

**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. John Kiyeyeu  
Decision of: 4 May 1999

**THE PROSECUTOR  
VERSUS  
CASIMIR BIZIMUNGU  
Case No. ICTR-99-45-DP**

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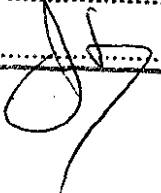
**EXTENSION OF THE PROVISIONAL DETENTION  
FOR A MAXIMUM PERIOD OF THIRTY DAYS  
(IN ACCORDANCE WITH RULE 40 BIS  
(G) OF THE RULES OF PROCEDURE AND EVIDENCE)**

The Office of the Prosecutor:

Mr. Don Webster

Counsel for the Suspect

Mr. Eliufoo N.K. 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 À L'ORIGINAL PAR NOUS	
NAME / NOM:	JOHN M. KIYEYEU
SIGNATURE:	
DATE:	4.05.99



THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ("the Tribunal"), sitting in the person of Judge William H. Sekule;

CONSIDERING THAT CASIMIR BIZIMUNGU ("the Suspect") is currently detained at the Detention Facility of the Tribunal pursuant to an order for transfer and provisional detention issued on 18 February 1999 by Judge William H. Sekule under rule 40 *bis* of the Rules of Procedure and Evidence ("the Rules") and extended in an order by the same Judge pursuant to rule 40 *bis* (F) for a further period of 30 days beginning on 24 March 1999;

BEING SEIZED OF the request by the Prosecutor filed with the Registry on 14 April 1999, pursuant to rule 40 *bis* (G) of the Rules, seeking the extension of the provisional detention of the suspect for another 30 days generally, on the ground that the crimes allegedly committed by him show that there is a consistent pattern to indicate that the suspect committed crimes within the jurisdiction of the Tribunal and on specific reasons constituting "special circumstances as elaborated herein;

TAKING INTO ACCOUNT the affidavit of Mr. Maxwell Nkole, the officer-in-Charge of Investigations dated 13 April 1999, attesting to, *inter alia*, the fact that the current investigations regarding the activities of the suspect are constantly handicapped by the recurrent security problems of Rwanda, which have resulted into slower and time consuming investigative work.

CONSIDERING rule 40 *bis* (G) of the Rules regarding extension of provisional detention;

HAVING HEARD the parties at the hearing on 20 April 1999;

CONSIDERING THAT during the hearing of 20 April 1999, an oral decision on this matter was rendered granting the Prosecutor's request for extension, the substance of which is captured herein below.

#### **Submission by the Prosecutor**

In her oral submissions, the Prosecutor argued that "special circumstances exist as required by rule 40 *bis* (G) of the Rules specifically the Prosecutor submitted:

- (a) That given the Commemoration of the Genocide in Rwanda and the local government elections held in Rwanda during the week of 5 April 1999, the investigation pace was affected;
- (b) That there were still difficulties and hazards involved in carrying out investigations in Rwanda due to the fluctuating security situation particularly in the North Western part of Rwanda;
- (c) That there was available evidence to show that the suspect acted in concert with three other former Rwandan Government Ministers, who were arrested on 6 April 1999 in Cameroon. Hence the Prosecutor requires extra time to prepare for a possible joint indictment with these other Ministers;
- (d) That it was prudent to analyze and assess evidence so as to draft a sound, concise



and precise indictment, which would not easily be subjected to amendment.

### **Defense Submissions**

The Defense Counsel objected to the procedure whereby a suspect such as CASIMIR BIZIMUNGU is first detained and then evidence to indict him is sought thereafter. He contended that this act was against the normal procedure as stipulated in Articles 18 (2) and 19 (2) of the Statute.

The Defense Counsel also submitted that pursuant to rule 47 (A) of the Rules, there must exist an indictment prior to the arresting of an accused. He contended further:

- (a) That the Prosecutor's submission was contrary to what she told the Tribunal on 23 March 1999, when she alleged that she had almost completed her investigations. Consequently, the Prosecutor should be granted only one week within which to present the indictment;
- (b) That pursuant to rule 40 *bis* (G) of the Rules, the "special circumstances advanced by the Prosecutor were untenable because there was no difference in the grounds used to support the earlier application and those relied upon in the current application, particularly, the Affidavit of Mr. Maxwell Nkole hereto attached;
- (c) That the presentation of the indictment was not a bar to any further investigations since the minimum requirement of Art 17 (4) of the Statute and Rule 47 (A) was the existence of a prime fact case.

In reply, the Prosecutor conceded that the Affidavit attached to the motion was similar in content to that of 23 March 1999 but maintained that she had, nevertheless, lost time for investigation and needed 30 days within which to prepare the Indictment. The Prosecutor contended that Articles 18 and 19 of the Statute and rule 47 of the Rules were complementary to rule 40 *bis* of the Rules and that under rule 40, it was possible to arrest a suspect without an Indictment being presented. In any event in the instant case, the Indictment was complex comprising of eleven charges thus this necessitated extra time for preparation.

### **AFTER HAVING DELIBERATED**

The Tribunal has carefully considered the submissions of the parties. It is in agreement with the contention by the Defense Counsel that this exercise is a serious matter, in which the interests of both parties should not be taken for granted but should be weighed carefully.

With respect to the extension of detention pursuant to rule 40 *bis* (G) of the Rules, this can only be done if the Prosecutor's request, is shown to be warranted by "special circumstances."

During the course of the hearing, the Prosecution has pointed out, what constitutes "special circumstances" in the instant case. She enumerated those factors as being, the interruption of the investigations due to the Commemoration of the 1994 massacre events in Rwanda, the holding of the local elections, the incessant insecurity in the Northwest part of Rwanda and the recent arrest of three former Government Ministers, whom the Prosecutor anticipates would be included



in a joint indictment involving the Suspect.

The Tribunal has carefully considered these factors and it is of the view that the Commemoration of the 1994 massacre events and the holding of local elections, cannot constitute "special circumstances" since these events were known prior to their occurrence and a set time table existed. For this reason, the Prosecutor should have programmed her work taking into account such occurrences. Consequently, the Tribunal rejects them and declares that they do not constitute "special circumstances" within the purview of rule 40 *bis* (G) of the Rules.

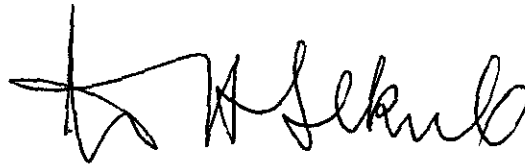
The Tribunal is, however, satisfied that the recent arrest of the three former Cabinet Ministers as alleged by the Prosecutor and the proposition that they could possibly be joined in a joint Indictment with the Suspect, CASIMIR BIZIMUNGU, constitutes "special circumstances."

The Tribunal is also of the opinion that the information that has been made available in the course of these proceedings right from the start, particularly, the fact that there is a consistent pattern of material which tends to show that CASIMIR BIZIMUNGU may have committed crimes for which this Tribunal has jurisdiction may, in that context, be considered to constitute "special circumstances" that would warrant an action to be taken by this Tribunal under Rule 40 *bis* (G) the Rules.

**FOR THE FOREGOING REASON, THE TRIBUNAL**

1. **GRANTS** the Prosecutor's motion, after balancing the rights of the suspect with the interests of justice.
2. **EXTENDS** the period of detention for another 21 days starting from 24 April 1999.

Arusha, 4 May 1999



William H. Sekule  
Judge

(Seal of the Tribunal)

