

ICTR-2001-70-I  
20-8-2004  
(1850 - 1846)

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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

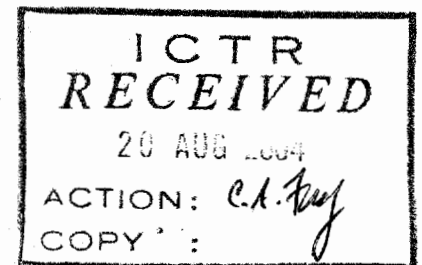
TRIAL CHAMBER III

ENGLISH:  
Original: FRENCH

Before Judges: Andrésia Vaz, presiding  
Sergei Aleckseevich Egorov  
Florence Rita Arrey

Registrar: Adama Dieng

Date: 15 July 2004



THE PROSECUTOR

v.

Emmanuel RUKUNDO

Case No. ICTR 2001-70-I

DECISION ON THE MOTION FOR PROVISIONAL RELEASE OF FATHER  
EMMANUEL RUKUNDO  
(Rule 65(B) of the Rules of Procedure and Evidence)

Office of the Prosecutor:

Sylvana Arbia  
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Michael Adenuga  
Manuel Bouwknecht  
Astou Mbow

Defence Counsel:

Phillipe Moriceau  
Wenceslas Habiyaemye

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

**SITTING** as Trial Chamber III (the “Trial Chamber”), composed of Judge Andréia Vaz, presiding Judge, Sergei Aleckseevich Egorov and Judge Florence Rita Arrey;

**CONSIDERING** the Motion for Provisional Release of Father Emmanuel Rukundo, filed by the Defence on 11 June 2004;

**CONSIDERING** the Prosecutor’s Response to Rukundo’s Motion for Provisional Release, filed on 18 June 2004;

**CONSIDERING** the Defence’s Brief in Reply to the Prosecutor’s Response to the Motion for Provisional Release, and Application for an Extension of Time-Limit for Filing a Reply, filed on 23 June 2004, and Reply to Prosecutor’s Response to Rukundo’s Motion for Provisional Release, filed on 6 July 2004;

**CONSIDERING** the Registrar’s Submission under Rule 33(B) of the Rules on Defence Counsel’s Motion for Provisional Release of Father Emmanuel Rukundo, filed by the Deputy Registrar on 12 July 2004;

**CONSIDERING** the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”);

**NOW RULES** on the Motion based solely on the briefs of the parties pursuant to Rule 73(A) of the Rules.

## **INTRODUCTION**

1. On 18 August 2003, the Trial Chamber, with a single Judge sitting, rendered a Decision on the Defence Motion seeking a date the Commencement of the Trial of Father Emmanuel Rukundo or, in the alternative, his Provisional Release. The Trial Chamber dismissed the Motion in its entirety.

2. On 30 December 2003, the Defence brought before the Appeals Chamber an Appeal of the Decision of 18 August 2003 Denying motion for Provisional Release and an Appeal of the Decision of 18 August 2003. On 8 March 2004, the Appeals Chamber granted the Applicant’s appeal and reversed the Trial Chamber’s 18 August 2003 Decision on the ground that Rule 65 of the Rules does not allow a single judge to decide on the provisional release of an accused. The Appeals Chamber remanded the initial application for provisional release to the Trial Chamber fully constituted.

3. On 18 March 2004, the fully-constituted Trial Chamber again denied the application by the Accused in a Decision on Defence Motion for his Provisional Release in which the Trial Chamber endorsed the reasoning and orders of the 18 August 2003 Decision.

4. The Accused filed an application for leave to appeal from the 18 March 2004 Decision denying his application for provisional release. The Appeals Chamber denied the Accused's application for Leave to Appeal in its Decision on the Application for leave to Appeal rendered on 28 April 2004.

### **SUBMISSIONS BY THE PARTIES**

#### ***Defence Submissions***

5. The Defence submits that the duration of provisional detention the Accused is subjected to is a breach of his right to be tried without undue delay and, is therefore, violative of the presumption of innocence principle.

6. The Defence further submits that if released, the Accused undertakes to appear for trial and to strictly observe such conditions as were imposed on him by the Trial Chamber in order to satisfy itself that he will appear before it when so required. The Accused intends, in the event that he were released, to return to his Diocese of Lausanne whose Bishop and parishioners are ready to receive him as attested by the petition and documents attached to his application.

7. The Defence reiterates that the Accused does not pose a danger to any victim, witness or other person, including by offering as proof his unimpeachable conduct before, during and after the 1994 events in Rwanda and the fact that he is unaware of the identity of the people who will be called to testify against him. The Accused also undertakes not to try to know their identities.

8. The Defence also submits that the Accused is in possession of a letter from the Minister of Justice of Switzerland pledging that should an order for his provisional release be issued, Switzerland would entertain the matter.

#### ***Prosecutor's Submissions***

9. As a preliminary submission, the Prosecutor argues that the issue of the provisional release of the Accused has been fully addressed in earlier Decisions of the Trial Chamber and, as a result, it is now *res judicata*. The Defence application is therefore an abuse of process. The Prosecutor refers to his earlier submissions on this issue in the instant case.

10. The Prosecutor relies on the jurisprudence of the European Court of Human Rights and of the Tribunal in arguing that the duration of the detention of the Accused may not be deemed to be undue in view of the seriousness of the crimes charged and the complexity of the case.

11. The Prosecutor submits that the requirements of Rule 65 of the Rules have not been met, which requirements are a condition precedent for any provisional release.

*Defence Reply*

12. In its Reply of 2 July 2004, the Defence submits that its application is not a request for review of the Appeals Chamber's Decision of 28 April 2004 which is said to have settled the matter but that it is rather a consequence thereof. The Accused further submits that his is a new application based on new arguments adduced therein.

**DELIBERATIONS**

13. The Prosecutor submits that the Motion is an abuse of process because the Trial Chamber has ruled on the issue of provisional release of the Accused in its earlier decisions. The Trial Chamber agrees with the Appeals Chamber that there is no provision in Rule 65 of the Rules that prohibits [the Accused] from filing a new application for provisional release before the Trial Chamber, with such materials as could satisfy the Trial Chamber that, if released, [the Accused] will appear for trial and will not pose a danger to any victim, witness or other person. In light of the new submissions made by the Defence in support of its Motion, the Trial Chamber finds that there is no abuse of process and rules the Motion admissible.

14. Rule 65(B) of the Rules reads: "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."

15. The Trial Chamber notes that pursuant to the provisions of Rule 65(B) of the Rules, that it is up to the Accused to satisfy the Trial Chamber that he will appear for trial before the Tribunal and that he will not pose a danger to any victim, witness or other person.

16. The Trial Chamber is mindful of fact that the Accused has been in detention since 12 July 2001, that is, for a period of three years. The Defence argues from the period of detention of the Accused that there exist exceptional circumstances which should be taken into account in considering whether good cause is shown for his provisional release. The Trial Chamber notes that the new wording of Rule 65(B), which came into force on 27 May 2003, no longer makes provisional release contingent upon exceptional circumstances being shown. As the Appeals Chamber recalled, the period of provisional detention may not be deemed under Rule 65(B) as cause justifying an order for provisional release of an accused person. Consequently, the Trial Chamber will not entertain the argument based on the period of provisional detention.

17. The Defence has suggested to the Trial Chamber that, if released, the Accused wishes to return to his diocese in Lausanne, Switzerland, providing in support of its submission a letter from the Minister of Justice pledging that if an order for his provisional release were entered, Switzerland would willing to entertain the matter. The Trial Chamber observes that the Government of Switzerland has not given any

indication as to whether or not it agrees or would agree to allow the Accused into Switzerland and as to whether it would take appropriate action to ensure that the Accused appear for his trial. The Trial Chamber notes that provisional release may only be considered if more specific information were provided by Switzerland.

18. In support of its application, the Defence also submitted an attestation from the Bishop of Lausanne, Geneva and Fribourg and a petition from parishioners of the diocese stating that they are willing to welcome the Accused. The Trial Chamber notes that such information is not such as to satisfy it that the Accused will appear for his trial.

19. The Trial Chamber reiterates that the requirements of Rule 65(B) of the Rules are cumulative and not alternative. Consequently, no application for provisional release may be granted if any one of such requirements were not met. Since is not satisfied that, if provisionally released, the Accused will appear for trial, the Trial Chamber denies the Defence Motion. The Trial Chamber finds that it is not necessary for it to consider whether the Accused has shown that he will not pose a danger to any victim, witness or other person.

**FOR THE FOREGOING REASONS, THE TRIAL CHAMBER**

**DISMISSES** the Defence Motion for the provisional release of the Accused.

Arusha, 15 July 2004

[Signed]  
Andresia Vaz  
Presiding Judge

[Signed]  
Sergei Aleckseevich Egorov

[Signed]  
Florence Rita Arrey

[Seal of the Tribunal]

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