

Case No.: ICTR-97-27-DP

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UNITED NATIONS



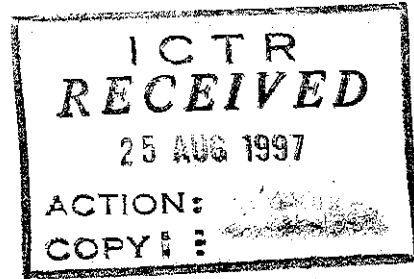
NATIONS UNIES

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
HASSAN NGEZE

Case No.: ICTR-97-27-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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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 the suspect Hassan Ngeze, 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 Hassan Ngeze, 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 Hassan Ngeze, pursuant to Rule 40 of the Rules;

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

Whereas, according to the Prosecutor, Hassan Ngeze was, in 1994, the editor in chief of the *Kangura*

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newspaper, published in Kigali, Rwanda;

WHEREAS certain 1994 editions of the *Kangura* newspaper in the possession of the Prosecutor, which bear the name of Hassan Ngeze as either editor in chief or as Director of publications, contain editorials, articles and caricatures inciting violence and hatred against the Tutsis population in Rwanda;

Whereas the Prosecutor allegedly also has in her possession recordings of broadcasts made by Hassan Ngeze on two radio stations, *Radio Télévision Libre des Mille Collines* and *Radio Rwanda*, containing statements inciting the listeners to violence and genocide against the Tutsis;

WHEREAS the Prosecutor allegedly holds evidence establishing that, during the month of April 1994, in Gisenyi prefecture, Hassan Ngeze allegedly ordered the killing of a member of the Tutsi population as part of a widespread and systematic attack against the Tutsis;

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 Hassan Ngeze 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 she deemed the provisional detention of Hassan Ngeze at the Detention Facility of the Tribunal in Arusha, following his transfer, to be necessary;

Whereas, according to the Prosecutor, it is, in fact feared that, with the massive movement of Rwandan refugees into Kenya from the former Zaire, the suspect may seek to intimidate or cause bodily harm to the victims or witnesses or to destroy evidence;

Whereas the Tribunal is thereby convinced that the provisional detention of Hassan Ngeze 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 Hassan Ngeze 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, Hassan Ngeze 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,



(Seal of the Tribunal)

[Handwritten signature]
Laity Kama
Judge.