

ICTR-97-34-DP
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Case No.: ICTR-97-34-DP

UNITED NATIONS



NATIONS UNIES

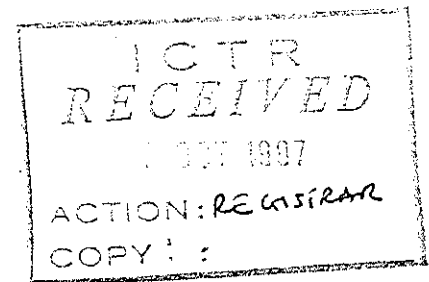
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR:FR

Before : Judge Laïty Kama

Decision of : 14 August 1997

THE PROSECUTOR
VERSUS
GRATIEN KABILIGI



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**DECISION ON THE EXTENSION OF THE PROVISIONAL DETENTION
FOR A MAXIMUM PERIOD OF THIRTY DAYS
(IN ACCORDANCE WITH RULE 40 BIS (F)
OF THE RULES OF PROCEDURE AND EVIDENCE)**

Office of the Prosecutor: Mr. Mohamed C. Othman
Mr. James Stewart
Mr. Oyvind Olsen
Mr. Pierre Duclos

Counsel for the Defence: Mr. Jean Yaovi Degli

Registry: Mr. Antoine Kesia-Mbe Mindua

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THE TRIBUNAL,

SITTING in the person of Judge Laïty Kama,

CONSIDERING that the suspect Gratien Kabiligi was transferred to the Detention Facility of the Tribunal on 18 July 1997, and that he will be incarcerated there up to and including 17 August 1997, on the basis of an order issued by Judge Laïty Kama on 16 July 1997 pursuant to Rule 40 *bis* of the Rules of Procedure and Evidence of the Tribunal (the 'Rules'), following a request he received from the Prosecutor on 14 July 1997,

CONSIDERING the request submitted by the Prosecutor on 12 August 1997, pursuant to the provisions of Rule 40 *bis* (F) of the Rules, seeking the extension of the provisional detention of the suspect Gratien Kabiligi (the 'request') for a further period of thirty days, and, considering the affidavit drawn up by Mr. Oyvind Olsen, Commander of Investigations at the Office of the Prosecutor, attached to the said request,

HAVING HEARD the parties during an *inter partes* hearing held on 14 August 1997 to that end,

AFTER HAVING DELIBERATED,

WHEREAS sub-Rule 40 *bis* (F) provides that :

" (...)

(F) At the end of the period of detention, at the Prosecutor's request indicating the grounds upon which it is made and if warranted by the needs of the investigation, the Judge who made the order, or another Judge of the same Trial Chamber, may decide, subsequent to an *inter partes* hearing, to extend the detention for a period not exceeding 30 days.

(...)";

WHEREAS, according to the Tribunal, in consideration of the Fundamental Freedoms of the Individual, this provision can only be applied where exceptional circumstances prevail, such as, in particular, serious problems which may arise during the investigations,

Whereas, in support of her request for the extension of the detention of the suspect Gratien Kabiligi for a further period of thirty days, the Prosecutor explains that she is not yet ready to file an indictment against Gratien Kabiligi due to :

- a. The complexity of the investigations concerning the suspect;
- b. The persistent difficulty in conducting investigations throughout the territory of Rwanda;
- c. The necessity to analyse and assess all the evidentiary materials seized at the time of the suspect's arrest and to determine the precise charges to be laid against him;

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- d. The necessity, in order to present a concise and precise indictment, to analyse the involvement and role of the suspect not only in the events that occurred in Rwanda in 1994 but also his alleged participation in the preparation, organization and execution of the crimes committed during that time in complicity with other suspects;
- e. The necessity to amend existing indictments in order to join the suspect with other accused,

Whereas the Prosecutor, during the oral presentation of her request, stated further that the investigations into the crimes allegedly committed by Gratien Kabiligi require meticulous research, particularly in the archives of the Rwandan Defence Ministry and of the former Rwandan Armed Forces, and, whereas permission to have access to the archives was only granted by the Rwandan Authorities to the Prosecutor after the arrest of the suspect, the investigation of the archives has therefore been delayed,

Whereas, furthermore, the Prosecutor added that she also hopes to gather certain crucial testimonies for her investigations, but that problems related to the prevailing insecurity in some parts of Rwanda and in the countries neighbouring Rwanda have thus far prevented her from doing so,

Whereas, *in fine*, the Prosecutor explained that the extension of the provisional detention of Gratien Kabiligi is necessary for the conduct of the investigations, in order to ensure that the suspect does not attempt to evade Justice, as the fact that he was in possession of false identity papers at the time of his arrest would seem to suggest,

WHEREAS the Defence requested the provisional release of the suspect, by arguing that at the time of his arrest in Kenya, the suspect did not receive the affidavit attached to the Prosecutor's request for the transfer and detention of the suspect for an initial period of 30 days; and, whereas the rights of the suspect were thus violated and that, consequently, the order for the transfer and detention, dated 16 July 1997, was illegal, rendering the Prosecutor's new request for the extension of the said detention inadmissible,

Whereas the Defence further stated that the request for the extension of the detention does not contain any new information compared with the reasons set forth in the order for the transfer and detention of 16 July 1997,

Whereas, furthermore, no inventory was taken of the objects, money and documents which were seized from the suspect at the time of his arrest,

WHEREAS the Defence stated, moreover, that it had not received the transcripts of the questioning of the suspect by the Prosecutor, as provided for under Rule 43 of the Rules,

Whereas the Defence finally maintained that the conditions of detention of the suspect are not in conformity with the Rules Covering the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal (the 'Rules of Detention'), given

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that the suspect is not allowed one hour of walking per day,

WHEREAS the Tribunal deems it necessary to provide the Defence with the following clarification: that, first of all, the suspect was arrested pursuant to the provisions of Rule 40 of the Rules, which deals with provisional measures that the Prosecutor may request any State to take in case of urgency, and that, evidently, such a procedure is not the concern of the Judges,

Whereas the order for the transfer and provisional detention was issued by the Tribunal in conformity with Rule 40 *bis*, sub-Rules (A) and (B),

Whereas sub-Rule (A) empowers the Prosecutor to submit a request to a Judge for the transfer to and provisional detention in the premises of the Detention Facility; the said sub-Rule (A) stresses the fact that the request must indicate the grounds upon which it is based and "unless the Prosecutor wishes only to question the suspect", which is not the case here, it should include a provisional charge and the material upon which the Prosecutor relies,

Whereas, in conformity with sub-Rule (B), only if the conditions provided for by the said sub-Rule are met, shall the Judge order the transfer and provisional detention of the suspect, who shall be detained for a period not exceeding 30 days (sub-Rule (C)),

Whereas only after very careful consideration of the conditions referred to above and after establishing that they had been effectively met, did the Tribunal issue the order which is being criticised by the Defence,

WHEREAS, as regards the arguments put forward by the Defence concerning the failure to transcribe the questioning of the suspect, the Tribunal reminds the Prosecutor of her obligation under Rule 43 (iv) of the Rules, should the facts revealed by the Defence be justified, to transcribe it as quickly as possible and supply the suspect with the text, and

Whereas, regarding the violations of the Rules of Detention which the suspect has allegedly had to suffer, the Tribunal requests the Registrar, if need be, to remind the Commanding Officer of the Detention Facility, to ensure strict adherence to all the provisions of the Rules of Detention,

WHEREAS, under the circumstances, the Tribunal, based on information provided by the Prosecutor and the attached affidavit supporting her request, is of the view that the Prosecutor has proved that the needs of the investigation, as provided for under Rule 40 *bis* (F), do, indeed, warrant the extension of the detention of the suspect,

WHEREAS the Tribunal, nevertheless, invites the Prosecutor to take due account of the provisions of Article 9 of the International Covenant on Civil and Political Rights, the spirit of which is echoed by Article 20 of the Statute of the Tribunal, which provides that any person deprived of his freedom must be informed promptly, after his arrest, of all the charges against him,

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Whereas, to this end, similar to the above-mentioned provisions, Rule 40 *bis* provides that the total period of provisional detention of a suspect shall in no case exceed 90 days, at the end of which, if the Prosecutor has not issued an indictment and had it confirmed by the Tribunal, the suspect shall be released immediately or delivered to the national authorities to whom the initial request was made,

FOR ALL THESE REASONS, the Tribunal is convinced that it is appropriate to grant the Prosecutor's request;

ON THESE GROUNDS,

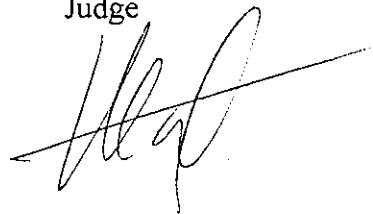
THE TRIBUNAL

GRANTS the Prosecutor's request;

ORDERS, consequently, the extension of the provisional detention of Gratien Kabiligi at the Detention Facility of the Tribunal for a further period not exceeding 30 days, beginning from 18 August 1997.

Arusha, 14 August 1997.

Laity Kama
Judge



(Seal of the Tribunal)

