

ICTR-99-46-T  
24-4-2002  
(2813-2811)

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#m



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER III**

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

Registrar: Mr Adama Dieng

Date: 24 April 2002

JUDICIAL RECORDS/MOUVES  
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*Adama Dieng*

**THE PROSECUTOR**  
v.  
**ANDRÉ NTAGERURA**  
**EMMANUEL BAGAMBIKI**  
**SAMUEL IMANISHIMWE**

**Case No. ICTR-99-46-T**

**DECISION ON DEFENCE MOTION TO OBTAIN CONFIDENTIAL  
REPORT CONCERNING ALLEGATIONS OF WITNESS LAI  
(Articles 19(1) and 20(2))**

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

Counsel for the Accused:  
Mr Benoît Henry  
Mr Hamuli Rety  
Mr Vincent Lurquin  
Mr Seydou Doumbia  
Ms Marie-Louise Mbida  
Mr Pierre Fofe

**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 Defence of Imanishimwe's "Motion Requesting Disclosure, Under Confidential Cover, of the Report by the Witness Protection Sections on the Investigation into Allegations Made by Prosecution Witness LAI pursuant to Articles 19.1. and 20.2. of the Statute and Rule 73 of the Rules of Procedure and Evidence" dated 30 March 2002 and filed 2 April 2002 (the "Motion");

**CONSIDERING** the Prosecutor's response filed 9 April 2002, in which the Prosecutor indicates that she does not wish to be heard on this matter;

**NOW CONSIDERS** the matter solely on the brief of the Defence, pursuant to Rule 73(A) of the Rules of Procedure and Evidence of the Tribunal (the "Rules").

## **PLEADINGS**

### *Defence Submissions*


1. On 18 September 2001, detained and protected prosecution Witness LAI told the Chamber that he had been subjected to harassment relating to his testimony. The Prosecutor revealed that it was not the first time that this type of incident occurred at the United Nations Detention Facility and that it was important for the Chamber to look into the nature of the harassment.
2. The Chamber ordered that various sections of the Registry should collaborate to investigate the matter. The Defence argues that the Chamber explicitly stated that it would hear the observations of the parties after the Report was filed.
3. On 26 September 2001, however, the Chamber announced that it had received a Confidential Report from the Registry concerning the matter. In view of the Report's conclusions, the Chamber indicated that it considered the question to be closed.
4. Relying on Articles 19(1) and 20(2) of the Statute and Rule 73 of the Rules, the Defence of Imanishimwe requests the Chamber to order the Registrar to transmit the Confidential Report to the Defence. Since Imanishimwe was accused of harassing the witness and was interviewed during the investigation ordered by the Chamber, the Defence argues that he has a right to see the Report. The Defence further observes that witness protection is a concern not only of the Prosecutor, but also of the Defence.

### *Deliberations*


5. On 18 September 2001, the President of the Chamber instructed the appropriate sections of the Registry to investigate the allegations made by the witness and to take any necessary steps to ensure the protection of the witness for the duration of his testimony.

6. Although the Chamber expected the results of the investigation to be circulated to the parties, the Registry communicated its Confidential Report only to the Judges of the Chamber.
7. On 26 September 2001, the Chamber reviewed the Confidential Report and concluded that it was not possible to come to any findings confirming the allegations against the Accused. Therefore, the Chamber found that there was no basis upon which to take any further action. As a result, the Chamber decided that it would not serve any purpose to distribute the Confidential Report to the Parties.
8. The Defence of Imanishimwe argued at the time that the Report should be made available to the Defence, in line with past practice. In the circumstances of this case, the Chamber rejected this proposal.<sup>1</sup>
9. The Motion relies on Articles 19(1) and 20(2) of the Statute, which are general provisions relating to the rights of the accused and to the fair, expeditious, and public nature of the proceedings. However, the Defence fails to explain how these provisions support the relief requested. It is not clear how denying the Defence access to this Confidential Report relating to the protection of a prosecution witness could affect the fairness of the trial or infringe any guaranteed right of the Accused. The mere fact that the Accused was interviewed during the investigation does not automatically require that the Report be distributed to the parties nor does it directly engage any rights of the Accused.
10. The Chamber therefore considers that this matter is closed. The Motion does not raise any legally recognised interest or right of the Defence as a compelling ground upon which the Chamber could be moved to reconsider its previous decision and to order the disclosure of the Confidential Report, which was prepared for and served only on the Chamber.
11. Therefore, the Chamber dismisses the Motion in its entirety.

Arusha, 24 April 2002.

  
Lloyd George Williams, Q.C.  
Judge, Presiding

  
Yakov Ostrovsky  
Judge

  
Pavel Dolenc  
Judge

(Seal of the Tribunal)

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<sup>1</sup> T. 26 September 2001 p. 78