



UNITED NATIONS
NATIONS UNIES

ICTR-05-82-I
22-4-2009
(1035 - 1633)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

TRIAL CHAMBER III

Before Judges: Aydin Sefa Akay
sitting pursuant to Rule 54 of the Rules

Registrar: Mr. Adama Dieng

Date: 22 April 2009

THE PROSECUTOR
v.
DOMINIQUE NTAWUKULILYAYO

Case No. ICTR-05-82-PT

JUDICIAL RECORDS/ARCHIVES
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**ORDER EXTENDING TIME FOR PARTIES TO COMPLY WITH CHAMBER'S
ORDER OF 1 APRIL 2009 AND FURTHER ORDER TO PROSECUTION
REGARDING TRANSFER OF DETAINED WITNESSES**

Rules 54, 73bis and 90bis of the Rules of Procedure and Evidence

Office of the Prosecutor:
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Thembile Segoete

Counsel for the Defence:
Maroufa Diabira
Dorothee Le Fraper du Hellen

CSA

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ("Tribunal"),

SITTING as Trial Chamber III, composed of Judge Aydin Sefa Akay pursuant to Rule 54 of the Rules of Procedure and Evidence ("Rules");

RECALLING the Chamber's "Further Orders to the Parties Concerning Commencement of Trial" of 1 April 2009 ("1 April 2009 Order") in which the Chamber ordered, among other things:

"I. ... the Parties to jointly file, no later than 20 April 2009:

- (i) Any admissions and a statement of other matters not in dispute; and
- (ii) A statement of contested matters of facts and law;

II. ... the Prosecution to file, after discussion with the Defence and no later than 20 April 2009, an amended Exhibit List which indicates, in accordance with Rule 89 (C),¹ the relevancy and probative value of each exhibit, and in accordance with Rule 73bis (B) (v) states, where possible, whether or not the Defence has any objection concerning authenticity;

[....]

V. ... the Prosecution to file the requisite verification under Rule 90bis (B) in respect of its Motion of 11 February 2009 for the transfer of detained witnesses, no later than 10 April 2009."²

NOTING the "Prosecution's Compliance with Further Orders to the Parties Concerning Commencement of Trial" filed on 3 April 2009, which annexes a letter from the Rwandan Ministry of Justice confirming the availability of detained Prosecution Witnesses AXV and BAF for the period 30 March to 30 April 2009;³

NOTING however that as commencement of trial has been postponed to 4 May 2009,⁴ the aforementioned letter from the Rwandan Ministry of Justice does not provide the requisite Rule 90bis (B) verification for the relevant period;⁵

¹ Rule 89 (C) of the Rules provides that a Chamber may admit any relevant evidence which it deems to have probative value.

² See *Ntawukuliyayo*, The Prosecutor's Request for an Order Transferring Detained Witnesses Pursuant to Rule 90bis of the Rules of Procedure and Evidence, 11 February 2009 ("Motion of 11 February 2009") in which the Prosecution requested transfer of detained Witnesses AXV and BAF for the period 30 March to 20 April 2009. The Motion of 11 February 2009 (para. 3) stated that the Prosecutor was awaiting the response from the Rwandan Minister of Justice with respect to the Rule 90bis (B) verification.

Rule 90bis (B) provides that the transfer order shall be issued by a Judge or Trial Chamber only after prior verification that the following conditions 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 Annex B.

⁴ *Ntawukuliyayo*, Decision on Defence Motion Alleging Breach of Prosecution's Disclosure Obligations; Chamber's Warning to Prosecution Counsel; and Scheduling Order Concerning Commencement of Trial, 26 March 2009.

⁵ See *supra* footnote 2 with respect to the requirements under Rule 90bis (B).

CONSIDERING that the Prosecution has yet to provide the requisite verification under Rule 90bis (B) with regard to the requested transfer of Prosecution Witnesses AXV and BAF, and that only 12 days remain until commencement of trial;

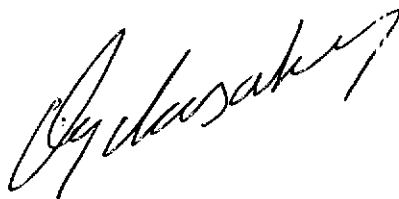
CONSIDERING the "Prosecutor's Leave for Extension of Time to Comply with Extant Orders of 1 April 2009" filed on 20 April 2009 ("Prosecution Motion") in which the Prosecution submits that, despite having met and engaged in constructive negotiations, the Parties are unable to comply with Orders I and II of the 1 April 2009 Order due to "logistics, schedules of the Prosecution and Defence teams, and the need to take instructions directly from the Accused" and requests an extension of time until close of business on 27 April 2009; and

CONSIDERING that efforts are being made by the Parties to comply with the 1 April 2009 Order;

THE CHAMBER HEREBY

- I. **GRANTS** the Prosecution Motion and extends time, until close of business on 27 April 2009, for the Parties to comply with Orders I and II of the Chamber's 1 April 2009 Order; and
- II. **ORDERS** the Prosecution to file, no later than close of business on 29 April 2009, the requisite verification under Rule 90bis (B) in respect of its Motion of 11 February 2009 for the transfer of detained Witnesses AXV and BAF.

Arusha, 22 April 2009



Aydin Sefa Akay
Judge

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