

ICTR-99-46-T
10-9-2001
(2542 - 2539)

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[International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 10 September 2001

JUDICIAL RECORDS ARCHIVES
ICTR
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THE PROSECUTOR
v.
EMMANUEL BAGAMBIKI
SAMUEL IMANISHIMWE

THE PROSECUTOR
v.
ANDRÉ NTAGERURA

Case No. ICTR-99-46-T

**DECISION ON PROSECUTOR'S EXTREMELY URGENT
APPLICATION TO PROLONG THE STAY OF
WITNESSES LAP AND LAI PURSUANT TO RULE 54**

The Office of the Prosecutor:
Richard Karegyesa
Holo Makwaia
Andra Mobberley

Counsel for the Accused:
Henri Benoît
Hamuli Rety
Vincent Lurquin
Marie-Louise Mbida

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the Tribunal),

SITTING as Trial Chamber III, composed of Judges Lloyd George Williams, presiding, Yakov Ostrovsky and Pavel Dolenc (the Chamber);

BEING SEIZED of the “Prosecutor’s Extremely Urgent Application to Prolong the Stay of Witnesses LAP and LAI pursuant to Rule 54”, filed on 30 July 2001 (the Motion);

CONSIDERING the “Réponse de la Défense de Ntagerura André à la Requête en Extrême Urgence du Procureur en Prolongation du Séjour des Témoins LAP et LAI Conformément à l’article 54 RPP” filed 10 August, 2001 (Ntagerura’s Response);

CONSIDERING the “Réponse de la Défense de Samuel Imanishimwe à la Requête en Extrême Urgence du Procureur en Prolongation du Séjour des Témoins LAP et LAI Conformément à l’article 54 RPP” filed 27 August 2001 (Imanishimwe’s Response);

CONSIDERING the “Decision on the Prosecutor’s Motion for the Transfer of Detained Witnesses Pursuant to Rule 90 *bis*”, dated 23 August 2000, which ordered, *inter alia*, that witnesses LAI and LAP be temporarily transferred to the United Nations Detention Facility (the UNDF) for a period not exceeding two months from the date of the commencement of trial, which expired on 18 November 2000;

CONSIDERING the “Decision on the Prosecutor’s Requête aux Fins de Prolongation du Délai de Transfert Temporaire et de Renouvellement de l’ordre de Transfert des Témoins Détenus par Application de l’article 90 *bis*”, dated 21 November 2000, which ordered that the detained witnesses including LAI and LAP be transferred from the Republic of Rwanda to the UNDF for a period commencing on 15 January 2001 and ending 28 February 2001;

NOTING that the witnesses LAI and LAP were not transferred to the UNDF until 29 March 2001;

CONSIDERING Rules 54 and 90 *bis* of the Rules of Procedure and Evidence (the Rules) and Rule 7 of the Rules Covering the detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise detained on the Authority of the Tribunal;

NOW CONSIDERS the matter solely on the basis of the briefs of the parties, pursuant to Rule 73(A) of the Rules.

SUBMISSIONS OF THE PARTIES

1. The Prosecutor requests the Chamber to issue a new order prolonging the custody of witnesses LAP and LAI, who are currently detained at the UNDF in Arusha. In support of this request, the Prosecutor relies on a letter from the Minister of Justice and Institutional Relations of the Republic of Rwanda, dated 17 July 2001.
2. The Defence of Ntagerura opposes this motion on the basis that the witnesses have been illegally detained, that Rule 54 is not applicable to this situation, and that the

evidence proffered by the Prosecutor does not satisfy the preconditions of Rule 90 *bis* (B).

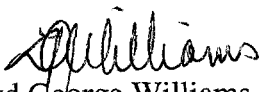
3. The Defence of Imanishimwe also opposes the Prosecutor's motion, arguing that the Chamber cannot prolong an irregular detention that does not legally exist and that Rule 54 is inapplicable.

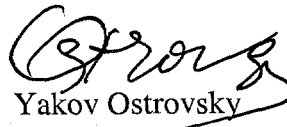
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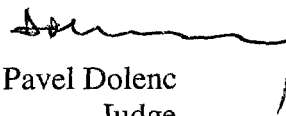
4. The transfer and detention of Witnesses LAI and LAP was authorised by this Chamber only during the periods set out in the Decisions of 23 August 2000 and 21 November 2000. While this authorised period expired on 28 February 2001, these two witnesses were not transferred to the UNDF in Arusha until 29 March 2001.
5. The Tribunal, the Registry, the Victims and Witnesses Support Section, the authorities at the UNDF and all parties must be meticulous in monitoring the detention of witnesses. Parties should bring motions for extension of detention pursuant to Rule 90 *bis* (F) in a timely manner, well in advance of the expiry of any previous detention order.
6. Notwithstanding the expiration of the previous Orders, Rule 54 permits the Chamber to issue orders as may be necessary for the conduct of the trial. While it would have been preferable to consider the issue pursuant to the specific provisions of Rule 90 *bis* (F), it is appropriate to resort to the Tribunal's general Rule 54 authority when the specific provision of Rule 90 *bis* is no longer available and when it is in the interests of justice and judicial efficiency to do so.
7. An Order pursuant to Rule 54 should nevertheless conform with the preconditions for the transfer of a detained witness as set out in Rule 90 *bis* (B)(i) and (ii). On the basis of the Prosecutor's written submissions and of the letter from the representative of the Government of Rwanda, the Chamber concludes that the detained witnesses are not required for any other proceedings in Rwanda and that the period of detention in Arusha will not exceed the foreseen period of detention in Rwanda.
8. For the foregoing reasons, the Chamber:
 - (a) **ORDERS** that Witnesses LAI and LAP continue to be detained at the UNDF in Arusha for a period not beyond **15 November 2001**, in order to testify at the trial in the instant case;
 - (b) **ORDERS** the Registrar to:
 - (i) Supervise the custody of the detained witnesses at the UNDF;
 - (ii) Remain abreast of any changes that might occur regarding these witnesses' conditions of detention in Rwanda that may affect the length of the temporary detention;
 - (iii) Inform the Chamber of any such changes as promptly as possible; and

- (iv) Transmit a copy of the order to the Government of the Republic of Rwanda and the Government of the United Republic of Tanzania.

Arusha, 10 September 2001.


Lloyd George Williams
Judge, Presiding


Yakov Ostrovsky
Judge


Pavel Dolenc
Judge

(Seal of the Tribunal)