



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
01-04-2010
(50726 - 50725)

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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: 01 April 2010

THE PROSECUTOR

v.

Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

JUDICIAL
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2010 APR - 10 11: 28

ORDER FOR THE TRANSFER OF A DEFENCE WITNESS FROM BENIN

Rules 54 and 90bis of the Rules of Procedure and Evidence

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INTRODUCTION

1. Following the Chamber's Order of 11 January 2010,¹ Georges Rutaganda was transferred to Arusha to testify for the Defence of Joseph Nzirorera. However he failed to testify during the last session and was returned to Benin. Joseph Nzirorera now seeks a new order from the Chamber for the temporary transfer of Rutaganda from the Republic of Benin from 12 April to 14 May 2010 for the purpose of testifying before the Chamber during the upcoming trial session.² The Prosecution did not respond to the Motion.

DELIBERATIONS

2. The Chamber notes that Joseph Nzirorera is supporting his request with Article 28 of the Statute and Rule 54 of the Rules of Procedure and Evidence.³ However, the Chamber notes that requests for the transfer of detained witnesses are governed by Rule 90 *bis* even if they involve questions in relation to States cooperation.

3. Rule 90 *bis* (B) sets two conditions for such an order: first, that "the detained witness is not required for any criminal proceedings in the territory of the requested State during the period the witness is required by the Tribunal"; and second, that the "[t]ransfer ... does not extend the period of his detention as foreseen by the requested State". Furthermore, Article 4(2) of the agreement between the United Nations and the Republic of Benin specifically provides for the temporary transfer of a convicted person, if the Tribunal orders that the convicted person appear as a witness in a trial before the Tribunal.⁴

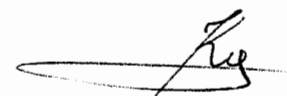
4. The Chamber has received no information from Joseph Nzirorera with respect to either criteria. However, the witness is a person who has been convicted by this Tribunal and who is serving his sentence according to an agreement between the Tribunal and the Republic of Benin. Consequently, the Chamber requests the Registry to confer with the relevant authorities of the Republic of Benin and ascertain whether the requirements of Rule 90 *bis* (B) are met. In particular, the Registry is requested to ascertain whether Georges Rutaganda is required for any

¹ *The Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera*. Case No. ICTR-98-44, Order for the Transfer of Defence Witnesses from Benin, 11 January 2010

² Joseph Nzirorera's Third Motion for Order to Transfer Witnesses from Benin, filed on 22 March 2010.

³ Motion, para. 1.

⁴ Agreement Between the Government of the Republic of Benin and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for Rwanda, 26 August 1999.



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criminal proceedings in Benin from 1 February to 19 March 2010 and whether the transfer of Rutaganda, who is serving a sentence of life imprisonment,⁵ will extend his period of detention.

5. Should the Benin authorities confirm that the Rule 90 *bis* (B) are met, the Chamber finds that a transfer order is warranted.

6. In view of the fact that Georges Rutaganda was already transferred during the last session but failed to testify, the Chamber recalls its oral Order of 4 March 2010 and reminds Joseph Nzirorera's Defence that Georges Rutaganda shall testify as soon as practicable after his arrival in Arusha once the session has started.

FOR THE ABOVE REASONS, THE CHAMBER

I. REQUESTS the Registrar to confer with the relevant authorities of the Republic of Benin and confirm that Georges Rutaganda is not required in any trial or judicial proceedings in Benin from 12 April to 31 May 2010 and that his transfer to Arusha will not prolong his detention in Benin;

II. ORDERS, conditional upon the agreement of the Government of Benin and confirmation that the requirements of Rule 90 *bis* (B) are met; that Georges Rutaganda shall be temporarily transferred to the Detention Unit of the Tribunal in Arusha pursuant to Rule 90 *bis* as soon as practicable for the upcoming session starting 12 April 2010;

III. REQUESTS the Government of Benin to facilitate the transfer in cooperation with the Registrar and the Tanzanian Government;

IV. INSTRUCTS the Registrar to:

- A) transmit this decision to the Governments of Benin and Tanzania;
- B) ensure the proper conduct of the transfer, including the supervision of the witness 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 and which may possibly affect the timing of the temporary detention, and as soon as possible, inform the Trial Chamber of any such change; and,

⁵ *The Prosecutor v. Georges Rutaganda*, Case No. ICTR-96-3, Decision on the Enforcement of Sentence (President), 18 May 2009.




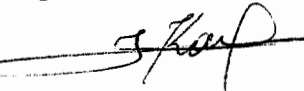
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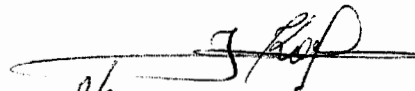
D) ensure that the return travel of the witness is facilitated as soon as practically possible after his testimony has ended.

V. **REMINDS** Joseph Nzirorera of its Order of 4 March 2010.

Arusha, 01 April 2010, done in English.


P/O Dennis C. M. Byron
Presiding Judge
(in absentia)


Gberdao Gustave Kam
Judge


P/O Vagn Joensen
Judge
(in absentia)

