



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

Before: Judge Lennart Aspegren

Registry:

Mr. Frederik Harhoff

Ms. Prisca Nyambe

Decision of: 3 March 1997

**THE PROSECUTOR
VERSUS
JEAN BOSCO BARAYAGWIZA**

Case No. ICTR-97-19-DP

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

The Office of the Prosecutor:

Mr. Yacob Haile-Mariam

Mr. Craig Keith McConaghy

The Tribunal,

SITTING as Judge Lennart Aspegren, 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 Prosecutor's request of 21 February 1997 to the Cameroonian Authorities, according to Rule 40 of the Rules, for provisional arrest of Jean Bosco Barayagwiza, whose detention was subsequently maintained;

CONSIDERING the request of 24 February 1997 to the Tribunal under Rule 40 *bis* of the Rules for an order for transfer and provisional detention of Jean Bosco Barayagwiza, filed by the Prosecutor (the "request"), and the affidavit attached to it;

HAVING HEARD the Prosecutor at an *ex-parte* hearing held at the seat of the Tribunal in Arusha on 3 March 1997;

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

DECIDES AND ORDERS AS FOLLOWS:

1 - Identification

1.1 The suspect Jean Bosco Barayagwiza is believed to have been born in 1950 in the Republic of Rwanda. He is the former Director of Political Affairs in the Ministry of Foreign Affairs in Rwanda, and held, in April 1994, the positions of Director General of the Coalition for the Defence of Rwanda ("CDR") and also of Director of Radio Télévision Libre des Mille Collines ("RTLM") in Kigali .

1.2 Jean Bosco Barayagwiza was arrested in the Cameroons under national law on 27 March 1996 and is currently being held in custody by the Cameroonian authorities in Yaoundé, the Cameroons.

2 - Justification

2.1 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 (...)".

2.2 The Office of the Prosecutor has been and is currently conducting investigations on crimes allegedly committed by Jean Bosco Barayagwiza.

2.3 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 submitted during the hearing indicate that there exist good reasons to believe that Jean Bosco Barayagwiza might have committed the crimes under the four provisional counts as detailed in the request, namely conspiracy to commit genocide, direct and public incitement to commit genocide, complicity in genocide, and crimes against humanity.

2.4 Consequently, the Tribunal considers that there is a reliable and consistent body of material which tends to show that Jean Bosco Barayagwiza may indeed have committed crimes over which the Tribunal has jurisdiction as set out in Articles 2 and 3 of the Statute.

2.5 The Tribunal is convinced that there are risks that Jean Bosco Barayagwiza may escape, that he may evade Justice and that he may try to destroy evidence.

2.6 The Cameroonian Government, it is believed, would cooperate and would receive favourably a positive decision on the request.

3 - Decision

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

HEREBY GRANTS the said request;

ORDERS the transfer of the suspect Jean Bosco Barayagwiza to the Tribunal's dominion;

ORDERS the provisional detention of Jean Bosco Barayagwiza in the Tribunal's Detention Facilities for a maximum period of thirty days from the day after his transfer;

RESPECTFULLY REQUESTS the Cameroonian Government to comply with the Tribunal's order for transfer, and to keep Jean Bosco Barayagwiza 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 Jean Bosco Barayagwiza before the expiration of the said 30-day limit of the provisional detention;

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

Arusha, 3 March 1997

Lennart Aspegren: Judge

(Seal of the Tribunal)