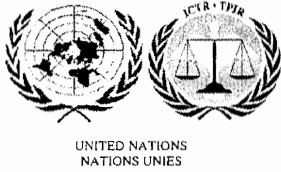


ICTR-97-31-DP
(30-26)
4/11/2002

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International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

Or: Eng

Before: Judge Erik Møse

Decision of: 4 November 2002

THE PROSECUTOR

v.

THARCISSE RENZAHU

Case No. ICTR-97-31-DP

**DECISION ON THE PROSECUTOR'S REQUEST FOR THE EXTENSION OF
THE SUSPECT'S DETENTION**

(Rule 40 *bis* (F) of the Rules of Procedure and Evidence)

Counsel for the Prosecution

Ciré Aly Bâ

Counsel for the Defence

Francis Musei

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“the Tribunal”);

SITTING as Judge Erik Møse, designated pursuant to Rule 40 *bis* (F) of the Rules of Procedure and Evidence (“the Rules”);

BEING SEIZED of a “Motion for extension of provisional detention” under Rule 40 *bis* (F) of the Rules, filed by the Prosecution on 28 October 2002;

HAVING HEARD the parties on 29 October 2002;

DECIDES AS FOLLOWS.

INTRODUCTION

1. On 27 September 2002, Judge Vaz issued an order for the transfer and the provisional detention of suspect Tharcisse Renzaho, pursuant to Rule 40 *bis* of the Rules. The order stipulated that the suspect was to be provisionally detained, at the Detention Unit of the Tribunal, for a maximum period not exceeding thirty days with effect from the day following his transfer, and that the Prosecution was to issue an indictment against him “before the expiration of the thirty-day period of provisional detention”.

2. On 29 September 2002, according to the Registry, the suspect was arrested pursuant to a request directly addressed by the Prosecutor to the authorities of the Democratic Republic of Congo, in accordance with Rule 40 of the Rules. He was transferred to the Tribunal on the same day. On 3 October 2002, he appeared before Judge Andrésia Vaz, who ascertained that his rights under the Statute and the Rules had been respected, in accordance with Rule 40 *bis* (J) of the Rules.

3. The initial period of his provisional detention as ordered on 27 September 2002 ended on 29 October 2002. On Friday 25 October 2002, the Prosecution submitted a motion for the confirmation of the indictment against the suspect, to which were attached a proposed indictment of 23 October 2002 and supporting material thereto.

4. On Monday 28 October 2002, the Prosecutor filed an extremely urgent motion for the extension of the suspect’s provisional detention on the basis of Rule 40 *bis* (F) of the Rules. The motion was heard on Tuesday 29 October 2002. The Defence declared that it did not object to the motion for extension, but drew the Chamber’s attention to two issues in respect of the Prosecution’s request for extension (see below). At the end of the hearing, the designated Judge decided that the motion would be granted. The length of the extension would be considered carefully in view of the circumstances. The present decision supplements the oral decision and sets forth the reasons for the extension.

DELIBERATIONS

5. The Tribunal notes that the Prosecution issued an indictment against the suspect before the expiration of the thirty-day period, as ordered in the decision of 27 September 2002.¹ However, the indictment (in English) and the supporting material was filed with the Registry on Friday 25 October 2002. Consequently, the duty Judge could not confirm the indictment

¹ Already for this reason, the Chamber does not accept the submission of Duty Counsel during the hearing that the indictment should have been filed within twenty days of the transfer, as required by Rule 40 (D).

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before the expiration of the stipulated period. This led to the Prosecution's motion for extension of the provisional detention under Rule 40 *bis* (F) of the Rules, which reads:

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 and before the end of the period of detention, to extend the provisional detention for a period not exceeding 30 days.

6. In its motion, the Prosecution submitted that the extension should be granted because it was not possible to file the indictment and the supporting material earlier. Reference was also made to lack of translation facilities. The Tribunal finds it difficult to reconcile these arguments with the wording of Rule 40*bis* (F), according to which the period of provisional detention may be extended if warranted by "the needs of the investigation". It is noted, however, that this provision is to be interpreted in light of Rule 40 (G), which provides for a second extension up to thirty days if warranted by "special circumstances". It follows from case law that it is not always possible to distinguish between these two criteria for successive extensions of provisional detention, even if both are incontestably subject to certain qualifications.² In the present case, there is no need for a detailed analysis of Rule 40*bis* (F), as the Prosecution has also provided reasons relating to the needs of the investigation.

7. During the hearing the Prosecution argued that the request for extension should be granted on the basis of "breakdown of structures" between its offices in The Hague, Arusha and Kigali which "to some extent" affected the investigations. No further details were provided. The Tribunal finds it difficult to accept that lack of administrative coordination or communication may justify an extension of a suspect's detention under the Statute and the Rules.

8. The Prosecution also submitted that two witness statements, qualified as "important" during the hearing, are missing from the supporting material to the indictment. Attached to the motion was a document entitled "Affidavit", dated 28 October 2002 and signed by the Commander of the Investigations of the Office of the Prosecutor in Kigali. According to the document, these witnesses would only sign their statements after getting guarantees for their safety. The Commander states that "efforts are being made to assure safety of the two witnesses and get them to sign their statements". He therefore requests an extension of time to enable the investigators to get the signed statements for use in the supporting material.

9. At the hearing, the Defence argued that the document had no legal value as the statement had not been made under oath before a commissioner, as required for affidavits. The Tribunal is not persuaded by this argument. According to Rule 89, a Chamber may admit any relevant evidence which it deems to have probative value. This principle also applies at the pre-trial stage. The Tribunal is satisfied that the statement has probative value and notes, in particular, the functions of the Commander within the Office of the Prosecutor.

² See decisions of 5 November 1997 in the cases of *The Prosecutor v. Georges Ruggiu* (ICTR-97-32) and *The Prosecutor v. Hassan Ngeze* (ICTR-97-27), both entitled "Reasons in Support of the Decision on Extension of Provisional Detention in Terms of Rule 40 *bis* (G)", in particular para. 16 of both decisions. Previous case law include decisions of 14 August 1997 concerning extension of provisional detention for a maximum period of thirty days in accordance with Rule 40 *bis* (F), in the cases of *The Prosecutor v. Jean Kambanda* (ICTR-97-23); *The Prosecutor v. Sylvain Nsabimana* (ICTR-97-29); *The Prosecutor v. Aloys Ntabakuze* (ICTR-97-30); *The Prosecutor v. Gratien Kabiligi* (ICTR 97-34), and decision of 18 August 1997 in the case of *The Prosecutor v. Hassan Ngeze* (ICTR-97-27).

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10. The purpose of Rule 40*bis* is to restrict the length of time during which a suspect may be detained without being indicted and to avoid arbitrary deprivation of liberty. In view of the Prosecution's explanations the Tribunal grants the motion and notes that the suspect did not object to an extension. Taking into account the circumstances of the case the Tribunal extends the period of provisional detention for a period of 21 days, expiring on Tuesday 19 November 2002.

11. Finally, it is emphasized that when the Prosecution submits an indictment for confirmation it should take into consideration the need for translation and transmission of documents in order to provide the confirming Judge with sufficient time to review the indictment and supporting material before the expiration of the period of detention.

FOR THE ABOVE REASONS

THE TRIBUNAL

GRANTS the Prosecutor's motion;

ORDERS, pursuant to Rule 40 *bis* (F) of the Rules, that the suspect, Tharcisse Renzaho, be held in detention for an additional period of 21 days, expiring on Tuesday 19 November 2002, pending confirmation of his indictment.

Arusha, 4 November 2002



Erik Møse
Judge

(Seal of the Tribunal)