



**International Criminal Tribunal for Rwanda**

**TRIAL CHAMBER III**

OR: ENG

Before: Judge Lloyd George Williams, Presiding  
Judge Yakov Ostrovsky  
Judge Pavel Dolenc

Registrar: Dr. Agwu Ukiwe Okali

Decision of: 6 October 1999

**THE PROSECUTOR**  
v.  
**LAURENT SEMANZA**

Case No. ICTR-97-20-I

ICTR  
ORIGINAL REGISTRY  
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**DECISION ON THE "MOTION TO SET ASIDE THE ARREST AND  
DETENTION OF LAURENT SEMANZA AS UNLAWFUL"**

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The Office of the Prosecutor:  
David Spencer  
Frédéric Ossogo

Counsel for Laurent Semanza:  
André Dumont

<b>International Criminal Tribunal for Rwanda</b> <b>Tribunal pénal international pour le Rwanda</b>	
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NAME / NOM:	AMINATTA L.R. N'GUM
SIGNATURE:	<i>Aminatta L.R. N'Gum</i> DATE: 07/10/99

1. **The International Criminal Tribunal for Rwanda** (Tribunal), sitting today as Trial Chamber III, composed of Presiding Judge Lloyd George Williams, Judge Yakov Ostrovsky, and Judge Pavel Dolenc, decide the "Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful" (Motion).

### BACKGROUND

2. On or about 26 March 1996, authorities in Cameroon arrested Mr. Laurent Semanza (Semanza), pursuant to an international arrest warrant issued by the Rwandan Attorney General's Office.

3. On 17 April 1996, the Prosecutor issued a request for provisional measures in respect of the accused, along with 11 other persons.

4. On 6 May 1996, the Prosecutor requested the Cameroon authorities to extend the detention of Semanza for three months.

5. On 16 May 1996, the Prosecutor expressed the intention to proceed against four of the twelve persons against whom provisional measures had been sought. Semanza was not one of these four persons.

6. On 21 February 1997, the Court of Appeal of the Centre (Criminal Chamber) in Yaoundé (Cameroon) ordered the release of Semanza, having found inadmissible the Rwandan extradition request.

7. On 21 February 1997, the Prosecutor issued a new request to the authorities in Cameroon for the provisional arrest of Semanza.

8. On 24 February 1997, the Prosecutor requested the Tribunal to order the transfer and provisional detention of Semanza, pursuant to Rule 40*bis* of the Rules of Procedure and Evidence (Rules).

9. On 3 March 1997, Judge Aspegren presided over an *ex parte* hearing on the request of the Prosecution for a Rule 40*bis* order.

10. On 4 March 1997, Judge Aspegren filed an "Order for Transfer and Provisional Detention" (40*bis* Order).

11. On 17 October 1997, the Prosecutor filed an indictment against Semanza.

12. On 23 October 1997, Judge Aspegren confirmed the indictment.

13. On 11 November 1997, authorities transferred Semanza from Cameroon to the custody of the Tribunal.

14. On 16 February 1998, Semanza made his initial appearance before the Tribunal and pleaded not guilty to the seven counts contained in the indictment.

15. On 31 May 1998, the Prosecutor filed a motion for leave to amend the indictment (to add seven new counts) under Rule 50.
16. On 18 June 1999, Trial Chamber II granted the Prosecution motion by an oral decision. The Trial Chamber filed the written decision on 2 September 1999.
17. On 24 June 1999, Semanza made a further appearance on the first amended indictment pursuant to Rule 50(B) and entered a plea of not guilty to all counts. Following the taking of the pleas, the Prosecution orally moved for leave of the Trial Chamber to correct minor translation discrepancies between the English and French versions of the first amended indictment. The Trial Chamber, in an oral decision, granted the Prosecutor's motion.
18. On 2 July 1999, the Prosecutor filed the second amended indictment (the current charging document) to comply with the decision of 24 June 1999 to correct the minor translation discrepancies.
19. On 16 August 1999, the Defence filed the Motion.
20. On 2 September 1999, the Prosecutor filed its Response to the Motion.
21. On 22 September 1999, the Defence filed its Brief in support of the Motion.
22. On 23 September 1999, the Trial Chamber heard the parties at a hearing on the Motion.

## SUBMISSIONS OF THE PARTIES

### *Submissions of the Defence*

23. The Defence argues that the detention of the accused is unlawful and unjustifiable on the following grounds:
  - (a) the accused did not receive a formal indictment stating the charges against him before his transfer, and therefore was unable to prepare his defence;
  - (b) the provisional detention of the accused violated the rights of the accused under Article 20 of the Statute and Rule 40;
  - (c) the extension of the detention in the absence of judicial control was arbitrary and an abuse of the rights of the accused;
  - (d) the accused has been discriminated against, as compared to others arrested in Cameroon;
  - (e) the Prosecution failed to comply with Rule 40bis and the 40bis Order to file an indictment within thirty days, by 2 April 1997.
24. The Defence argues that there was a violation of Rules 5, 66(A) and 72 because the Defence did not receive copies of all documents in French.

25. The Defence submits that the legal proceedings in Cameroon bar any trial of Semanza by the Tribunal under of the principle of *non bis in idem*, as laid down in Article 9(2)(b) of the Statute.

26. The Motion prays that the Trial Chamber find Semanza's "arrest and his pre-trial detention void *ab initio*." Motion, at 4.

*Submissions of the Prosecution*

27. The Prosecution argues that the Trial Chamber should deny the Motion because Semanza's detention is lawful under the Statute and Rules. The Prosecution submits that the Tribunal did not extend arbitrarily Semanza's detention in violation of Rule 5, as the Defence contends, and that the Prosecutor does not have judicial control *stricto sensu* over detention within a sovereign State.

28. The Prosecutor submits that *non bis in idem* principle of Article 9(2)(b) is not applicable as the accused was the subject of extradition proceedings, not a criminal trial, in Cameroon, and the two proceedings are fundamentally different.

**FINDINGS OF THE TRIAL CHAMBER**

*Semanza's Detention Before His Transfer to the Custody of the Tribunal*

29. The Trial Chamber finds that the Defence failed to distinguish clearly between the periods of detention before and after Semanza's transfer to the custody of the Tribunal.

30. With regard to an accused person detained by a sovereign State before his transfer to the custody of the Tribunal, the Trial Chamber notes the decision in *Prosecutor v. Ntagerura*, ICTR-96-10-I, at para. 37 (Decision on the Preliminary Motion Filed by the Defence Based on Defects in the Form of the Indictment, 1 December 1997) in which Trial Chamber II refused "to terminate and nullify the proceedings before it as a consequence of acts of State over which it has no knowledge or control." See also *Prosecutor v. Barayagwiza*, Case ICTR-97-19-I, at 5 (Decision on the Extremely Urgent Motion by the Defence for Orders to Review and/or Nullify the Arrest and Provisional Detention of the Suspect, 17 November 1997). In other words, an accused, before his transfer to the custody of the Tribunal, has no remedy under the Statute and Rules for the detention and acts by sovereign States over which the Tribunal does not exercise control.

31. The Trial Chamber, therefore, holds that it is not for the Tribunal to consider alleged violations of Semanza's rights before his transfer to the custody of the Tribunal.

*Semanza's Detention After His Transfer to the Custody of the Tribunal*

32. With regard to the defence claim that Tribunal proceedings against Semanza violate the principle of *non bis in idem*, as laid down in Article 9 and Rule 13, the Trial Chamber finds that the extradition proceedings in Cameroon did not constitute a trial on the merits. Thus, trial of Semanza before the Tribunal does not infringe Article 9 or Rule 13.

33. The Trial Chamber finds that any deadline as to the issuance of the indictment that Judge Aspegren may have suggested at the *ex parte* hearing on the Rule 40bis Order was not legally binding on the Prosecutor. The matter of issuance and confirmation of indictments is governed by the Rules.

34. Rule 40(D) requires the issuance of an indictment *within twenty days of the suspect's transfer* to the custody of the Tribunal. Pursuant to Rule 40bis, the indictment must be confirmed before the expiration of the provisional detention period that runs for *thirty days from the day after the transfer* of the suspect to the Tribunal.


35. In the case at bench, the indictment was issued and confirmed *before* the transfer of Semanza into the custody of the Tribunal. Therefore, the provisions of Rules 40 and 40bis were in no way contravened.


36. The Trial Chamber consequently finds that the Defence has failed to show any violation of the provisions of the Statute and the Rules with regard to Semanza's detention after his transfer to the custody of the Tribunal.

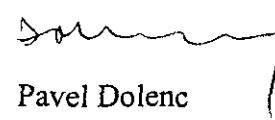
**CONCLUSION**

37. For the reasons given, the Trial Chamber **DENIES** the Defence Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful.

Arusha, 6 October 1999.

  
Lloyd George Williams  
Judge, Presiding

  
Yakov Ostrovsky  
Judge

  
Pavel Dolenc  
Judge

