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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
CASE NO.: ICTR-2001-65-DP

THE PROSECUTOR
OF THE TRIBUNAL

VERSUS

JEAN MPAMBARA

29 JUNE 2001
1000H
HEARING UNDER 40BIS (J)

Before:
Judge Pavel Dolenc, Presiding

For the Registry:
Mr. Koffi Kumelio A. Afande
Mr. Constant Kwaku Hometowu

For the Office of the Prosecutor:
Ms. Andra Mobberley
Ms. Autumn Elliott

For the Suspect Mpambara:
Mr. Bharat B. Chadha

Court Reporters:
Sithembiso Moyo

1 P R O C E E D I N G S

2 MR. PRESIDENT:

3 The Court is now in session.

4

5 Good morning everyone. I would like to ask
6 Mr. Registrar to announce the matter which
7 is before us.

8 MR. AFANDE:

9 Thank you Mr. President.

10

11 The International Criminal Tribunal for
12 Rwanda is sitting as Judge Pavel Dolenc in
13 open session, today, Friday the 29th June,
14 2001, for the Appearance in the matter of
15 the Prosecutor versus Jean Mpambara, Case
16 No. ICTR-2001-65-DP, pursuant to Rule
17 40bis (J) of the Rules of Procedure and
18 Evidence. Thank you.

19 MR. PRESIDENT:

20 Thank you, Mr. Registrar.

21 Can we have the appearances, starting with
22 the Prosecutor, please.

23 MS. MOBBERLEY:

24 May it please the Court. The Prosecution is
25 represented today by myself, Ms. Mobberley,

1 and I am assisted by Ms. Elliott.

2 MR. PRESIDENT:

3 The Defence, please.

4 MR. CHADHA:

5 Thank you, My Lord. My name is Bharat B.

6 Chadha. I am duty counsel for the accused

7 and I am a private advocate based in Arusha.

8 Pleased, Your Lordship.

9 MR. PRESIDENT:

10 I am Judge Pavel Dolenc. Does either party

11 have any objections to conduct today's

12 proceedings? The Prosecutor?

13 MS. MOBBERLEY:

14 I have no objections, Your Honour.

15 MR. PRESIDENT:

16 The Defence?

17 MR. CHADHA:

18 I don't have any objection, My Lord.

19 MR. PRESIDENT:

20 Please, Security Officer, accompany the

21 Suspect to the witness box, please.

22 I hope you have solved these technical

23 problems.

24

25 Suspect, what is your native language?

1 First to clarify this matter -- Can you
2 hear?

3 THE SUSPECT:

4 My mother tongue is Kinyarwanda.

5 MR. PRESIDENT:

6 Do you understand any other language?

7 THE SUSPECT:

8 I speak French.

9 MR. PRESIDENT:

10 The purpose of today's session is to ensure
11 that the rights of a suspect who is in
12 provisional detention are respected.

13
14 Firstly, I intend to ask you some questions
15 which are not related to alleged crimes at
16 all. I simply want to know if the identity
17 of you before us is the same as the identity
18 of a person named Jean Mpambara, for whom
19 the order for transfer was rendered.

20
21 However, also on these questions, you are
22 not obliged to answer on any of them or all
23 of them. Would you answer on these
24 questions which are related only as
25 indicated, about the identity?

1 THE SUSPECT:

2 Yes, I am ready to answer.

3 MR. PRESIDENT:

4 Can you tell us, what is your full name?

5 THE SUSPECT:

6 My name is Mpambara, Jean.

7 MR. PRESIDENT:

8 What are the names of your parents, father
9 and mother?

10 THE SUSPECT:

11 My father?

12 MR. PRESIDENT:

13 Yes, please.

14 THE SUSPECT:

15 I am sorry, I have some minor problems. I
16 will be able to discuss them with my counsel
17 but unfortunately -- or rather I wanted to
18 discuss with him, but this was not possible
19 to enable me to take a stand in this matter.

20 MR. PRESIDENT:

21 You don't wish to answer on this question?

22 THE SUSPECT:

23 Yes, because first of all, I would like my
24 counsel to tell me what position I should
25 adopt.

1 MR. PRESIDENT:

2 Very well. I will not insist to ask you
3 further questions about your identity. I
4 would proceed with the issue which is the
5 purpose of this proceeding today. The
6 rights of a suspect are regulated in several
7 provisions of the Statute and Rules of
8 Procedure and Evidence of the Tribunal and,
9 as well as in international conventions and
10 other international instruments.

11
12 Firstly, a suspect who is in custody or
13 provisional detention must be promptly
14 informed in detail of the nature, and cause
15 of the charges against him. To this end,
16 the Registrar should as soon as possible
17 serve upon the suspect, order for transfer
18 and provisional detention and Prosecutor's
19 request for making the order. Both
20 documents indicate the grounds for the
21 order, provisional charges and summary of
22 materials upon which the Prosecutor relies.

23
24 In accordance with Rule 40bis (i) and 55 (b)
25 and also the statements of rights of a

1 suspect should be attached to these two
2 documents. Have you received the order of
3 the Judge, the Prosecutor's request and the
4 list of rights?

5 THE SUSPECT:

6 Yes, I received them.

7 MR. PRESIDENT:

8 Further, the suspect is entitled to be
9 promptly informed of the rights that he can
10 mandate a counsel of his choice, and of the
11 rights to assigned counsel when the interest
12 of justice are required; and that, in the
13 case that you have no means to pay expenses
14 for assigned counsel, the Tribunal should
15 cover that expense. Have you been informed
16 of these rights?

17 THE SUSPECT:

18 Yes, I was informed.

19 MR. PRESIDENT:

20 Every suspect who is in custody should also
21 be promptly informed of the rights that his
22 counsel is present at every interrogation.
23 Have you been informed of this right?

24 THE SUSPECT:

25 Yes, I was informed of this right.

1 MR. PRESIDENT:

2 Also a suspect should be promptly informed
3 of the rights to remain silent and to be
4 cautioned; that any of his statements shall
5 be recorded and may be used in evidence.
6 Have you been informed of this right?

7 THE SUSPECT:

8 I was not informed; because I did not have
9 time to discuss with my counsel, for him to
10 give me those explanations -- explanations
11 relating to legal terms which I do not
12 understand. He came yesterday in the
13 evening at 8 p.m. I spent a few minutes
14 with him. He left. I was not able to ask
15 him the necessary explanation relating to
16 all the legal terms which I do not
17 understand.

18 MR. PRESIDENT:

19 Very well. Anyway, you are now informed
20 about this right.

21 THE SUSPECT:

22 Thank you.

23 MR. PRESIDENT:

24 Also, it is very important that every
25 suspect is promptly informed that he has

1 rights to use his own language; that all the
2 information and cautions and the documents
3 served to him are in native language he
4 understands, or be translated into the
5 language he understands. Were the documents
6 which were served upon you in the language
7 you understand, either Kinyarwanda or
8 French?

9 THE SUSPECT:

10 The documents are written in English, which
11 I do not understand. So, as I told you, I
12 understand French clearly. Many of the
13 documents I have in my possession are
14 written in English, and English I do not
15 understand.

16 MR. PRESIDENT:

17 Let us clarify about documents. You have
18 got order for transfer and provisional
19 detention. In what language was this order?

20 THE SUSPECT:

21 The said order was in English.

22 MR. PRESIDENT:

23 You have received the request of the
24 Prosecutor to -- can you hear me?

25

1 THE SUSPECT:

2 Yes, I can.

3 MR. PRESIDENT:

4 You have received the Prosecutor's request
5 for making such an order; in what language
6 was this request?

7 THE SUSPECT:

8 I received it in English.

9 MR. PRESIDENT:

10 You received also a list of rights of a
11 suspect; in what language or languages have
12 you received these documents?

13 THE SUSPECT:

14 It was in French.

15 MR. PRESIDENT:

16 Thank you. Therefore, I ask Registry that
17 that order for transfer and provisional
18 detention and request of the Prosecutor for
19 this order should be translated as soon as
20 possible.

21

22 Finally, a suspect has a right to be
23 informed, and the duty counsel has an
24 obligation to inform the suspect of his
25 rights. Have you been informed about this

1 right by the duty counsel?

2 THE SUSPECT:

3 He came in a hurry. I did not completely
4 address all the questions which I wanted to
5 put to him.

6 MR. PRESIDENT:

7 Thank you.

8
9 Therefore, I ask duty counsel to inform the
10 Suspect about his rights, as the Suspect
11 under investigation and about his rights as
12 a detainee in provisional detention in the
13 United Nations Detention Facilities.

14
15 I would ask the Suspect if he has any
16 complaints about proceedings during his
17 transfer to the United Nations' facilities
18 for detention; or in treatment or about
19 treatment in detention facilities?

20 THE SUSPECT:

21 First, I would like to discuss with my
22 counsel all these points.

23 MR. PRESIDENT:

24 Mr. Chadha, you have been informed about
25 some complaints from the detainee -- from

1 the Suspect?

2 MR. CHADHA:

3 No, My Lord. There is no complaint. The
4 only situation was, yesterday in the evening
5 at 5.30, I was handed a few papers and then
6 I managed to see him, and then I could not
7 even take an interpreter because the hours
8 were odd. Somehow I managed to explain
9 whatever I could do, and I think he needs
10 more time; but he did not complain. There
11 was no such discussion. While we were
12 discussing what was -- and what does it
13 mean -- and the thing is -- I may have to
14 see him again and may discuss but at that
15 time, there was no complaint.

16 MR. PRESIDENT:

17 Does the Prosecutor have any request at this
18 stage of the proceedings?

19 MS. MOBBERLEY:

20 I have no matters to raise, Your Honour.

21 MR. PRESIDENT:

22 In this case --

23 MR. AFANDE:

24 The Registry wants to point out that he does
25 not understand why the counsel says that the

1 documents were served on him yesterday. The
2 documents were prepared before yesterday and
3 counsel was informed that he could come at
4 any time to look for the documents; and
5 yesterday we sought to meet him on several
6 occasions, and I had to call his home and
7 spoke to his wife and therefore, if the
8 documents were served on him only yesterday,
9 it is simply because, he himself was not
10 available at the opportune moment. Thank
11 you.

12 MR. PRESIDENT:

13 In any case, the Defence Counsel, duty
14 counsel and the suspect should have an
15 opportunity to meet, to discuss and if they
16 find that there are matters which can be
17 raised as being in violations of the rights
18 of the SUSPECT, they can apply -- they can
19 file a motion to remedy such a violation.

20
21 At this stage today, since such a complaint
22 hasn't been raised, I don't see any need for
23 action or except what I had already done.

24

25 Therefore, these proceedings today are

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closed.

(Court adjourned at 1035H)

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C E R T I F I C A T E

I, Sithembiso Moyo, Official Court Reporter of the International Criminal Tribunal for Rwanda, do hereby certify that the foregoing proceedings in the above-entitled cause was taken at the time and place as stated; that it was taken in shorthand (Stenotype) and thereafter transcribed by computer and revised under my supervision and control; that the foregoing pages contain a true and correct transcription of the said proceedings to the best of my ability and understanding.

I further certify that I am not of counsel nor related to any of the parties to this cause and that I am in no wise interested in the result of said cause.

.....
Sithembiso Moyo
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