

ICTR-99-46-T
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
NATIONS UNIES

TRIAL CHAMBER III

Original: English

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

Registrar: Agwu U. Okali

Date: 21 November, 2000

JUDICIAL RECORDS ARCHIVES
ICTR
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THE PROSECUTOR
vs

EMMANUEL BAGAMBIKI and SAMUEL IMANISHIMWE

THE PROSECUTOR
vs

ANDRÉ NTAGERURA

Case No. ICTR-99-46-I

**DECISION ON THE PROSECUTOR'S REQUÊTE AUX FINS DE
PROLONGATION DU DÉLAI DE TRANSFERT TEMPORAIRE ET DE
RENOUVELLEMENT DE L'ORDE DE TRANSFERT DES TÉMOINS DÉTENUS
PAR APPLICATION DE L'ARTICLE 90 bis**

The Office of the Prosecutor:
Mr. Leonard ASSIRA
Ms. Liliane RASENDRA
Mr. Richard KAREGYESA
Ms. Holo MAKWAIA
Ms. Ayodedji FADUGBA
Ms. Andra MOBBERLEY

Counsel for the Defense:
Mr. Luc P. BOUTIN
Ms. Marie Louise MBIDA
Mr. Benoit HENRY

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the “Tribunal”),

SITTING as Trial Chamber III, composed of Judge Lloyd George Williams, Presiding, Judge Yakov Ostrovsky and Judge Pavel Dolenc (the “Chamber”);

BEING SEISED of the Prosecutor’s Requête aux Fins de Prolongation du Délai de Transfert Temporaire et de Renouvellement de l’Orde de Transfert des Témoins Détenus par Application de l’Article 90 *bis*, filed on 17 November 2000 (the “Motion”);

RECALLING the Chamber's Decision of 23 August 2000 on the transfer of the detained witnesses;

CONSIDERING the parties' submissions on the record during the trial proceedings of today.

NOTING that during the proceedings of 21 November 2000, the Prosecutor indicated that it was not aware of any changes in the conditions of detention of any of the subject detained witnesses.

NOTING that pursuant to the Decision of 23 August 2000, the Registry was ordered to remain abreast of any changes that might occur with regards to the conditions of detention of the subject witnesses as prescribed by the Republic of Rwanda and to promptly communicate any such changes to the Chamber.

NOTING that the Chamber has not received from the Registrar any communication indicating that the conditions of detention of any of the detained witnesses has changed.

NOTING that the Defense submitted no written response to the Motion. The Defense did, however, make oral submissions during the course of the trial proceedings of 21 November 2000. The Defense of Imanishimwe made no objection to the Motion. The Defense of Ntagerura and Bagambiki challenge the propriety of the Motion on two grounds. First, the Defense notes that the Prosecutor has failed to establish the necessary factual predicate to the Motion inasmuch as the Prosecutor failed to establish the requirements under Rule 90 *bis* (B) have been satisfied, namely: (i) that the presence of the detained witnesses is not required by the Rwandan authorities in connection with any criminal proceedings in progress within its territory and (ii) the transfer of the detained witness will not result in an extension of his or her detention as prescribed by Rwanda. Second, the Defense also submits that the Chamber cannot, as a practical matter, grant the Prosecutor’s Motion to the extent it prays for the extension of the Decision of 23 August 2000, an order, which expired by its terms on 18 November 2000.

FINDINGS

1. As a threshold matter, the Chamber finds that it is inappropriate to extend a time limit which has already expired in respect of a previous order. Although the Prosecutor’s motion was filed on Friday, 17 November 2000, the Chamber could not have learned nor disposed of it by the date of its expiry, i.e., 18 November 2000, since that date was a Saturday, a day on which that the Tribunal does not sit. Notably in this respect, Rule 90 *bis* (F) provides as follows: “If, by the end of the period decided by the


Tribunal, the presence of the detained witness continues to be necessary, a Judge or a Chamber may extend the period, on the same conditions stated in the Sub-Rule (B).”

2. Notwithstanding the untimeliness of the Prosecutor’s instant Motion, Rule 54 does permit the Chamber to issue, *proprio moto*, orders appropriate to the current circumstances. Specifically, Rule 54 provides: “At the request of either party or *proprio moto*, a Judge or a Trial Chamber may issue such orders, . . . and transfer orders as may be necessary for the purposes of investigation or for the preparation or conduct of trial.” Accordingly, in the interest of providing orders necessary for the preparation and conduct of trial, the Chamber shall, by authority granted to it in Rule 54 and Rule 90 *bis*, fashion an appropriate order addressing the issue of the transfer of the detained Prosecution witnesses, *proprio moto*. The Chamber considers Rule 54 to be appropriate to the current circumstances and has acted accordingly.
3. The Chamber finds that the Prosecutor has established in his submissions on the record of today’s proceeding that she has furnished the necessary factual predicate for the transfer or continued custody of the detained witnesses who are the subject of the instant Motion pursuant to Rule 90 *bis* (F) by affirming that none of the conditions of detention of any of the detained witnesses has changed since the date of the 23 August 2000 Decision. In addition, the Chamber notes that the Registrar has not communicated to the Tribunal that any change has occurred in respect to the conditions of detention of any of the witnesses that are the subject of the instant Motion.
4. For the foregoing reasons, the Chamber:
 - (a) **GRANTS** the Prosecutor’s Motion to the following extent:
 - (b) **ORDERS** that the witness referred to by the pseudonym LAM, who is already in the custody of the Tribunal’s Detention Facility and who has today completed his testimony before the Tribunal, remain in such custody up to and including Wednesday, 29 November 2000; and further
 - (c) **ORDERS** that the witnesses bearing pseudonyms LAK and LAB, who have already been transferred to the Detention Facility in Arusha, Tanzania, remain in the custody of such Detention Facility up to and including Monday, 4 December 2000; and further
 - (d) **ORDERS** that the detained witnesses who are referred to by the pseudonyms LC, LAI, LAP, LAG, LAR, be transferred from the Republic of Rwanda temporarily into the Tribunal’s Detention Facility in Arusha, Tanzania, for a period commencing on Monday, 15 January 2001 up to and including Wednesday, 28 February 2001, in order to testify during the trial of the instant case; and further
 - (e) **ORDERS** the Registrar to:
 - (i) Ensure the timely and proper conduct of the transfer of the detained witnesses not yet in the custody of the Tribunal’s

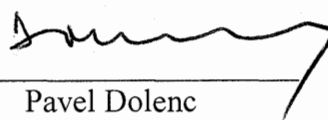
Detention Facility, in cooperation with the Prosecutor and the Government of the Republic of Rwanda;

- (ii) Supervise the custody of all the detained witnesses at the Tribunal's Detention Facility;
- (iii) Remain abreast of any changes that might occur regarding the conditions of detention provided for by the Government of the Republic of Rwanda and that possibly may affect the length of the temporary detention and, as promptly as possible, inform the Chamber of any such change, and.
- (iv) Transmit a copy of this order to the Government of the Republic of Rwanda and the Government of the United Republic of Tanzania.

Arusha, 21 November 2000


Lloyd George Williams
Judge, Presiding


Yakov Ostrovsky
Judge


Pavel Dolenc
Judge

Seal of the Tribunal

