

ICTR-98-440-T
26-03-2010
(3221-3218)

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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: 26 March 2010

THE PROSECUTOR

v.

Callixte NZABONIMANA

Case No. ICTR-98-44D-T

2010 MAR 26 1 A 10: 52
JUDICIAL RECORDS/ARCHIVES
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**DECISION ON NZABONIMANA'S URGENT MOTION FOR THE TRANSFER OF
DETAINED DEFENCE WITNESSES FROM RWANDA**
Rules 54 & 90 bis of the Rules of Procedure and Evidence

Office of the Prosecution

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INTRODUCTION

1. On 18 March 2010, the Defence filed a Motion requesting that the Trial Chamber issue an order for the transfer of five detained defence witnesses to the seat of the ICTR, pursuant to Rule 90 *bis* of the Rules of Procedure and Evidence ("Rules").¹
2. On 22 March 2010, the Prosecution filed its Response.²
3. On 24 March 2010, the Defence filed its Reply.³

Submissions of the Parties

4. In its Motion, the Defence notes that its case is scheduled to start during the week of 12 April 2010 and requests that the Trial Chamber order the transfer of five detained witnesses whom the Defence expects to testify.⁴ The Defence asserts that the requirements of Rule 90 *bis* are met.⁵ In support of its Motion, the Defence has annexed a confidential letter from the Minister of Justice of the Republic of Rwanda marked Annexure "A".⁶
5. In its response, the Prosecution notes its concern that the letter from the Minister of Justice marked Annexure "A" has been redacted and requests that the Defence explain who made the redactions and why.⁷ The Prosecution submits that it does not oppose the Motion if the Defence files an unredacted copy of the Minister's letter.⁸
6. In its Reply, the Defence submits that it filed Annexure "A" in a redacted form in order to avoid unnecessary confusion by putting the names of potential defence witnesses

¹ *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Callixte Nzabonimana's Confidential and Extremely Urgent Motion for the Transfer of Detained Witness from Rwanda ("Motion"), 18 March 2010.

² *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Prosecutor's Response to Nzabonimana's Confidential and Extremely Urgent Motion for the Transfer of Detained Witnesses from Rwanda ("Response"), dated 22 March 2010.

³ *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Callixte Nzabonimana's Reply to Prosecutor's Response to Confidential and Extremely Urgent Motion for the Transfer of Detained Witnesses from Rwanda, ("Reply"), 24 March 2010.

⁴ Motion, paras. 2 & 3.

⁵ Motion, paras. 2,6-7.

⁶ Confidential Annexure "A", attached to the Motion in redacted form.

⁷ Response, para.3.

⁸ Response, para.4.

everywhere in the records.⁹ However, it also appended an unredacted copy of the Minister's letter to its Reply.¹⁰

DELIBERATIONS

Applicable Law

7. 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.

Defence Compliance with Rule 90 bis

8. The Trial Chamber observes that the Defence has attached to its Motion a letter from the Rwandan Ministry of Justice affirming that these five detained defence witnesses are available to testify before the tribunal in accordance with Rule 90 *bis* (B).¹¹ The Trial Chamber is therefore satisfied that the five detained defence witnesses are not required for criminal proceedings in Rwanda during the period of their testimony and that the presence of these witnesses at the tribunal will not extend the period of his detention in Rwanda.
9. Therefore, the Trial Chamber is satisfied that the Defence has fulfilled the requirements under Rule 90 *bis* for the transfer of the five detained defence witness.
10. The Trial Chamber nevertheless notes with concern that the Defence took the liberty of redacting an official document from authorities of a sovereign State without informing the Prosecution and the Trial Chamber that it had done so and without offering explanation at the outset. The Trial Chamber considers that by acting in such a manner

⁹ Reply, para. 5.

¹⁰ Confidential Annexure "A" attached to the Reply in unredacted form.


¹¹ Confidential Annexure "A" attached to the Reply in unredacted form.

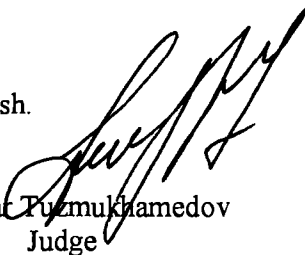
the Defence has unnecessarily complicated a straightforward issue and strongly advises the Defence to desist from such impropriety in the future.


FOR THESE REASONS, THE CHAMBER

- I. GRANTS** the Motion as follows:
- II. ORDERS** the Transfer of the five detained defence witnesses 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 transfer of the five detained defence witnesses known by the pseudonym T24, T155, T31, T138 and T90 to the UNDF facility in Arusha, no later than the aforementioned date and until the witness' presence is no longer necessary;
- IV. REQUESTS that** the Registrar ensure that the return travel of the witness is facilitated as soon as practically possible after the witness' 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.
- VII. CAUTIONS** the Defence about impropriety of interference with documents in its possession that are relevant to the case.

Arusha, 26 March 2010, done in English.


 Solomy Balungi Bossa
 Presiding Judge


 Bakhtiyar Tuzmukhamedov
 Judge


 Mparany Rajohnson
 Judge

[Seal of the Tribunal]

