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INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

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Case No.: ICTR-96-8-DP

THE JUDGE


**THE PROSECUTOR
AGAINST
FERDINAND NAHIMANA
(ASSISTED BY MAÎTRE BENJAMIN ONDIGUD)**

DECISION:

CONTINUED DETENTION ON REMAND OF

FERDINAND NAHIMANA

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DECISION ON THE CONTINUED DETENTION ON REMAND OF

Ferdinand Nahimana (born 15 June 1950)

(Pursuant to Rule 40 *bis* (D) of the Rules of Procedure and Evidence)

The International Criminal Tribunal for Rwanda (the "Tribunal"), sitting as Judge Lennart Aspegren, designated by the President of the International Tribunal pursuant to Rule 28 of the Rules of Procedure and Evidence ("the Rules") of the Tribunal,

Considering Resolution 955 of 8 November 1994 adopted by the United Nations Security Council, establishing the Statute of the Tribunal (the "Statute"), and in particular Article 28 of the said Statute,

Considering the Rules of the Tribunal and in particular its Rule 40 *bis* (D) adopted on 15 May 1996 by the Judges of the Tribunal pursuant to Article 14 of the Statute,

Noting the decision rendered by the Tribunal on 12 March 1996 for the Kingdom of Belgium to defer to the competence of the Tribunal in relation to all investigations and criminal proceedings being conducted ~~in the matter of Ferdinand Nahimana~~ concerning the activities of the RTLM, as well as persons involved in the case of ~~the~~ RTLM,

Considering the decision rendered by the Tribunal on 17 May 1996 for the detention on remand and transfer to the Tribunal's Detention Unit of Ferdinand Nahimana,

Considering the request (the "request") made by the Prosecutor of the Tribunal on 13 June 1996 and the affidavits attached to it,

Having heard today, at a hearing held in Yaoundé, the representatives of the Prosecutor, acting under Rules 37 and 38 of the Rules, and the detainee and his counsel,

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Keeping in mind the rights of the suspect as provided for, inter alia, in Article 20 of the Statute,

Decides and orders as follows:

I - Request

1. The request is made by the Prosecutor of the Tribunal, pursuant to Rule 40 *bis* of the Rules, seeking an order for the continued detention on remand and the transfer to the Tribunal's Detention Unit of Ferdinand Nahimana.

II - Justification

2. Rule 40 *bis* of the Rules states that:

“(…)

(B) The Judge shall order the transfer and provisional detention of the suspect if the following conditions are met:

- (i) the Prosecutor has requested a State to arrest the suspect provisionally, in accordance with Rule 40 of the Rules, or the suspect is otherwise detained by the State authorities;
- (ii) after hearing the Prosecutor, the Judge considers that there is a reliable and consistent body of material which tends to show that the suspect may have committed a crime over which the Tribunal has jurisdiction, and
- (iii) the Judge considers provisional detention to be a necessary measure to prevent the escape of the suspect, injury to or intimidation of a victim or witness or the destruction of evidence, or to be otherwise necessary for the conduct of the investigation (...).

- (D) The provisional detention of a suspect shall be ordered for a period not exceeding 30 days from the signing of the provisional detention order. At the end of that period, at the Prosecutor's request, the Judge who made the order, or another Judge of the same Trial Chamber, may decide, subsequent to an *inter partes* hearing of the Prosecutor and the suspect assisted by his counsel, to extend the detention for a period not exceeding 30 days, if warranted by the needs of the investigation (...)

3. The suspect, Ferdinand Nahimana, was arrested by the Cameroonian authorities in the evening of 27 March 1996 pursuant to an international warrant of arrest issued by the

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Rwandan authorities. On 17 May 1996, at a hearing held in Arusha, the Tribunal ordered the detention on remand and transfer to the Tribunal's Detention Unit of Ferdinand Nahimana. To date, he is being held by the Cameroonian prison authorities.

4. The request made by the Prosecutor, the elements made known to the Tribunal by the affidavits attached to the request, and the indications and information developed during the hearing indicate that there still exist good reasons to believe that Ferdinand Nahimana might have committed offences such as genocide, crimes against humanity, and violations of Article 3 common to the Geneva Conventions and of Additional Protocol II. The request, however, has above all set forth reasons which seem to justify the continued detention on remand of Ferdinand Nahimana. These reasons relate, *inter alia*, to the material security conditions in the territory of Rwanda, and to the fact that the Prosecutor has not yet received the records of investigations and criminal proceedings concerning the Radio Télévision Libre des Mille Collines (RTL) and persons involved in that case, as called for in the order for deferral issued by the Tribunal on 12 March 1996 and addressed to the Government of the Kingdom of Belgium.
5. The Tribunal is convinced that there still are risks that Ferdinand Nahimana may escape, that he may evade Justice, that he may try, directly or indirectly, to harm victims or witnesses, and that he may try to destroy evidence, and that there also exist reasons related to the sources and conditions of the investigations conducted by the Prosecutor, which justify and require the continued detention on remand of Ferdinand Nahimana.

In particular, the Tribunal took as a basis the information set forth in the affidavits attached to the request, which show that the records concerning the suspects have not yet been sent from Belgium and also that the security situation in the western part of Rwanda has suddenly deteriorated, adversely affecting the normal conduct of the investigations and causing some witnesses to be inaccessible.

6. The Government of Cameroon, according to the statements made by the Representatives of the Prosecutor and of the Tribunal, would be cooperative and would receive favorably a positive decision on the request for the continued detention on remand of Ferdinand Nahimana.
7. In the light of the foregoing, the Tribunal is of the opinion that the request for the continued detention on remand and transfer of Ferdinand Nahimana made by the Prosecutor meets with the conditions set forth in Rule 40 *bis* (D) of Rules and that it should be received favorably.

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8. The request for the continued detention, dated 13 June 1996, was submitted to the Registrar on 16 June 1996, that is before the expiry of the duration of detention on remand.

For a number of reasons, the Tribunal has not been able to consider the question of the continued detention on remand of Ferdinand Nahimana before the expiry, on 16 June 1996, of the period in accordance with the Tribunal's decision of 17 May 1996. Since 17 June 1996, he has however been detained again under Cameroonian law. At this stage, instead of considering an order for a new thirty day period of detention in accordance with paragraph (A) of Rule 40 *bis* of the Rules, the Tribunal, intending to comply with the aims and functions of article 40 *bis* in general and of its paragraph (D) in particular, favors instead the continued detention on remand of Ferdinand Nahimana for a maximum period of 30 days yet from the expiry date of the first period of detention, so as to continue the detention on remand under Rule 40 *bis* (D) of the Rules.

9. In his request, not only did the Prosecutor request the continued detention on remand of Ferdinand Nahimana, but also the confirmation of the order for the transfer of Ferdinand Nahimana to the Tribunal's Detention Unit. Since the Tribunal's decision on the transfer of Ferdinand Nahimana to the Tribunal's Detention Unit under Rule 40 *bis* (B) of the Rules has not yet been effected by the Cameroonian authorities, the Tribunal is of the opinion that its order of transfer is still in effect. Consequently, the Tribunal does not need to confirm the validity of that order, but only to remind the Government of Cameroon to effect such transfer as soon as possible.

III - Decision

THE TRIBUNAL, BASED ON THE FOREGOING DETERMINES AS FOLLOWS:

Considering all the matters raised in the Prosecutor's request and by Ferdinand Nahimana's counsel and addressed at the hearing,

Taking into account the provisions of Article 28 of the Statute,

Considering the requirements set forth in Rule 40 *bis* (D) of the Rules,

Considering that the Prosecutor has submitted sufficient reasons to show and justify the need for the continued detention on remand in order to complete his investigations and criminal proceedings against Ferdinand Nahimana;

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Noting that Ferdinand Nahimana is still detained by the Cameroonian authorities and that his transfer to the Tribunal's Detention Unit has however not yet been implemented despite the Tribunal's decision of 17 May 1996:

Given the request before it made by the Prosecutor,

HEREBY GRANTS the said request,

ORDERS the continued detention on remand of Ferdinand Nahimana for a maximum period of thirty days, namely from 17 June 1996 to 16 July 1996 inclusive;

REQUESTS the Government of Cameroon to effect as soon as possible the Tribunal's order of 17 May 1996 for the transfer of Ferdinand Nahimana to the Tribunal's Detention Unit;

Lastly, the Tribunal requests the Registrar to notify the Government of Cameroon and to inform the Government of the Kingdom of Belgium and the Government of Rwanda of this Decision.

Yaoundé, 18 June 1996

For the Tribunal

Lennart Aspegren
Lennart Aspegren
Judge

