



UNITED NATIONS
NATIONS UNIES

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

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Gberdao Gustave Kam
Vagn Joensen

Registrar: Adama Dieng

Date: 22 May 2009

THE PROSECUTION

v.

Tharcisse MUVUNYI
Case No. ICTR-00-55A-PT

ORDER FOR THE TRANSFER OF PROSECUTION WITNESSES FROM RWANDA

Rule 90bis of the Rules of Procedure and Evidence

Prosecution Counsel:
Mr. Charles Adeogun-Phillips
Mr. Ibukunolu Babajide

Defence Counsel:
Mr. William E. Taylor III
Ms. Abbe Jolles

INTRODUCTION

1. On 21 May 2009, the Prosecution filed a motion pursuant to Rule 90 *bis* of the Rules of Procedure and Evidence requesting the Chamber to order the temporary transfer of three detained Prosecution witnesses from Rwanda.¹ The witnesses, CCP, YAI and AMJ, are expected to testify from 17 June 2009 until the end of the Prosecution's case, which is expected to finish on 19 June 2009.²

DELIBERATIONS

2. The Chamber notes that in a Scheduling Order dated 8 May 2009, the Prosecution was directed to file any preliminary motions, including those for transfer of detained witnesses, by 15 May 2009.³ Obviously the Prosecution has not complied with this Order. The Prosecution is warned pursuant to Rule 46 (A) that any disregard for the orders of the Tribunal will not be tolerated by the Chamber. However, in the interests of justice, the Chamber will address the Prosecution's Motion for the temporary transfer of detained witnesses.

3. Pursuant to Rule 90 *bis* (A), any detained person whose personal appearance as a witness has been requested by the Tribunal shall be transferred temporarily to the Detention Unit of the Tribunal, conditional on his return within the period decided by the Tribunal. Rule 90 *bis* (B) requires prior verification of two conditions for such an order:

- (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.

4. The Chamber notes that the Prosecution has attached to the Motion two letters from the Rwandan Minister of Justice confirming that the witnesses are available to be transferred pursuant to the conditions outlined in Rule 90 *bis* (B). Accordingly, a transfer order for Witnesses CCP, YAI and AMJ is warranted and the Chamber requests that the Witnesses and Victims Support Section start consulting with the relevant Rwandan authorities in order to ensure the presence of these witnesses.

¹ Prosecutor's Motion for an Order for Temporary Transfer of Detained Witnesses from Rwanda to the Seat of the ICTR at Arusha, Pursuant to Rules 90 *Bis* and 73 (A) of the Rules of Procedure and Evidence, 21 May 2005 ("Motion").

² Motion, para. 6.

³ *The Prosecutor v. Muvunyi*, Case No. ICTR-00-55A-PT, Scheduling Order, 8 May 2009, p. 3.

5. The Chamber also notes that the Motion was filed confidentially despite the fact that the Motion itself reveals no confidential information, as opposed to the letters from the Rwandan Minister of Justice. Consequently, the Chamber re-classifies pages 1 to 3 of the Motion as a public document and finds that the two letters attached to the Motion should be classified as a confidential annex. The Chamber reminds the parties that public filings should be the norm and confidential filings should be the exception.

FOR THESE REASONS, the CHAMBER

I. GRANTS the Prosecution Motion as follows:

II. REQUESTS, pursuant to Rule 90 *bis*, the Registrar to make the necessary arrangements for the temporary transfer of the detained witnesses known by the pseudonyms CCP, YAI, and AMJ to the UNDF facility in Arusha, no later than 12 June 2009 until such time as they have completed their testimony;

III. REQUESTS the Registrar to ensure that the return travel of the witnesses is facilitated as soon as practically possible after their testimony has ended;

IV. REQUESTS the Governments of the Republic of Rwanda and the United-Republic of Tanzania to cooperate with the Registrar in the implementation of this Order;

V. REQUESTS the Registrar to cooperate with the authorities of the Governments of Rwanda and the United-Republic of Tanzania to ensure the proper conduct of the transfer and detention of the witnesses at the UNDF and to inform the Chamber of any changes in the conditions which may affect the length of the stay of the witnesses in Arusha;

VI. RECLASSIFIES pages 1 to 3 of the Motion as a public document and finds that the two attached letters from the Rwandan Minister of Justice should be re-classified as a confidential annex; and,

VII. ISSUES a warning to Senior Trial Attorney Charles Adeogun-Phillips pursuant to Rule 46 (A) to comply with the orders of the Chamber.

Arusha, 22 May 2009, done in English.

Dennis C. M. Byron
Presiding Judge

Gberdao Gustave Kam
Judge

Vagn Joensen
Judge

[Seal of the Tribunal]