

ICTR-97-27-DP
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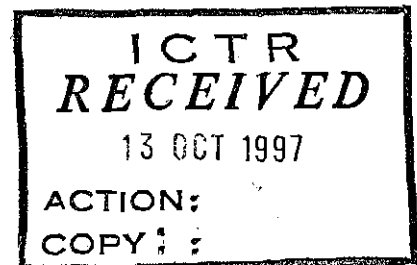
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR:FR

Before : Judge Laïty Kama

Registry: Mr. Antoine Kesia-Mbe Mindua

Decision of : 18 August 1997



THE PROSECUTOR
VERSUS
HASSAN NGEZE

Case No.: ICTR-97-27-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

Counsel for the Defence: Mr. Wamuti Ndegwa
Mr. Kamau Ngata

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THE TRIBUNAL,

SITTING in the person of Judge Laïty Kama;

CONSIDERING that the suspect Hassan Ngeze was transferred to the Detention Facility of the Tribunal on 18 July 1997, and that he was 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 Hassan Ngeze (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;

CONSIDERING the reply to the said request filed by the Defence on 18 August 1997 (the "Reply of the Defence"), in which it essentially objected to the extension of the detention of the suspect, and considering the attached documents, including the affidavit dated 17 August 1997, signed by Hassan Ngeze;

HAVING HEARD the parties during an *inter partes* hearing held on 18 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;

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WHEREAS, in the affidavit attached to the Reply of the Defence, the suspect, Hassan Ngeze, states that, in support of the documents he has submitted, he knew of his impending arrest and in that connection, he allegedly told the representatives of the Prosecutor who had come to arrest him: "I was waiting for you";

WHEREAS in the oral presentation of his reply to the Prosecutor's request, the Defence Counsel also stressed the fact that his client would in no way attempt to evade Justice if he were released and that, had he the intention of evading Justice, he would have had ample time to do so, having been informed well before his arrest of the Prosecutor's intentions towards him, and that consequently, he believed his client, Hassan Ngeze, had provided sufficient guarantees of being present before the Prosecutor and the Tribunal to justify his release;

WHEREAS it is true that, in so arguing, the Defence Counsel merely replied the Prosecutor, who had found it necessary to include, in the reasons motivating her request for the extension of the detention of the suspect, the fact that holding the latter in detention would prevent his escape;

WHEREAS the Tribunal maintains that the *inter partes* hearing provided for under Rule 40 bis (F) is not about the issue of holding the suspect in detention in order to prevent his escape, but solely that of finding out if the needs of the investigation warrant the extension of the said detention for a further period of thirty days;

WHEREAS, on this specific point, the Prosecutor pointed out that the investigation was facing serious difficulties 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;
- d. The necessity, in order to present a concise and a 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 Tribunal, based on the information provided by the Prosecutor and the attached affidavit supporting her request, which were not contested by the Defence, is of the view that the needs of the investigation do, indeed, warrant the extension of the detention of the suspect at the current stage of the investigations, given particularly the complexity of the investigations, the necessity to verify and assess the materials seized during the arrest of the suspect, in order to determine the precise charges to be laid against him, without having to mention the need to amend existing indictments in order to include Hassan Ngeze therein;

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WHEREAS, the Tribunal, while giving cause for satisfaction to the Prosecutor, nevertheless invites her 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 40bis of the Rules 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 Hassan Ngeze at the Detention Facility of the Tribunal for a further period not exceeding 30 days, beginning from 18 August 1997.

Arusha, 18 August 1997.


Laity Kama
Judge

(Seal of the Tribunal)

