR THE ABOVE REASONS, THE CHAMBER

I. GRANTS the Motion;

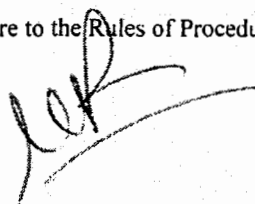
II. ORDERS, pursuant to Rule 90 *bis* (B), that Prosecution Witnesses BTG and BYR be transferred to Arusha, no later than 26 January 2009, until as soon as practically possible after each individual's testimony has ended but, in any event, no later than 28 February 2009;

III. REMINDS the Registrar of his obligations under Rule 90 *bis* of the Rules;

¹ Scheduling Order Concerning the Commencement of Trial, 22 December 2008.

² The Prosecutor's Request for the Transfer of Detained Witnesses Pursuant to Rule 90 *bis* of the RPE, filed 5 January 2009 (The "Motion").

³ Unless stated otherwise, all further references to Rules in this Decision are to the Rules of Procedure and Evidence.

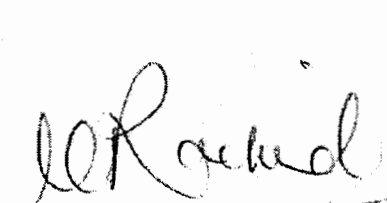


IV. REQUESTS the Government of the Republic of Rwanda, in accordance with this Order, to cooperate with the Prosecutor and the Registrar and, in conjunction with the Government of the United Republic of Tanzania, the Registrar and the WVSS, to take the necessary measures to implement the present decision;

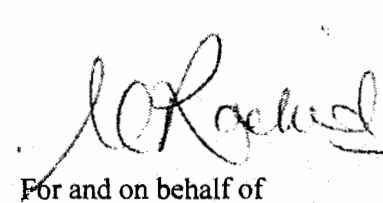
V. INSTRUCTS the Registrar to:

- 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.

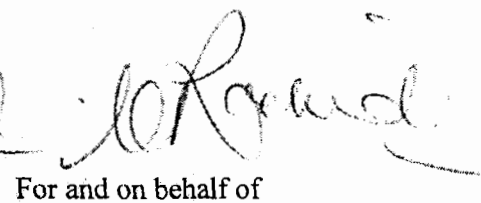
15 January 2009


Khalida Rachid Khan

Presiding Judge


For and on behalf of
Lee Gacuiga Muthoga

Judge


For and on behalf of
Emile Francis Short

Judge

[Seal of the Tribunal]

