



**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

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UNITED NATIONS
NATIONS UNIES

OR: ENG

Before: Judge William H. Sekule

Registry: Mr. Antoine Kesia-Mbe Mindua
Mr. John Kiyeyeu

Decision of: 23 March 1999

**THE PROSECUTOR
VERSUS
CASIMIR BIZIMUNGU**

Case No. ICTR-99-45-DP

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**DECISION ON THE EXTENSION OF THE PROVISIONAL DETENTION
FOR A MAXIMUM PERIOD OF THIRTY DAYS
(RULE 40 BIS (F) OF THE RULES OF PROCEDURE AND EVIDENCE)**

The Office of the Prosecutor:

Mr. Don Webster

Counsel for the Defence:

Mr. Loomu Ojaare

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIÉE CONFORME A L'ORIGINAL PAR NOUS
NAME / NOM: *Mr. MINDUA K. M. Antoine*
SIGNATURE: *[Signature]* DATE: *24.03.1999*

[Handwritten signature]

Case No. ICTR-99-45-DP

The International Criminal Tribunal For Rwanda (“the Tribunal”),

SITTING in the person of Judge William H. Sekule, who was assigned pursuant to rule 28 of the Rules of Procedure and Evidence (“the Rules”) as required by rule 40 *bis* A of the Rules;

CONSIDERING that the suspect Casimir Bizimungu was transferred to the Detention Facility of the Tribunal at 5p.m. on 23 February 1999;

TAKING INTO ACCOUNT an Order issued under Rule 40 *bis* of the Rules by Judge William H. Sekule on 18 February 1998, which was based upon the Prosecutor’s request dated 15 February 1999, consequent upon which Casimir Bizimungu has been detained in the Detention Facility from 23 February 1999 to-date;

BEING SEIZED OF the Prosecutor’s request to the Tribunal (the “request”), filed on 17 March 1999, pursuant to the provisions of Rule 40 *bis* (F) of the Rules, seeking the extension of the provisional detention of the suspect Casimir Bizimungu for a further period of thirty days owing particularly to the needs of the investigation;

CONSIDERING the affidavit dated 12 March 1999, drawn up by Mr. Alfred Kwende, Acting Officer in Charge of Investigations of the Office of the Prosecutor of the Tribunal attached to the said request;

CONSIDERING the objections to the extension of the detention of the suspect by the Defense as herein stated;

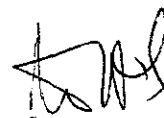
HAVING HEARD the parties during an *inter partes* hearing held on 23 March 1999 to that end;

CONSIDERING THAT at the conclusion of the said *inter partes* hearing on 23 March 1999, an oral decision was rendered, granting the Prosecutor’s request for extension of the period of detention for a further thirty days with effect from the expiry date of the initial period of detention as contained in the Order of 18 February 1999, that is, from 24 March 1999;

CONSIDERING FURTHER THAT the oral decision of 23 March 1999 was rendered pending a detailed written decision giving the reasons for the decision. The said written decision is thus provided below.

Submission by the Prosecutor

WHEREAS the Prosecutor in her written request submitted that it is necessary to detain the suspect for a further thirty days in order to prevent his escape, to prevent injury to or intimidation of witnesses, or the destruction of evidence;



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WHEREAS in her oral presentation, during the hearing, the Prosecutor made an oral motion to effect some changes in her written submission, particularly, to strike out the last part of section 8(c) of her written submission as filed;

WHEREAS further the Prosecutor, during the oral presentation advanced the argument that it is necessary to facilitate aspects of the ongoing investigations and the preparation of the indictment against Casimir Bizimungu;

The Prosecutor also submitted that:

- a. The Office of the Prosecutor("the OTP") is in the course of drafting an indictment against Casimir Bizimungu and as a matter of fact had drafted a substantial portion of that indictment but it was not ready for filing as drafted until outstanding portions of the investigation of Casimir Bizimungu has been completed;
- b. The OTP investigators were being hampered by the sudden breakdown in the safety conditions in the territory of Rwanda, particularly in the Western and Northern regions of Rwanda thus rendering the necessary investigations to proceed at a slow pace;
- c. The OTP investigators had communicated with the Prosecutor on 22 March 1999 informing her that the investigators had left for Ruhengeri to continue with their investigations hence the investigations were still ongoing;
- d. It was necessary for the OTP to analyse the role of Casimir Bizimungu in the events of 1994 and his implication in the organisation, preparation and execution of the crimes committed in complicity with other suspects and accused persons in order to present a substantive indictment, concise and precise, rather than file an indictment which would be incomplete;
- e. The OTP anticipated the necessity of amending existing indictments and carefully crafting the indictment against Casimir Bizimungu in order to join the indictment against him with indictment currently pending against several other accused persons;

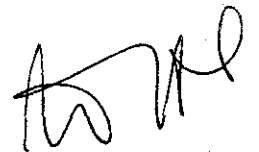
Reply On behalf of the Suspect

WHEREAS the Defence Counsel opposed any further detention of the suspect and contended that any extension must satisfy the provisions of rule 40 *bis* (F) of the Rules, namely the extension must be warranted by the needs of investigation;

WHEREAS on behalf of the suspect it was stated that the Affidavit and other materials relied upon by the Prosecutor for this request did not show any needs of investigation.

The following were the specific submissions:

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- (a) That paragraph 5 of the Prosecutor's request was contradictory in that it specified that the indictment against the suspect had already been drafted but also had portions which were incomplete;
- (b) That the portions that were not ready would not in any way relate to particular charges to be filed against Casimir Bizimungu. Furthermore, that neither the ongoing investigations allegedly affected by the insecurity in N.W. Rwanda as detailed in paragraph 6 of the Prosecutor's request nor the anticipated joinder of the suspect to the existing indictment in respect of some accused persons, as presented in paragraph 7 of that request, would affect the filing of the indictment, which according to the Prosecutor, is ready;
- (c) That the Prosecutor has been investigating since 1994 and as such, this was enough period for her to unearth meaningful investigations but so far no progress has been made therefore no additional time will make a difference to the ongoing investigations;
- (d) That should the Tribunal feel inclined to grant the Prosecutor's request for extension of detention, the time period of incarceration should be short, preferably, between 7-14 days so that the suspect's rights, to be brought before a Judge without delay, is not compromised.

AFTER HAVING DELIBERATED,

WHEREAS sub-Rule 40 *bis* (F) provides:

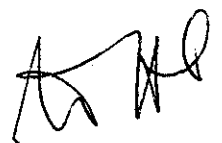
"(...)

(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 initial order, or another Judge of the same Trial Chamber, may decide, subsequent to an *inter partes* hearing, to extend the provisional detention for a period not exceeding 30 days.

(...)"

WHEREAS, the Tribunal is aware of the fundamental freedoms of the individual, which in the instant case should not be tampered with except, as provided by rule 40 *bis* F of the Rules, that is, where warranted by the needs of investigation;

WHEREAS the Tribunal has considered the Prosecutor's request that Casimir Bizimungu be provisionally detained for a further 30 days from the end of the initial period of detention, that is from 24 March 1999 as authorised under the Order of the Tribunal dated 18 February 1999;



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WHEREAS FURTHER the Tribunal has considered the information provided by the Prosecutor and the attached affidavit supporting her request as well as the arguments presented on behalf of the suspect opposing the extension, the Tribunal pronounces itself as below.

It is the view of the Tribunal 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 the difficulties being encountered in the investigations as stated in the request.

The Tribunal reiterates its conviction, as stated in the Order of 18 February 1999, that there is a reliable and consistent body of material that tends to show that Casimir Bizimungu may have committed crimes over which the Tribunal has jurisdiction. To this end, the Tribunal acknowledges the provisional charges held against Casimir Bizimungu, namely, genocide; crimes against humanity and the serious violations of Article 3 common to the Geneva Conventions of August 18 1949 and of the Additional Protocol II of June 8 1977, which are crimes provided for by Articles 2, 3 and 4 of the Statute. The Tribunal will, however, keep in mind the spirit echoed by Article 20 of the Statute of the Tribunal, which provides for the rights of an accused.

FOR ALL THESE REASONS THE TRIBUNAL

1. **GRANTS** the Prosecutor's request for the detention of Casimir Bizimungu for a further period of 30 days.
2. **ORDERS**, that based upon the needs of investigation and the provisional charges, Casimir Bizimungu's detention should be extended for an additional period of thirty days from the expiry of the initial period of detention as authorised by the Order of the Tribunal dated 18 February 1999, that is, from 24 March 1999. He should continue to be detained on the premises of the Detention Unit of the Tribunal in Arusha, Tanzania.

Arusha, 23 March 1999



(Seal of the Tribunal)

A handwritten signature in black ink, appearing to read "W. H. Sekule".

William H. Sekule
Judge

Handwritten initials in black ink, possibly "WHS".