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ICTR-DI-76-1  
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(579-577)

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UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

Case No. ICTR-2001-76-DP

ENGLISH  
Original: FRENCH

Before Judge:           Andrésia Vaz  
Registry:               Adama Dieng  
Date filed:             23 November 2001

JUDICIAL RECTOR  
ICTR  
2002 AUG -1 A 9:07  
*Carla Del Ponte*

THE PROSECUTOR

v.

ALOYS SIMBA

**ORDER FOR TRANSFER AND PROVISIONAL DETENTION**

(Rule 40 *bis* of the Rules of Procedure and Evidence)

Office of the Prosecutor:

Carla Del Ponte  
Kenneth C. Fleming

Translation certified by LCSS, ICTR

SIMBA(C)02-004

**The International Criminal Tribunal for Rwanda (the “Tribunal”);**

**Sitting** in the person of Judge Andréia Vaz, designated by the President pursuant to Rule 28 of the Rules of Procedure and Evidence (the “Rules”),

**Considering** the application the Prosecutor made on 22 November 2001, under Article 40 *bis* of the Rules, for the immediate transfer to the Tribunal’s Detention Facility in Arusha, Tanzania, and for the provisional detention of:

**Aloys Simba,**

Born in 1942 in Musebeya *commune*, Gikongoro *préfecture*, Rwanda,  
Former Lieutenant Colonel in the Rwandan Armed Forces,

**Considering** the affidavit signed and submitted on 21 November 2001 by Alfred Kwende, Commander in the Office of the Prosecutor,

**Having heard** the Prosecutor *in camera* at the seat of the Tribunal in Arusha on 22 November 2001 in an *ex parte* hearing,

**Considering** Resolution 955, adopted on 8 November 1994 by the United Nations Security Council (the “United Nations Security Council resolution 955”) and the Statute of the Tribunal annexed thereto, in particular Article 28 thereof, as well as the relevant provisions of the Rules, notably Rules 40 and 40 *bis*,

**Considering** Articles 17, 19(2) and 20 of the Statute of the Tribunal (the “Statute”), and Rules 40, 40*bis*, 42 and 43 of the Rules,

**After having deliberated,**

**Whereas** we are satisfied that Rule 40 *bis* of the Rules has been complied with, in that:

(i) The Prosecutor, by letter dated 21 November 2001, requested Senegal to arrest **Aloys Simba** and hold him in custody pursuant to Article 28 of the Statute and Rule 40 of the Rules, and submits that **Aloys Simba** “is believed to be present on the territory of the Republic of Senegal and is likely to be detained, or already has been provisionally arrested (...) pursuant to a request from the Prosecutor” (...)

(ii) Having heard the Prosecutor and examined the material submitted to us, we have taken note that **Aloys Simba** is the subject of current investigations by the Office of the Prosecutor and that there is a reliable and consistent body of material, including witness statements, tending to show that the suspect committed crimes over which the Tribunal has jurisdiction, namely Genocide, pursuant to Articles 2 and 6 of the Statute, and Crimes against humanity pursuant to Articles 3 and 6 of the Statute according to the provisional charges leveled by the Prosecutor against **Aloys Simba**, allegedly committed, in particular, in his capacity as being in charge of civil defence in Gikongoro and Butare *préfectures* in the course of May and June 1994;

(iii) Lastly, we find that provisional detention is a necessary measure to prevent the escape of the suspect, physical or mental injury to or intimidation of the victims or witnesses, or the destruction of evidence.

**Whereas** the Prosecution declares its intention to file an indictment against the suspect with the Registry of the Tribunal "in the four weeks to come";

**For the foregoing reasons,**

**The Tribunal,**

Pursuant to Article 40 *bis* of the Rules

**I. Grants** the Prosecutor's application;

**II. Orders** the immediate transfer of the suspect **Aloys Simba** to the Tribunal's Detention Facility at Arusha and that he be provisionally detained there for a period of not more than 30 days from the day after the transfer to the Tribunal's Detention Facility;

**III. Enjoins** the Prosecutor to file as soon as possible, before the above time-limit, the indictment against the suspect containing a concise statement of the facts and the crimes with which the Accused is charged;

**IV. Instructs** the Registrar:

- (i) To serve the present decision on the government of the Republic of Senegal and to inform the Government of Rwanda thereof;
- (ii) To serve on the suspect, and his counsel, copies of the present decision, and the Prosecutor's application, as soon as possible;
- (iii) To ensure that the suspect be informed of his rights as a suspect, pursuant, in particular, to Article 17 of the Statute and Rules 42 and 43 of the Rules, of which copies shall be given to him.

**V. Requests** the Government of Senegal to kindly comply with the present order of the Tribunal, pursuant to the United Nations Security Council resolution 955, adopted on 8 November 1994, and the Statute of the Tribunal annexed thereto, and to hold **Aloys Simba** in custody until he is handed over to the Tribunal for transfer and detention at the Tribunal's Detention Facility.

Done at Arusha, 23 November 2001

(Signed)  
Judge Andréia Vaz



(Seal of the Tribunal)