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UNITED NATIONS  NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

Arusha International Conference Centre
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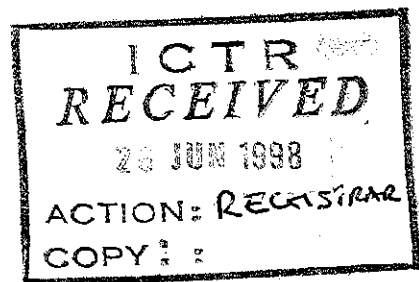
Tel: 255 57 4207-11/4367-72 or 1 212 963 2850—Fax: 255 57 4000/4373 or 1 212 963 2848

OR: ENG

Before: Judge Navanethem Pillay

Registry: Mr. Antoine Mindua

Decision of: 22 June 1998



**THE PROSECUTOR
VERSUS
JOSEPH NZIRORERA**

Case No. ICTR-98-38-DP

**ORDER
FOR TRANSFER AND PROVISIONAL DETENTION
(RULE 40 BIS)**

The Office of the Prosecutor:

Mr. James Stewart
Mr. Matar Diop

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The Tribunal,

SITTING as Judge Navanethem Pillay, designated by the President pursuant to Rule 28 of the Rules of Procedure and Evidence (the "Rules") of the Tribunal;

CONSIDERING Resolution 955 of 8 November 1994 adopted by the United Nations Security Council, to which is annexed the Statute of the Tribunal (the "Statute"), and in particular Article 28 of the said Statute;

CONSIDERING Rule 40 *bis* of the Rules;

CONSIDERING the request made by the Prosecutor on 27 May 1998 to the Republic of Benin, pursuant to Rule 40 of the Rules, for the arrest and provisional detention of Joseph Nzirorera (the "suspect"), where upon he was subsequently detained;

CONSIDERING the Prosecutor's written request of 10 June 1998 to the Tribunal pursuant to Rule 40 *bis* of the Rules for an order for the transfer and provisional detention of the suspect, and the affidavit of the Commander of Investigations Maxwell Nkole in support thereof;

HAVING HEARD the Prosecutor at an *ex-parte* hearing on 19 June 1998;

AFTER HAVING DELIBERATED

1. The Prosecutor submitted in her written request, as well as orally that :-
 - 1.1. the suspect is currently detained in Cotonou, Benin, by the authorities of the Republic of Benin;
 - 1.2. the suspect is the subject of current investigations by the Office of the Prosecutor, for crimes committed in the territory Rwanda and which fell within the jurisdiction of the Tribunal;
 - 1.3. it appears from these investigations that there is a reliable and consistent body of material which tend to show that the suspect committed Genocide pursuant to Articles 2 and 6 of the Tribunal's Statute, Crimes against Humanity pursuant to Articles 3 and 6 of the Tribunal's Statute and serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 and of Additional Protocol II of 8 June 1977, pursuant to Articles 4 and 6 of the Tribunal's Statute;
 - 1.4 the provisional detention of the suspect is a necessary measure to prevent the escape of



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the suspect, injury to or intimidation of victims and witnesses.

2. In support of her request, the Prosecutor tendered the affidavit of Maxwell Nkole, the Commander of Investigations at the Office of the Prosecutor, wherein the following averments, *inter alia*, were deposed to :-

2.1. the suspect was the Executive Secretary of the *Mouvement républicain national pour la démocratie et développement* (MRND) during the events of 1994;

2.2. . during the events of 1994, the suspect conspired with others to eliminate Tutsi and moderate Hutu, recruited, trained and distributed weapons to the Interahamwe and held meetings with them in order to prepare massacres of the Tutsi civilian population;

3. The Tribunal notes that Rule 40 *bis* of the Rules states, *inter alia*, 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 (…)”.

4. The Tribunal notes that the suspect is currently detained by the authorities of the Republic of Benin in accordance with a request made by the Prosecutor pursuant to Rule 40 of the Rules.

5. The Tribunal finds that the Prosecutor has presented a reliable and consistent body of material which tend to show that the suspect may have committed certain crimes that fall within its jurisdiction.

6. The Tribunal further finds that it is necessary to keep the suspect in provisional detention,

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since there are risks that he may abscond and evade justice, intimidate victims and witnesses, destroy evidence or hamper the investigations against him.

7. The Tribunal is mindful of the rights of the suspect pursuant to Article 20 of the Statute and Rules 40*bis* (D), (I), 42,43 and 55(B)(i) and (iii) of the Rules.

FOR THESE REASONS

THE TRIBUNAL, in accordance with Rule 40 *bis* of the Rules,

HEREBY GRANTS the said request;

ORDERS the transfer of the suspect Joseph Nzirorera to the seat of the Tribunal;

ORDERS the provisional detention of the suspect Joseph Nzirorera in the Tribunal's Detention Facilities for a maximum period of thirty days commencing from the day after his transfer;

ORDERS that a statement of the rights of the suspect Joseph Nzirorera as specified in Rules 40 *bis*, 42 and 43 accompany this order at the time of execution and the suspect is informed of his rights pursuant to Rule 55(B)(i) and (iii) of the Rules as amended and Article 20 of the Statute;

RESPECTFULLY REQUESTS the authorities of the Republic of Benin to keep the suspect Joseph Nzirorera in custody until he is handed over to the Tribunal for transfer and detention under the authority of the Tribunal;

REQUESTS the Prosecutor to submit the indictment against the suspect Joseph Nzirorera before the expiration of the period of provisional detention as ordered;

REQUESTS the Registrar of the Tribunal to notify the Government of the Republic of Benin and to inform the Rwandan Government of this decision.

Arusha, 22 June 1998

Navanethem Pillay
Judge 