



UNITED NATIONS
NATIONS UNIES

ICTR-01-68-I
22-02-2011
(2703-2701)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

2703
P

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 22 February 2011

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THE PROSECUTOR

v.

GREGOIRE NDAHIMANA

Case No. ICTR-2001-68-T

**DECISION ON DEFENCE MOTION FOR THE TRANSFER OF DETAINED WITNESS
GK1 PURSUANT TO RULE 90BIS**

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

NA

Introduction

1. On 31 December 2010, the Defence filed a motion pursuant to Rules 54 and 90 *bis* of the Rules of Procedure and Evidence (“Rules”), requesting that the Chamber order the transfer of detained Defence Witnesses MB1 and GK1 to the custody of the International Criminal Tribunal for Rwanda (“ICTR”).¹ On 17 January 2011, the Trial Chamber denied the Defence Motion on the grounds that the Defence had failed to satisfy the requirements of Rule 90 *bis*.²
2. On 15 February 2011, the Defence filed a new motion for the transfer of detained witness GK1 to the United Nations Detention Facility in Arusha.³

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 Defence has attached to the instant motion a letter from the office of the National Public Prosecution Authority in Rwanda, dated 14 February 2011,⁴ and another letter from the Minister of Justice in Rwanda, dated 14 February 2011.⁵ Both letters state that the witness is available to testify before the International Criminal Tribunal for Rwanda (ICTR) as a Defence

¹ *Prosecutor v Ndahimana* Case No. ICTR 2001-68-T, Defence Motion for Transfer of Detained Witnesses Pursuant to Rules 54 and 90*bis* of the Rules of Procedure and Evidence, 31 December 2011.

² *Prosecutor v Ndahimana*, Case No. ICTR 2001-68-T, Decision on Defence Motion for the Transfer of detained witnesses. 17 January 2011.

³ *Prosecutor v Ndahimana*, Case No. ICTR 2001-68-T, Defence’s Motion for the Transfer of witness GK1 detained in Rwanda, 15 February 2011 (“Motion”).

⁴ Annex to Defence Motion : Letter from the office of the National Public Prosecution Authority in Rwanda, dated 14 February 2011.

⁵ Annex to Defence Motion : Letter from the Minister of Justice in Rwanda, dated 14 February 2011.

witness in *Ndahimana*'s case. The Chamber is therefore satisfied that the conditions for a transfer order pursuant to Rule 90*bis* have been met.

ACCORDINGLY, THE CHAMBER

I. GRANTS the Defence Motion;

II. ORDERS, pursuant to Rule 90*bis* (B), that detained Defence Witness **GK1** be transferred to the United Nations Detention Facility in Arusha, Tanzania no later than 15 April 2011 to testify before the Tribunal in the course of the 18 - 21 April 2011 session, and to be returned as soon as is practically possible after his testimony;

III. REMINDS the Registrar of his obligations under Rule 90*bis* (C) and (D) of the Rules to:

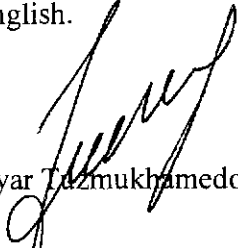
- a) Transmit this Decision to the Government of the Republic of Rwanda and the Government of the United Republic of Tanzania;
- b) Ensure the proper conduct of the transfer, including the supervision of the Witness in the Tribunal's detention facilities;
- c) Remain abreast of any changes which might occur regarding the conditions of detention provided for by the requested State (Rwanda) which may affect the timing of the temporary detention, and as soon as possible, inform the Chamber of any such change; and

IV. REQUESTS the Government of the Republic of Rwanda, in accordance with this Decision and Rule 90*bis* (C) of the Rules, to liaise with the Government of the United Republic of Tanzania, the Registrar and the Witness and Victims Support Section of the Tribunal, to take the necessary measures to implement the present Decision.

Arusha, 22 February 2011, done in English.


Florence Rita Arrey

Presiding Judge


Bakhtiyar Tazmukhamedov

Judge


Aydin Sefa Akay

Judge

[Seal of the Tribunal]

