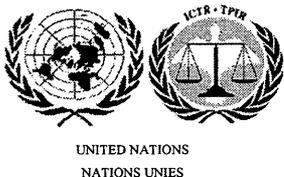


ICTR-2001-70-I
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International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

Original: English

TRIAL CHAMBER III

Before: Judge Lloyd G. Williams, Q.C., Presiding
Judge Andréia Vaz
Judge Sergey A. Egorov

Registrar: Adama Dieng

Date: 18 August 2003

2003 AUG 18 P 4: 12
ICTR
OFFICIAL RECORDS/ANNUNCIATIONS

THE PROSECUTOR

v.

EMMANUEL RUKUNDO

Case No. ICTR-2001-70-I

**DECISION ON DEFENCE MOTION TO FIX A DATE FOR THE
COMMENCEMENT OF THE TRIAL OF FATHER EMMANUEL RUKUNDO OR,
IN THE ALTERNATIVE, TO REQUEST HIS PROVISIONAL RELEASE**
Rule 65, Rule 65 bis and Rule 73 bis of the Rules of Procedure and Evidence

Counsel for the Defence:
Philippe Moriceau
Wenceslas Habiyaemye

Office of the Prosecutor:
Sylvana Arbia
Gregory Townsend
Faria Rekkas

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),

SITTING in the person of Judge Lloyd G. Williams, Q.C., presiding, designated by Trial Chamber III ("Chamber"), pursuant to Rule 73(A) of the Rules of Procedure and Evidence of the Tribunal ("Rules") for the purposes of the present motion;

BEING SEISED of the Defence "Motion to Fix a Date for the Commencement of the Trial of Father Emmanuel Rukundo or, in the Alternative, to Request his Provisional Release" filed on 21 May 2003;

CONSIDERING the "Prosecutor's Response to the Defence Motion for Provisional Release (Bail) or to Fix a Date for a Pre-Trial Conference" filed on 27 May 2003 and the Defence Reply thereto filed on 3 July 2003;

NOTING the "Registrar's Submission under Rule 33 (B) of the Rules on Defence Counsel's Motion for Provisional Release of Father Emmanuel Rukundo," filed on 18 July 2003 and the Defence response thereto filed on 28 July 2003;

CONSIDERING the Statute of the Tribunal ("Statute") and the Rules, particularly Rule 65 as it was amended at the thirteenth plenary session of 26 and 27 May 2003;

NOW DECIDES the matter, pursuant to Rule 73(A) of the Rules, solely on the basis of the written briefs filed by the parties.

Submissions of the Parties

Defence

1. The Defence prays for the Tribunal to set a date for the pre-trial conference as per Rule 73*bis* of the Rules, in order to ensure that the Accused is "to be tried fairly and without undue delay in accordance with the provisions of Article 20(4)(c) of the Statute."
2. The Defence asserts that the right of the accused to a fair and expeditious trial is a "genuine right whose violation may have repercussions, in particular, on the provisional release of the Accused, or may constitute arbitrary detention."
3. In the alternative, the Defence moves for the provisional release of the Accused in accordance with Rule 65 of the Rules.
4. The Defence argues that "failure to try [the Accused] without delay constitutes an exceptional circumstance within the meaning of Rule 65." The Accused has been in detention since 12 July 2001, and the Defence asserts that the need to conduct investigations can no longer justify the delay, given that the Prosecutor has had since 1994 to investigate and "no additional evidence has been produced in the last year."
5. The Defence also argues that the Accused's "rights were violated in that Prosecution motions, briefs and annexes were not translated into French" and because some decisions had been rendered before the Accused "had the opportunity to read the French translations of the



Prosecution's written briefs and, for that matter, the material time and opportunity to respond."

6. The Defence further submits that "there is a serious doubt about the person being prosecuted and the likelihood that Father Emmanuel Rukundo is responsible for the crimes with which he is charged."

7. The Defence thus argues that the above considerations "justify exceptional circumstances and warrant application of Rule 65 in the instant case."

8. In order to provide the guarantees required by the Tribunal for provisional release of an accused, the Defence presents the Accused's "status and the guarantees he can offer as a person and as a priest." Moreover, the Defence suggests that the Accused could return to his diocese in Switzerland and "avail himself of all the guarantees of representation when the time comes, either at the initiative of the Swiss authorities or the Church authorities."

9. The Defence reminds the Chamber that "aware of the crimes with which he was charged, Father Emmanuel Rukundo never sought to flee or escape from justice... he continued his ministry in the diocese in utmost serenity." The Defence explains that the Accused "does not in any way intend to escape from the judges...he wants his innocence to be acknowledged and confirmed."

Prosecution

10. The Prosecutor argues that "while the right of the accused to be tried without undue delay pursuant to Article 20(4)(c) of the Statute must be respected, the interests of justice and judicial administration require that the proper procedure must be adhered to." Accordingly, the Prosecutor submits that the Chamber should set a status conference pursuant to Rule 65*bis*, before setting down a date for a pre-trial conference.

11. The Prosecutor explains that "in almost all the cases before the Trial Chambers of the Tribunal, Status Conferences have been held to determine the issues between the parties in preparation for the trial, prior to the setting down of trial dates." Thus the Prosecutor asserts that the Defence is "putting the cart before the horse" in "seeking a pre-trial conference without adequately exhausting the avenues provided in the Rules through the status conference."

12. With respect to the application for provisional release, the Prosecutor recalls that the Accused has the burden of establishing the four criteria for provisional release.¹ The Prosecutor further "contends that the Trial Chamber has to take due cognizance of the general complexity of all proceedings, including the investigations in terms of law and of the facts in light of the gravity of the offences the accused in charged with."

13. The Prosecutor submits that neither the length of detention, nor the delay of trial, nor the alleged inherent problems in the Prosecution's case qualify as exceptional circumstances,

¹ The Accused has the burden of a) demonstrating exceptional circumstances, b) satisfying the Chamber that the accused will appear for trial, c) satisfying the Chamber that, if released, the accused will not pose a danger to any victim, witness or other person, and d) ensuring that the host country and the country to which the accused seeks to be released have the opportunity to be heard.

and that the failure to prove exceptional circumstances should lead to the dismissal of this motion.

14. The Prosecutor thus prays that the Defence Motion be dismissed.

Registrar

15. The Registrar submits that the Defence motion does not meet the requirements for provisional release. "Not only does the Defence have to provide the Chamber with the name of the country willing to receive the accused person should he be granted provisional release, but also he has to establish before the Chamber that the said country has undertaken to transport the Accused to and from the Seat of the Tribunal in Arusha, as required by the rules."

16. In addition, the Registrar notes "apart from one document, all the documents referred to by Defence Counsel have been translated and served on the Accused and Counsel," so the call for provisional release based on the Accused's rights being violated by lack of translation is inadequate.

Defence Reply to Registrar's Submissions

17. The Defence responds to the Registrar's submissions regarding translation and provisional release. On the first point, the Defence agrees with the Registrar's report and underlines that what is stated in his motion was true at the time the motion was filed. The Defence justifies this motion by the fact that the Chamber has to protect the rights of the Defence, especially on appeal procedures, violated by the non-availability of French versions of decisions, briefs, etc. On the second point, the Defence criticizes the Registrar for arguing like a party to the Trial. The Defence states that he can provide the Chamber with any further information that may be requested, regarding the guarantees that the Accused will appear at trial.

Deliberations

18. The Chamber reminds the parties that the Chamber will set a date for commencement of trial in due time. The motion is unnecessary. This is a matter which should be settled by correspondence. The motion to fix a date for trial is therefore dismissed.

19. The Chamber now considers the request for provisional release of the Accused, pursuant to Rule 65. The Chamber recalls that Rule 65 was amended at the thirteenth plenary session on 27 May 2003. The revised version does not contain an exceptional circumstances requirement, and reads:

(B) Provisional release may be ordered by a Trial Chamber only after giving the host country and the country to which the accused seeks to be released the opportunity to be heard, and only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person.

20. In accordance with Rule 6(C), the amended version of Rule 65 shall apply immediately, without prejudice to the Accused. As a result, the Chamber will not address the exceptional circumstances arguments advanced by the parties.

21. The Chamber notes that while the elimination of the exceptional circumstances requirement somewhat alleviates the task of the Accused, applicants must still satisfy certain criteria. In particular, it remains incumbent upon the Accused to demonstrate that he will return for trial and will not pose any danger to victims, witnesses or others.

22. The Defence has informed the Chamber that the Accused wishes to return to his diocese in Switzerland, but expression of the mere wish to reside in a given country is not sufficient to meet the requirements for provisional release. The Defence must provide at least *prima facie* evidence that the country in question agrees or would agree to accept the Accused on its territory, and that the country will guarantee the Accused's return to the Tribunal at such times as the Chamber may order. The Defence submission, in its reply to the Registrar, that it can provide guarantees that the Accused will appear for trial if requested to do so, is not sufficient. The Defence is obliged to provide such guarantees upon application for provisional release, not at a later date. The information provided in the Defence motion has thus not satisfied the Chamber that the Accused will appear for trial.

23. Failure to satisfy a single prong of the Rule 65(B) is fatal to an application for provisional release. Consequently, the Chamber need not consider whether the Accused demonstrated that he would not pose a risk to victims, witnesses or other persons.

ACCORDINGLY, THE TRIBUNAL

DENIES the Defence Motion to Fix a Date for the Commencement of the Trial of the Accused.

DENIES the Defence Motion for Provisional Release.

Arusha, 18 August 2003



Lloyd G. Williams, Q.C., Presiding
Designated Judge

(Seal of the Tribunal)

