



UNITED NATIONS  
NATIONS UNIES

ICTR-98-440-T  
25-01-2011  
(5538-5535)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

5538  
AM

OR: ENG

**TRIAL CHAMBER III**

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

**Registrar:** Adama Dieng

**Date:** 25 January 2011

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**THE PROSECUTOR**

v.

**Callixte NZABONIMANA**  
*Case No. ICTR-98-44D-T*

**ORDER FOR THE TEMPORARY TRANSFER OF  
DETAINED DEFENCE WITNESS T300**  
*(Rule 90 bis of the Rules of Procedure and Evidence)*

**Office of the Prosecutor**  
Paul Ng'arua  
Memory Maposa  
Simba Mawere  
Mary Diana Karanja

**Defence Counsel**  
Vincent Courcelle-Labrousse  
Philippe Larochelle

## INTRODUCTION

1. On 19 January 2011, the Trial Chamber issued a decision in which it allowed the Defence, *inter alia*, to add a new witness, T300, to its witness list, so that he may testify during forthcoming trial session scheduled for 28 February until 8 April 2011.<sup>1</sup>
2. On 20 January 2011, the Defence filed a Motion requesting that the Trial Chamber issue an order for the temporary transfer of detained witness T300 to the seat of the ICTR, pursuant to Rule 90 *bis* of the Rules of Procedure and Evidence (“Rules”).<sup>2</sup>
3. On 24 January 2011, the Prosecution filed a Response stating that it did not oppose the motion.<sup>3</sup>
4. The Defence submits that the requirements of Rule 90 *bis* are met, as T300 is not required to be present in connection with any criminal proceedings currently in progress in Rwanda. In support of this claim, the Defence has annexed to its Motion a confidential letter on this issue from the Minister of Justice of the Republic of Rwanda.<sup>4</sup>
5. The Defence further requests that T300 be transferred to UNDF by “23 February 2011” and kept in the custody of the Tribunal “until 8 April 2011 or until his presence is no longer necessary”.<sup>5</sup>
6. On 24 January 2011 the Defence filed an Order of Appearance indicating that Witness T300 is scheduled to testify during the week of 7 to 11 March 2011.

## 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

<sup>1</sup> *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Decision on “Nzabonimana’s Motion for the Variation of its Lists of Witnesses”, 19 January 2011.

<sup>2</sup> *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Callixte Nzabonimana’s Confidential and Urgent Motion for the Transfer of a Detained Witness from Rwanda, 19 January 2011 [sic] (“Motion”).

<sup>3</sup> *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Prosecutor’s Response to Nzabonimana’s Confidential and Urgent Motion for the Transfer of a Detained Witness from Rwanda, 19 January 2011 (“Response”).

<sup>4</sup> Motion, para. 6.

<sup>5</sup> Motion, paras. 9 and Prayer for Relief.

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 Chamber observes that the Defence has attached to its motion a letter from the Rwandan Ministry of Justice affirming that defence detained witness T300 is available to testify before the Tribunal in accordance with the conditions specified in Rule 90 *bis* (B).<sup>6</sup> The Chamber is therefore satisfied that the Defence has complied with the requirements of that rule.
9. Moreover, the Prosecution in its Response presents no objection to the Defence motion.
10. For these reasons, the Trial Chamber finds that the criteria established under Rule 90 *bis* (B) have been satisfied, and grants the Defence request to have T300 transferred to Arusha for the purpose of testifying in the present proceedings.
11. However, the Chamber notes with concern that the Defence requests that the detainee be transferred for a period of approximately a month and a half or longer. As the Defence has provided no justification for such a lengthy transfer, and bearing in mind consequent strain on Tribunal resources, the Chamber considers the period requested to be excessive.

**FOR THESE REASONS, THE CHAMBER**

- I. GRANTS** the motion and;
- II. ORDERS** the transfer of detained Defence Witness known by pseudonym T300 to the United Nations Detention Facility (UNDF) in Arusha by 4 March 2011 until 25 March 2011, or until he completes his testimony;
- III. REQUESTS** that the registrar make required arrangements to facilitate the transfer of the detained witness T300 to UNDF by the aforementioned date, pursuant to Rule 90 *bis*;
- IV. REQUESTS** that, the Registrar ensures the facilitation of the witness' return travel as soon as practicable after the end of the witness's testimony;

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<sup>6</sup> Motion, Confidential Annexure A.

- V. **REQUESTS** that the Government of the Republic of Rwanda and The United Republic of Tanzania cooperate with the Registrar in implementing this order;
- VI. **REQUESTS** that the Registrar cooperate with the authorities of the Government of Rwanda and the Government of The United Republic of Tanzania to ensure the proper conduct of transfer and detention of the witness at UNDF, and to inform the Chamber of any changes in condition that may affect the length of the stay of detained witness T300 in Arusha.

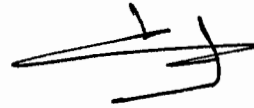
Arusha, 25 January 2011, done in English.



Solomy Balungi Bossa  
Presiding Judge



Bakhtiyar Tuzmukhamedov  
Judge



Mparany Rajohnson  
Judge