International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

United Nations
Nations Unies

Office of the President
Cabinet du Président

Original: English

Before: Judge Erik Møse, President

Registrar: Mr Adama Dieng

Date: 17 August 2006

THE PROSECUTOR
v.
MICHEL BAGARAGAZA

Case No.: ICTR-2005-86-I

ORDER FOR THE CONTINUED DETENTION OF MICHEL BAGARAGAZA AT THE ICTY DETENTION UNIT IN THE HAGUE, THE NETHERLANDS

The Prosecution:
Hassan Bubacar Jallow
Stephen Rapp

The Defence:
Geert-Jan Alexander Knoops

THE PRESIDENT OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

BEING SEIZED of the Prosecutor's Application of 16 August 2006 to extend the present conditions of detention of Michel Bagaragaza;

NOTING the exchange of diplomatic notes between the Tribunal and the Government of the Netherlands of 4 and 16 August 2006;

HEREBY DECIDES THE APPLICATION

INTRODUCTION

On 13 August 2005, Judge Arlette Ramaroson, in her capacity as Acting President, ordered that Michel Bagaragaza ("the Accused") be transferred to the Detention Unit of the International Criminal Tribunal for the Former Yugoslavia ("ICTY"), The Hague, Netherlands, for a period of six months. He was transferred to The Hague and arrived at the ICTY Detention Unit on 18 August 2005. On 15 February 2006, the Prosecutor requested an extension of this period of detention for a further six months. This request was granted by the President on 17 February 2006.

On 15 February 2006, the Prosecutor filed a request to transfer the case of the Accused to Norway for trial pursuant to Rule 11*bis* of the Rules of Procedure and Evidence. This request was denied by the Trial Chamber on 19 May 2006. The Prosecutor has appealed this decision, and the matter is currently pending before the Appeals Chamber.

SUBMISSIONS

The Prosecutor requests a further order extending the detention of the Acccused at the ICTY Detention Unit in order to allow sufficient time to arrange for the removal of the Accused from The Netherlands following the disposition of its appeal. The Prosecutor observes that if this appeal is granted and the transfer of the case to Norway ordered, it will take several days thereafter to arrange for the physical transfer of the Accused to Norway. If it is denied, it will take several weeks to negotiate an alternative disposition of the case as envisaged in the agreement between the Prosecutor and the Accused dated 18-19 December 2004. According to the Prosecutor, the Appeals Chamber decision is expected shortly. He therefore requests a relatively brief extension of the Accused's current detention in The Hague, for a period not exceeding two months from the date of the order.

The Prosecutor recalls that the Netherlands and the ICTY originally consented to the detention of the Accused at the ICTY Detention Unit for a period not exceeding one year. This period expires on 17 August 2006. The Government of the Netherlands, on 16 August 2006, agreed to permit the Accused to remain there for an additional period, until 16 October 2006, on the assumption that the Tribunal shall do its utmost to arrange a prompt transfer of the Accused to another State. According to the Prosecutor, counsel for the Accused does not object to the granting of this Application.

The Prosecutor submits that the detention of the Accused in The Hague continues to be justified due to special security reasons, and will have the incidental effect of facilitating contact between the Accused and his counsel.

DELIBERATIONS

Generally, accused detained under the jurisdiction of the Tribunal are held in the ICTR Detention Facility in Arusha, Tanzania. However, Rule 64 of the Rules of Procedure and Evidence permits an accused to be detained in a country other than in Tanzania. The

detention of an accused in another country after he or she has been transferred to the custody of the Tribunal requires a modification of his or her conditions of detention. The President may order a modification of these conditions on application from either party. In the present case, this was done in the original Order and maintained in the second Decision. Although this period has now elapsed, final disposition of the Accused's case would appear to be imminent. Further, the documentation provided by the Prosecutor demonstrates that the Dutch Authorities have consented to this Application. The security concerns raised previously by the Prosecutor justify his detention at The Hague.

Consequently, the continued detention of the Accused in The Hague is in interests of justice. The Application should therefore be granted.

FOR THE REASONS MENTIONED ABOVE, THE PRESIDENT

ORDERS that Michel Bagaragaza be detained at the Detention Unit of the International Criminal Tribunal for the Former Yugoslavia, at The Hague, The Netherlands, until 16 October 2006;

REQUESTS the Registrar to transmit this order to the International Criminal Tribunal for the Former Yugoslavia and to Michel Bagaragaza.

Arusha, 17 August 2006

Erik Møse
President

[Seal of the Tribunal]