

ICTR-97-27-I
8.10.1997
(33-29)

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AT

Case no : ICTR-97-27-DP

UNITED NATIONS  NATIONS UNIES

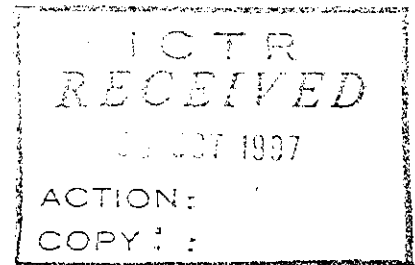
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR:ENG

Before : Judge Navanethem Pillay

Decision of : 16 September 1997

Registry: Ms. Prisca M. Nyambe



PROSECUTOR
VERSUS
HASSAN NGEZE

Case No.: ICTR-97-27-DP

**EXTENSION OF THE PROVISIONAL DETENTION
FOR A MAXIMUM PERIOD OF TWENTY DAYS
(IN ACCORDANCE WITH RULE 40 BIS (G)
OF THE RULES OF PROCEDURE AND EVIDENCE)**

Office of the Prosecutor : Mr. James Stewart

Counsel for the Defence: Mr. N.Kamau
Mr W. Ndegwa

EXT40BIS(G)/97-27-DP/ENG

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

SITTING in the person of Judge Navanethem Pillay;

CONSIDERING that the suspect Hassan Ngeze is currently detained at the Detention Facility of the Tribunal, following an order for transfer and provisional detention issued on 16 July 1997 by Judge L. Kama, pursuant to Rule 40*bis*(B) of the Rules of Procedure and Evidence of the Tribunal (the 'Rules') and extended on 18 August 1997 by Judge L. Kama, pursuant to Rule 40*bis*(F) of the Rules;

CONSIDERING the request by the Prosecutor, dated 10 September 1997 and filed with the Registry on 11 September 1997, pursuant to the provisions of Rule 40*bis*(G) of the Rules, seeking the extension of the provisional detention of the suspect Hassan Ngeze for a further period of thirty days;

HAVING HEARD the parties at a hearing on 16 September 1997 and having perused the statements of the suspect Hassan Ngeze and of Commander Øyvind Olsen, also having heard the testimony of Commander Olsen;

AFTER HAVING DELIBERATED

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

" (...)

(G) At the end of that extension, at the Prosecutor's request indicating the grounds upon which it is made and if warranted by special circumstances, 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 provisional detention of the suspect, Hassan Ngeze for a further period of thirty days, the Prosecutor submits that she is presently unable to file an indictment against Hassan Ngeze for the following reasons which constitute "special circumstances" within the meaning of Rule 40*bis*(G):

- a. the complexity of the investigations concerning the suspect Hassan Ngeze, who was Editor-in-

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- chief of a publication known as "KANGURA", which was responsible for the dissemination of hateful propaganda and public and direct incitement to commit genocide;
- b. the difficulty in conducting investigations in Rwanda due to the fluctuating security situation, especially in Gisenyi Prefecture which is in Phase IV of the United Nations Security Procedures;
 - 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;
 - f. the need to track down and analyse all available issues of "KANGURA", the majority of which were published in Kinyarwanda;
 - g. the number of suspects detained in the detention facility at Arusha, who are subject to investigation, and in respect of certain of whom draft indictments have been submitted to the Prosecutor for final approval, among them this suspect;

WHEREAS the Prosecutor, in support of her request, submitted a sworn statement 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 Gisenyi Prefecture in particular, makes the investigative work slower and more difficult;

WHEREAS the Defence submitted that :-

- a. the investigations pertaining to the suspect, Hassan Ngeze, did not start at the time of his arrest but sometime in 1996, as confirmed by Commander Olsen under oath. The Prosecutor therefore had sufficient time to complete her investigations against the suspect;
- b. the Prosecutor's contention that thousands of documents need to be translated and evaluated in order to ascertain the evidence against the suspect, Hassan Ngeze, must be rejected. The only relevant documentation are six issues of 'KANGURA'. The Prosecutor had not indicated that she is not in possession of these issues of 'KANGURA' and she is having difficulty obtaining them. Further, the international portion of 'KANGURA' is in french and since this is one of the official languages of the Tribunal, there was no need for any translation;

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- c. the Prosecutor had not demonstrated the existence of special circumstances, as required in terms of Rule 40 *bis* (G) of the Rules, to warrant the extension of the provisional detention of the suspect, Hassan Ngeze for a further period not exceeding 30 days;
- d. the Prosecutor's motion must be dismissed;
- e. the Prosecutor should have attached a copy of the draft indictment in support of her motion;
- f. the right to extend the suspect's detention to facilitate investigations, to prevent the suspect's escape and to protect victims and witnesses must be weighed against the suspect's rights which are enshrined in the International Covenant on civil and political rights. The suspect should be released since the balance of convenience between these two rights weigh in favour of the suspect.

WHEREAS an application for the release of the suspect must be made to a full Trial Chamber, in terms of Rule 40*bis*(K) of the Rules, the Tribunal, as presently constituted, has no jurisdiction to hear this application, and therefore rejects Defence Counsel's submission that the suspect should be released;

WHEREAS the Tribunal accepts the Prosecutor's submission that the investigation with regard to this suspect, Hassan Ngeze extends far beyond the six issues of "KANGURA";

WHEREAS the Tribunal carefully weighed the suspect's rights to liberty against circumstances in which such a right can be infringed and notes that Rule 40*bis*(G) provides for the extension of provisional detention provided there are "special circumstances" that warrant this extension;

WHEREAS the Tribunal relies on the Prosecutor's confirmation that the final draft of the indictment together with all the supporting documentation have been sent to the Chief Prosecutor for review and signature and is mindful that an indictment can only be presented in its final form to a Judge for confirmation in terms of Rule 47(A) of the Rules, once it is signed by the Chief Prosecutor. It is these difficulties, realities and complexities referred to by the Prosecutor as also the well founded anxieties that detention of the suspect is necessary, to secure his attendance before the Tribunal, to ensure that he does not interfere with on-going investigations, and that he does not interfere with or intimidate witnesses, that constitute 'special circumstances' as envisaged in Rule 40*bis*(G) of the Rules. The Tribunal finds that "special circumstances" do exist and that the Prosecutor has made substantial progress and has reached an advanced stage in the investigation and preparation of the indictment;

WHEREAS the Tribunal carefully weighed the suspect's right to liberty against circumstances in which such a right can be infringed and notes that Rule 40*bis*(G) provides for the extension of provisional detention provided there are "special circumstances" that warrant this extension. The

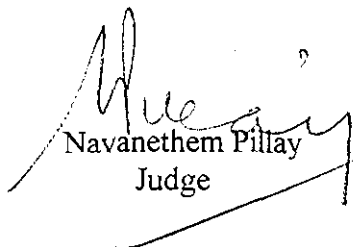
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Tribunal finds that "special circumstances" do exist in that the Prosecutor has made substantial progress and has reached an advanced stage in the investigation. A draft indictment has been submitted to the Chief Prosecutor for review and signature;

THE TRIBUNAL ORDERS,

that the suspect, Hassan Ngeze be detained provisionally for a further period of twenty (20) days, commencing on 17 September 1997 and ending on 6 October 1997, both days inclusive.

This order was delivered orally on 16 September 1997 and signed at Arusha this 23 day of September 1997.


Navanethem Pillay
Judge

(Seal of the Tribunal)

