



UNITED NATIONS  
NATIONS UNIES

ICTR-98-44B-R71bis  
06-05-2011  
(270-267)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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OR: ENG

**SPECIAL DEPOSITION PROCEEDINGS**

**Before:** Judge Vagn Joensen

**Registrar:** Mr. Adama Dieng

**Date:** 6 May 2011

**THE PROSECUTOR**  
v.  
**Félicien KABUGA**

Case No. ICTR-98-44B-R71bis

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**DECISION ON THE PROSECUTOR'S REQUEST FOR THE  
TRANSFER OF DETAINED WITNESSES  
(Pursuant to Rule 90 bis)**

**Office of the Prosecutor:**

Mr. William Egbe  
Mr. Peter Tafah  
Mr. Disengi Mugeyo  
Mr. Sharifah Adong

**For the Accused:**

Mr. Bahame Tom Nyanduga (Duty Counsel)

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**INTRODUCTION**

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1. On 18 April 2011, the Prosecution filed a Motion requesting the issuance of an order for the transfer of twelve detained Prosecution witnesses from Rwanda to the seat of the Tribunal, pursuant to Rule 90 *bis* of the Rules of Procedure and Evidence.<sup>1</sup> On 20 April 2011, the Duty Counsel filed a Response noting, *inter alia*, that the Prosecution had failed to comply with key requirements of Rule 90 *bis*.<sup>2</sup> In its Reply, dated 21 April 2011, the Prosecution admitted that it had not fully met the requirements of Rule 90 *bis*, submitted that it was still awaiting an official response from the Government of Rwanda, and argued that in any event "the transfer order would not cause any prejudice to the Defence."<sup>3</sup>
2. On 5 May 2011, the Prosecution filed an Addendum to its Motion which included confidential letters from the Rwandan Minister of Justice confirming the availability of the twelve detained witnesses to give their depositions before the Tribunal.<sup>4</sup>

**DELIBERATIONS***Applicable Law*

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) requires the Judge or Trial Chamber deciding the matter to issue such an order for the transfer of witnesses only after prior verification that the following two conditions have been met:
  - 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.

<sup>1</sup> *The Prosecutor v. Félicien Kabuga*, Case No. ICTR-98-44B-R71*bis*, The Prosecutor's Request for the Transfer of Detained Witnesses Pursuant to Rule 90 *bis* of the Rules of Procedure and Evidence, 18 April 2011 (the "Motion").

<sup>2</sup> *The Prosecutor v. Félicien Kabuga*, Case No. ICTR-98-44B-R71*bis*, Defence's (*sic*) Response to the Prosecutor's Request for the Transfer of Detained Witnesses Pursuant to Rule 90 *bis* of the Rules of Procedure and Evidence, dated 19 April 2011 and filed on 20 April 2011 (the "Response").

<sup>3</sup> *The Prosecutor v. Félicien Kabuga*, Case No. ICTR-98-44B-R71*bis*, The Prosecutor's Reply to the Defence Response to the Prosecutor's Request for the Transfer of Detained Witnesses Pursuant to Rule 90 *bis* of the Rules of Procedure and Evidence, 21 April 2011 (the "Reply").

<sup>4</sup> *The Prosecutor v. Félicien Kabuga*, Case No. ICTR-98-44B-R71*bis*, Addendum to the Prosecutor's Request for the Transfer of Detained Witnesses Pursuant to Rule 90 *bis* of the Rules of Procedure and Evidence filed on 18 April 2011, 5 May 2011 (the "Addendum").

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4. According to the jurisprudence of the Tribunal, a Judge or Trial Chamber may not ordinarily grant a request for the transfer of detained witnesses without being satisfied that the criteria set out in Rule 90 *bis* (B) have been met.<sup>5</sup> It is a matter of judicial cooperation involving States and informal personal assurances of the nature described by the Prosecution in the Motion<sup>6</sup> are not sufficient.<sup>7</sup>

5. The Addendum to the Motion contains confidential letters from the Rwandan Minister of Justice affirming that the twelve detained Prosecution witnesses are available to appear before the Tribunal in accordance with Rule 90 *bis* (B). On the basis of these official assurances, I am satisfied that the witnesses are not required for any criminal proceedings in progress in Rwanda during the period of their depositions and that their presence at the Tribunal will not extend the period of their detention in Rwanda.

6. Therefore, I find that the Prosecution has fulfilled the requirements under Rule 90 *bis* for the transfer of the twelve detained witnesses.

#### FOR THESE REASONS, I

**I. GRANT** the Motion;

**II. ORDER** the transfer of the twelve detained Prosecution witnesses from Rwanda to the jurisdiction of the Tribunal in Arusha **before 16 May 2011**.

**III. REQUEST**, pursuant to Rule 90 *bis*, that the Registrar make the necessary arrangements for the transfer of the twelve detained Prosecution witnesses known respectively by the pseudonyms SDFK7, SDFK10, SDFK15, SDFK17, SDFK19, SDFK20, SDFK25, SDFK26, SDFK27, SDFK28, SDFK3 and SDFK39 to the United Nations Detention Facility (UNDF) in Arusha, **before 16 May 2011** and until the

<sup>5</sup> *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Decision on Nzabonimana's Urgent Motion for the Transfer of Detained Defence Witnesses from Rwanda (Rules 54 and 90 *bis* of the Rules of Procedure and Evidence), 26 March 2010; *The Prosecutor v. Jean Akayesu*, Case No. ICTR-96-4-T, Decision on Defence Motion for the Transfer, Appearance, and Protection of Thirteen Detained Witnesses (TC), 9 March 1998, p. 3; *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-PT, Decision on Motion for Transfer of Witnesses and other Issues Relating to the preparation of Trial, 24 August 2009, para 7; *The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Motion of Jérôme-Clément Bicamumpaka for the Transfer of Detained Witness LD-1 from Rwanda, 23 January 2008, para. 7.

<sup>6</sup> See para. 5 of the Motion.

<sup>7</sup> *The Prosecutor v. Grégoire Ndahimana*, Case No. ICTR-2001-68-T, Decision on Defence Motion for the Transfer of Detained Witnesses (Pursuant to Rules 54 and 90 *bis* of the Rules of Procedure and Evidence), 17 January 2011, paras. 8-9.

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witnesses' presence is no longer necessary for the special deposition proceedings in this case;

**IV. REQUEST** the Registrar to ensure that the return travel of the witnesses is facilitated as soon as practically possible after the witnesses' depositions have been recorded;

**V. REQUEST** the Governments of the Republic of Rwanda and the United Republic of Tanzania to cooperate with the Registrar in the implementation of this Decision; and

**VI. REQUEST** the Registrar to cooperate with the authorities of the Governments of Rwanda and the United Republic of Tanzania to ensure the proper conduct of the transfer and detention of the witness at the UNDF and to immediately inform me of any changes in the conditions which may affect the length of the stay of the witness in Arusha.

Arusha, 6 May 2011, done in English.

  
Vagn Joensen  
Judge

[Seal of the Tribunal]

