



**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

**ICTR
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UNITED NATIONS
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OR: ENG

Before: Judge William H. Sekule

Registry: Ms. Prisca Nyambe

Decision of: 18 February 1999

**THE PROSECUTOR
VERSUS
CASIMIR BIZIMUNGU**

Case No. ICTR-99-45-DP

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

The Office of the Prosecutor:

Mr. Mohammed Othman

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
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SIGNATURE:	DATE: 18:02:99

The International Criminal Tribunal For Rwanda (“the Tribunal”),

SITTING in the person of Judge William H. Sekule, designated by the President pursuant to Rule 28 of the Rules of Procedure and Evidence (the “Rules”) of the Tribunal;

BEING SEIZED OF the Prosecutor’s request of 15 February 1999 to the Tribunal under Rule 40 *bis* of the Rules;

MINDFUL OF THE FACT THAT the Prosecutor’s request was for an order for transfer and provisional detention of Casimir Bizimungu, who was born in Ruhengeri Prefecture, in Rwanda; and who occupied the post of Minister of Health, in the Interim Government of Prime Minister Jean Kambanda, from 8 April 1994 until July 1994;

TAKING INTO ACCOUNT the affidavit dated 15 February 1999, sworn and signed by Mr Maxwell Nkole, the Commander of Investigations at the Office of the Prosecutor Kigali and attached to the Prosecutor’s request thereof;

CONSIDERING the formal request made by the Prosecutor dated 12 February 1999 to the Kenyan Authorities, pursuant to Rule 40 of the Rules, requesting them to, *inter alia*, arrest Casimir Bizimungu; seize any physical evidence, which shows or tends to show that he has committed crimes within the jurisdiction of the Tribunal and take all necessary measures to prevent the escape of the suspect and the destruction of evidence;

HAVING HEARD the Prosecutor at an *ex-parte* hearing held at the Seat of the Tribunal in Arusha on 18 February 1999;

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 and the pertinent provisions of the Rules, namely, Rules 40 and 40 *bis*;

KEEPING IN MIND the rights of the suspect as provided for, *inter alia*, by Article 20 of the Statute;

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, physical or mental 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 Authorities of the Republic of Kenya arrested Casimir Bizimungu on 11 February 1999 and is being detained at the Kilimani Police Station or elsewhere in the Republic of Kenya;

WHEREAS the Prosecutor reports that she has been and is currently conducting investigations on crimes allegedly committed by Casimir Bizimungu in the territory of Rwanda in 1994, crimes which fall within the jurisdiction of the Tribunal;

WHEREAS the request made by the Prosecutor and the facts made known to the Tribunal, through the affidavit attached to the Prosecutor's request and sworn by the Commander of Investigations at the Office of the Prosecutor in Kigali, Mr Maxwell Nkole;

WHEREAS the said affidavit indicates, *inter alia*, the following:

1. That as a Cabinet Minister, Casimir Bizimungu, participated regularly in government held meetings throughout the period of April to July 1994;
2. That at those meetings, Cabinet Ministers were made aware of the ongoing massacres taking place throughout Rwanda and that the said Cabinet Ministers, instead of stopping the massacres, the Cabinet Ministers including Casimir Bizimungu, took measures to execute and carry out the plan of extermination in place;
3. That the measures adopted included the removal of Jean Baptiste Habyarimana, the Tutsi Prefect of Butare, who had managed to prevent full blown massacres in his Prefecture;
4. That Casimir Bizimungu sent a delegation to Butare to ensure that the massacres would start in Butare;
5. That during the events of April to July 1994, Casimir Bizimungu regularly attended meetings organised by the Government members and the Interahamwe leaders to discuss the conduct of the massacres of the Tutsi population;
6. That Casimir Bizimungu, as a member of the Rwandan Interim Government, participated in the adoption of the Directives issued by the Rwandan Interim Government, which were intended to facilitate the massacres of the Tutsi Population. For example, an Order from the Interim Government on 27 April 1994, directing that roadblocks be set up, knowing that they would be used to identify the Tutsi and their "accomplices" for the purpose of eliminating them;
7. That government decisions were passed on to the general public through radio broadcasts and print media by speeches from various government members and they were intended, by the members of the government including Casimir Bizimungu, to incite, aid and abet

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the perpetration of the massacres;

8. That there exists evidence to show that the Ministers of the Interim Government knew that members of the Rwandan Armed Forces, the Gendarmerie, the Communal Police, the Administration as well as civilians, were participating in the massacres of the Tutsi population;
9. That the said Ministers, among whom was Casimir Bizimungu, had a sworn duty to protect all Rwandans but instead took no measures to stop the killings and encouraged the extermination.

WHEREAS there is information submitted during the hearing, which indicates that there are good reasons to believe that Casimir Bizimungu might have committed the crimes under the three provisional counts as detailed in the request, namely genocide, conspiracy to commit genocide, direct and public incitement to commit genocide;

WHEREAS consequently, the Tribunal considers that there is a reliable and consistent body of material which tends to show that Casimir Bizimungu may have indeed committed crimes over which the Tribunal has jurisdiction as set out in the Statute, namely, Articles 2(2)(a) and 2(3)(a)(Genocide); Article 2(3)(b)(Conspiracy to commit genocide) and Article 2(3)(c)(Direct and public incitement to commit genocide);

WHEREAS the Tribunal is convinced that there are risks that Casimir Bizimungu may escape, evade Justice and that he may try to destroy evidence;

WHEREAS it is believed, that the Government of the Republic of Kenya would co-operate and receive this request favourably.

FOR ALL THE ABOVE REASONS, the Tribunal considers that there is a reliable and consistent body of material, which tends to show that **CASIMIR BIZIMUNGU** may have committed the crimes over which the Tribunal has jurisdiction.

The Tribunal also **ACKNOWLEDGES** the provisional charges preferred by the Prosecutor against Casimir Bizimungu, namely, Genocide, Conspiracy to commit genocide and Direct and public incitement to commit genocide. The Tribunal finds that the Prosecutor's request for the transfer and provisional detention of Casimir Bizimungu meets the conditions required under Rule 40 *bis* (B) of the Rules.

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

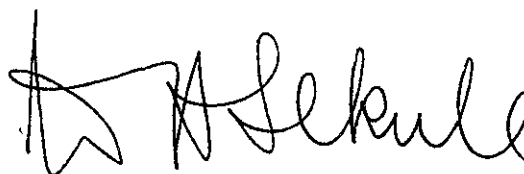
1. **GRANTS** the request submitted by the Prosecutor as herein stated and as presented at the hearing;
2. **ORDERS** that, as soon as possible, suspect Casimir Bizimungu be transferred to the Detention Facility of the Tribunal and be kept in provisional detention for a maximum period of thirty(30) days, with effect from the date of his transfer to the said Facility;
3. **REQUESTS** the Registrar of the Tribunal to notify the Government of the Republic of

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Kenya of this decision and **INSTRUCTS** him to inform the Government of the Republic of Rwanda thereof;

4. **RESPECTFULLY REQUESTS** the Kenyan Authorities to comply with the Order of the Tribunal for transfer and provisional detention, pursuant to United Nations Security Council Resolution 955 of 8 November 1994 and the Statute annexed thereto;
5. **FURTHER REQUESTS** the Government of the Republic of Kenya to keep Casimir Bizimungu in custody until he is handed over to the Tribunal for transfer and detention at the Detention Facility of the Tribunal.

Arusha, 18 February 1999



William H. Sekule
Judge

(Seal of the Tribunal)

