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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

BEFORE TRIAL CHAMBER III

Before: Judge Vagn Joensen, Presiding
Judge Bakhtiyar Tuzmukhamedov
Judge Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 15 March 2010

The Prosecutor

v.

Michel BAGARAGAZA

Case No. ICTR-05-86

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**THE REGISTRAR'S SUBMISSION SEEKING CLARIFICATION
ON THE COMPUTATION OF TIME TO BE SERVED BY MICHEL BAGARAGAZA**

Office of the Prosecutor

Wallace Kapaya
Patrick Gabaake
Iskander Ismail

Defence Counsel

Geert-Jan Alexander Knoops
Wayne Jordash
Anne-Marie Verwiel

INTRODUCTION

1. The Registrar makes the following submission pursuant to Rule 33(B) of the ICTR Rules of Procedure and Evidence (Rules).
2. In the implementation of the Practice Direction on the Procedure for Designation of the State in which a Convicted Person is to Serve his/her own Sentence of Imprisonment, as revised and amended on 23 September 2008, the Registrar has engaged in a communication process with some States that have declared their willingness to accept ICTR convicted persons and have signed an agreement with the Tribunal to that effect pursuant to Article 26 of the Statute.
3. Some of the States contacted by the Registrar have requested clarification as to the time already served by Bagaragaza. In order to respond to these queries and speed up the transfer of this convict, the Registrar seeks the Chamber's clarification as to the remainder of the sentence Bagaragaza has to serve, as per the Sentencing Judgment of 17 November 2009.¹
4. The Registrar recalls that Trial Chamber III sentenced Bagaragaza to 8 years' imprisonment and further held, as per Rule 101 (C) of the Rules, that the convict would be entitled for credit for the time served in custody to be computed from the date of his surrender, 15 August 2005, to the date of the judgment, 17 November 2008.
5. In spite of the seeming clarity of the holding above, the Registrar notes that, as referred to in the procedural history at the beginning of the judgement, Bagaragaza, immediately after his initial appearance, was transferred to the Detention Unit (UNDU) of the International Criminal Tribunal for ex-Yugoslavia (ICTY) in The Hague, to be held under the jurisdiction of the ICTR.²
6. On 13 April 2007, Trial Chamber III granted the Prosecution's request to refer the indictment of Bagaragaza to the authorities of the Kingdom of the Netherlands, pursuant to rule 11 *bis* of the Rules.³ As a result, on 7 May 2007, Bagaragaza was transferred from the custody of the UNDU to the custody of the Dutch authorities.
7. On 17 August 2007, the Trial Chamber designated under Rule 11 *bis* granted a Prosecutor's extremely urgent motion for revocation of the referral of Bagaragaza's case to the Kingdom of the Netherlands.⁴ The Chamber also requested that the national authorities defer to the competence of the Tribunal regarding the Bagaragaza's case and comply with the Warrant of Arrest and Order for Transfer and Detention issued on 17 August 2007 (Warrant of Arrest).⁵
8. Despite the instruction contained in the Warrant of Arrest to surrender the Accused to the Tribunal without delay, Bagaragaza was transferred back to the United Nations Detention Facility (UNDF) in Arusha only on 20 May 2008.

¹ *The Prosecutor v. Michel Bagaragaza*, Case No. ICTR-05-86 (*Bagaragaza*), Sentencing Judgement, 17 November 2009.

² *Bagaragaza*, Order for Special Detention Measures (President), 13 August 2005. The President of the Tribunal then granted several motions from the Prosecution to extend the Accused's detention in The Hague: see *Bagaragaza*, Order for the Continued Detention of Michel Bagaragaza at the ICTY Detention Unit in The Hague, The Netherlands (President), 17 February 2006; *Bagaragaza*, Order for the Continued Detention of Michel Bagaragaza at the ICTY Detention Unit in The Hague, The Netherlands (President), 16 August 2006; *Bagaragaza*, Order for the Continued Detention of Michel Bagaragaza at the ICTY Detention Unit in The Hague, The Netherlands (President), 14 February 2007.

³ *Bagaragaza*, Decision on Prosecutor's Request for Referral of the Indictment to the Kingdom of the Netherlands, 13 April 2007.

⁴ *Bagaragaza*, Decision on Prosecutor's Extremely Urgent Motion for the Revocation of the Referral to the Kingdom of the Netherlands pursuant to Rule 11 *bis* (F) and (G), 17 August 2007.

⁵ *Bagaragaza*, Warrant of Arrest and Order for Transfer and Detention, 17 August 2007.

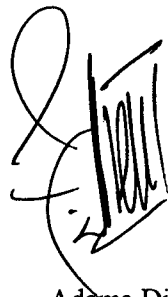
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DISCUSSION

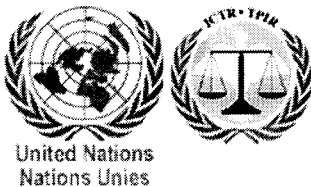
9. It would appear that from the date of the transfer of the case to the Kingdom of the Netherlands on 13 April 2007 until the revocation of the referral on 17 August 2007, Michel Bagaragaza was under the custody of the Netherlands' authorities for the sole purpose of his trial in the Netherlands. Thus the need to clarify whether this period is to be counted as time served by Bagaragaza. Particularly so, when this detention period may be understood as not constituting a detention pending transfer, as envisaged in Rule 101(C), because ICTR had then relinquished its jurisdiction. It is not equally clear that this detention period has been taken into account as credit for a penalty imposed by a national court, as per Article 9(3), because no penalty was imposed on M. Bagaraza in the Netherlands' judicial proceedings.
10. The Registrar therefore respectfully seeks further guidance from the Chamber as to the appropriate computation of the time that Bagaragaza has already served.

Respectfully submitted.

Arusha, 15 March 2010



Adama Dieng
Registrar



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Dates:	Transmitted: 16 March 2010		Document's date: 15 March 2010	
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