

ICTR-97-23-I
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Case No: ICTR-97-23-DP

UNITED NATIONS



NATIONS UNIES

ICTR
CRIMINAL REGISTRY
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

1997 NOV 27 P 5:51

Before: Judge Laïty Kama
President of the Tribunal

Decision of: 25 November 1997

**THE PROSECUTOR
VERSUS
JEAN KAMBANDA**

Case No.: ICTR-97-23-DP

**ORDER ISSUED BY THE PRESIDENT REGARDING SPECIAL MEASURES FOR
DETENTION ON REMAND,
FOLLOWING A REQUEST FILED BY THE PROSECUTOR**

Office of the Prosecutor: Mr. Bernard A. Muna, Deputy Prosecutor

Registry: Mr. Agwu U. Okali
Ms Prisca Nyambe

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THE TRIBUNAL,

Sitting in the person of Judge Laïty Kama, President of the Tribunal,

CONSIDERING the request of 13 October 1997 filed by the Prosecutor (the "request") for an order, pursuant to Rules 39 and 54 of the Rules of Procedure and Evidence (the "Rules"), of special detention measures aimed at protecting Jean Kambanda, in which the Prosecutor requests the Tribunal to order his transfer to and detention in a high security detention establishment, such as the Detention Facility of the International Criminal Tribunal for the former Yugoslavia; considering also the affidavit drawn up on 13 October 1997 by Mr. Gilbert Morissette, Investigator for the Prosecutor, attached to the said request,

CONSIDERING the letter from the accused, Jean Kambanda, dated 11 August 1997, in which he expressly waived his right to assistance by counsel,

HAVING HEARD the Prosecutor, during a hearing held in camera on 25 November 1997,

AFTER HAVING DELIBERATED,

WHEREAS Jean Kambanda was arrested on 18 July 1997 in Kenya, upon the request of the Prosecutor and, on that same day, was transferred to the Detention Facility of the Tribunal, on the basis of an order for the transfer and provisional detention issued by the Tribunal in accordance with the provisions of Rule 40 *bis* of the Rules,

Given that an indictment was subsequently prepared against him and filed by the Prosecutor on 15 October 1997, and confirmed on 16 October 1997 by Judge Yakov Ostrovsky, who also issued, on 16 October 1997, a warrant of arrest and an order for continued detention,

WHEREAS Rule 64 of the Rules which provides that:
"Upon his transfer to the Tribunal, the accused shall be detained in facilities provided by the host country or by another country. The President may, on the application of a party, request modification of the conditions of detention of an accused."
is henceforth applicable to the detention of Jean Kambanda,

Whereas, in the view of the Tribunal, this provision can be applied only in exceptional circumstances which imperatively demand the modification of the conditions of detention,

WHEREAS, in her request, the Prosecutor has required of the Tribunal a modification of the conditions of detention of the accused, Jean Kambanda,

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Given that in support of this request, the Prosecutor has explained that Jean Kambanda, in his capacity as Prime Minister of the Interim Government of Rwanda at the time of the events of 1994, is an essential witness for the Prosecutor with whom he has accepted to cooperate; that his cooperation will be known and that he would consequently be the object of threats and that there are serious reasons to believe that his safety would be seriously threatened,

Given that, under these circumstances, it is necessary for the Prosecutor to ensure that Jean Kambanda has a place of detention offering all the necessary guarantees for safety, while allowing the investigators of the Prosecutor's Office constant and confidential access to the accused, without attracting the attention of other detainees,

WHEREAS the Tribunal is of the opinion that the reasons raised by the Prosecutor are enough to indeed justify the modification of Jean Kambanda's detention conditions,

Given that the Prosecutor, in her motion, has indicated that the Detention Facility of the International Criminal Tribunal for the former Yugoslavia, would provide all the guarantees for safety and access necessary for the detention on remand of Jean Kambanda,

WHEREAS the Tribunal is convinced that, considering the exceptional circumstances prevailing in this particular instance, it is appropriate to grant the request made by the Prosecutor to transfer Jean Kambanda to the Detention Facility of the International Criminal Tribunal for the former Yugoslavia, subject to the agreement of the Government of the United Republic of Tanzania, Host Country of the Tribunal, of the relevant Authorities at the Detention Facility of the International Criminal Tribunal for the former Yugoslavia and of the Government of The Netherlands, Host Country of the International Criminal Tribunal for the former Yugoslavia,

FOR THESE REASONS,

THE TRIBUNAL

GRANTS the request of the Prosecutor;

DECIDES, consequently to modify the conditions of the provisional detention of Jean Kambanda;

INSTRUCTS the Registrar of the Tribunal, subject to the agreement of the Government of the United Republic of Tanzania, Host Country of the Tribunal, the relevant Authorities of the Detention Facility of the International Criminal Tribunal for the former Yugoslavia and of the Government of The Netherlands, Host Country of the International Criminal Tribunal for the former Yugoslavia, to take the necessary steps for the transfer and provisional detention of Jean Kambanda at the Detention Facility of the International Criminal Tribunal for the former Yugoslavia;

INVITES the Authorities of the Government of the United Republic of Tanzania and of the Government of The Netherlands to kindly cooperate with the Tribunal;

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REQUESTS the Authorities of the International Criminal Tribunal for the former Yugoslavia, in particular, its President and its Registrar, to kindly cooperate with the Tribunal;

DECIDES that this decision and the request by the Prosecutor shall not be disclosed to the public.

Arusha, 25 November 1997,

(Signed)

Laïty Kama
President

(Seal of the Tribunal)



This is an accurate and faithful translation of the French text

Anne Béhlé
 Officer-in-charge
 Language & Conference Services

A handwritten signature in cursive script, appearing to read "A Béhlé", is written over the typed name and title.

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