

ICTR-2001-68-T  
20-09-2060  
(2368-2366)

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UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Florence Rita Arrey, Presiding  
Judge Bakhtiyar Tuzmukhamedov  
Aydin Sefa Akay

**Registrar:** Adama Dieng

**Date:** 20 September 2010

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JUDICIAL RECORDS/ARCHIVES  
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**THE PROSECUTOR**

v.

**GREGOIRE NDAHIMANA**

*Case No. ICTR-2001-68-T*

**DECISION ON PROSECUTION'S MOTION FOR THE TRANSFER OF DETAINED  
WITNESSES PURSUANT TO RULE 90 BIS**

**Office of the Prosecutor:**  
Holo Makwaia, Senior Appeals Counsel  
Althea Alexis-Windsor, Appeals Counsel  
Segun Jegede, Trial Attorney  
Lansana Dumbuya, Case Manager

**Counsel for the Defence**  
Bharat J.B. Chadha, Lead Counsel  
Wilfred Ngunjiri Nderitu, Co Counsel  
Tharcisse Gatarama, Legal Assistant  
Marie-Pier Barbeau, Legal Assistant

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**Introduction**

1. On 13 September 2010, the Prosecution filed a motion pursuant to Rules 90 *bis* and 73 of the Rules of Procedure and Evidence, requesting that the Chamber issue an order for the transfer of detained Witnesses CNT, CDL, CDK, and CBR from Rwanda to the custody of the International Criminal Tribunal for Rwanda (ICTR), so that they may testify in the *Ndahimana* case.<sup>1</sup> The Prosecution has attached to its motion a letter from the Rwandan Attorney General to the Rwandan Minister of Justice stating that the presence of these detained witnesses is not required for any criminal proceedings in progress in Rwanda and that the transfer of these witnesses will not extend the period of their detention.<sup>2</sup> The Prosecution concludes that the two conditions of Rule 90 *bis* have been satisfied.<sup>3</sup>

2. The Defence has not filed a response to the Motion.

**Deliberations**

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) states that, a transfer order shall be issued only after prior verification that:

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

4. The Prosecution provided the Trial Chamber with a copy of a letter from the Attorney General of Rwanda to the Minister of Justice of Rwanda, dated 08 September 2010, in which the Attorney General stated that the two preconditions set out in Rule 90 *bis* (A) are met, and that the detained Witnesses are therefore available to testify before the International Criminal Tribunal

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<sup>1</sup> *Prosecutor v. Ndahimana*, ICTR-2001-68-T, Prosecution’s Motion for the transfer of detained witnesses pursuant to Rule 90 *bis*, 13 September 2010 (“Motion”), paras. 2-3.

<sup>2</sup> Motion, Annex A.

<sup>3</sup> Motion, paras. 4 and 7.

for Rwanda (ICTR).<sup>4</sup> The Chamber is therefore satisfied that the conditions for a transfer order pursuant to Rule 90*bis* have been met.

**ACCORDINGLY, THE CHAMBER**

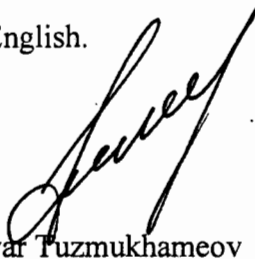
**GRANTS** the Motion and,  
**ORDERS** the transfer of Prosecution Witnesses CNT, CDL, CDK, and CBR to the United Nations Detention Facility in Arusha, Tanzania to testify before the Tribunal.

Arusha, 20 September 2010, done in English.



Florence Rita Arrey

Presiding Judge



Bakhtiyar Tuzmukhameov

Judge



Aydin Sefa Akay

Judge



<sup>4</sup> Annex to Prosecution's Motion: Letter from the Attorney General to the Minister of Justice in Rwanda, dated 08 September 2010