



UNITED NATIONS
NATIONS UNIES

**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: 7 April 2010

THE PROSECUTOR

v.

**Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA**
Case No. ICTR-98-44-T

ORDER REGARDING TRANSFER OF DEFENCE WITNESSES FROM MALI

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

Office of the Prosecution:
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Defence Counsel for Édouard Karemera
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Defence Counsel for Matthieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

Defence Counsel for Joseph Nzirorera
Peter Robinson and Patrick Nimy Mayidika Ngimbi

INTRODUCTION

1. Joseph Nzirorera requests an order for the temporary transfer from the Republic of Mali of Ferdinand Nahimana, Hassan Ngeze and Samuel Imanishimwe to Arusha for the purpose of testifying before the Chamber between 12 April and 14 May 2010.¹ The three prospective witnesses are persons who have been convicted by this Tribunal and who are currently serving their sentence in the Republic of Mali.²

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 recalls 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 Mali 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 recalls that Joseph Nzirorera’s request to have the statement of Samuel Imanishimwe admitted pursuant to Rule 92 *bis* was rejected⁵ and that this witness was not on the final witness list filed by Joseph Nzirorera prior to the commencement of his case. At most, the Chamber notes that Imanishimwe was listed in the document filed on 16 October 2009 in a section named by Joseph Nzirorera: “F. Witnesses rejected for 92 *bis* (to be Called if Permitted)”. Nzirorera has not moved the Chamber for a variation of his witness list in relation to Imanishimwe. Consequently, his request for transfer regarding Imanishimwe is denied.

¹ Joseph Nzirorera’s Second Motion for Order to Transfer Witnesses from Mali, 22 March 2010 (“Motion”).

² *The Prosecutor v. Ferdinand Nahimana*, Case No. ICTR-99-52, Decision on the Enforcement of Sentence (President), 3 November 2008 (transferred on 2 December 2008). *The Prosecutor v. Hassan Ngeze*, Case No. ICTR-99-52, Decision on the Enforcement of Sentence (President), 3 November 2008 (transferred on 2 December 2008). *The Prosecutor v. Samuel Imanishimwe*, Case No. ICTR-97-32, Decision on the Enforcement of Sentence (President), 3 November 2008 (transferred on 6 December 2008).

³ Motion, para. 1.

⁴ Agreement Between the Government of the Republic of Mali and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for Rwanda, 12 February 1999.

⁵ *See Karemera et al.*, Decision on Joseph Nzirorera’s Motions for Admission of Written Statements and Testimony, 15 July 2009.

5. The Chamber has received no information from Joseph Nzirorera with respect to either criteria with regards to Ferdinand Nahimana and Hassan Ngeze. However, the two witnesses are persons who have been convicted by this Tribunal and who are serving their sentence according to an agreement between the Tribunal and the Republic of Mali. Consequently, the Chamber requests the Registry to confer with the relevant authorities of the Republic of Mali and ascertain whether the requirements of Rule 90 *bis* (B) are met. In particular, the Registry is requested to ascertain whether Ferdinand Nahimana and Hassan Ngeze are required for any criminal proceedings in Mali from 12 April to 14 May 2010 and whether the transfer of Nahimana and Ngeze who are serving sentences of 30 and 35 years respectively,⁶ will extend their period of detention.

6. Should the authorities of Mali confirm that the Rule 90 *bis* (B) are met, the Chamber finds that a transfer order is warranted for Ferdinand Nahimana and Hassan Ngeze.

7. 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 Ferdinand Nahimana and Hassan Ngeze shall testify as soon as practicable after their arrival in Arusha once the session has started.

FOR THE ABOVE REASONS, THE CHAMBER

I. DENIES Joseph Nzirorera's Motion with regards to Samuel Imanishimwe;

II. REQUESTS the Registrar to confer with the relevant authorities of the Republic of Mali and confirm that Ferdinand Nahimana and Hassan Ngeze are not required in any trial or judicial proceedings in Mali from 12 April to 14 May 2010 and that their transfer to Arusha will not prolong their detention in Mali;

III. ORDERS, conditional upon the agreement of the Government of Mali and confirmation that the requirements of Rule 90 *bis* (B) are met; that Ferdinand Nahimana and Hassan Ngeze shall be temporarily transferred to the Detention Unit of the Tribunal in Arusha pursuant to Rule 90 *bis* by 1 February 2010;

IV. REQUESTS the Government of Mali to facilitate the transfer in cooperation with the Registrar and the Tanzanian Government; and

V. INSTRUCTS the Registrar to:

⁶ *Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52, Judgement (AC), 28 November 2007.

- A) transmit this decision to the Governments of Mali 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,
- D) ensure that the return travel of the witnesses is facilitated as soon as practically possible after their testimony has ended.

VI. REMINDS Joseph Nzirorera of its Order of 4 March 2010.

Arusha, 7 April 2010, done in English.

Dennis C. M. Byron
Presiding Judge

Gberdao Gustave Kam
Judge

Vagn Joensen
Judge

[Seal of the Tribunal]