



UNITED NATIONS  
NATIONS UNIES

ICTR-00-61-T  
22-10-2009  
(3022-3020)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

3022  
10/10

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Khalida Rachid Khan, presiding  
Lee Gacuiga Muthoga  
Aydin Sefa Akay

**Registrar:** Mr. Adama Dieng

**Date:** 22 October 2009

JUDICIAL RECORDS ARCHIVED  
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**THE PROSECUTOR**

v.

**Jean-Baptiste GATETE**

**Case No. ICTR-2000-61-T**

**DECISION ON PROSECUTOR'S MOTION FOR THE TRANSFER OF DETAINED  
WITNESSES PURSUANT TO RULE 90BIS**

*Rules 73 and 90bis of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**

Richard Karegyesa  
Adelaide Whest  
Didace Nyirinkwaya  
Yasmine Chubin

**For the Accused:**

Marie-Pierre Poulain  
Kate Gibson

3021

## INTRODUCTION

1. The trial in this case commenced on 20 October 2009.<sup>1</sup>
2. On 17 September 2009, the Prosecution filed a motion requesting the Chamber to order the temporary transfer of detained Witnesses GJQ-4, BVR, BVQ and BBQ from the Republic of Rwanda to the United Nations Detention Facility in Arusha.<sup>2</sup>
3. On 23 September 2009, the Defence filed a Response to the Prosecution Motion.<sup>3</sup>

## DISCUSSION

4. Rule 90bis (A) of the Rules of Procedure and Evidence ("Rules") states that "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." According to Rule 90bis (B), a transfer order shall only be issued after prior verification that: (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; and (ii) transfer of the witness does not extend the period of his detention as foreseen by the requested State.
5. The Chamber recalls that Witness GJQ-4 has been removed from the Prosecution's Witness List.<sup>4</sup> The Chamber therefore notes that the Prosecution's request for transfer now relates to Witnesses BBQ, BVR and BVQ. The Prosecution bears the burden of showing that the conditions set out in Rule 90bis (B) have been met.
6. The Chamber notes that the Prosecution has provided the Chamber with a letter from the Rwandan Ministry of Justice dated 2 September 2009, which confirms that Witnesses BVR, BVQ and BBQ are available to testify before the Tribunal in accordance with the requirements of Rule 90bis (B).<sup>5</sup> The Chamber is therefore satisfied that the Prosecution has discharged its burden under Rule 90bis (B).
7. The Chamber further recalls its Decision regarding the scheduling of the Prosecution case, in which it ordered as follows:

<sup>1</sup> *The Prosecutor v. Jean-Baptiste Gatete*, Case No. ICTR-00-61-PT, Scheduling Order, 30 September 2009.

<sup>2</sup> Prosecutor's Motion for the Transfer of Detained Witnesses Pursuant to Rule 90bis of the Rules of Procedure and Evidence, filed 17 September 2009 ("Prosecution Motion").

<sup>3</sup> Defence Motion for Disclosure Pursuant to Rules 66(A)(ii) of The Rules of Procedure and Evidence and Response to 'Prosecutor's Motion for the Transfer of Detained Witnesses Pursuant to Rule 90bis' ("Rule 66 Defence Motion"), 23 September 2009. The Defence contended that the Prosecution had not disclosed any *Gacaca* materials in relation to the four detained witnesses and accordingly requested the Chamber to refrain from rendering a decision on the Prosecution Motion until it had complied with its disclosure obligations. The Defence also requested to preclude the Prosecution from calling these four witnesses until 60 days from the date of the Prosecution's compliance with its disclosure obligations. The Chamber has since then issued a Decision on the Rule 66 Defence Motion and ruled on the disclosure breaches alleged by the Defence. (*See* Decision on Defence Motions for Disclosure Pursuant to Rule 66(A)(ii) and Commencement of Trial, 13 October 2009).

<sup>4</sup> Decision on Prosecutor's Motion to Vary List of Witnesses pursuant to Rule 73bis (E) of the Rules of Procedure and Evidence, 19 October 2009.

<sup>5</sup> Prosecution Motion, Annex I.




- (i) The first session will run from 20 to 23 October 2009 to hear those witnesses currently in Arusha, namely, Witnesses BBP, BUY, BBM, BCS, BVS, and AWF; and
- (ii) The second session will run from 2 to 13 November 2009 to hear the remaining Prosecution witnesses.<sup>6</sup>

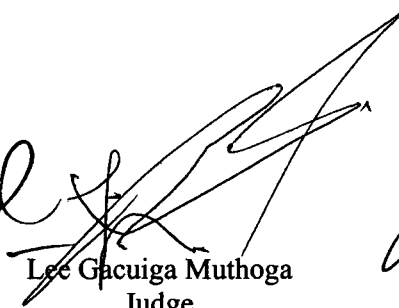
8. In light of the aforementioned schedule, the Chamber notes that Witnesses BBQ, BBR and BVQ will testify in this case between 2 and 13 November 2009.

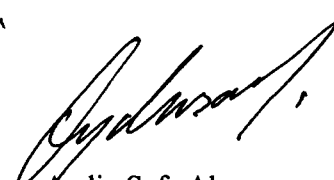
**FOR THESE REASONS**, the Chamber

- I. **GRANTS** the Prosecution Motion;
- II. **ORDERS**, pursuant to Rule 90bis (B), that Prosecution Witnesses BBQ, BVQ and BVR be transferred to Arusha, no later than 1 November 2009 until as soon as practically possible after each Witness's testimony has ended;
- III. **REMINDS** the Registrar of his obligations under Rule 90bis (C) and (D) of the Rules 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; and
- IV. **REQUESTS** the Government of the Republic of Rwanda, in accordance with this Decision and Rule 90bis (C) of the Rules, to liaise with the Government of the United Republic of Tanzania, the Registrar and the Witness and Victims Support Section of the Tribunal, to take the necessary measures to implement the present Decision.

Arusha, 22 October 2009

  
Khalida Rachid Khan  
Presiding Judge

  
Lee Gacuga Muthoga  
Judge

  
Aydin Sefa Akay  
Judge

[Seal of the Tribunal]

<sup>6</sup> Decision on Defence and Prosecution Motions for Reconsideration of the Chamber's Decision of 13 October 2009 and Scheduling of Prosecution Case, 19 October 2009.

