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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before Judges: Asoka de Silva, Presiding
Taghrid Hikmet
Seon Ki Park

Registrar: Adama Dieng

Date: 9 February 2009

JUDICIAL RECORDS/ARCHIVES
2009 FEB - 9 1 P 5: 35

The PROSECUTOR
v.
Augustin NDINDILYIMANA
Augustin BIZIMUNGU
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU
Case No. ICTR-00-56-T

**PROPRIO MOTU ORDER FOR TRANSFER OF A DETAINED WITNESS AND FOR
CERTAIN WITNESSES TO TESTIFY VIA VIDEO-LINK PURSUANT TO RULES
54, 90BIS, AND 75 OF THE RULES**

Office of the Prosecution:

Mr Alphonse Van
Mr Moussa Sefon
Mr Lloyd Strickland
Mr Abubacarr Tambadou
Ms Faria Rekkas

Counsel for the Defence:

Mr Gilles St-Laurent and Mr Benoît Henry for **Augustin Bizimungu**
Mr Christopher Black and Mr Vincent Lurquin for **Augustin Ndindiliyimana**
Mr Charles Taku and Ms Beth Lyons for **François-Xavier Nzuwonemeye**
Mr Fabien Segatwa and Mr Seydou Doumbia for **Innocent Sagahutu**

INTRODUCTION

1. On 22 September 2008, the Chamber found that the Prosecution had violated its obligation to disclose exculpatory material in respect of several witness statements and ordered that the relevant documents be immediately disclosed to the Defence in un-redacted format. The Chamber further ordered that the Defence teams could file motions to recall identified Prosecution witnesses or additional Defence witnesses based on the statements for which the Prosecution had been found in violation of Rule 68.¹

2. On 4 December 2008, the Chamber rendered two Decisions based on Motions filed by the Defences for Ndindiliyimana, Nzuwonemeye and Bizimungu. In one of those Decisions, the Chamber ordered that Prosecution Witnesses FAV, GFS, GFR and KF be recalled for further cross-examination by the Defence for Ndindiliyimana, and allowed Ndindiliyimana's Defence to call JH, JVN, CR, FU and JDT as additional witnesses.² In the other Decision, the Chamber ordered that Prosecution Witnesses ALN and DCK be recalled for further cross-examination by Nzuwonemeye, and that CN, JPF and JVN be called as additional Defence witnesses for Nzuwonemeye. The Chamber denied Bizimungu's Motion in its entirety.³

3. In both Decisions, the Chamber ordered the Parties not to contact any of the recalled Prosecution Witnesses and directed the Registry to make arrangements to facilitate the travel to Arusha of all relevant witnesses for the purpose of hearing their testimony between 16 and 27 February 2009.

4. On 2 February 2009, the Registry informed the Chamber that Prosecution Witnesses DCK, FAV, GFS and additional Defence Witness JDT are ready to travel to Arusha. The Registry further noted that Witnesses KF and FU have indicated that due to work and other commitments, they would not be able to travel to Arusha, but would be willing to testify via video-link from a secure location in Rwanda. With respect to Witness JH, the Registry informed the Chamber that this witness is currently a detainee in Rwanda and that a temporary transfer order under Rule 90bis of the Rules of Procedure and Evidence ("Rules") will be necessary in order to bring him to Arusha. Finally, the Registry informed the Chamber that it had been unable to contact Witnesses ALN, CN, JPF, JVN, GFR, and CR despite various efforts.

DELIBERATIONS

5. Rule 54 empowers a Judge or a Trial Chamber upon application by one of the Parties or *proprio motu*, to issue such orders, including transfer orders, which may be necessary for the purposes of an investigation or trial. Rule 90bis lays down certain conditions for the transfer of detained witnesses, and Rule 75 empowers the Chamber to grant various protective measures to witnesses, including testimony by video-link.

¹ *The Prosecutor v. Ndindiliyimana et al*, Decision on Defence Motions Alleging Violations of the Prosecution's Disclosure Obligations Pursuant to Rule 68 (TC), 22 September 2008.

² *Ndindiliyimana et al*, Decision on Ndindiliyimana's Motion to Recall Identified Prosecution Witnesses and to Call Additional Defence Witnesses (TC), 4 December 2008

³ *Ndindiliyimana et al*, Decision on Nzuwonemeye's and Bizimungu's Motions to recall Identified Prosecution Witnesses and to Call Additional Witnesses (TC), 4 December 2008.

6. In determining whether to exercise its *proprio motu* powers in this instance, the Chamber has taken into account the fact that the Prosecution and Defence cases have closed and the Parties are expected to file their closing briefs by 31 March 2009. The Chamber has also considered the rights of the Accused to a trial without undue delay. Having deliberated on these factors, the Chamber finds that this is a proper case for it to exercise its *proprio motu* powers without waiting for either of the Parties to file a Motion.

Transfer of the detained witness

7. Under Rule 90bis, a Trial Chamber can issue an order for the temporary transfer of a detained witness provided it verifies that: (i) during the period the witness is required by the Tribunal, his/her presence is not required for any criminal proceedings in progress in the state in which he is detained; and (ii) the transfer of the witness does not extend the period of his detention.

8. The Chamber notes that Witness JH, who is currently detained in Rwanda, is being called as an additional Defence witness for Ndindiliyimana on the basis of the late disclosure of a statement containing exculpatory material. His testimony may enlighten the Chamber about certain allegations in the Indictment and assist the Chamber in discovering the truth about those allegations.

9. Therefore even though the Chamber has not received notification from the Rwandan authorities that the requirements of Rule 90bis have been satisfied, the Chamber considers that it is in the interests of justice to order the temporary transfer of Witness JH from his place of detention in Rwanda to Arusha, provided that before or at the time of such transfer, the Government of Rwanda confirms in writing to the Registrar of the Tribunal that the witness will not be required for any criminal proceedings in Rwanda during the period of his transfer and that such transfer will not extend the period of his detention.

Video-Link

10. The Chamber notes that ordinarily, witnesses should appear before the Chamber and give their evidence directly. However, in certain circumstances, witnesses may be allowed to testify by video-link from a remote location where this is necessary for purposes of witness protection or otherwise justified by the interests of justice. In determining whether it is in the interests of justice to allow a witness to testify via video-link, the Chamber will consider the following factors: i) the importance of the testimony; ii) the inability or unwillingness of the witness to travel to Arusha to testify; and iii) whether a good justification has been adduced for that inability and/or unwillingness.⁴

11. In this instance, the Chamber notes that Witness KF, who testified for the Prosecution, is being recalled for further Defence cross-examination on the basis of the Prosecution's late disclosure of an exculpatory statement. Witness FU is being called as an additional Defence witness to testify on the basis of a statement he made to the Prosecution which contained material falling within Rule 68. The Chamber is therefore satisfied that the testimony of both of these witnesses is sufficiently important and that it will be in the interests of justice to allow them to testify by video-link from a secure location in Rwanda.

⁴ *Ndindiliyimana et al*, Decision on Nzuwonemeye's Extremely Urgent and Confidential request for Video-Link Testimony of Witnesses Y1, S2, Y3, F10, and F11 (TC), 9 June 2008, para. 3.



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FOR THE ABOVE REASONS, THE CHAMBER acting proprio motu,

ORDERS the temporary transfer of Witness JH from his place of detention in Rwanda to the Tribunal's Detention Facility in Arusha provided that the national authorities in Rwanda either before or at the time of such transfer, confirm in writing to the Registrar that the requirements of Rule 90bis have been satisfied;

DIRECTS the Registry to transmit this Order to the national authorities of Rwanda and to ensure the proper conduct of the transfer, including the supervision of the witness in the Detention Unit of the Tribunal;

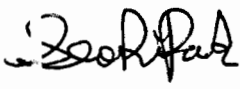
REQUESTS the Governments of Rwanda and Tanzania to cooperate with the Registry in the implementation of this Order;

FURTHER ORDERS that upon transfer, Witness JH shall remain in Arusha for the period required to give his testimony, but shall be returned to Rwanda not later than 6 March 2009;

ORDERS that Witnesses KF and FU shall testify by video-link from a secure location in Rwanda on a date between 16 and 27 February 2007;

DIRECTS the Registry to make all necessary arrangements to facilitate the video-link testimony of the said witnesses.

Arusha, 9 February 2009, done in English.


for [read and approved by]
Asoka de Silva
Presiding Judge


for [read and approved by]
Henrik Hilmert

[Seal of the Tribunal]


Seon Ki Park
Judge