



UNITED NATIONS
NATIONS UNIES

ICTR-00-61-T
23-02-2010
3553-3551

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

3553
AM

OR: ENG

TRIAL CHAMBER III

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

Registrar: Mr. Adama Dieng

Date: 23 February 2010

THE PROSECUTOR

v.

Jean-Baptiste GATETE

Case No. ICTR-2000-61-T

JUDICIAL
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**DECISION ON DEFENCE 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
Drew White
Didace Nyirinkwaya
Yasmine Chubin

For the Accused:

Marie-Pierre Poulain
Kate Gibson

INTRODUCTION

1. On 23 February 2010, the Defence filed a motion requesting the Chamber to order the temporary transfer of detained Defence Witnesses LA50 and LA18 from the Republic of Rwanda to the United Nations Detention Facility in Arusha.¹
2. As the Defence case is commencing on 2 March 2010,² the Chamber considers it unnecessary to wait for the Prosecution to respond to the Defence Motion before rendering its decision.

DISCUSSION

Preliminary Matter

3. The Defence filed a motion on 19 February 2010, in compliance with the Chamber's Order of 9 February 2010,³ requesting a provisional order to transfer its two detained witnesses, as the verification from the Rwandan authorities required under Rule 90bis (B) ("Rule 90bis (B) verification") had not yet been provided.⁴
4. Given that the Defence has now filed a new motion appending the requisite Rule 90bis (B) verification,⁵ the Chamber considers the Defence Motion of 19 February 2010 moot.

Order for the Transfer of Detained Witnesses

5. 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.
6. The Chamber notes that, pursuant to its Revised Witness List,⁶ the Defence request for transfer now relates to two detained witnesses. The Defence bears the burden of showing that the conditions set out in Rule 90bis (B) have been met. The Chamber notes that the Defence has provided the Chamber with a letter from the Rwandan Ministry of Justice dated 19 February 2010, which confirms that Witnesses LA18 and LA50 are available to testify before

¹ Defence Motion for the Transfer of Detained Witnesses Pursuant to Rule 90bis, 23 February 2010, ("Defence Motion of 23 February 2010").

² Scheduling Order and Order for the Defence to Reduce its List of Witnesses, 2 February 2010.

³ Order Varying the Order of 19 November 2009, 9 February 2010.

⁴ Defence Motion Pursuant to Rule 90bis of the Rules of Procedure and Evidence, 19 February 2010, paras 6 and 13, ("Defence Motion of 19 February 2010").

⁵ Defence Motion of 23 February 2010, paras 2 and 7.

⁶ The Defence filed a Revised Witness List on 19 February 2010 pursuant to the Chamber's Order of 2 February 2010 to reduce its List of Witnesses.

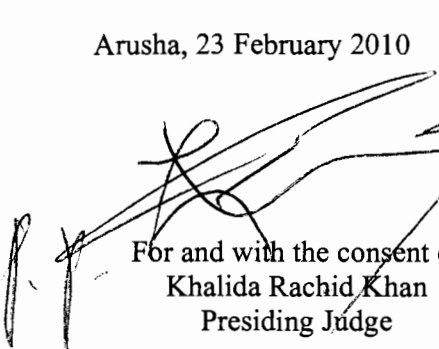
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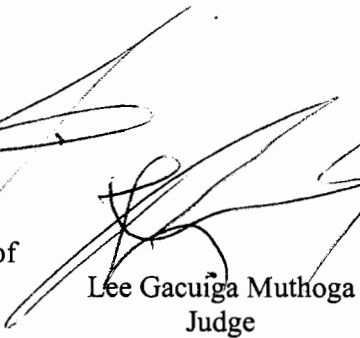
the Tribunal in accordance with the requirements of Rule 90bis (B).⁷ The Chamber is therefore satisfied that the Defence has discharged its burden under Rule 90bis (B).

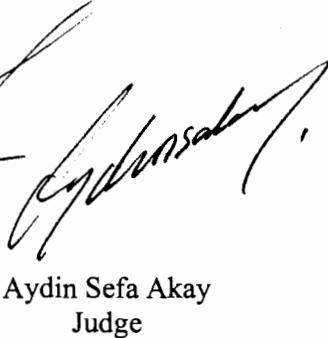
FOR THESE REASONS, the Chamber

- I. **GRANTS** the Defence Motion of 23 February 2010;
- II. **ORDERS**, pursuant to Rule 90bis (B), that Defence Witnesses LA18 and LA50 be transferred to Arusha, no later than 8 March 2010 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; and
- V. **DECLARES** the Defence Motion of 19 February 2010 moot.

Arusha, 23 February 2010


For and with the consent of
Khalida Rachid Khan
Presiding Judge


Lee Gacuiya Muthoga
Judge


Aydin Sefa Akay
Judge

[Seal of the Tribunal]



⁷ Confidential Annex I to Defence Motion of 23 February 2010