



UNITED NATIONS
NATIONS UNIES



**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

***Office of the President
Cabinet du Président***

Before: Judge Erik Møse, President

Original: English

Registrar: Mr Adama Dieng

Date: 14 February 2007

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
James Stewart
Wallace Kapaya

The Defence:

Geert-Jan Alexander Knoops

THE PRESIDENT OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

BEING SEIZED of the Prosecutor's Application of 13 February 2007 to extend the present conditions of detention of Michel Bagaragaza;

HEREBY DECIDES THE APPLICATION

INTRODUCTION

1. 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, The Netherlands, for a period of six months. He 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 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 appealed this decision.

2. On 16 August 2006, the Prosecutor requested an extension of the Accused's detention for an additional 60 days in order to allow sufficient time to arrange for the removal of the Accused from The Netherlands following the disposition of its appeal. This request was granted on 17 August 2006. The additional period expired on 16 October 2006.

3. The Appeals Chamber dismissed the Prosecutor's appeal on 30 August 2006. On 12 October 2006, the Prosecutor received notification from a State with the capacity to prosecute the Accused for violations of international humanitarian law that it would accept referral of his case for prosecution. On 16 October 2006, the President extended the Accused's regime of detention for an additional period of 120 days, through 15 February 2007, as some time was required to conclude arrangements with that State and to file and obtain a decision on the request to transfer the case of the Accused pursuant to Rule 11 *bis*.

4. On 1 November 2006, the Prosecutor sought leave to amend the Indictment. Leave was granted by the pre-trial Chamber on 30 November 2006. The Prosecutor submitted a request for referral of the Indictment to the Kingdom of the Netherlands on 12 December 2006. Pursuant to Rule 11 *bis*, the President, on 13 December 2006, designated a Chamber to decide this motion. On 31 January 2007, that Chamber, pursuant to Rule 74, invited the parties and The Netherlands to file submissions and responses on, *inter alia*, the jurisdiction of The Netherlands over the crimes charged in the Indictment, within 14 days and 21 days respectively.

SUBMISSIONS

5. The Prosecutor requests a further order extending the detention of the Accused at the ICTY Detention Unit to permit sufficient time to allow the Chamber to render a decision on the Rule 11 *bis* motion to transfer the case of the Accused to The Netherlands. Should this motion be granted, time will also be required to conclude arrangements with that State. The

Prosecutor therefore requests an extension of the Accused's current detention in The Hague, for a period not exceeding 120 days from the date of the order. The Government of The Netherlands is not opposed to such an extension of the Accused's period at the ICTY Detention Unit.

6. According to the Prosecutor, counsel for the Accused does not object to the granting of this Application. He further submits that the Accused detention in The Hague continues to be justified due to special security reasons, and will have the incidental effect of facilitating contact between him and his counsel.

DELIBERATIONS

7. 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 in successive Orders since that date. 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 also justify his detention at The Hague.

8. 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 15 June 2007;

REQUESTS the Registrar to transmit this order to the relevant authorities of the Kingdom of The Netherlands, the International Criminal Tribunal for the Former Yugoslavia and to Michel Bagaragaza.

Arusha, 14 February 2007.

Erik Møse
President

[Seal of the Tribunal]