UNITED NATIONS   NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case Number: ICTR-96-7-D

THE JUDGE

THE PROSECUTOR
VERSUS
THÉONESTE BAGOSORA

DECISION :
ORDER OF PROVISIONAL DETENTION
AND OF TRANSFER

UNITED NATIONS ⬢ NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case Number: ICTR-96-7-D

DECISION ON THE APPLICATION
BY THE PROSECUTOR FOR TRANSFER AND PROVISIONAL DETENTION
IN THE MATTER OF THÉONESTE BAGOSORA
(PURSUANT TO RULE 40 BIS OF THE RULES OF PROCEDURE AND EVIDENCE)

The International Criminal Tribunal for Rwanda (the "Tribunal"), sitting as Judge Lennart Aspegren, designated by the President of the International Tribunal 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, establishing the Statute of the Tribunal (the "Statute"), and in particular Article 28 of said Statute,

Considering the Rules of the Tribunal and in particular its Rule 40 *bis* adopted on 15 May 1996 by the Judges of the Tribunal pursuant to Article 14 of the Statute,

Considering the request (the "request") made by the Prosecutor of the Tribunal on 16 May 1996 and the affidavit attached to it,

Having heard the representatives of the Prosecutor, designated in accordance with Rule 37 of the Rules, at a hearing held in Arusha on 16 May 1996,

Keeping in mind the rights of the suspect as provided for, inter alia, in Article 20 of the Statute,

Decides and orders as follows:

1

LA

I- Request

1.   This is a request by the Prosecutor of the Tribunal. made pursuant to Rule 40 *bis* of the Rules, seeking an order for the transfer to the Tribunal's detention unit and the provisional detention of Théoneste Bagosora.

II- Justification

2.   Rule 40 *bis* of the Rules states 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 of the Rule, or the suspect is otherwise detained by State authorities;

(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 (...)".

3.   The suspect, Théoneste Bagosora, was arrested by the Cameroonian authorities on 9 March 1996 pursuant to an international warrant of arrest issued by a Belgian Examining Magistrate. The suspect is also the subject of a request for extradition made by the Rwandan authorities. To date, he is being held by the Cameroonian prison authorities.

4.   The Office of the Prosecutor is presently conducting investigations on crimes allegedly committed by théoneste Bagosora.
The request made by the Prosecutor, the elements made known to the Tribunal by the affidavit attached to the request, and the indications and information developped during the hearing indicate that there exist good reasons to believe that Théoneste Bagosora might have committed offences such as genocide, crimes against humanity, and violations of Article 3 common to the Geneva Conventions and of Additional Protocol II.

2

In the light of this information, the Tribunal firmly believes that there is a reliable and consistent body of material which tends to show that Théoneste Bagosora may indeed have committed crimes over which the Tribunal has jurisdiction.

5.   The Tribunal is convinced that there are risks that Théoneste Bagosora may escape, that he may evade Justice, that he may try, directly or indirectly, to harm victims or witnesses, and that he may try to destroy evidence. The Tribunal is consequently convinced that it is necessary to detain Théoneste Bagosora under an order of the Tribunal.

6.   The Government of the Cameroons, according to the statements made by the representatives of the Prosecutor at the hearing, would cooperate and would receive favourably a positive decision on the request.

7.   In the light of the foregoing, the Tribunal is of the opinion that the request for transfer and provisional detention made by the Prosecutor in the case of Théoneste Bagosora meets with the conditions set forth in Rule 40 *bis* (B) of the Rules and that it should be favourably received.

II- Decision

THE TRIBUNAL,
BASED ON THE FOREGOING DETERMINES AS FOLLOWS:

Considering all the matters raised in the Prosecutor's request and addressed in the public hearing,

Taking into account the provisions of Article 28 of the Statute,

Considering the requirements set forth in Rule 40 *bis* (B) of the Rules,

Considering that the Prosecutor has gathered serious and concordant indications which tend to show that Théoneste Bagosora allegedly committed offences which come within the Tribunal's jurisdiction,

Noting that the Prosecutor provisionally charges Théoneste Bagosora, at this stage of the procedure, with the provisional counts of genocide, crimes against humanity and serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949 and of Additional Protocol II of 8 June 1977, offences set forth in Articles 2, 3 and 4 of the Statute of the Tribunal,

Given the request before it made by the Prosecutor,

HEREBY GRANTS the said request,

ORDERS the provisional detention of suspect Théoneste Bagosora for a maximum period of thirty days,
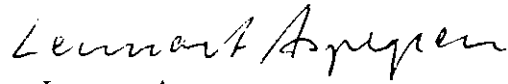
ORDERS the transfer of Théoneste Bagosora to the Tribunal's detention unit,

FORMALLY REQUESTS that the Government of the Cameroons to comply with this request from the Tribunal.

3

LA

The Tribunal requests the Registrar of the International Tribunal to notify the Government of the Cameroons and to inform the Government of the Kingdom of Belgium and the Government of Rwanda of this Decision.

Arusha, 17 May 1996

For the International Criminal Tribunal for Rwanda.

Lennart Aspegren
Judge