

ICTR-95-1C-I
15-12-2004
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INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

TRIAL CHAMBER III

ENGLISH
Original: FRENCH

Before:

Registrar: Adama Dieng

Date:

THE PROSECUTOR

v.

VINCENT RUTAGANIRA

Case No. ICTR-95-1C-I

JUDICIAL RECORDS/ARCHIVES
ICTR

2004 DEC 15 P 4:28

C.A. July

MOTION TO SET A DATE FOR TRIAL AND TO SEEK RELEASE PENDING TRIAL, UNDER RULE 73 OF THE RULES OF PROCEDURE AND EVIDENCE

Office of the Prosecutor:
Charles Adeogun-Philips

Counsel for the Defence:
François Roux, Lead Counsel
Maroufa Diabira, Co-Counsel
Abigail Hansen, Assistant

MAY IT PLEASE THE TRIBUNAL

1. Whereas according to the Indictment of 29 April 1996 in Case No. ICTR-95-1-I Vincent Rutaganira is accused of conspiracy to commit genocide, genocide, crimes against humanity (assassination, extermination, other inhuman acts), violation of Article 3 Common to the Geneva Conventions, and violation of Additional Protocol II,
2. Whereas the Accused voluntarily gave himself up to the Prosecutor's investigators at the border of the Democratic Republic of Congo and Rwanda, and he was transferred directly to Arusha on 4 March 2002,
3. Whereas the Accused has been detained since that date at the United Nations Detention Facility, Arusha, pursuant to Rule 64 of the Rules of Procedure and Evidence (the "Rules"),
4. Whereas the Accused was brought before the Trial Chamber on 7 March 2002 and on 26 March 2002 for a hearing pursuant to Rule 62(A) of the Rules, and that at the hearing on 26 March 2002, the Accused pleaded not guilty,
5. Whereas Rule 62(A) of the Rules provides that:
"The Trial Chamber or the Judge shall...(iv) In case of a plea of not guilty, instruct the Registrar to set a date for trial",
6. Whereas at the initial appearance of 26 March 2002, the Presiding Judge declared that *"once all preliminary matters addressed and after consultations are held with the Parties, including the possible holding of a status conference, the Registry would eventually set a date for commencement of trial in the present case",*
7. Whereas Article 19(3) of the Statute of the Tribunal also provides that:
"The Trial Chamber shall read the indictment, satisfy itself that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. The Trial Chamber shall then set the date for trial",
8. Whereas, since the initial appearance of the Accused, the Trial Chamber has not convened a status conference, pursuant to Rule 65 bis of the Rules,
9. Whereas, since the initial appearance of the Accused, the Registry has not set a date for commencement of trial, pursuant to Rule 62(A) (iv) of the Rules and to Article 19(3) of the Statute,

10. Whereas, since the initial appearance of the Accused, the Defence has received from the Office of the Prosecutor several Prosecution witness statements, but that since 21 May 2003, the Defence has not received any new material in respect of the present case,

11. Whereas since the initial appearance of the Accused, the Defence has effected several investigation missions in different countries in search of Defence witnesses, and that, at present, the Defence has substantial ingredients to challenge the current Indictment in defence of the Accused,

12. Whereas Article 19(1) of the Statute provides that:

“The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules of Procedure and Evidence, with full respect for the rights of the accused...”,

13. Whereas Article 20(4) of the Statute provides that:

“In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality: ... (c) To be tried without undue delay”,

14. Whereas many declarations and conventions and other international instruments guarantee, without restriction or exemption, the right of an accused to be tried within a reasonable time, and, in particular:

(i) Article 9(3) of the International Covenant on Civil and Political Rights provides that:

“Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment”;

(ii) Article 5(3) of the European Convention on Human Rights provides that:

“Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this article ... shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial”;

- (iii) Article 6 (right to a fair trial) of the European Convention on Human Rights provides that:

“... everyone is entitled to a fair and public hearing within a reasonable time...”;

- (iv) Article 7(1)(d) of the African Charter and People's Rights provides that every individual shall have *“the right to be tried within a reasonable time by an impartial court or tribunal”*;

15. Whereas in the light of the foregoing, the Accused considers that neither his right to a date for commencement of trial following his initial appearance nor his right to be tried within a reasonable time has been complied with, and that he is justified in requesting that the date for his trial be set without delay,

16. Whereas the Accused submits that he should be provisionally released if the Tribunal is unable to set a date for trial: more specifically, the Accused requests the Tribunal to issue an order, in accordance with Rule 65(A) of the Rules, and relying also on his rights pursuant to Article 9(3) of the International Covenant on Civil and Political Rights, and Article 5(3) of the European Convention on Human Rights, as well as the universal right to presumption of innocence. The Accused also relies on the jurisprudence of international criminal law in its entirety, including *Blaškić* (IT-95-14-T) of the International Criminal Tribunal for ex-Yugoslavia (ICTY), *Džukić* (ICTY) and *Simić* (ICTY),

17. Whereas this motion is justified in that the Accused has amply demonstrated his willingness to appear for trial, and particularly the fact that he voluntarily gave himself up to the Tribunal in May 2002,

18. Whereas the Accused states that he is ready to accept any condition deemed appropriate for his provisional release, including strict observance of such conditions as are necessary to ensure his presence at trial and the protection of others.

FOR THESE REASONS

19. May it please Trial Chamber I to:

- CONFIRM to the Defence that it is ready to commence the trial of the Accused on the basis of the current Indictment;
- ORDER the Registry to set a date for commencement of the Accused's trial or alternatively to set a date for a status conference, pursuant to Rule 65 *bis* of the Rules;

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- Should the Tribunal fail to set a date for commencement of trial, ORDER the provisional release of the Accused pursuant to Rule 65(A) of the Rules.

The Defence reserves the right to make further submissions

AND JUSTICE SHALL BE DONE

Montpellier, 1 August 2004

[Signed]

François Roux
Lead Counsel