



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

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UNITED NATIONS  
NATIONS UNIES

OR: ENG

Before: Judge Lloyd G. Williams  
Registry: Ms. Marianne Ben Salimo  
Decision of: 19 April 1999

**THE PROSECUTOR  
VERSUS  
JUSTIN MUGENZI**

Case No. ICTR-99-47-DP

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

The Office of the Prosecutor:

Mr. Don Webster

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
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NAME / NOM: <i>Dr. MINAUA K. H. Antoinette</i>	
SIGNATURE: <i>[Signature]</i>	DATE: <i>17.04.1999</i>

**The International Criminal Tribunal For Rwanda ("the Tribunal"),**

SITTING in the person of Judge Lloyd G. Williams, designated by the President pursuant to Rule 28 of the Rules of Procedure and Evidence (the "Rules") of the Tribunal;

CONSIDERING the Prosecutor's request of 14 April 1999, under Rule 40 *bis* of the Rules, for an order for transfer and provisional detention of Justin Mugenzi, who occupied the post of Minister of Commerce, Mines and Industry in the Interim Government of Prime Minister Jean Kambanda, from 8 April 1994 until July 1994;

CONSIDERING the affidavit dated 14 April 1999, sworn and signed by Mr Maxwell Nkole, Commander of Investigations at the Office of the Prosecutor and attached to the Prosecutor's request thereof;

CONSIDERING the formal request made by the Prosecutor to the Authorities of the Republic of Cameroun, pursuant to Rule 40 of the Rules, requesting them to arrest provisionally Justin Mugenzi;

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*;

HAVING HEARD the Prosecutor at an *ex-parte* hearing held at the Seat of the Tribunal in Arusha on 19 April 1999;

MINDFUL 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 Cameroun arrested Justin Mugenzi on 6 April 1999, who is being detained in Yaoundé;

WHEREAS the Prosecutor reports that she has been and is currently conducting investigations on crimes allegedly committed by Justin Mugenzi 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, Mr Maxwell Nkole, indicates, *inter alia*, the following:

1. That Justin Mugenzi was present in Rwanda during the events of April to July 1994 and that he was then a Minister of Commerce, Mines and Industry in the Interim Government of Rwanda;
2. That, as a Cabinet Minister, Justin Mugenzi participated regularly in Government meetings;
3. That, during those meetings, Cabinet Ministers, including Justin Mugenzi, were made aware of the ongoing massacres taking place throughout Rwanda and that the said Cabinet Ministers, instead of stopping the massacres, took measures to promote and carry out a plan of extermination of the Tutsi population and of the moderate Hutu;
4. That, during the Cabinet Meetings, members of the Government, including Justin Mugenzi, agreed to purchase arms and distribute them to members of political parties, militias and certain members of the population, with the knowledge that these arms would be used in the perpetration of widespread killings of civilians, the majority of whom were members of the Tutsi population;
5. That members of the Cabinet, including Justin Mugenzi, agreed by consensus to congratulate, encourage and assist Prefects under whose prefectures massacres of the civilian Tutsi population and moderate Hutu were being committed;
6. That on 20 April 1994, at Gisenyi, Justin Mugenzi, in a speech broadcast on Radio Rwanda, incited the general population to kill all Tutsi;
7. That, in a Government meeting held on or about 15 April 1994 at Murambi, Justin Mugenzi upheld the activities of Interahamwe militia who were committing massacres and that he castigated and threatened to dismiss or cause the dismissal of Government officials who attempted to resist the said activities of the Interahamwe militia;
8. That there exists evidence to show that the Ministers of the Interim Government, including Justin Mugenzi, 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 and of moderate Hutu, yet took no steps to stop the killings;
9. That the said Ministers, among whom Justin Mugenzi, had a sworn duty to



protect all Rwandans but instead took no measures to stop the killings and encouraged the extermination;

WHEREAS the information submitted by the Prosecutor indicates that there are good reasons to believe that Justin Mugenzi might have committed the crimes under the three provisional counts as detailed in the request, namely genocide, conspiracy to commit genocide and 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 Justin Mugenzi may have indeed committed crimes over which the Tribunal has jurisdiction as set out in the Statute, namely, Article 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 Justin Mugenzi may escape, evade Justice, may attempt to intimidate victims or witnesses, and that he may try to destroy evidence;

WHEREAS it has been indicated that the Government of the Republic of Cameroun would cooperate 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 Justin Mugenzi may have committed the crimes over which the Tribunal has jurisdiction. The Tribunal finds that the Prosecutor's request for the transfer and provisional detention of Justin Mugenzi 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 the suspect, Justin Mugenzi, be immediately transferred to the United Nations' Detention Facilities of the Tribunal in Arusha and be kept in provisional detention for a maximum period of thirty (30) days, with effect from the day after his transfer to the said Detention Facilities;
3. **INSTRUCTS** the Registrar of the Tribunal to notify the Government of the Republic of Cameroun of this decision and to inform the Government of the Republic of Rwanda thereof;
4. **RESPECTFULLY REQUESTS** the Government of the Republic of Cameroun 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. **AND ALSO RESPECTFULLY REQUESTS** the Government of the Republic of Cameroun to keep Justin Mugenzi in custody until he is handed over to the Tribunal for transfer and detention at the Detention Facility of the Tribunal.

Arusha, 19 April 1999



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Lloyd G. Williams  
Judge

(Seal of the Tribunal)

