

ICTR-98-44D-T
16-03-2010
(3148-3144)

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Am



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
NATIONS UNIES

OR: ENG

TRIAL CHAMBER III

Before Judges: Solomy Balungi Bossa, Presiding
Mparany Rajohnson
Bakhtiyar Tuzmukhamedov

Registrar: Adama Dieng

Date: 16 March 2010

THE PROSECUTOR

v.

Callixte NZABONIMANA

Case No. ICTR-98-44D-T

JUDICIAL RECORDS/ARCHIVES
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**ORDER FOR THE TEMPORARY TRANSFER OF DETAINED PROSECUTION
WITNESSES CNAC**

Rule 90 bis of the Rules of Procedure and Evidence

Office of the Prosecution

Paul Ng'arua
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Defence Counsel for Callixte Nzabonimana

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INTRODUCTION

1. On 8 March 2010, the Prosecution filed a Motion requesting that the Trial Chamber issue an order for the temporary transfer of detained witnesses CNAC to the seat of the ICTR, pursuant to Rule 90 *bis* of the Rules of Procedure and Evidence (“Rules”).¹
2. On 15 March 2010, the Defence filed its Response.²

Submissions of the Parties

The Prosecution states that its witness CNAC who was partly heard prior to adjournment of the trial, must complete his testimony when hearings recommence.³ The Prosecution asserts that the requirements of Rule 90 *bis* are met.⁴ In support of its Motion, the Prosecution has annexed a confidential letter from the Minister of Justice of the Republic of Rwanda marked Annexure “A”.

DELIBERATIONS

Applicable Law

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:
 - a. 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;
 - b. Transfer of the witness does not extend the period of his detention as foreseen by the requested State.

¹ *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Prosecutor’s Motion for an Order for Temporary Transfer of Detained Witness from Rwanda to the Seat of the ICTR at Arusha (“Motion”), 8 March 2010.

² *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Nzabonimana’s Confidential Response to Prosecutor’s Motion for an Order for “Temporary Transfer of Detained Witness from Rwanda to the Seat of the ICTR at Arusha” (“Response”), dated 13 March 2010. The Court Management Section (“CMS”) filed the Defence Response on 15 March 2010, the date of filing indicated by CMS on the document is 16 March 2010.

³ Motion, para. 2, 6.

⁴ Motion, para. 5.

Prosecution Compliance with Rule 90 bis

4. The Trial Chamber observes that the Prosecution has attached to its Motion a letter from the Rwandan Ministry of Justice affirming that Prosecution Witnesses CNAC is available to testify before the Tribunal in accordance with Rule 90 bis (B).⁵ The Trial Chamber is therefore satisfied that witness CNAC is not required for criminal proceedings in Rwanda during the time scheduled for his testimony and that the witness's presence at the tribunal will not extend the period of his detention in Rwanda.
5. Hence, the Trial Chamber is satisfied that the Prosecution has fulfilled the requirements under Rule 90 bis for the transfer of detained witness CNAC.

FOR THESE REASONS, THE CHAMBER

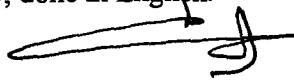
- I. GRANTS** the Motion as follows:
- II. ORDERS** the Transfer of Witnesses CNAC to the jurisdiction of the ICTR in Arusha by 29 March 2010.
- III. REQUESTS**, pursuant to Rule 90 bis, that the Registrar make the necessary arrangements for the temporary transfer of the detained witness known by the pseudonym CNAC to the UNDF facility in Arusha, no later than the aforementioned date and until his presence is no longer necessary, after having verified, in coordination with the Prosecutor and the relevant Rwandan authorities, that this witness is not required in any trial or judicial proceedings in Rwanda during the aforementioned period, and that his transfer to Arusha will not prolong his detention in Rwanda;
- IV. REQUESTS that** the Registrar ensure that the return travel of the witness is facilitated as soon as practically possible after his testimony has ended;
- V. REQUESTS that** the Governments of the Republic of Rwanda and the United Republic of Tanzania cooperate with the Registrar in the implementation of this Order; and,
- VI. REQUESTS** that the Registrar 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 witness at the UNDF and to inform the Chamber of any changes in the conditions which may affect the length of the stay of the witness in Arusha.

⁵ Motion, Confidential Annexure A.

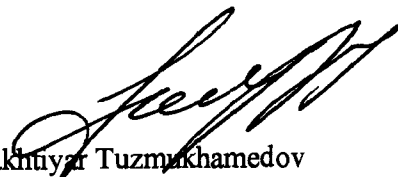
Arusha, 16 March 2010, done in English.



Solomy Balungi Bossa
Presiding Judge



Mparany Rajohnson
Judge



Bakhtiyar Tuzmukhamedov
Judge

[Seal of the Tribunal]

