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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

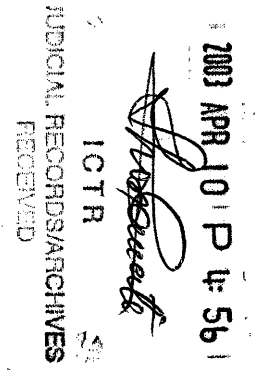
TRIAL CHAMBER III

Original: English

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

Registrar: Mr. Adama Dieng

Date: 10 April 2003



THE PROSECUTOR

v.

ANDRE NTAGERURA,
EMMANUEL BAGAMBIKI, and
SAMUEL IMANISHIMWE

Case No. ICTR-99-46-T

**DECISION ON THE PROSECUTOR'S EXTREMELY URGENT REQUEST
FOR A SUSPENSION OF TIME LIMITS AND FOR AN EXTENSION OF
TIME FOR FILING AN APPLICATION FOR REBUTTAL**

The Office of the Prosecutor

Mr. Richard Karegyesa
Mr. Holo Makwaia
Ms. Andra Mobberly

Defence Counsel for the Accused

Mr. Benoît Henry
Mr. Hamuli Rety wa Mudeydey
Mr. Vincent Lurquin
Mr. Sedou Doumbia
Ms. Marie-Louise Mbida
Mr. Jean Pierre Fofe

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“TRIBUNAL”)

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

BEING SEISED of the Prosecutor’s Extremely Urgent Request for a Suspension of Time Limits and for an Extension of Time for Filing an Application for Rebuttal, filed 7 April 2003 (the “Motion”);

RECALLING the oral decision of the majority of the Chamber delivered during the Status Conference of 3 April 2003, which allowed the Prosecutor to file her motion requesting leave to present evidence in rebuttal no later than 11 April 2003 (Judge Ostrovsky dissenting) (the “Oral Decision”);¹

NOW DECIDES this Motion solely on the basis of the Prosecutor’s written submissions.

Submissions of the Prosecutor

1. Pursuant to Rules 54 and 73, the Prosecutor files the instant Motion seeking an extension of the time limit to file a motion for rebuttal from 11 April to 18 April 2003.
2. In support of the relief she seeks, the Prosecutor asserts that she has been informed by her investigators that they require an additional week within which to complete their inquiries relative to her rebuttal case. The Prosecutor is advised by Samuel Akorimo, the Commander of Investigations, that the need for additional time is occasioned by the following state of affairs that have hampered her investigations: (1) the national mourning period for the Rwanda Genocide during the week of 1 to 7 April 2003; (2) the National holiday in Rwanda commemorating the genocide on 7 April 2003; (3) the great distance and dangerous road conditions between Kigali and Cyangugu, the site where most of the outstanding inquiries must be made; and (4) the state of insecurity both in the area of Nyungwe Forest and in Cyangugu, where the high risk of attacks since 1997 has required the use of a military escort. Moreover, claims the Prosecutor, the investigators have continued to make the necessary inquiries notwithstanding the foregoing impediments that have made it necessary for them to proceed cautiously in their investigations.
3. Finally the Prosecutor contends that the requested extension of time will not cause prejudice to any party in the proceedings because it is in the interest of justice and consistent with the imperatives of Article 19 of the Tribunal’s Statute.

Deliberations

4. Owing to the urgent nature of the relief the Prosecutor seeks the Chamber has considered this Motion solely on the basis of Prosecutor’s submissions.
5. The Chamber finds that the circumstances described by the Prosecutor, which may have been generally known, were not specifically considered by the Chamber at the Status Conference. Considering such exigencies at this time, the Chamber finds that they justify granting the Prosecutor the proposed extension of time to file her motion seeking leave to

¹ Transcript of Status Conference, 3 April 2003, p. 9 (Closed Session).

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present a rebuttal case. The Chamber notes, however, that the date proposed by the Prosecutor, 18 April 2003, falls on a holiday when the Registry is not open to receive filings.

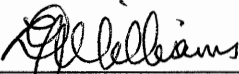
6. Judge Ostrovsky dissents from the Decision of the Chamber and attaches his separate dissenting opinion hereto.

7. Accordingly, the Chamber

GRANTS the Motion and;

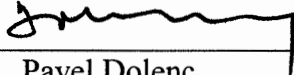
ORDERS the Prosecutor to file her motion seeking leave to present a rebuttal case, if any, no later than 17 April 2003.

Arusha, 10 April 2003



Lloyd George Williams, Q.C.
Judge, Presiding

Yakov Ostrovsky
Judge



Pavel Dolenc
Judge

[SEAL OF THE TRIBUNAL]





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JUDICIAL RECORDS/ARCHIVES
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DISSENTING OPINION OF JUDGE YAKOV OSTROVSKY
Decision On The Prosecutor's Extremely Urgent Request For A Suspension Of
Time Limits And For An Extension Of Time For Filing An Application For
Rebuttal

Office of the Prosecutor:

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DISSENTING OPINION OF JUDGE YAKOV OSTROVSKY

1. I write separately to express my dissenting opinion to the majority's Decision On The Prosecutor's Extremely Urgent Request For A Suspension Of Time Limits And For An Extension Of Time For Filing An Application For Rebuttal.

2. The majority's decision to grant the Prosecutor's motion for an extension of time to file her application for rebuttal is wholly unjustified. The Prosecutor's motion was based solely on foreseeable difficulties in the pursuit of *outstanding* inquiries that she asserts may limit the scope of her application. However, the Prosecutor's pursuit of inquiries is not a relevant ground to justify an extension of the 11 April 2003 deadline set by the Chamber at the 3 April 2003 status conference.

3. Rebuttal is only properly allowed where the Prosecutor seeks to refute a particular piece of evidence adduced by the Defence on an unforeseen matter that arises *ex improviso*.¹ Therefore, an application seeking leave to call rebuttal must first and foremost explain the specific aspect of the defence's case that gives rise to rebuttal. This requires the Prosecutor to submit to the Chamber all pertinent justifications, including: (1) the specific evidence adduced by the Defence; (2) an explanation of why the presentation of this evidence was unforeseen or *ex improviso*; and (3) a justification of what rule or other applicable principle of law required the Defence to provide advance notice before tendering the evidence. If a Chamber determines that there are legitimate grounds to allow rebuttal, only then should it consider any proposed witnesses to be called in rebuttal to determine if their testimony will be relevant and pertinent.²

4. To complete the foregoing exercise, the Prosecutor need only analyse the record of the proceedings and the rules of procedure or other applicable principles of law. The Prosecutor's pursuit of investigative inquiries is not relevant to any of these issues. Therefore, the problems the Prosecution is facing in completing its inquiries does not preclude it from filing its application.

5. In my opinion, the Prosecutor's motion seeks an unwarranted delay of the proceedings. During the presentation of the Bagambiki case, the Prosecution did not refer to its intention to file an application for rebuttal. The Prosecutor waited for the close of the evidence to announce her intention to seek rebuttal at the status conference. The Prosecution requested fourteen days to conclude inquiries, which, as indicated, were outstanding and largely in an advanced stage of completion.

¹ *Prosecutor v. Semanza*, Case No. ICTR-97-20-T, Decision on the Prosecutor's Motion for Leave to Call Rebuttal Evidence and the Prosecutor's Supplementary Motion for Leave to Call Rebuttal Evidence, Tr. Ch., 27 March 2002, para. 8; *Prosecutor v. Delalic, et al*, Case No. IT-96-21-T, Decision on the Prosecution's Alternative Request to Reopen the Prosecution's Case, Tr. Ch. (ICTY), 19 August 1998, para. 23.

² I further note that the Prosecutor has not even indicated that her inquiries are directed at this secondary consideration.

6. A majority of the Chamber directed the Prosecutor to file the motion for rebuttal not later than 11 April 2003. Thus, the Prosecutor received more than a week to prepare and file this motion.

7. I did not support the majority's decision at that time because, in my opinion, the Prosecutor sought additional time, not for the preparation and filing of the motion for rebuttal, but for conducting inquiries that are not appropriate at this stage. As discussed above, the Chamber first must know why the Prosecutor finds it necessary to present the evidence in rebuttal with all pertinent and supporting justifications.

8. In the Prosecutor's motion of 7 April 2003, she explained, for the first time, her basis for presenting evidence in rebuttal. In paragraph 7, the Prosecutor asserts vaguely that "the Accused gave *ex improviso* evidence of which the Prosecutor had no prior notice, and which raises justiciable issues meriting rebuttal and affecting all three Accused."

9. The motion did not give any indication of what *ex improviso* evidence arose during the Bagambiki Defence case, why prior notice would be justified, and how this evidence is relevant to the other Accused. Moreover, there was also no such indication at any point during the examination of Emmanuel Bagambiki or at the status conference.

10. In my opinion, the Prosecutor must specify these issues, which for the Chamber will be sufficient to render a decision on the substance. It is obvious that in order to specify these issues inquiries are not necessary.

11. The decision of the majority to allow the Prosecutor to continue the inquiry is contrary to the provisions of the Rules of Procedure and Evidence. When the Prosecution and the Defence cases are closed the Chamber pursuant to Rule 86 must set the date for the presentation of the closing arguments by the parties. There is nothing in the Rules of Procedure which allows the Prosecutor to continue inquiries at this stage. For this purpose, the Prosecutor had enough time taken into consideration that the trial commenced in September 2000. Moreover, the motion and the majority decision run counter to the obligation of the Tribunal to ensure expeditious proceedings provided in Article 19(1) of the Statute and the Accused's right to be tried with undue delay as guaranteed by Article 20(4)(c).

12. For the foregoing reasons, I consider the position of the majority to allow the Prosecutor to continue with her inquiries as an artificial delay in the proceedings.

Arusha, 10 April 2003



Yakov Ostrovsky
Judge

Seal of the Tribunal

