

ICTR-97-29-DP
(63bis - 60bis)
9-10-97

63 bis
K. K.

Case No.: ICTR-97-29-DP

UNITED NATIONS  NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR:FR

Before : Judge Laity Kama

Decision of : 14 August 1997

THE PROSECUTOR
VERSUS
SYLVAIN NSABIMANA

Case No.: ICTR-97-29-DP

**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: Ms. Josette Kadji

Registry: Mr. Antoine Kesia-Mbe Mindua

ICTR
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THE TRIBUNAL,

SITTING in the person of Judge Laïty Kama.

CONSIDERING that the suspect Sylvain Nsabimana 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 Sylvain Nsabimana (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, the Defence stating that it was ready to argue the request immediately, although it first of all pointed out that the request and the attached affidavit had been transmitted to it late and that it could therefore have obtained a postponement of the consideration of the said request to a later date, as the Tribunal had, moreover, proposed to it,

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 Sylvain Nsabimana for a further period of thirty days, the Prosecutor explains that she is not yet ready to file an indictment against Sylvain Nsabimana due to :

- a. The complexity of the investigations concerning the suspect;
- b. The persistent difficulty in conducting investigations throughout the territory of Rwanda;

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- 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;
- 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, furthermore, the Prosecutor stated during the hearing that her investigations into the crimes allegedly committed by Sylvain Nsabimana are essentially taking place in Butare prefecture, where there are numerous security problems at present,

WHEREAS the Defence took issue with the general and repetitive nature of the Prosecutor's request, and would have liked more particulars regarding what, in the specific case of Sylvain Nsabimana, constitutes the difficulties of the investigation warranting the extension of the detention of his client,

WHEREAS the Tribunal, based on information provided by the Prosecutor and the attached supporting affidavit, is of the view that the needs of the investigation warrant the extension of the detention of the suspect, especially given the complexity of the investigations, the necessity to analyse and assess the materials seized during the arrest of the suspect, his role in the events that occurred in Rwanda in 1994, and his alleged participation in the preparation, organisation and execution of the crimes committed during that time, in order to determine the precise charges to be laid against him,

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,

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



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GRANTS the Prosecutor's request;

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

Arusha, 14 August 1997.

Laïty Kama
Judge

