



Office of the
Deputy General Prosecutor
for Serious Crimes

Case No 10/2003

The Prosecutor

v

Mateus Lao aka Ena Poto

**Response to Defense Motion to Exclude Minutes
of Detention Review Hearing Held On 25 November 2002**

For the Prosecution:

Charles Nsabinana

For the Defense:

Sebastian Appenah

(R) 21/10/04

A. Background.

1. On 7th October 2004 the Defense Lawyer of Mateus Lao filed a Motion to Exclude the Minutes of Detention Review Hearing Held On 25 November 2002.

2. The Defense invokes its belief that the Minutes of Detention Review Hearing Held On 25 November 2002 were in possession, custody or control of the Prosecution prior to the presentation of the indictment and concludes that the Prosecution failed to place the said document timely before the Court pursuant to Section 24.4(a) of the TRCP.

3. The Defense pretends also that admission of these Minutes, at any level, would certainly be extremely prejudicial to the Accused and have a negative effect on the integrity of the proceedings.

B. Response

Belief that the Minutes of Detention Review Hearing Held On 25 November 2002 were in possession, custody or control of the Prosecution prior to the presentation of the indictment.

4. Here again, the Defense is just speculating; the fact is that that document was made available to the Prosecution, not at the time of its request for a copy of the Minutes, but much later.

5. While it is undisputed that the Prosecutor had knowledge of the existence of that document, he could only get in possession of that document, sometime around the period of its filing, despite many attempts. This situation was totally beyond the control of the Prosecutor, and, as soon as it was available, the copy and translation into English of the Minutes were filed and made available to the Defense.

6. It is submitted that in so doing the Prosecutor complied with the obligation of discovery of qualifying material coming later into his possession to the representative of the Accused set up by Section 24.7 of the TRCP.

7. This legal obligation has no time limitation; this obligation is a continuing duty. In fact, when lodging motions for further discovery, as it is the case in the very motion dated 7th October 2004 in which the same Defense Lawyer requests the Honorable Panel to compel the Prosecution for further discovery of a series of documents and information of any form and nature, the Defense itself is doing nothing less than confirming our submission.

8. In the present case, the Prosecution did not wait until such request for discovery is formulated by the Defense; as soon as the Minutes of Detention Review Hearing Held On 25 November 2002 were made available to the Prosecution, they were immediately filed to Court and to the Defense.

Pretended extreme prejudice to the Accused and negative effect on the integrity of the proceedings.

9. Furthermore, Section 33.4 of the TRCP authorizes the Court to admit such document; provided that provisions of Section 29A of the TRCP were respected.

Section 33.4 of the TRCP reads: "A statement or confession made by the Accused before an Investigating Judge may be admitted as evidence, if the Court finds that any admission of guilt contained in such a statement was made in compliance with the provisions of Section 29.1".

10. Whether such legal requirements were met or not during the confession made by the Accused before the Investigating Judge and may be admitted as evidence will constitute a substantive matter to be examined by the Honorable Panel during trial. At this stage of the proceedings (trial is not yet started), the issue to be examined is the admissibility into evidence of the Minutes.

11. The Minutes, where the Accused confessed having killed an unknown person, are relevant to the case. It alleged by the indictment that the victim was Josef Maknaun. Whether the allegations of the Prosecution are founded or not will again constitute one of the substantive issues to be examined during the trial.

12. The Defense is not founded to exclude official minutes of a legal hearing written by a legally competent Investigating Judge. This would be to deprive the Honorable Panel the right and the obligation to examine a relevant document to the case under its review.

13. Furthermore the Defense has not proved the pretended extreme prejudice for the Accused and negative effect on the integrity of the proceedings.

By failing to demonstrate how the Accused will be prejudiced by his own statement voluntarily made and with the advice of his legal representative before the Investigating Judge and in which manner an admission of the minutes will have a negative effect on the integrity of the proceedings, the Defense must be dismissed.

14. It is submitted, on the contrary, that a dismissal of such a so relevant document to the case would impact negatively on the seeking and the manifestation of the judicial truth.

C. CONCLUSION

In light of the above submissions, the Prosecutor here requests the Honorable Court to disregard the Defense Motion to Exclude the Report on Human Right Violations During 1999 in Occussi District dated November 2001 submitted on 11th October 2004 and admit this important document into evidence in the present case.

Dated the 20th day of October 2004
Respectfully submitted.

Charles Nsabimana
Prosecutor for Serious Crimes

