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CASE No: ICTR-98-40-DP
CRIMINAL REGISTRY
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UNITED NATIONS  NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR : FR

Before : Judge Laity Kama

Decision of: 8 July 1998

THE PROSECUTOR

VERSUS

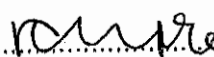
BERNARD NTUYAHAGA

Case No : ICTR - 98 - 40 -DP

**ORDER FOR TRANSFER AND PROVISIONAL DETENTION
(UNDER RULE 40 BIS OF THE RULES)**

Office of the Prosecutor : Mr. James K. STEWART

Registry : Mr. John M. KIYEYEU

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: PRISCA M. NYAMBE
SIGNATURE:  DATE: 15-7-98

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THE TRIBUNAL,

SITTING in the person of Judge Laity Kama ;

HAVING RECEIVED on 7 July 1998, from the Prosecutor, a request, in accordance with Rule 40 *bis* of the Rules of Procedure and Evidence of the Tribunal ("the Rules"), for the transfer and provisional detention of the suspect **Bernard Ntuyahaga**, born in 1952 in Mabanza, Kibuye Prefecture, Rwanda, who occupied various command posts in the Rwandan army;

CONSIDERING the undated affidavit attached to the said request from the Prosecutor and signed by Dodo Kadri, Investigator at the Office of the Prosecutor ;

HAVING HEARD the Prosecutor during a hearing held to that end on 8 July 1998 ;

CONSIDERING the formal request dated 17 June 1998, addressed by the Prosecutor to the authorities of the United Republic of Tanzania to arrest and hold in custody the suspect Bernard Ntuyahaga, pursuant to Rule 40 of the Rules of Procedure and Evidence ;

CONSIDERING Resolution 955 of 8 November 1994 adopted by the United Nations Security Council, the Statute of the Tribunal annexed to the said Resolution, in particular, 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 United Republic of Tanzania, on 17 June 1998, to arrest and hold the suspect Bernard Ntuyahaga in custody, pursuant to Rule 40 of the Rules;

WHEREAS the authorities of the United Republic of Tanzania granted the said request from the Prosecutor and arrested Bernard Ntuyahaga on 18 June 1998 and that he has since then been held in custody;

WHEREAS the Prosecutor reports that she is currently investigating crimes allegedly committed by Bernard Ntuyahaga in the territory of the Republic of Rwanda in 1994, crimes which fall within the jurisdiction of the Tribunal;

WHEREAS she points out that at the time of the events, from April to July 1994, Bernard Ntuyahaga was present in Rwanda, and occupied various command posts in the Rwandan army;

WHEREAS from January to April 1994, Major Bernard Ntuyahaga was a G-4 Officer based in Kigali Military Barracks and that, according to the Prosecutor, he transported in this capacity, in the morning of 7 April 1994, to Kigali Military Barracks, ten Belgian soldiers of the United Nations Assistance Mission for Rwanda (UNAMIR), who had been arrested, disarmed and made prisoners by Rwandan soldiers;

WHEREAS the Prosecutor alleges that, on arrival at Kigali Military Barracks, the ten Belgian soldiers of UNAMIR were massacred by Rwandan soldiers in the presence of Major Bernard NTUYAHAGA who did nothing to prevent them from doing so;

WHEREAS, furthermore, the Prosecutor submits that in the evening of 7 April 1994, Rwandan soldiers, who were involved in the massacre of the civilian population of Kigali, feasted with Major Bernard Ntuyahaga in his residence and that, on 8 April 1994, Rwandan soldiers, who were involved in the massacre of the civilian population of Kigali, used the residence of Major Bernard Ntuyahaga as their headquarters and in his presence;

WHEREAS, still according to the Prosecutor, various testimonies mention the many comings and goings in the residence of Major Bernard Ntuyahaga of Rwandan soldiers who were killing people in the neighbourhood;

WHEREAS the Prosecutor states that as an officer who occupied certain command posts from April to July 1994, Major Bernard Ntuyahaga exercised *de facto* and *de jure* authority over his



subordinates, namely non-commissioned officers and the rank and file of the Rwandan army;

WHEREAS, during this same period, some units of the Rwandan army ,including the Presidential Guard, the Para-commando Battalion and the Reconnaissance Battalion, massacred Tutsi civilians with the aid of militiamen;


WHEREAS Major Bernard Ntuyahaga knew or should have known that his subordinates were committing serious violations of international humanitarian law;

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

WHEREAS, furthermore, the Prosecutor explained to the Tribunal that the provisional detention of Major Bernard Ntuyahaga is a necessary measure to prevent his escape and to prevent the said suspect from seeking to intimidate or to cause bodily harm to victims or witnesses or to destroy evidence;

WHEREAS the Tribunal is thereby convinced that the provisional detention of Bernard Ntuyahaga in this case, and in all things considered, is necessary ;

Whereupon , the Tribunal notes that Major Bernard Ntuyahaga came of his own volition in order to escape , as he claims, his extradition to Rwanda, thereby placing himself voluntarily at the disposal of the Tribunal;



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FOR ALL THESE REASONS, the Tribunal considers that the request submitted by the Prosecutor for the transfer and provisional detention of Major Bernard Ntuyahaga meets the conditions required under Rule 40 *bis* (B) of the Rules and that the said request should, therefore, be granted;

ON THESE GROUNDS,

THE TRIBUNAL,

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

INSTRUCTS the Registrar to serve the present decision on the Government of the United Republic of Tanzania and inform the Rwandan Government thereof;

REQUESTS the Government of the United Republic of Tanzania 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, 8 July 1998


Laity Kama
Judge

(Seal of the Tribunal)

