

ICTR-00-55B-1
9-3-2009
(1381-1579)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
NATIONS UNIES

OR: ENG

TRIAL CHAMBER III

Before Judges: Arlette Ramaroson, presiding
Taghrid Hikmet
Joseph Masanche

Registrar: Adama Dieng

Date: 09 March 2009

JUDICIAL RECORDS ARCHIVER
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2009 MAR - 9, P 12: 40
A. R. Dovi
09/03/2009

THE PROSECUTOR
v.

ILDEPHONSE HATEGEKIMANA

Case No. ICTR-00-55B-PT

**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

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INTRODUCTION

- 1. The trial in this matter is scheduled to commence on 16 March 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 the proceedings before the Tribunal.²
- 2. The Chamber recalls that, on 15 January 2009, Trial Chamber III granted an earlier order for the transfer of these detained witnesses to the International Criminal Tribunal for Rwanda, in Arusha, Tanzania. However, the Trial Chamber’s order, which expired on 28 February 2009, was not executed because of the rescheduling of the commencement of this trial on 16 March 2009.
- 3. The Chamber notes that the Defence has not responded to the Motion within the time limit prescribed by the Rules of Procedure and Evidence.³

DISCUSSION

- 4. Pursuant to Rule 90 *bis* of the Rules, 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.”
- 5. 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 16 March until 10 April 2009, and avers that transfer of the witnesses will not extend their periods of detention as foreseen by Rwanda.
- 6. 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, as of 16 March 2009, until as soon as practically

¹ Scheduling Order Concerning the Commencement of Trial, dated 23 February 2009.
² The Prosecutor’s Request for the Transfer of Detained Witnesses Pursuant to Rule 90 *bis* of the RPE, filed 03 March 2009 (The “Motion”).
³ Unless stated otherwise, all further references to Rules in this Decision are to the Rules of Procedure and Evidence.

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possible after each individual's testimony has ended but, in any event, no later than 10 April 2009;

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

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 rapidly 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.

09 March 2009

Arlette Ramarosan

Presiding Judge

Taghrid Hikmet

Judge

Joseph Masanche

Judge

[Seal of the Tribunal]

