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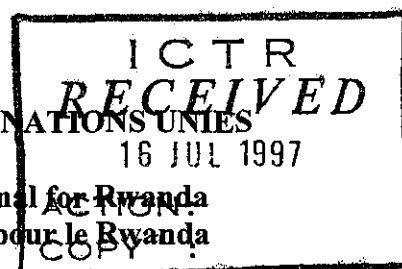
Case No.: ICTR-97-34-DP

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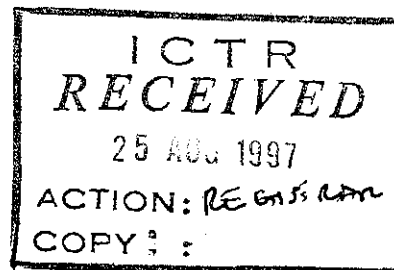
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda



OR:FR

Before: Judge Laïty Kama

Decision of: 16 July 1997



**THE PROSECUTOR
VERSUS
GRATIEN KABILIGI**

Case No.: ICTR-97-34-DP

**ORDER FOR TRANSFER AND PROVISIONAL DETENTION
(IN ACCORDANCE WITH RULE 40 BIS OF THE RULES)**

Office of the Prosecutor: Mr. Bernard A. Muna

Registry: Mr. Antoine Kesia-Mbe Mindua

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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THE TRIBUNAL,

SITTING in the person of Judge Laïty Kama,

HAVING RECEIVED on 14 July 1997 from the Prosecutor a request dated 9 July 1997 for the transfer and provisional detention of suspect Gratien Kabiligi, in accordance with Rule 40 bis of the Rules of Procedure and Evidence of the Tribunal ('the Rules');

CONSIDERING the affidavit dated 10 July 1997, attached to the said request from the Prosecutor;

HAVING HEARD the Prosecutor during a hearing held to that end on 15 July 1997;

CONSIDERING the formal request dated 9 July 1997, addressed by the Prosecutor to the authorities of the Republic of Kenya to arrest and place in custody the suspect Gratien Kabiligi, in accordance with Rule 40 of the Rules;

CONSIDERING Resolution 955 of 8 November 1994 adopted by the United Nations Security Council, the Statute of the Tribunal, annexed to the said Resolution, particularly Article 28 of the said Statute and the pertinent provisions of the Rules, notably Rules 40 and 40 bis;

AFTER HAVING DELIBERATED,

WHEREAS Rule 40 bis of the Rules provides that :

“ (...)

(B) The Judge shall order the transfer and provisional detention of the suspect if the following conditions are met:

- (i) the Prosecutor has requested a State to arrest the suspect provisionally, in accordance with Rule 40, or the suspect is otherwise detained by a State;
- (ii) after hearing the Prosecutor, the Judge considers that there is a reliable and consistent body of material which tends to show that the suspect may have committed a crime over which the Tribunal has jurisdiction; and
- (iii) the Judge considers provisional detention to be a necessary measure to prevent the escape of the suspect, injury to or intimidation of a victim or witness or the destruction of evidence, or to be otherwise necessary for the conduct of the investigation. (...)”.

WHEREAS the Prosecutor formally requested the authorities of the Republic of Kenya on 9 July 1997 to arrest and place in custody the suspect Gratien Kabiligi, pursuant to Rule 40 of the Rules;

WHEREAS the Prosecutor reports that she is currently investigating crimes allegedly committed by Gratien Kabiligi in the territory of the Republic of Rwanda between January and July 1994, which fall within the jurisdiction of the Tribunal;



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WHEREAS she points out that during the period of April to July 1994, Colonel Gratien Kabiligi occupied the post of a G-3 officer in charge of operations within the general staff of the Rwandan Army;

WHEREAS, in this capacity, Gratien Kabiligi, during this period, exercised *de facto* and *de jure* authority over his subordinates, namely the officers, the non-commissioned officers and the soldiers of the Rwandan Army;

WHEREAS, according to the Prosecutor, certain units of the Rwandan Army, including the Presidential Guard, the Para-Commando Batalion and the Reconnaissance Batalion, engaged during the same period in massacres of the Tutsi civilian population with the assistance of militia men

WHEREAS Gratien Kabiligi knew or should have known that his subordinates were committing serious violations of humanitarian law and allegedly did nothing to prevent the commission of crimes by his subordinates or to punish the perpetrators;

WHEREAS the Tribunal considers, based on the request submitted by the Prosecutor, on the evidence brought to its attention in the affidavit attached to the request and on the information disclosed during the hearing, that there exists a reliable and consistent body of material which tends to show that Gratien Kabiligi may have committed the crimes of genocide, crimes against humanity and violations of Article 3 common to the Geneva Conventions, and of Additional Protocol II, offences which fall within the jurisdiction of the Tribunal;

WHEREAS, furthermore, the Prosecutor explained to the Tribunal that the provisional detention of Gratien Kabiligi is a necessary measure to prevent the said suspect from seeking to intimidate or to cause bodily harm to victims or witnesses or to destroy evidence, inasmuch as, given the post he occupied, he is in a position to do so;

Whereas the Tribunal is thereby convinced that the provisional detention of Gratien Kabiligi is, in this case and all things considered, necessary;

FOR ALL THESE REASONS, the Tribunal considers that the request submitted by the Prosecutor for the transfer and provisional detention of Gratien Kabiligi meets the conditions required under Rule 40 bis (B) of the Rules and that consequently the request should be granted;

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ON THESE GROUNDS,

THE TRIBUNAL,

GRANTS the request submitted by the Prosecutor and, consequently, orders that, as soon as possible after his arrest, Gratién Kabiligi be transferred to the Detention Facility of the Tribunal, and placed in provisional detention for a maximum period of thirty days from the day after his transfer;

INSTRUCTS the Registrar to serve the present decision upon the Kenyan Government and to inform the Rwandan Government about it ;

REQUESTS the Kenyan Government, to kindly comply with the present order of the Tribunal, pursuant to Resolution 955 of 8 November 1994, adopted by the United Nations Security Council and the Statute of the Tribunal annexed thereto.

Arusha, 16 July 1997,



[Signature]
Laity Kama
Judge.

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