

ICTR-97-36-DP
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Case no : ICTR-97-36-DP

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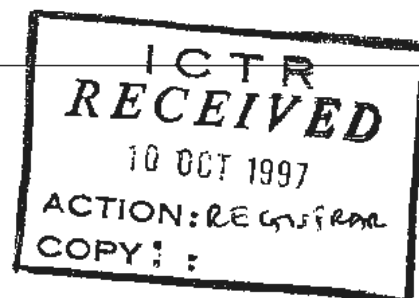
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR:ENG

Before : Judge Navanethem Pillay

Decision of : 8 September 1997

Registry: Ms. Prisca M. Nyambe



PROSECUTOR
VERSUS
SAMUEL IMANISHIMWE

Case No.: ICTR-97-36-DP

**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. James Stewart
Mr. Luc Côté
Mr. Pierre Duclos

Counsel for the Defence: Ms Marie Louise Mbida.

EXT40BIS(F)/97-36-DP/ENG

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Case no. : ICTR-97-36-DP

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "TRIBUNAL"),

SITTING in the person of Judge Navanethem Pillay

CONSIDERING that the suspect Samuel Imanishimwe is currently detained at the Detention Facility of the Tribunal, following an order for transfer and provisional detention issued on 22 July 1997 by Judge L Kama, pursuant to Rule 40bis(B) of the Rules of Procedure and Evidence of the Tribunal (the 'Rules');

CONSIDERING the request by the Prosecutor, dated 29 August 1997 and filed with the Registry on 4 September 1997, pursuant to the provisions of Rule 40bis(F) of the Rules, seeking the extension of the provisional detention of the suspect Samuel Imanishimwe for a further period of thirty days;

HAVING HEARD the parties at a hearing on 8 September 1997 and having perused the affidavit of Commander Øyvind Olsen;

AFTER HAVING DELIBERATED

WHEREAS sub-Rule 40bis(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, in support of her request for the extension of the detention of the suspect Samuel Imanishimwe for a further period of thirty days, the Prosecutor submits that she is presently unable to file an indictment against Samuel Imanishimwe for the following reasons :

- a. the complexity of the investigations concerning the suspect;
- b. the difficulty in conducting investigations throughout the Rwandan territory;
- c. the necessity to analyse and assess all the materials seized at the time of the suspect's arrest and determine the precise charges to be laid against him;
- d. the necessity, in order to present as concise and as precise an indictment as possible, to analyse the involvement and role of the suspect in the events that occurred in Rwanda in 1994 and his alleged participation in the preparation, organization and execution of the crimes in complicity with others;
- e. the need to amend existing indictments in order to join the suspect with other accused.

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WHEREAS the Prosecutor, in support of her request, submitted an Affidavit by Commander of Investigations, Øyvind Olsen, which confirmed the following :-

- a. the offences for which this suspect is being investigated are by nature complex and broad in scope;
- b. the need to analyse the thousands of documents seized at the time the suspect and others were arrested;
- c. the continuing "high risk security "situation in Rwanda and in Cyangugu Prefecture in particular, makes the investigative work slower and more difficult;

WHEREAS the Defence submitted that the suspect Samuel Imanishimwe should be released in terms of Rule 40 (D) of the Rules since the Prosecutor had failed to issue an indictment within twenty days of his transfer. The Defence further submitted that the fact that the Prosecutor is investigating the possibility of joining the suspect with other accused should not be an obstacle for the preparation and service of the indictment;

WHEREAS the Tribunal rejects Defence Counsel's submission that the suspect Samuel Imanishimwe should be released in terms of Rule 40(D) of the Rules and points out that Rule 40 is not applicable in these circumstances since the suspect, Samuel Imanishimwe is detained under Rule 40bis(B) and not Rule 40. A request for relief under Rule 40 (D) falls outside the ambit of the enquiry provided for in Rule 40bis(F);

WHEREAS, furthermore, the Tribunal reminds the Defence Counsel that any review of a provisional detention established pursuant to Rule 40bis(B) or any request for release of the suspect can only be heard by a Trial Chamber under Rule 40bis(K) upon a request by the Prosecutor, the suspect or his counsel to the Trial Chamber;

WHEREAS the Tribunal accepts Defence Counsel's submission that the possibility of joining the suspect with other accused should not be an obstacle for the preparation and service of the indictment;

WHEREAS the Tribunal is convinced that, except for the reason under point (e), the needs of the investigation advanced by the Prosecutor warrant an extension of the period of detention in terms of Rule 40bis(F) of the rules;

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FOR THESE REASONS THE TRIBUNAL ORDERS THAT :-

the suspect Samuel Imanishimwe shall be kept in provisional detention at the detention facility of the Tribunal for a further period not exceeding 30 days, commencing on 12 September 1997 and expiring on 11 October 1997, both days included.

Arusha, 9 September 1997

Navanethem Pillay
Navanethem Pillay
Judge

(Seal of the Tribunal)

