



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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ICTR-98-44-I
8-MAY-2000
(187-173)

Orig: Eng.

TRIAL CHAMBER II

Before: Judge Laïty Kama, Presiding
Judge Williams H. Sekule
Judge Mehmet Güney

Registry: John M. Kiyeyeu

Decision of: 8 May 2000

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THE PROSECUTOR
VERSUS
JUVENAL KAJELIJELI

Case No. ICTR-98-44-I

**DECISION ON THE DEFENCE MOTION CONCERNING THE ARBITRARY
ARREST AND ILLEGAL DETENTION OF THE ACCUSED AND ON THE
DEFENCE NOTICE OF URGENT MOTION TO EXPAND AND SUPPLEMENT
THE RECORD OF 8 DECEMBER 1999 HEARING**

The Office of the Prosecutor:

Mr. Ken Fleming
Mr. Don Webster
Ms. Ifeoma Ojemeni

Counsel For the Accused:

Mr. Lennox Hinds

Kajelijeli/31/12/1999/arrest

SITTING as Trial Chamber II composed of Judge Laïty Kama, Presiding, Judge William H. Sekule and Judge Mehmet Güney ("the Trial Chamber");

CONSIDERING that upon the request of the Prosecutor, the Benin Authorities arrested Juvénal Kajelijeli ("the Accused") on 5 June 1998 in Benin and put him in custody;

CONSIDERING that on 29 August 1998, the Tribunal sitting as Judge Navanethem Pillay ("the confirming Judge") confirmed the Indictment against the Accused as submitted by the Prosecutor indicting him together with others, *inter alia*, Augustin Bizimana, Edouard Karemera, André Rwamakuba, Mathieu Ndirumpatse and Joseph Nzirorera for Conspiracy to commit Genocide, Genocide, Complicity in Genocide, Direct and Public Incitement to commit Genocide, Crimes Against Humanity and Violations of Article 3 common to the Geneva Conventions and Additional Protocol II, offences stipulated in Articles 2, 3, and 4 of the Statute;

NOTING that pursuant to an Order by the confirming Judge on 29 August 1998, the Accused was transferred to the United Nations Detention Facilities ("UNDF") in Arusha on 9 September 1998;

CONSIDERING that on 14 October 1998 the Prosecutor filed a redacted indictment with the Registry for purposes of the initial appearance of the Accused and seven others scheduled for 24 November 1998, which was postponed several times and finally took place on 7 and 8 April 1999 pursuant to Rule 62 of the Rules of Procedure and evidence ("the Rules");

BEING SEIZED OF the motion by the Accused ("the Motion") filed *pro se* motion on 9 November 1998 challenging the illegality of his arrest and detention;

HAVING heard the arguments of both parties on 7 December 1999;



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CONSIDERING that the Trial Chamber, having heard the oral submissions by the parties, directed that the Prosecutor should file a written brief explaining whether the Accused was actually interrogated and requested the Registry to provide information concerning the delay in the assignment of Counsel and an explanation as to why the Initial Appearance was delayed;

CONSIDERING the Defence Motion filed on 2 February 2000, seeking to expand the record of the proceedings of 7 December 1999;

WHEREAS to expand the said record, the Defence relied upon a Supplementary Affidavit of Mr. Augustin Basebya, which articulates their efforts to seek information regarding the circumstances of the arrest and detention of the Accused in Benin;

CONSIDERING the oral submissions by the parties on 29 March 2000.

SUBMISSION OF THE DEFENCE

1. The Defence relied upon the papers filed by the Accused *pro se* including a sworn affidavit setting forth the factual allegations contained in his original motion. The Defence also based its arguments upon all unredacted witness statements deposited with the Registry and used by Judge Pillay to confirm the Indictment against the Accused and all transcripts of all prior proceedings before the Tribunal. The Defence submitted that there were five major complaints against the Prosecutor, which are elaborated below.

The Arrest of the Accused Without Warrant and Probable Cause

2. At the initial hearing, the Defence Counsel offered a basic understanding of probable cause as "evidence that would lead a reasonable person to believe that a crime was committed and that the Accused committed that crime."

The Defence argued that:

3. The Accused was arrested without a warrant and probable cause. In any case, the Prosecutor made a false statement that evidence exists to show that the Accused committed crimes within Tribunal's jurisdiction;
4. At the time of arrest of the Accused on 5 June 1998, the Prosecutor had information that Joseph Nzirorera had committed certain crimes within the jurisdiction of the Tribunal. The Prosecution had no information on the Accused. The Prosecutor's investigators found the Accused in Nzirorera's residence and arrested him without probable cause;

5. It is not true that the Accused was arrested due to his illegal status in Benin because at the time of his arrest, the Accused was under the protection of the United Nations High Commissioner for Refugees (UNHCR) as his papers dated 11 September 1997 attached to his Motion shows. Additionally, the Defence investigator has shown that the Accused had bona fide documents from the UNHCR permitting him to stay in Benin as a refugee at the time of arrest on 5 June 1998;
6. At the time of his transfer, the Accused was no longer a "suspect" but an "Accused" pursuant to Rule 62, and Rule 40 *bis* does not apply;
7. Further, despite the request by the Defence to the Prosecutor on 19 April 1999 to return the seized documents and the acknowledgement of receipt of the Defence request by the Prosecutor on 3 May 1999, the documents seized are yet to be returned to the Defence;
8. Mr. Augustin Basebya's affidavit, which among other things illustrates that there was no cause to arrest the Accused or seize documents uncovered by the investigators, should be admitted because they have probative value.

Right to Counsel during Interrogation

9. The Accused was denied the right to counsel during his interrogation in July 1998 while in custody in Benin in violation of Rules 42, 43 and 44 of the Rules. He was questioned and statements taken from him by the investigators of the Prosecutor, who also made recordings yet they were not provided to him. Contrary to what the Prosecutor had earlier asserted, the Accused was interrogated for about one hour by the said investigators. The tapes of this interrogation, which were unsealed in the presence of the Parties on 27 March 2000, show this. The Defence submits that there is no need to summon the investigators, who recorded the interview. The Defence concedes that the integrity of the tapes are no longer questionable and that the Accused had waived his right to have his counsel present at his interrogation. However, the Defence argues that the tapes contain exculpatory information concerning the Accused.

Right to be Promptly informed About the Charges against Him

10. The Defence argues that the Accused was not informed of the charges against him in a language he understands. He was presented, for the first time: a confirmation of non-disclosure of the indictment; a warrant and a copy of a redacted indictment without his name being mentioned anywhere and without any identification of him, when he was transferred to Arusha on 9 September 1998. All the documents were in English, which he does not understand contrary to Article 20 (4) (a) of the Statute. This also violates the International Covenant on Civil and Political Rights (ICCPR) and the European



Convention for the Protection of Human Rights and Fundamental Freedoms and its eight Protocols ("the ECPHR").

Right to Have Initial Appearance Without Delay

11. The Defence submits that the Accused first appeared before the Tribunal on 7 April 1999, 281 days after transfer. This contravenes Article 20(4)(2) of the Statute and Rule 62 of the Rules. Counsel submits that considering these violations, the Accused is entitled to a right to remedy pursuant to Article 9(4) of the ICCPR; Article 5 (4) of the ECPHR and Article 8 of the Universal Declaration of Human Rights.

Response by the Prosecutor

12. In addition to her initial submission, the Prosecutor relied upon a further written brief dated 31 January 2000 and a written text handed to the Trial Chamber at the hearing of 29 March 2000. She challenged the admissibility of Mr. Basebya's affidavit on the basis of Section 3 of the Rules (Rules of Evidence), Rules 89(B) and (C) as well as Rule 95. The Prosecutor submitted that the supplementary affidavit of Basebya is not admissible. Alternatively, the Trial Chamber should find that the affidavit has no probative value. The Prosecutor argues, *inter alia*, that the Affidavit is marred by numerous defects, such as being based on hearsay upon hearsay; having been recorded in the first person and being only an interpretative of what was said and failing to indicate the sources and the methods used to extract information.
13. The Prosecutor clarifies that her request letter was drafted on 6 June 1998 and later faxed to the Ministry of Justice in Benin. The Prosecutor submits that:
14. If the Accused was arrested on 5 June 1998 then obviously he was not arrested on the basis of the letter dated 6 June 1998. She stated that although the Accused may not have been arrested on the basis of this letter, there was clearly an arrest made by the Benin Authorities either for reasons known to them or at the behest of the Prosecutor;
15. The document allegedly seized was a receipt indicating that his application for refugee status was received but it was not a document that purports to justify his immigration status or designate him as a refugee;
16. Furthermore, the arrest of the Accused was legal despite the lack of an arrest warrant under Rules 39 and 40 of the Rules. Pursuant to Rule 39 the Prosecutor may summon and question suspects; collect evidence, conduct on site investigations and seek the assistance from State authorities. Under Rule 40 only "suspects" are arrested and Rule 2

of the Rules defines, "a suspect" "as a person concerning whom the Prosecutor possesses reliable information, which tends to show that he may have committed a crime;"

17. Further, pursuant to Rule 40 of the Rules, the Prosecutor may request a State to arrest a suspect in conditions of urgency and may request that physical evidence be seized. The request may be oral or in writing. Additionally, on the basis of a Decision rendered on 10 December 1999, Trial Chamber II, in *The Prosecutor v. Ngirumpatse*, ICTR-97-44-I, at para. 60, states that "the Prosecutor need not have initiated any proceedings against a suspect at the Tribunal prior to requesting arrest under Rule 40 (A)--- The Statute and Rules, unlike many national jurisdictions, do not require a warrant to arrest a suspect." Thus, if the Accused has any complaint about his arrest, he can seek redress from the Benin Authorities, as the Tribunal has no jurisdiction;
18. At the time of arrest of the Accused, it was alleged that he was illegal immigrant but the Benin Authorities at the request of the Prosecutor arrested the Accused. The arrest of the Accused and that of Joseph Nziroera was one of the series of contemporaneous arrests that took place across West Africa, in relation to the Rwandan genocide. These arrests were also part of much larger investigations. Even if the Accused was not an initial target of these arrests, his name was often mentioned in a number of witness statements together with that of Mr. Nziroera in respect of activities in Ruhengeri;
19. The definition of "probable cause" relied upon by the Defence is similar to that given by the fourth amendment to the US Constitution and is flawed. For example, the definition by the Defence refers to the term "believe" which connotes a state of mind which has been convinced that there is evidence yet Rule 40 uses the term "tends to show," which connotes a raising of issues which require further investigation in order to arrive at the state of mind set out in Rule 47. Hence, it is truly part of the investigative process, and a person can be detained for that purpose. The definition requires that there should be a belief that a crime "was committed" but then, under the Rules, a "suspect" is someone who "may have committed a crime." In total, if all the components of the definition of the Defence are put together, evidence creating a reasonable belief that a crime was committed by the arrested person is vastly different from "reliable information tending to show that the arrested person may have committed a crime;"
20. In this case, the Prosecutor kept within the required period for filing an indictment as the indictment was confirmed, pursuant to Rule 47(B), on the basis that there was sufficient evidence to provide reasonable grounds for believing that a suspect committed a crime

as required by Article 17(4) of the Statute. Further, Article 17 distinguishes between information sufficient to proceed with an investigation (Article 17(1)) and a *prima facie* case (Article 17(4));

21. The Accused made a request to the Benin Authorities to be released but they did not respond. The Prosecutor has no power over the Benin Authorities and she cannot compel the release of the Accused by those authorities. Rather, the responsibility of the Tribunal is to ensure the adequacy of information for the Accused to be transferred to the UNDF. Finally, there is no substance in the Defence submission on the arrest of the Accused and his detention. The arrest was legal and the rights of the Accused were ensured but the Accused had, at the time of arrest, a right to challenge the arrest;
22. There are several versions of the indictment and this issue was considered on 10 March 1999. The Accused was served a redacted indictment and there is nothing irregular about the document since the redaction was made pursuant to a judicial Order given that four of the Accused persons were not in custody at the time the Accused was arrested. The issue of the redacted indictment was revisited on 7 and 8 April 1999 when the indictment was served in an unsealed form. It is on record that the Defence Counsel for the Accused conceded that there was nothing irregular about the indictment.

Right to Counsel during Interrogation

23. The Prosecutor had initially submitted that that no interrogation occurred and that she was not in possession of any statements that would be used at the trial against him. In a further written brief of 31 January 2000, the Prosecutor apologized for misleading the Chamber. She stated that at the time of the first hearing of the motion, there was no available information because the lawyers that handled the matter had moved on to other investigations and the officer in charge of the investigations, had ceased to be employed by the Prosecutor. However, later, the tapes were unsealed in the presence of the Accused on 29 March and it was revealed that an interrogation had taken place. The Prosecutor argued that nonetheless, the right of the Accused to counsel during the interrogation was respected. With respect to the issue of unlawful questioning, it is clear that the Accused waived his right to counsel as shown by a document, which he had signed to that effect. The document was attached to the Prosecutor's further brief.

Right to Counsel Generally

24. The right to counsel attaches upon transfer to Arusha as provided in Rules 40 and 42. Pursuant to Rule 40(B) it is provided that "the suspect from the moment of his transfer enjoys all the rights provided in Rule 42 and may apply for review to a Trial Chamber."



Hence, by reading Rule 40 in conjunction with Rule 42, the right to counsel attaches upon transfer to Arusha and in this case, this right should have attached on 9 September 1998. Regarding the issue of assignment of Counsel, the Prosecutor elaborated upon her efforts to consult with the Registry. However, since the facts are similar to the response from the Registry on the matter, they are included in the response by the Registry below.

25. Mr. Didier D. Preira, Deputy Chief of the Tribunal's Legal and Defence Facility Management Section ("the LDFMS") through a written memorandum filed on 10 December 1999, provided detailed information about the efforts taken by the Registry to assign Counsel to the Accused. Briefly, the memo states that as soon as the Accused was transferred to the UNDF on September 10 1998, the LDFMS asked him whether he could pay for his legal representation, which he answered in the negative. Consequent upon this, the LDFMS began the process of appointing a Duty Counsel to represent him but the Accused did not follow established procedure for assignment of Counsel and several factors delayed the actual assignment of Counsel to him. For instance, on two occasions, he submitted names of Counsel not on the Registrar's list. This was compounded by the fact that one of the Defence Counsel, Mr. Songa from the Democratic Republic of Congo was not reachable, a fact the Accused confirmed in writing. Both Counsels did not submit their applications. Further, there was a claim by Mr. De Temmerman stipulating that the brother of the Accused had mandated him to represent the accused, a fact disputed by the Accused. Ultimately, after further correspondences on the issue, on 2 February 1999, the Registry assigned Mr. Lennox Hinds, as the Defence Counsel for the Accused.

Right to be Promptly informed About the Charges against Him

26. The Prosecutor submits that by November 1998, the Accused should have known the charges against him because in response to this motion, the Prosecutor attached a letter from the Deputy Prosecutor requesting his arrest. In any case, the Authorities in Benin should have explained to him why he was being arrested. The Prosecutor states that an Accused is usually appraised of the nature of the charges against him at his initial appearance. In this case, the Accused was served with a copy of the indictment while he was still in Benin. All the procedures that are put in place during an arraignment in a national jurisdiction were already in place in the context of the procedures engaged by the Registry of the Tribunal.



Right to have his Initial Appearance without Delay

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27. The Prosecutor states that the scheduling of the initial appearances is fundamentally the responsibility of the Registry, in which the Prosecutor does not play a role. The Prosecutor submits that in the present case, the initial appearances were scheduled on 19 October and 24 November 1998, 10 March 1999 and she is at a loss to explain why the initial appearances did not take on 19 October and 24 November 1998. When she conferred with the Registry to look into the matter, the explanation given was that the postponement in the initial appearance was due to problems in the assignment of Counsel. In any case, the initial appearance for the Accused was scheduled when the Accused was actually assigned Counsel. However, the adjournments of initial appearances were caused by Accused himself. For instance, at the initial appearance on 10 March 1998, the Defence Counsel applied for a postponement on the basis that there were alleged irregularities in the indictment although the initial appearance finally took place on 7 and 8 April 1999 and the Prosecutor participated. Thus, his right to initial appearance without delay was respected.

28. Mr. Antoine Mindua, a representative of the Registry, who filed a written brief on 7 February 2000, to that effect, supported the submissions of the Prosecutor on the delay of assignment of Counsel. He, *inter alia*, explained that the reason for the delayed initial appearance was connected to the assignment of Counsel. Also that since the case involved joint trials, it was difficult for the Tribunal's Court Management Section to organize the initial appearance for the Accused alone. Hence, the Registry had to wait until the issue of assigned Counsel was resolved. Additionally, when the suitable Defence Counsel was identified, it was difficult to set a date acceptable to all to hold the initial appearance but finally 10 March 1999 was set as the date for the initial appearance. When the date was set, the Defence Counsel for the Accused requested the Trial Chamber to postpone it.



Rejoinder by the Defence

29. The Defence conceded to drop reference to "probable cause" but contended that even by her own definition the Prosecutor did not produce any evidence to justify the arrest of the Accused. The arguments of the Prosecutor with regard to the Affidavit of Mr. Basebya do not go to its admissibility but rather to the weight of evidence.

AFTER HAVING DELIBERATED

30. The Trial Chamber has considered all the arguments advanced by the Parties and gives its decision below.

Admissibility of Mr. Basebya's Affidavit

31. The issue of admissibility of Mr. Basebya's affidavit came up during the hearing of the Defence motion to expand the record of 7 December 1999. The Chamber is aware that the Prosecutor raised an initial objection to the admissibility of the supplementary affidavit but also notes that her written submission, upon which her subsequent oral submissions were based, challenged its probative value. The Chamber has carefully considered the affidavit of Mr. Basebya and finds that, since its contents have formed part of the record, the Trial Chamber has implicitly admitted the affidavit and any issue of admissibility has been rendered moot.

The Lack of Warrant of Arrest and The Arrest of The accused

32. The Defence submits that "probable cause" would be the basis upon which a person could be arrested and defines "probable cause" as "evidence that would lead a reasonable person to believe that a crime was committed and that the Accused committed that crime." The Defence further contends that in the present case, no probable cause was shown for the arrest of the Accused. The Trial Chamber notes that the Rules do not refer to "probable cause" but to a "suspect." Pursuant to Rule 2, a "suspect" is "a person concerning whom the Prosecutor possesses reliable information, which tends to show that he may have committed a crime over which the Tribunal has jurisdiction." Under Rule 40(A)(i) of the Rules, in case of urgency, the Prosecutor may request any State to arrest a suspect and place him in custody. It is the view of the Trial Chamber that all that is required at this stage is to have "reliable information, which tends to show that a person may have committed a crime over which the Tribunal has jurisdiction." There is no requirement for "probable cause" as contended and defined



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by the Defence. The Trial Chamber, therefore, is in agreement with the submission of the Prosecutor regarding the law under which the Accused was arrested and then, later transferred to the UNDF.

33. Regarding the arrest, pursuant to Rule 40, what is required is a request, which may be oral or written. In the present case, despite the missing letter of 6 June 1998, as alleged by Mr. Basebya's affidavit, there was in fact an arrest. The affidavit confirms that the Benin Authorities rendered assistance to the Prosecutor and arrested the Accused upon a request from the Prosecutor. The Prosecutor's request to the Benin Government could have been made orally. The Trial Chamber notes that it has no control over the investigations carried out by the Prosecutor and so cannot really verify the truth or otherwise of the statements made by her to the States. Thus the issue of the falseness of the statement is not founded in light of Rule 40(A)(i). It should be noted that an indictment against the Accused was subsequently confirmed. The other matters raised in the affidavit have not been substantiated.
34. Concerning the lack of an arrest warrant, when arresting a "suspect," there is no requirement for the Prosecutor to have a warrant of arrest or even evidence that the person committed a crime within the jurisdiction of the Tribunal. At this stage, the manner and execution of arrest is an area within the States' responsibility. When the Prosecutor makes a request for the arrest of the Accused, the matter falls within the domain of the requested State and it is that State which organizes, controls and carries out the arrest in accordance with their domestic law. All these procedures were fulfilled in this case. The Accused was, therefore, properly arrested under Rule 40.
35. In this regard, the Trial Chamber recalls two of its Decisions, namely *The Prosecutor V Edouard Karemera*, Case No. ICTR-98-44-1 (Decision on The Release of the Accused) and *The Prosecutor Vs Mathieu Ndirumpatse*, Case No. ICTR-97-44-1 both dated 10 December 1999. In *Karemera* case, Trial Chamber II expressed the opinion that a request made by the Prosecutor is executed and controlled by the State authorities using their law enforcement organs. (para.4.3.1). In that case, it was decided that "the Trial Chamber therefore, considers that it cannot provide any remedy concerning such arrest and custody as these are still matters within the jurisdiction of the requested State." In the *Ndirumpatse* Case a similar declaration was made. At para. 56, the Trial Chamber states that "the Tribunal is not competent to supervise the legality of arrest, custody, search and seizure executed by the requested State. The laws of the requested State may

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not require an arrest warrant or impose other legal conditions.” Further that the Prosecutor need not have initiated any proceedings against a suspect at the Tribunal prior to requesting arrest under Rule 40 (A).----The Statute and Rules, unlike many national jurisdictions, do not require a warrant of arrest.” (See. Para. 60). The Trial Chamber maintains its reasoning in the above cited cases on the issue of lack of warrant of arrest and is of the view that there is no good reason to depart from it.

36. The Trial Chamber is satisfied that the Accused was legally arrested as a “suspect” and this is justified under Rule 40(A)(i). The Accused has not shown that any denial, whatsoever, has occurred to affect his right to immediately challenge the legality of his arrest in Benin.

Right to Counsel during Interrogation

37. The Prosecutor submits that the matters concerning the interrogation and the integrity of the tapes were settled when they were unsealed on 27 March 2000. There is evidence that the Accused waived the right to have Counsel attend his interview. The Chamber takes cognisance of the fact that the Defence conceded that the integrity of the tapes was no longer questionable. However, if indeed the tapes contain exculpatory information concerning the Accused, this fact cannot be established without the transcripts of the unsealed tapes. For the moment, the Defence complaint is just an allegation subject to proof. Once the tapes are transcribed, in accordance with Rule 68, the Prosecutor, “shall, as soon as practicable, disclose to the Defence the existence of evidence known to the Prosecutor, which in any way tends to suggest the innocence or mitigate the guilt of the accused or may affect the credibility of prosecution evidence.”
38. The Chamber, otherwise, finds that the Prosecutor interrogated the Accused as was revealed at the subsequent hearing. The Prosecutor has elaborately explained how the misrepresentation on this issue initially arose. Whereas the Chambers does not condone any misrepresentation from any given party to the case, the explanation provided by the Prosecutor is reasonable in the circumstances of this case. For example, the investigators in this case were also involved in other investigations and the Legal Officer in charge of the case, Mr. Petit, who had contacted the Accused, had already left the Tribunal. In future, however, the Prosecutor, should present to the Tribunal only those facts, which are within her knowledge. She is always at liberty to request the Tribunal to grant her more time within which to respond to any given question where she is unsure of the matter.

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39. Considering that the Defence had conceded that the Accused had waived his right to counsel, the Chamber finds that, in accordance with Rule 42(B), the Accused voluntarily waived his right to counsel at the time of questioning. He was made aware of his rights and the Defence has admitted this fact. The Chamber finds that, in light of those facts, this allegation is without merit.

Rights to Counsel Generally

40. The Trial Chamber is fully convinced and accepts the detailed explanation of LDMFS on the issue of delay of assignment of Counsel. It is clear that serious efforts were made by the Registry to secure an assigned Counsel for the Accused. It is also true that the Accused frustrated these efforts by selecting Counsel whose names were not on the Registrar's drawn up list. Among the reasons for the delay of assignment of Counsel was the fact that the brother of the Accused instructed Mr. Luc De Temmerman to represent him indicating that he would pay the legal representation fees. This matter was clarified by the Accused to the contrary. There were also other problems, which compounded the situation such as the unavailability of Counsel as selected by the Accused. Each step was a setback to the assignment of Counsel in the case. This meant that the process of the assignment of Counsel to the Accused was prolonged. The Chamber is, therefore, of the view that the Accused contributed to the delay of the assignment of counsel.

41. Hence, the Trial Chamber finds that none of his rights were violated. Rather his right to Counsel was respected in accordance with Article 20-(4) (c) of the Statute, Rules 45 and 65 of the Rules as well as the relevant provisions in the Directive on the Assignment of Counsel. The Accused himself abused his right to Counsel by not following the established procedure on the assignment of Counsel.

Regarding the Lack of Information As to Charges Preferred against the Accused

42. The Chamber is of the opinion that, at the time of arrest, the Accused should have been informed of the reasons for his arrest by the Benin Authorities. Although it is disputed that, at the time of his arrest, there was no information passed on to the Accused, it is not challenged that while in Benin, before his transfer to the UNDF on 9 September 1998, the Accused was served with a warrant of arrest, a copy of the redacted Indictment and an Order for non-disclosure of the indictment. In fact, the Defence Counsel in his opening statement at the hearing of the first motion stated that the Defence was relying upon several documents including transcripts of prior proceedings

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before the Tribunal and all other information disclosed to the Defence. Thus he was notified about the charges against him. Additionally, pursuant to Rule 40 *bis* (E), copies of the order as well as the request by the Prosecutor must be served on the suspect and his Counsel by the Registrar as soon as possible. However, this Rule is inapplicable to this case because the Accused was served with a confirmed indictment while he was still in Benin thus he was promptly informed of the charges against him. This indictment was also read out to him at his initial appearance.

43. Pertaining to the issue of a redacted indictment, redaction is aimed at the public. In this case, the Defence Counsel acknowledges that there was in fact no irregularity with the indictment.
44. The Trial Chamber finds that there was ample information about the charges against the Accused and he had been appraised of them. The Trial Chamber, therefore, finds that this complaint is unfounded.

Right to Initial Appearance without Delay

45. Rule 62 of the Rules requires that an Accused who is transferred to the custody of the Tribunal be brought before the Tribunal or a single Judge for his initial appearance without delay to be formally charged. However, at the initial appearance, the Trial Chamber is required to "satisfy itself that the right of the Accused to Counsel is respected." The Accused was transferred to Arusha on 9 September 1998 and according to the records in the Registry, efforts to assign him counsel commenced soon after his arrival. It was not until 2 February 1999, that the current Defence Counsel, Mr. Hinds was assigned to him. It is also on record that the Accused contributed to the delay in the assignment of Counsel in this case and he stands to blame for the delay in his initial appearance, which is inter-twined to the issue of the assignment of Counsel. The Accused should have been more co-operative with the initial appearance unfounded and devoid of merit.

Other Complaints

46. The Accused complained that he should not have been treated as a "suspect" under Rule 40 but as an "Accused" under Rule 62. The Trial Chamber notes the Prosecutor's arguments distinguishing between the operation of Rule 40 and 40 *bis*. In the present case, the Accused was transferred as an "Accused" to Arusha pursuant to Rule 47(I) under a confirmed indictment. There was no need to refer to the procedure under Rule 40 *bis*. Consequently, the procedure for the execution of warrants of arrest laid down in Rule 55 was followed and therefore his complaints are groundless. There was also mention of

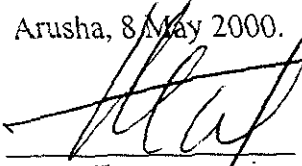
documents seized but no adequate information was made available to the Trial Chamber to enable it to determine this issue.

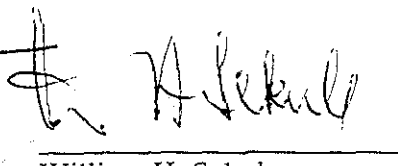
47. In conclusion, the Chamber finds no violation of the Statute and Rules.

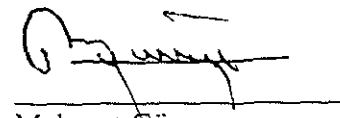
FOR ALL THE ABOVE REASONS, THE TRIBUNAL

DENIES the Defence Motion.

Arusha, 8 May 2000.


Laity Kama
Presiding Judge


William H. Sekule
Judge


Mehmet Güney
Judge

Seal of the Tribunal

