

II

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1994-1996

**International Criminal Tribunal
for Rwanda**

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<p style="text-align: center;">Clément Kayishema ICTR-95-1-T</p>
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First amended indictment

Confirmation of trial date and superseding indictment

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INTERNATIONAL CRIMINAL TRIBUNAL
FOR RWANDA

CASE NO: ICTR-95-1-I

THE PROSECUTOR OF THE TRIBUNAL

AGAINST

CLEMENT KAYISHEMA
OBED RUZINDANA

FIRST AMENDED INDICTMENT

Richard J. Goldstone, Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to his authority under Article 17 of the Statute of the International Criminal Tribunal for Rwanda (Tribunal Statute), charges:

1. This indictment charges persons responsible for the following massacres which occurred in the Prefecture of Kibuye, Republic of Rwanda:
 - 1.1. The massacre at the Catholic Church and the Home St. Jean complex in Kibuye town, where thousands of men, women and children were killed and numerous people injured on about 17 April 1994.
 - 1.2. The massacre at the Stadium in Kibuye town, where thousands of men, women and children were killed and numerous people injured on about 18 and 19 April 1994.
 - 1.3. The massacre at the Church in Mubuga, where thousands of men, women and children were killed and numerous people injured between about 14 and 17 April 1994.
 - 1.4. The massacres in the area of Bisesero, where thousands of men, women and children were killed and numerous people injured between about 10 April and 30 June 1994

THE MASSACRE SITES

2. The Republic of Rwanda is divided into eleven Prefectures. These eleven Prefectures are further divided into communes. The Prefecture of Kibuye consists of nine communes. The massacres which form the basis of the charges in the indictment occurred in the Prefecture of Kibuye, in Gitesi, Gishyita and Gisovu communes.

3. The first massacre site addressed in this indictment, the Catholic Church and Home St. Jean complex, is located in Kibuye town, Gitesi Commune, on a piece of land which is surrounded on three sides by Lake Kivu. A road runs past the entrance to the Catholic Church and Home St. Jean complex. The Catholic Church is visible from the road. The Home St. Jean is behind the Church and is not visible from the road.

4. The second massacre site addressed in this indictment, the Stadium, is located near the main traffic circle in Kibuye town, Gitesi Commune. The town's main road runs past the Stadium. Immediately behind the stadium is a high hill.

5. The third massacre site addressed in this indictment, the Church of Mubuga, is located in Gishyita Commune. Gishyita Commune is located in the southern part of Kibuye Prefecture. The Church in Mubuga is located approximately 20 kilometers from Kibuye town.

6. The fourth massacre site addressed in this indictment is the area of Bisesero. The area of Bisesero extends through two communes in the Prefecture of Kibuye: Gishyita and Gisovu. Bisesero is an area of high rolling hills, located in the southern portion of Kibuye Prefecture. The hills are very large, and are often separated by deep valleys.

BACKGROUND

7. The structure of the executive branch, and the authority of the members therein, is set forth in the laws of Rwanda. In the Prefecture, the Prefect is the highest local representative of the government, and is the trustee of the State Authority. The Prefect has control over the government and its agencies throughout the Prefecture.

8. In each commune within a prefecture there exists the council of the commune, which is led by the Bourgmestre of that commune. The Bourgmestre of each commune is nominated by the Minister of the Interior and appointed by the President. As representative of the executive power, the Bourgmestre is subject to the hierarchical authority of the Prefect, but, subject to this authority, the Bourgmestre is in charge of governmental functions within his commune.

9. The Prefect is responsible for maintaining the peace, public order, and security of persons and goods within the prefecture. In fulfilling his duty to maintain peace, the Prefect can demand assistance from the army and the Gendarmerie Nationale. The Bourgmestre also has authority over those members of the Gendarmerie Nationale stationed in his commune.

10. The Gendarmerie Nationale is an armed force established to maintain the public order and execute the laws. It is lead by the Minister of Defence, but can exercise its function of safeguarding the public order at the request of the competent national authority, which is the Prefect. The Gendarmerie Nationale has an affirmative duty to report to the Prefect information which has a bearing on the public order, as well as a duty to assist any person who, being in danger, requests its assistance. From January - July 1994, there were approximately 200 gendarmes in the Prefecture of Kibuye.

11. Members of the executive branch also have control over the communal police. Each commune has Police Communale, who are engaged by the Bourgmestre of that commune. Normally, the Bourgmestre has exclusive authority over the members of the Police Communale. In case of public calamities, however, the Prefect can claim the policemen of the Police Communale and place them under his direct control.

12. The Interahamwe, an unofficial paramilitary group composed almost exclusively of extremist Hutus, had significant involvement in the events charged in this indictment. The National Revolutionary Movement for Development (MRND) party created the Interahamwe as a military training organization for MRND youth and based the Interahamwe's leadership on the MRND's own structure, with leaders at the national, prefectural, and communal levels. There was no official link between the Interahamwe and the Rwandan military, but members of the Army and Presidential Guard trained, guided and supported the Interahamwe. Occasionally, members of the Army or Presidential Guard participated in Interahamwe activities.

13. On 6 April 1994, the airplane carrying then-president of Rwanda Juvenal Habyarimana, crashed during its approach into Kigali airport in Rwanda. Almost immediately, the massacre of civilians began throughout Rwanda. During that time, individuals seeking Tutsis were able to focus their activities on specific locations because Tutsis, who believed themselves to be in danger, often fled in large numbers to perceived safe areas such as churches and communal buildings. This practice, which was widely known, was based on the fact that in the past Tutsis who had sought refuge in such places had not been attacked. Thus, during the period of time relevant to this indictment, groups of people seeking refuge in the same area were most likely predominately Tutsis.

14. Also, during the times relevant to this indictment, the Rwandan government required all Rwandans to carry, at all times, identity cards that designated the bearer's status as Hutu, Tutsi, Twa or "naturalized". Individuals seeking Tutsis could identify their targets simply by asking individuals to show their identification card.

GENERAL ALLEGATIONS

15. All acts of omissions by the accused set forth in this indictment occurred during the period of 1 January 1994 to 31 December 1994 and in the territory of Rwanda.

16. In each paragraph charging genocide, a crime recognized by Article 2 of the Tribunal Statute, the alleged acts or omissions were committed with intent to destroy, in whole or in part, an ethnical or racial group.

17. In each paragraph charging crimes against humanity, crimes recognized by Article 3 of the Tribunal Statute, the alleged acts or omissions were part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds.

18. At all times relevant to this indictment, the victims referred to in this indictment were protected under Article 3 common to the Geneva Conventions and by Additional Protocol II thereto.

19. At all times relevant to this indictment, there was an internal armed conflict occurring within Rwanda.

20. At all times relevant to this indictment, **Clement Kayishema** was Prefect of Kibuye and exercised control over the prefecture of Kibuye, including his subordinates in the executive branch and members of the gendarmerie nationale.

21. Each of the accused is individually responsible for the crimes alleged against him in this indictment, pursuant to Article 6(1) of the Tribunal Statute. Individual responsibility includes planning, instigating, ordering, committing or otherwise aiding and abetting in the planning, preparation or execution of any of the crimes referred to in Articles 2 to 4 of the Tribunal Statute.

22. In addition, **Clement Kayishema** is also or alternatively individually responsible as a superior for the criminal acts of his subordinates in the administration, gendarmerie nationale, and communal police with respect to each of the crimes charges, pursuant to Article 6(3) of the Tribunal Statute. Superior individual responsibility is the responsibility of a superior for the acts of his subordinate if he knew or had reason to know that his subordinate was about to commit such criminal acts or had done so and failed to take necessary and reasonable measures to prevent such acts, or to punish the perpetrators thereof.

The Accused

23. **Clement Kayishema** was born in 1954 in Bwishyura Sector, Gitesi Commune, Kibuye Prefecture, Rwanda. **Kayishema's** father was Jean Nayigiziki, and his mother was Catherine Nyiramaronko. He was appointed to the position of Prefect of Kibuye on July 3, 1992, and assumed his responsibilities as Prefect soon after. **Clement Kayishema** acted as Prefect of Kibuye until his departure to Zaire in July 1994. He is believed to be currently in Bukavu, Zaire.

24. **Obed Ruzindana** is believed to have been born around 1959 in Gisovu Sector, Gisovu Commune, Kibuye Prefecture, Rwanda. **Ruzindana's** father was Elie Murakaza. **Obed Ruzindana** was a commercial trader in Kigali and in Rwamatamu Commune, Kibuye

Prefecture during the time period in which the crimes alleged in this indictment occurred. He is believed to be currently somewhere in Zaire.

The Massacre at the Catholic Church and Home St. Jean Complex

COUNTS 1 - 6

25. By about 17 April 1994, thousands of men, women and children from various locations had sought refuge in the Catholic Church and Home St. Jean complex (the Complex) located in Kibuye town. The men, women and children were unarmed and were predominantly Tutsis. They were in the Complex seeking protection from attacks on Tutsis which had occurred throughout the Prefecture of Kibuye.

26. Some of the people who sought refuge in the Complex did so because **Clement Kayishema** ordered them to go there. When **Clement Kayishema** ordered people to go to the Complex, he knew or had reason to know that an attack on the Complex was going to occur.

27. After people gathered in the Complex, the Complex was surrounded by persons under **Clement Kayishema's** control, including members of the Gendarmerie Nationale. These persons prevented the men, women and children within the Complex from leaving the Complex at a time when **Clement Kayishema** knew or had reason to know that an attack on the Complex was going to occur.

28. On about 17 April 1994, **Clement Kayishema** ordered members of the Gendarmerie Nationale, communal police of Gitesi Commune, Interahamwe and armed civilians to attack the Complex, and personally participated in the attack. The attackers used guns, grenades, machetes, spears, cudgels and other weapons to kill the people in the Complex.

29. The attack resulted in thousands of deaths and numerous injuries to the people within the Complex (Attachment A contains a list of some of the individuals killed in the attack). During the two weeks following the attack, members of the Gendarmerie Nationale, Interahamwe and armed civilians searched for and killed or injured survivors of the attack.

30. Before the attack on the Complex **Clement Kayishema** did not take measures to prevent an attack, and after the attack **Clement Kayishema** did not punish the perpetrators.

31. By these acts and omissions Clement Kayishema is criminally responsible for:

Count 1: GENOCIDE, a violation of Article 2(3)(a) of the Tribunal Statute;

- Count 2: CRIMES AGAINST HUMANITY, a violation of Articles 3(a)(murder) of the Tribunal Statute;
- Count 3: CRIMES AGAINST HUMANITY, a violation of Article 3(b)(extermination) of the Tribunal Statute;
- Count 4: CRIMES AGAINST HUMANITY, a violation of Article 3(I)(other inhumane acts) of the Tribunal Statute;
- Count 5: A VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS, a violation of Article 4(a) of the Tribunal Statute; and
- Count 6: A VIOLATION OF ADDITIONAL PROTOCOL II, a violation of Article 4(a) of the Tribunal Statute.

The Massacre at the Stadium in Kibuye Town

COUNTS 7 - 12

32. By about 18 April 1994, thousands of men, women and children from various locations had sought refuge in the Stadium located in Kibuye town. These men, women and children were unarmed and were predominately Tutsis. They were in the Stadium seeking refuge from attacks on Tutsis which had occurred throughout the Prefecture of Kibuye.

33. Some of the people who sought refuge in the Stadium did so because **Clement Kayishema** ordered them to go there. When **Clement Kayishema** ordered people to go to the Stadium, he knew or had reason to know that an attack on the Stadium was going to occur.

34. After people gathered in the stadium, the Stadium was surrounded by persons under **Clement Kayishema's** control, including members of the Gendarmerie Nationale. These persons prevented the men, women and children within the Stadium from leaving the Stadium at a time when **Clement Kayishema** know or had reason to know that an attack on the Complex was going to occur.

35. On or about the 18 April 1994, **Clement Kayishema**, went to Stadium and ordered members of the Gendarmerie Nationale, communal police of Gitesi Commune, Interahamwe and armed civilians to attack the Stadium. **Clement Kayishema** initiated the attack by firing a gun into the air. In addition **Clement Kayishema** personally participated in the attack. The attackers used guns, grenades, pangas, machetes, spears, cudgels and other weapons to kill the people in the Stadium. There were survivors of the attack on 18 April 1994. During the night of 18 April 1994 and the morning of 19 April 1994 gendarmes surrounding the Stadium prevented the survivors from leaving. The attack on the Stadium

continued on 19 April 1994. Throughout the attacks, men, women and children attempting to flee the attacks were killed.

36. The two days of attacks resulted in thousands of deaths and numerous injuries to the men, women and children within the Stadium (Attachment B contains a list of some of the individuals killed in the attacks).

37. Before the attacks on the Stadium **Clement Kayishema** did not take measures to prevent an attack from occurring, and after the attacks **Clement Kayishema** did not punish the perpetrators.

38. By these acts and omissions **Clement Kayishema** is criminally responsible for:

Count 7: GENOCIDE, a violation of Article 2(3)(a) of the Tribunal Statute;

Count 8: CRIMES AGAINST HUMANITY, a violation of Articles 3(a)(murder) of the Tribunal Statute;

Count 9: CRIMES AGAINST HUMANITY, a violation of Article 3(b)(extermination) of the Tribunal Statute;

Count 10: CRIMES AGAINST HUMANITY, a violation of Article 3(I)(other inhumane acts) of the Tribunal Statute;

Count 11: A VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS, a violation of Article 4(a) of the Tribunal Statute; and

Count 12: A VIOLATION OF ADDITIONAL PROTOCOL II, a violation of Article 4(a) of the Tribunal Statute.

The Massacre at the Church in Mubuga

COUNT 13 - 18

39. By about 14 April 1994, thousands of men, women and children congregated in the Church in Mubuga, Gishyita Commune. These men, women and children were predominantly Tutsis. They were in the church seeking refuge from attacks on Tutsis which had occurred throughout the Prefecture of Kibuye.

40. After the men, women and children began to congregate in the Church, **Clement Kayishema** visited the Church on several occasions. On or about 10 April **Clement Kayishema** brought gendarmes, under his control, to the Church. These gendarmes prevented the men, women and children within the church from leaving.

41. On or about 14 April 1994 individuals, including individuals under **Clement Kayishema's** control, directed members of the Gendarmerie Nationale, communal police of Gishyita commune, Interahamwe and armed civilians to attack the Church. In addition, each of them personally participated in the attacks. The attackers used guns, grenades, machetes, spears, pangas, cudgels and other weapons to kill the people in the Church. Not all the people could be killed at once, so the attacks continued for several days. Both before and during these attacks persons under **Clement Kayishema's** control, including members of the Gendarmerie Nationale and Communal police prevented the men, women and children within the Church from leaving.

42. The attacks resulted in thousands of deaths and numerous injuries to the men, women, and children with the church (Attachment C contains a list of some of the victims killed in the attacks).

43. Before the attacks on the Church in Mubuga **Clement Kayishema** did not take measures to prevent the attacks, and after the attacks **Clement Kayishema** did not punish the perpetrators.

44. By these acts and omissions **Clement Kayishema** is criminally responsible for:

Count 13: GENOCIDE, a violation of Article 2(3)(a) of the Tribunal Statute;

Count 14: CRIMES AGAINST HUMANITY, a violation of Articles 3(a)(murder) of the Tribunal Statute;

Count 15: CRIMES AGAINST HUMANITY, a violation of Article 3(b)(extermination) of the Tribunal Statute;

Count 16: CRIMES AGAINST HUMANITY, a violation of Article 3(I)(other inhumane acts) of the Tribunal Statute;

Count 17: A VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS, a violation of Article 4(a) of the Tribunal Statute; and

Count 18: A VIOLATION OF ADDITIONAL PROTOCOL II, a violation of Article 4(a) of the Tribunal Statute.

The massacres in the Area of Bisesero

COUNTS 19 - 24

45. The area of Bisesero spans two communes in Kibuye Prefecture. From about 9 April 1994 through 30 June 1994, thousands of men, women and children sought refuge in the area of Bisesero. These men, women and children were predominantly Tutsis and were seeking refuge from attacks on Tutsis which had occurred throughout the Prefecture of Kibuye.

46. The area of Bisesero was regularly attacked, on almost a daily basis, throughout the period of about 9 April 1994 through 30 June 1994. The attackers used guns, grenades, machetes, spears, pangas, cudgels and other weapons to kill the Tutsis in Bisesero. At various times the men, women and children seeking refuge in Bisesero attempted to defend themselves from these attacks with stones, sticks and other crude weapons.

47. At various locations and times throughout April, May and June 1994, and often in concert, **Clement Kayishema** and **Obed Ruzindana** brought to the area of Bisesero members of the Gendarmerie Nationale, communal police of Gishyita and Gisovu communes, Interahamwe and armed civilians, and directed them to attack the people seeking refuge there. In addition, at various locations and times, and often in concert, **Clement Kayishema** and **Obed Ruzindana** personally attacked and killed persons seeking refuge in Bisesero.

48. The attacks described above resulted in thousand of deaths and numerous injuries to the men, women and children within the area of Bisesero (Attachment D contains a list of some of the individuals killed in the attacks).

49. Throughout this time, **Clement Kayishema** did not take measures to prevent the attacks, and after the attacks **Clement Kayishema** did not punish the perpetrators.

50. By these acts and omissions **Clement Kayishema** and **Obed Ruzindana** are criminally responsible for:

Count 19: GENOCIDE, a violation of Article 2(3)(a) of the Tribunal Statute;

Count 20: CRIMES AGAINST HUMANITY, a violation of Articles 3(a)(murder) of the Tribunal Statute;

Count 21: CRIMES AGAINST HUMANITY, a violation of Article 3(b)(extermination) of the Tribunal Statute;

Count 22: CRIMES AGAINST HUMANITY, a violation of Article 3(I)(other inhumane acts) of the Tribunal Statute;

Count 23: A VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS, a violation of Article 4(a) of the Tribunal Statute; and

Count 24: A VIOLATION OF ADDITIONAL PROTOCOL II, a violation of Article 4(a) of the Tribunal Statute.

1996
Arusha, Tanzania

Richard J. Goldstone
Prosecutor

This rearranged version conform to the Order of Trial Chamber II in their decision of 10 April 1997 of the indictment of 28 November 1995 confirmed by the Honorable Judge Pillay and amended on 29 April 1996, to serve as the relative indictment for the accused, **Clement Kayishema** and **Obed Ruzindana** in the case ICTR 95-I-I.

Arusha, on the (unreadable date)

for the Prosecutor,

Jonah Rahetlah, Senior Trial Attorney

UNITED NATIONS

NATIONS UNIES

International Criminal Tribunal for Rwanda

TRIAL CHAMBER 2

OR: ENG

Before: Judge William H. Sekule, Presiding Judge
Judge Yakov Ostrovsky
Judge Tafazzal H. Khan

Registry: Mr. Frederik Harhoff
Ms. Prisca Nyambe

Decision of: 10 April 1997

**THE PROSECUTOR
VERSUS
CLEMENT KAYISHEMA
OBED RUZINDANA**

Case No. ICTR-95-1-T

**DECISION ON THE MOTION FILED BY THE PROSECUTOR FOR
CONFIRMATION OF THE TRIAL DATE AND SUBMISSION OF A
SUPERSEDING INDICTMENT**

The Office of the Prosecutor:

**Mr. Jonah Rahetlah
Ms. Elizabeth Ann Farr
Ms. Brenda Sue Thornton**

The Counsel for the Accused:

**Me Pascal Besnier (for Obed Ruzindana)
Me André Ferran (for Clément Kayishema)
Me Philippe Moriceau (for Clément Kayishema)**

ICTR-95-1-T

THE TRIBUNAL,

SITTING AS Trial Chamber 2 of the International Criminal Tribunal for Rwanda ("the Tribunal"), composed of Judge William H. Sekule as Presiding Judge, Judge Yakov Ostrovsky and Judge Tafazzal Khan;

CONSIDERING the indictment confirmed by Judge Navanethem Pillay on 28 November 1995, and the subsequent first amended indictment confirmed by Judge Pillay 6 May 1996 pursuant to Rule 47 of the Rules of Procedure and Evidence (the "Rules"), on the basis that there was sufficient evidence to provide reasonable grounds for believing that the accused had committed genocide, conspiracy to commit genocide, crimes against humanity and violations of Article 3 common to the 1949 Geneva conventions and Additional Protocol II thereto;

CONSIDERING the decision of the Tribunal of 6 November 1996 ordering the joinder of the two accused Clément Kayishema and Obed Ruzindana in the present case;

CONSIDERING the Prosecutor's motion dated 26 March 1997 to request confirmation of the trial date in Case No. ICTR-95-1-T and to submit an amended indictment (the "superseding indictment");

TAKING INTO ACCOUNT the decision of 27 March 1997 by which the Tribunal dismissed the motion of the Prosecutor for severance, joinder and consolidation of charges in the cases against Clément Kayishema (case ICTR-95-1-T), Obed Ruzindana (cases ICTR-95-1-T & ICTR-96-10-T) and Gerard Ntakirutimana (cases ICTR-96-10-T & ICTR-96-17-T);

CONSIDERING the fact that the trial on the merits of this case was scheduled to commence on 9 April 1997;

HAVING THEN HEARD the parties at the hearings held on 9 and 10 April 1997;

AFTER HAVING DELIBERATED:

WHEREAS the Prosecutor contends that the purpose of the superseding indictment is partly to sever the two detained accused from the six other co-accused, still at large, in case No. ICTR-95-1-T, and partly to consolidate and simplify the charges against these two accused by bringing down the number of Counts raised against Clément Kayishema in the first amended indictment from 25 to 5 consolidated Counts in the superseding indictment, and similarly by bringing down the number of Counts originally charged against Obed Ruzindana from 7 to 5;

WHEREAS the Prosecutor, in so doing, has asserted that no new or substantial changes have been included in the superseding indictment; except that the charge against Clément

Kayishema and Obed Rusindana for conspiracy to commit genocide pursuant to Article 2(3)(b) of the Tribunal's Statute (the "Statute"), in Count 1 of the first amended indictment, has been withdrawn;

WHEREAS, furthermore the Prosecutor has asserted that Count 5 of the superseding indictment for violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II pursuant to Article 4 of the Statute is to be understood as limited to Article 4(a) of the Statute, thereby reassuring that the superseding indictment is not intended to add any new charges to the first amended indictment;

WHEREAS the Defence has opposed the superseding indictment partly on the grounds that the two accused are being charged five times for the same actions, which is held to be in violation

ICTR-95-1-T

of the fundamental legal principle *non bis in idem* as laid down in Article 9 of the Statute, and partly because the wording of the Counts in the superseding indictment does not adequately identify the particular actions of the two accused, for which they are now being charged;

WHEREAS, moreover, the Defence has argued that the Prosecution's frequent changes of the indictment, the most recent change being proposed shortly before the trial, is prejudicial to the rights of the accused;

WHEREAS the Tribunal, in principle as well as in the interests of the accused, is in favor of simplifying and consolidating the indictments but, nevertheless, is unable to accede to the reasons advanced by the Defence, since these reasons relate to matters of law which should either have been brought forward within the 60 day limit stipulated in Rule 73 (B) of the Rules, or which may be addressed during later stages of this trial;

WHEREAS, however, the Tribunal is of the opinion that, in this case, the superseding indictment does in fact vary from the first amended indictment in a number of ways which the Prosecutor has failed to account for, notably concerning the role which the accused Clément Kayishema is alleged to have played during the atrocities, the number of victims of these atrocities and the relevant time-span during which the other accused, Obed Ruzindana, is alleged to have committed the crimes for which he is being charged in the superseding indictment;

WHEREAS, furthermore, the Tribunal is of the view that the causal relation between the particular actions alleged to have been carried out by each of the accused and the crimes for which they have been accused appears, in the superseding indictment, to be at variance with the first amended indictment, which, in the Tribunal's view, may obscure the individual responsibility attributed to both the accused and may be prejudicial to them to plead to the crimes for which they have been charged before the Tribunal;

WHEREAS, finally, the Tribunal finds that the Prosecutor has had sufficient time to prepare and propose a consolidated indictment and therefore regrets that the superseding indictment in this case has been presented only 10 days before the beginning of the trial on its merits;

FOR ALL THE ABOVE STATED REASONS

THE TRIBUNAL DECIDES

TO DISMISS the motion of the Prosecutor for submission of a superseding indictment against the accused; and

TO GRANT LEAVE to the Prosecutor to redact the names of the 6 other accused not in custody, from the first amended indictment and to delete Count 1 (conspiracy to commit genocide) of that indictment and to rearrange the remaining Counts accordingly.

Arusha, 10 April 1997

w.s. William H. Sekule
Presiding Judge

w.s. Yakov Ostrovsky
Judge

w.s. T.H. Khan
Judge

Seal of the Tribunal

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR RWANDA**

Case no. ICTR-95-1-I

BEFORE A JUDGE OF THE TRIAL CHAMBER

Before: Judge N. Pillay

Registrar: Dr. Andronico O. Adede

Decision of: 28 November 1995

THE PROSECUTOR

v.

OBED RUZINDANA

**WARRANT OF ARREST
ORDER FOR SURRENDER**

To: The Republic of Zaire

I, Judge N. Pillay, Judge of the International Criminal Tribunal for Rwanda,

CONSIDERING United Nations Security Council Resolution 978 of 27 February 1995, and Articles 19(2) and 28 of the Statute, and Rules 54 to 61 of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda,

CONSIDERING the indictment submitted by the Prosecutor against Obed Ruzindana, and confirmed by a Judge of the International Criminal Tribunal for Rwanda on the 28th day of November 1995, a copy of which is annexed to this warrant of arrest,

HEREBY DIRECT the authorities of the Republic of Zaire to search for, arrest and surrender to the International Criminal Tribunal for Rwanda:

Obed Ruzindana is believed to have been born around 1959 in Gisovu Sector, Gisovu Commune, Kibuye Prefecture of Rwanda. He is believed to be currently somewhere in Zaire.

He is alleged to have committed between 9 April and 30 June 1994 in Kibuye Prefecture in Rwanda, the following crimes: Conspiracy to Commit Genocide, Genocide, Crimes Against Humanity, and Violation of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977, within the competence of the International Criminal Tribunal for Rwanda by virtue of Articles 2, 3 and 4 respectively,

And to advise the said Obed Ruzindana at the time of his arrest, and in a language he understands, of his rights as set forth in Article 20 of the Statute and, *mutatis mutandis*, in Rules 42 and 43 of the Rules of Procedure and Evidence which are set out below, and of his right to remain silent, and to caution him that any statement he makes shall be recorded and may be used in evidence. The indictment and review of the indictment (and all other documents annexed to the present warrant) must also be brought to the attention of the accused,

REQUESTS THAT the Republic of Zaire, upon the arrest of Obed Ruzindana, promptly notify the Registrar of the International Criminal Tribunal for Rwanda, for the purposes of his transfer pursuant to Rule 57 of the Rules of Procedure and Evidence,

REQUESTS THAT the Republic of Zaire report forthwith to the Registrar of the International Criminal Tribunal for Rwanda if it is unable to execute the present warrant of arrest, indicating the reasons for its inability pursuant to Rule 59 (A) of the Rules of Procedure and Evidence.

Judge, Trial Chamber
International Criminal Tribunal for Rwanda

Dated this 28th day of November 1995,
At Arusha, Tanzania

Registrar
Arusha, Tanzania

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR RWANDA**

Case no. ICTR-95-1-I

BEFORE A JUDGE OF THE TRIAL CHAMBER

Before: Judge N. Pillay

Registrar: Dr. Andronico O. Adede

Decision of: 28 November 1995

THE PROSECUTOR

v.

RYANDIKAYO

**WARRANT OF ARREST
ORDER FOR SURRENDER**

To: The Republic of Zaire

I, Judge N. Pillay, Judge of the International Criminal Tribunal for Rwanda,

CONSIDERING United Nations Security Council Resolution 978 of 27 February 1995, and Articles 19(2) and 28 of the Statute, and Rules 54 to 61 of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda,

CONSIDERING the indictment submitted by the Prosecutor against Ryandikayo, and confirmed by a Judge of the International Criminal Tribunal for Rwanda on the 28th day of November 1995, a copy of which is annexed to this warrant of arrest,

HEREBY DIRECT the authorities of the Republic of Zaire to search for, arrest and surrender to the International Criminal Tribunal for Rwanda:

Ryandikayo is believed to have been born around 1961 in Musenyi Sector, Gishyita Sector, Gishyita Commune, Kibuye Prefecture of Rwanda. He is believed to be currently somewhere in Zaire.

He is alleged to have committed between 9 April and 30 June 1994 in Kibuye Prefecture in Rwanda, the following crimes: Conspiracy to Commit Genocide, Genocide, Crimes Against Humanity, and Violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977, within the competence of the International Criminal Tribunal for Rwanda by virtue of Articles 2, 3 and 4 respectively.

And to advise the said Ryandikayo at the time of his arrest, and in a language he understands, of his rights as set forth in Article 20 of the Statute and, *mutatis mutandis*, in Rules 42 and 43 of the Rules of Procedure and Evidence which are set out below, and of his right to remain silent, and to caution him that any statement he makes shall be recorded and may be used in evidence. The indictment and review of the indictment (and all other documents annexed to the present warrant) must also be brought to the attention of the accused,

REQUESTS THAT the Republic of Zaire, upon the arrest of Ryandikayo, promptly notify the Registrar of the International Criminal Tribunal for Rwanda, for the purposes of his transfer pursuant to Rule 57 of the Rules of Procedure and Evidence,

REQUESTS THAT the Republic of Zaire report forthwith to the Registrar of the International Criminal Tribunal for Rwanda if it is unable to execute the present warrant of arrest, indicating the reasons for its inability pursuant to Rule 59 (A) of the Rules of Procedure and Evidence.

Judge, Trial Chamber
International Criminal Tribunal for Rwanda

Dated this 28th day of November 1995,
At Arusha, Tanzania

Registrar
Arusha, Tanzania

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR RWANDA**

Case no. ICTR-95-1-I

BEFORE A JUDGE OF THE TRIAL CHAMBER

Before: Judge N. Pillay

Registrar: Dr. Andronico O. Adede

Decision of: 28 November 1995

THE PROSECUTOR

v.

VINCENT RUTAGANIRA

**WARRANT OF ARREST
ORDER FOR SURRENDER**

To: The Republic of Zaire

I, Judge N. Pillay, Judge of the International Criminal Tribunal for Rwanda,

CONSIDERING United Nations Security Council Resolution 978 of 27 February 1995, and Articles 19(2) and 28 of the Statute, and Rules 54 to 61 of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda,

CONSIDERING the indictment submitted by the Prosecutor against Vincent Rutaganira, and confirmed by a Judge of the International Criminal Tribunal for Rwanda on the 28th day of November 1995, a copy of which is annexed to this warrant of arrest,

HEREBY DIRECT the authorities of the Republic of Zaire to search for, arrest and surrender to the International Criminal Tribunal for Rwanda:

Vincent Rutaganira, who was born in the early to 1940's in Mubuga Sector, Gishyita Commune, Kibuye Prefecture of Rwanda. He is believed to be currently in either Bukavu or Ijwi Island, Zaire.

He is alleged to have committed between 9 April and 30 June 1994 in Kibuye Prefecture in Rwanda, the following crimes: Conspiracy to Commit Genocide, Genocide, Crimes Against Humanity, and Violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977, within the competence of the International Criminal Tribunal for Rwanda by virtue of Articles 2, 3 and 4 respectively.

And to advise the said Vincent Rutaganira at the time of his arrest, and in a language he understands, of his rights as set forth in Article 20 of the Statute and, *mutatis mutandis*, in Rules 42 and 43 of the Rules of Procedure and Evidence which are set out below, and of his right to remain silent, and to caution him that any statement he makes shall be recorded and may be used in evidence. The indictment and review of the indictment (and all other documents annexed to the present warrant) must also be brought to the attention of the accused,

REQUESTS THAT the Republic of Zaire, upon the arrest of Vincent Rutaganira, promptly notify the Registrar of the International Criminal Tribunal for Rwanda, for the purposes of his transfer pursuant to Rule 57 of the Rules of Procedure and Evidence,

REQUESTS THAT the Republic of Zaire report forthwith to the Registrar of the International Criminal Tribunal for Rwanda if it is unable to execute the present warrant of arrest, indicating the reasons for its inability pursuant to Rule 59 (A) of the Rules of Procedure and Evidence.

Judge, Trial Chamber
International Criminal Tribunal for Rwanda

Dated this 28th day of November 1995,
At Arusha, Tanzania

Registrar
Arusha, Tanzania

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA -
Case no. ICTR-95-1-I

BEFORE A JUDGE OF THE TRIAL CHAMBER

Before: Judge N. Pillay

Registrar: Dr. Andronico O. Adede

Decision of: 28 November 1995

THE PROSECUTOR

v.

CHARLES SIKUBWABO

**WARRANT OF ARREST
ORDER FOR SURRENDER**

To: The Republic of Zaire

I, Judge N. Pillay, Judge of the International Criminal Tribunal for Rwanda,

CONSIDERING United Nations Security Council Resolution 978 of 27 February 1995, and Articles 19(2) and 28 of the Statute, and Rules 54 to 61 of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda,

CONSIDERING the indictment submitted by the Prosecutor against Charles Sikubwabo, and confirmed by a Judge of the International Criminal Tribunal for Rwanda on the 28th day of November 1995, a copy of which is annexed to this warrant of arrest,

HEREBY DIRECT the authorities of the Republic of Zaire to search for, arrest and surrender to the International Criminal Tribunal for Rwanda:

Charles Sikubwabo, born in the early to mid- 1940's in Gishyita Sector, Gishyita Commune, Kibuye Prefecture of Rwanda. He is believed to be currently in Bukavu, Zaire.

He is alleged to have committed between 9 April and 30 June 1994 in Kibuye Prefecture in Rwanda, the following crimes: Conspiracy to Commit Genocide, Genocide, Crimes Against Humanity, and Violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977, within the competence of the International Criminal Tribunal for Rwanda by virtue of Articles 2, 3 and 4 respectively.

And to advise the said Charles Sikubwabo at the time of his arrest, and in a language he understands, of his rights as set forth in Article 20 of the Statute and, *mutatis mutandis*, in Rules 42 and 43 of the Rules of Procedure and Evidence which are set out below, and of his right to remain silent, and to caution him that any statement he makes shall be recorded and may be used in evidence. The indictment and review of the indictment (and all other documents annexed to the present warrant) must also be brought to the attention of the accused,

REQUESTS THAT the Republic of Zaire, upon the arrest of Charles Sikubwabo, promptly notify the Registrar of the International Criminal Tribunal for Rwanda, for the purposes of his transfer pursuant to Rule 57 of the Rules of Procedure and Evidence,

REQUESTS THAT the Republic of Zaire report forthwith to the Registrar of the International Criminal Tribunal for Rwanda if it is unable to execute the present warrant of arrest, indicating the reasons for its inability pursuant to Rule 59 (A) of the Rules of Procedure and Evidence.

Judge, Trial Chamber
International Criminal Tribunal for Rwanda

Dated this 28th day of November 1995,
At Arusha, Tanzania

Registrar
Arusha, Tanzania

UNITED NATIONS

NATIONS UNIES

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
ARUSHA INTERNATIONAL CONFERENCE CENTRE**

P.O. Box 6016 - Arusha, Tanzania
Fax: 255 57 4373 • 255 57 4000
Tel: 255 578 3181 Ext. 1258 • 255 57 4372 (Direct)

Case No. ICTR-95-1-I

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
BEFORE A JUDGE OF THE TRIAL CHAMBER**

Before: Judge Navanethem Pillay

Registrar: Dr. Andronico O. Adede

Decision of: 30th September 1996

IN THE MATTER OF THE CASE No. ICTR-95-1-I

THE PROSECUTOR

v.

IGNACE BAGILISHEMA a/k/a IGNATIUS BAGILA NTAGANDA

**WARRANT OF ARREST
AND
ORDER FOR SURRENDER**

To: The Republic of Malawi

I, Judge Navanethem Pillay, Judge of the International Criminal Tribunal for Rwanda,

CONSIDERING the United Nations Security Council Resolution 955 of 8 November 1994 and Resolution 978 of 27 February 1995, and Articles 19(2) and 28 of the Statute of the International Criminal Tribunal for Rwanda, and Rules 54 to 61 of the Rules of Procedure and Evidence adopted by the International Criminal Tribunal for Rwanda.

CONSIDERING the Indictment submitted by the Prosecutor against **Ignace Bagilishema**, and confirmed by myself, Judge Navanethem Pillay, Judge of the International Criminal Tribunal for Rwanda, on the 28 day of November 1995, a copy of which is annexed to this warrant of arrest.

CONSIDERING FURTHER the Warrant of Arrest and Order for Surrender issued by myself, Judge Navanethem Pillay, Judge of the International Criminal Tribunal for Rwanda, on the 28 day of November 1995 which was transmitted to the Republic of Zaire,

CONSIDERING FURTHER the Warrant of Arrest and Order for Surrender issued by myself, Judge Navanethem Pillay, Judge of the International Criminal Tribunal for Rwanda, on 10 June 1996, which was transmitted to the Republic of Malawi,

CONSIDERING FURTHER the letter from the Commissioner For Disaster Preparedness, Relief and Rehabilitation dated 25 July 1996 indicating that a person going by the name of Ignatius Bagila Ntaganda, is currently living in Dzeleka Refugee Camp Dowa District, Lilongwe Malawi,

NOTING that the Office of the Prosecutor has records to show that the person bearing the name Ignace Bagilishema is one and the same as the person using the name of Ignatius Bagila Ntaganda,

CONSIDERING FURTHER the request by the Government of Malawi that the Tribunal issue a new Warrant of Arrest bearing all the names used by the accused,

HEREBY DIRECT the Authorities of the Republic of Malawi to search for, arrest and surrender to the International Criminal Tribunal for Rwanda:

Ignace Bagilishema, a/k/a Ignace Bagila Ntaganda born in 1955 in Rubengera Sector, Mabanza Commune, Kibuye Prefecture, Rwanda. He is now believed to be in the territory of the Republic of Malawi.

He is alleged to have committed between 9 April and 30 June 1994 in Kibuye Prefecture in Rwanda, the following crimes: Conspiracy to Commit Genocide, Genocide, Crimes Against Humanity, and Violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1997, within the competence of the International Criminal Tribunal for Rwanda by virtue of Articles 2, 3 and 4 of the Statute respectively,

And to advise the said Ignace Bagilishema a/k/a Ignatius Bagila Ntaganda at the time of his arrest, and in a language he understands, of his rights as set forth in Article 20 of the Statute and, *mutatis mutandis*, in Rules 42 and 43 of the Rules of Procedure and Evidence which are set out below, and of his right to remain silent, and to caution him that any statement he makes shall be recorded and may be used in evidence. The indictment and review of the Indictment (and all other documents annexed to the present Warrant) must also be brought to the attention of the accused,

REQUESTS THAT the Republic of Malawi, upon the arrest of Ignace Bagilishema a/k/a Ignatius Bagila Ntaganda, promptly notify the Registrar of the International Criminal Tribunal for Rwanda, for the purposes of arranging his transfer to the custody of the International Criminal Tribunal for Rwanda pursuant to Rule 57 of the Rules of Procedure and Evidence,

REQUESTS THAT the Republic of Malawi report forthwith to the Registrar of the International Criminal Tribunal for Rwanda if it is unable to execute the present Warrant of Arrest, indicating the reasons for its inability pursuant to Rule 59 (A) of the Rules of Procedure and Evidence.

Judge Navanethem Pillay
International Criminal Tribunal for Rwanda

Dated this 30th day of September 1996,
At Arusha, Tanzania.

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case no. ICTR-95-1-I

BEFORE A JUDGE OF THE TRIAL CHAMBER

Before: Judge N. Pillay

Registrar: Dr. Andronico O. Adede

Decision of: 28 November 1995

THE PROSECUTOR

v.

MIKA MUHIMANA

**WARRANT OF ARREST
ORDER FOR SURRENDER**

To: The Republic of Zaire

I, Judge N. Pillay, Judge of the International Criminal Tribunal for Rwanda,

CONSIDERING United Nations Security Council Resolution 978 of 27 February 1995, and Articles 19(2) and 28 of the Statute, and Rules 54 to 61 of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda,

CONSIDERING the indictment submitted by the Prosecutor against Mika Muhimana, and confirmed by a Judge of the International Criminal Tribunal for Rwanda on the 28th day of November 1995, a copy of which is annexed to this warrant of arrest,

HEREBY DIRECT the authorities of the Republic of Zaire to search for, arrest and surrender to the International Criminal Tribunal for Rwanda:

Mika Muhimana, is believed to be born around 1950 in Gishyita Sector, Gishyita Commune, Kibuye Prefecture of Rwanda. His is believed to be currently in Zaire.

He is alleged to have committed between 9 April and 30 June 1994 in Kibuye Prefecture in Rwanda, the following crimes: Conspiracy to Commit Genocide, Genocide, Crimes Against Humanity, and Violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977, within the competence of the International Criminal Tribunal for Rwanda by virtue of Articles 2, 3 and 4 respectively.

And to advise the said Mika Muhimana at the time of his arrest, and in a language he understands, of his rights as set forth in Article 20 of the Statute and, *mutatis mutandis*, in Rules 42 and 43 of the Rules of Procedure and Evidence which are set out below, and of his right to remain silent, and to caution him that any statement he makes shall be recorded and may be used in evidence. The indictment and review of the indictment (and all other documents annexed to the present warrant) must also be brought to the attention of the accused,

REQUESTS THAT the Republic of Zaire, upon the arrest of Mika Muhimana, promptly notify the Registrar of the International Criminal Tribunal for Rwanda, for the purposes of his transfer pursuant to Rule 57 of the Rules of Procedure and Evidence,

REQUESTS THAT the Republic of Zaire report forthwith to the Registrar of the International Criminal Tribunal for Rwanda if it is unable to execute the present warrant of arrest, indicating the reasons for its inability pursuant to Rule 59 (A) of the Rules of Procedure and Evidence.

Judge, Trial Chamber
International Criminal Tribunal for Rwanda

Dated this 28th day of November 1995,
At Arusha, Tanzania

Registrar
Arusha, Tanzania

**THE INTERNATIONAL CRIMINAL
TRIBUNAL FOR RWANDA**

Case no. ICTR-95-1-I

BEFORE A JUDGE OF THE TRIAL CHAMBER

Before: Judge N. Pillay

Registrar: Dr. Andronico O. Adede

Decision of: 28 November 1995

THE PROSECUTOR

v.

ALOYS NDIMBATI

**WARRANT OF ARREST
ORDER FOR SURRENDER**

To: The Republic of Zaire

I, Judge N. Pillay, Judge of the International Criminal Tribunal for Rwanda,

CONSIDERING United Nations Security Council Resolution 978 of 27 February 1995, and Articles 19(2) and 28 of the Statute, and Rules 54 to 61 of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda,

CONSIDERING the indictment submitted by the Prosecutor against Aloys Ndimbati, and confirmed by a Judge of the International Criminal Tribunal for Rwanda on the 28th day of November 1995, a copy of which is annexed to this warrant of arrest,

HEREBY DIRECT the authorities of the Republic of Zaire to search for, arrest and surrender to the International Criminal Tribunal for Rwanda:

Aloys Ndimbati, born in the early to mid-1950's in Gitabura Sector, Gisovu Commune, Kibuye Prefecture of Rwanda. He is believed to be currently in Zaire.

He is alleged to have committed between 9 April and 30 June 1994 in Kibuye Prefecture in Rwanda, the following crimes: Conspiracy to Commit Genocide, Genocide, Crimes Against Humanity, and Violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977, within the competence of the International Criminal Tribunal for Rwanda by virtue of Articles 2, 3 and 4 respectively.

And to advise the said Aloys Ndimbati at the time of his arrest, and in a language he understands, of his rights as set forth in Article 20 of the Statute and, *mutatis mutandis*, in Rules 42 and 43 of the Rules of Procedure and Evidence which are set out below, and of his right to remain silent, and to caution him that any statement he makes shall be recorded and may be used in evidence. The indictment and review of the indictment (and all other documents annexed to the present warrant) must also be brought to the attention of the accused,

REQUESTS THAT the Republic of Zaire, upon the arrest of Aloys Ndimbati, promptly notify the Registrar of the International Criminal Tribunal for Rwanda, for the purposes of his transfer pursuant to Rule 57 of the Rules of Procedure and Evidence,

REQUESTS THAT the Republic of Zaire report forthwith to the Registrar of the International Criminal Tribunal for Rwanda if it is unable to execute the present warrant of arrest, indicating the reasons for its inability pursuant to Rule 59 (A) of the Rules of Procedure and Evidence.

Judge, Trial Chamber
International Criminal Tribunal for Rwanda

Dated this 28th day of November 1995,
At Arusha, Tanzania

Registrar
Arusha, Tanzania

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR RWANDA**

Case no. ICTR-95-1-I

BEFORE A JUDGE OF THE TRIAL CHAMBER

Before: Judge N. Pillay

Registrar: Dr. Andronico O. Adede

Decision of: 28 November 1995

THE PROSECUTOR

v.

CLEMENT KAYISHEMA

**WARRANT OF ARREST
ORDER FOR SURRENDER**

To: The Republic of Zaire

I, Judge N. Pillay, Judge of the International Criminal Tribunal for Rwanda,

CONSIDERING United Nations Security Council Resolution 978 of 27 February 1995, and Articles 19(2) and 28 of the Statute, and Rules 54 to 61 of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda,

CONSIDERING the indictment submitted by the Prosecutor against Clement Kayishema, and confirmed by a Judge of the International Criminal Tribunal for Rwanda on the 28th day of November 1995, a copy of which is annexed to this warrant of arrest,

HEREBY DIRECT the authorities of the Republic of Zaire to search for, arrest and surrender to the International Criminal Tribunal for Rwanda:

Clement Kayishema, born in 1954 in Bwishyura Sector, Gitesi Commune, Kibuye Prefecture of Rwanda. His is believed to be currently in Bukavu, Zaire.

He is alleged to have committed between 9 April and 30 June 1994 in Kibuye Prefecture in Rwanda, the following crimes: Conspiracy to Commit Genocide, Genocide, Crimes Against Humanity, and Violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977, within the competence of the International Criminal Tribunal for Rwanda by virtue of Articles 2, 3 and 4 respectively.

And to advise the said Clement Kayishema at the time of his arrest, and in a language he understands, of his rights as set forth in Article 20 of the Statute and, *mutatis mutandis*, in Rules 42 and 43 of the Rules of Procedure and Evidence which are set out below, and of his right to remain silent, and to caution him that any statement he makes shall be recorded and may be used in evidence. The indictment and review of the indictment (and all other documents annexed to the present warrant) must also be brought to the attention of the accused,

REQUESTS THAT the Republic of Zaire, upon the arrest of Clement Kayishema, promptly notify the Registrar of the International Criminal Tribunal for Rwanda, for the purposes of his transfer pursuant to Rule 57 of the Rules of Procedure and Evidence,

REQUESTS THAT the Republic of Zaire report forthwith to the Registrar of the International Criminal Tribunal for Rwanda if it is unable to execute the present warrant of arrest, indicating the reasons for its inability pursuant to Rule 59 (A) of the Rules of Procedure and Evidence.

Judge, Trial Chamber
International Criminal Tribunal for Rwanda

Dated this 28th day of November 1995,
At Arusha, Tanzania

Registrar
Arusha, Tanzania

UNITED NATIONS NATIONS UNIES
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No: ICTR-95-1-T

TRIAL CHAMBER 1

THE PROSECUTOR

V.

CLEMENT KAYISHEMA

DEFENCE COUNSEL: ANDRE FERRAN

DECISION:

ORDER FOR CONTINUED DETENTION AWAITING TRIAL

THE TRIBUNAL, sitting as Judge Laïty Kama, Presiding Judge, Judge Lennart Aspegren, and Judge Yakov A. Ostrovsky, in Trial Chamber 1,

CONSIDERING the indictment against Clément Kayishema submitted by the Prosecutor and confirmed on 28 November 1995 by Judge Navanethem Pillay,

CONSIDERING the transfer of the accused to the Tribunal on 26 May 1996,

CONSIDERING the initial appearance of the accused on 31 May 1996 before the Trial Chamber 1,

PURSUANT TO Rules 62 and following of the Rules of Procedure and Evidence,

HEREBY ORDERS the detention on remand of Clément Kayishema and enjoins the Commanding Officer of the United Nations Detention Unit to continue to detain him until further order.

Arusha, 31 May 1996,

Laïty Kama
Presiding Judge

Lennart Aspegren
Judge

Yakov A. Ostrovsky
Judge

(Seal of the Tribunal)

Case No: ICTR-95-1-T

UNITED NATIONS

NATIONS UNIES

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA**

**Office of the Prosecutor
Bureau du Procureur**

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Tel. +(250) 84266 Tel. +(1-212) 963-9906/2663, Fax +(1-212) 963 4001

CASE N°: ICTR-95-1-I

THE PROSECUTOR OF THE TRIBUNAL

AGAINST

CLEMENT KAYISHEMA

PRELIMINARY MOTION FOR JOINDER OF ACCUSED

The undersigned, Louise Arbour, Prosecutor of the International Criminal Tribunal for Rwanda,

Considering Rules 37, 54, 48 and 82 of the Rules of Procedure and Evidence,

Together with the motion filed by Mr. Ferran, the counsel for the accused Clément Kayishema, for a continuance of the case scheduled to be heard on 7 November 1996,

Has the honor to respectfully request from the Trial Chamber the joinder of the accused Clément Kayishema and Obed Ruzindana, based on the following:

The counsel for the accused Clément Kayishema has notified the Office of the Prosecutor of the motion he has filed with this Chamber for a continuance of his client's trial.

The Office of the Prosecutor trusts the wisdom of the Chamber as to the action to be taken on that request, but proposes, should the Chamber consider granting the request, that the Chamber order the joinder of the accused with his co-accused Obed Ruzindana.

Indeed, Clément Kayishema and Obed Ruzindana, who are both presently awaiting trial before the International Criminal Tribunal for Rwanda, have been indicted in the **same indictment** references 95/TPIR-1-I which was confirmed on 28 November 1995 by Judge Pillay. A reading of this indictment shows that these two individuals are accused of the **same crimes** of genocide, crimes against humanity and violations of article 3 common to the Geneva Conventions and Additional Protocol II thereto, committed **in the course of the same transaction**, namely massacres of the civilian population, perpetrated in the area of Bisero, Prefecture of Kibuye, between April and June 1994.

Therefore, the proceedings concerning the accused Clément Kayishema and Obed Ruzindana fulfill the conditions for joint trials, as set forth in Rule 48 of the Rules of Procedure and Evidence, and the two accused can be jointly tried under the same Rule.

The Prosecutor requests the joinder of the accused for reasons related to the good administration of justice:

- on the one hand, a significant number of the witnesses called to testify in both trials are the same, and joint trials of the individuals concerned will facilitate a more coherent and reasoned perception of the evidence submitted;
- on the other hand, for emotional and physical reasons related to their security, some of the witnesses would probably not be willing or able to come forward and testify several times;

finally, the joinder of the accused will obviate the possible risks of contradiction or inconsistency of decisions, in matters which are indivisible and related.

WHY the undersigned Prosecutor concludes that it may please the Trial Chamber to:

- grant this request and **order the joinder of the accused** Clément Kayishema and Obed Ruzindana
- consequently and in case of a continuance, to set a same date for the trials of Clément Kayishema and Obed Ruzindana, for them to be jointly tried in accordance with the law.

Done at Arusha, 4 November 1996
For the Prosecutor of the
International
Criminal Tribunal for Rwanda

Jonah Rahetlah
Senior Trial Attorney

**THE INTERNATIONAL CRIMINAL
TRIBUNAL FOR RWANDA**

Case No.: ICTR-95-1-I

IN THE TRIAL CHAMBER

Before:

Registrar: Dr. Andronico O. Adede

Date filed: 2 September 1996

THE PROSECUTOR

v.

CLEMENT KAYISHEMA

**RESPONSE TO THE PRELIMINARY MOTIONS
BROUGHT FORTH BY THE DEFENCE**

The Prosecutor
Justice Richard J. Goldstone

Counsel for the Accused
Mr. André Ferran

The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to his authority under Article 17 of the Statute of the International Criminal Tribunal for Rwanda ("the Statute") hereby responds to the preliminary motion filed on 26 July 1996 by the accused Clément KAYISHEMA.

1 - ON THE MATTER OF PROCEDURE

On 28 November 1995, pursuant to Article 18 of the Statute and ICTR Rule 47, a Judge of the International Criminal Tribunal for Rwanda confirmed an indictment against the accused and seven others. The indictment was amended and subsequently confirmed on 29 April 1996. The 25 count indictment charges the accused with crimes relating to a series of massacres which occurred in Kibuye Prefecture, Rwanda in 1994. The charged crimes are conspiracy to commit genocide, genocide, crimes against humanity and violations of Article 3 Common to the Geneva Conventions and Additional Protocol II.

Pursuant to ICTR Rule 47(A), additional material supporting the charges against the accused was submitted at the time of the indictment. This material included excerpts from statements of victims and witnesses which delineate the accused's involvement in the above-mentioned crimes. The statement excerpts were letter-coded to safeguard the identity of the witnesses, although the contents of the some of the excerpts revealed the identity of several witnesses.

On 31 May 1996, the accused made his initial appearance before a Trial Chamber in Arusha, Tanzania and pleaded not guilty to the 25 counts contained in the indictment.

On 13 July 1996, the Office of the Prosecutor began its compliance with ICTR Rule 66 and tendered to the Registry for transmittal to the defence redacted versions of the supporting material which accompanied the indictment. These materials were given to defence counsel on or about 15 July 1996. Those parts of statement excerpts which could potentially identify the witnesses were removed. These redactions were made out of a concern for the safety of the witnesses due to reports of violence against genocide survivors and witnesses in Rwanda, particularly in Kibuye Prefecture. This concern was also based on statements made by several witnesses who expressed fear for their safety. Before disclosure was made to the defence however, the issues concerning witness safety were discussed in a telephone conversation with defence counsel on 3 July 1996. In that conversation, the Office of the Prosecutor informed defence counsel that it would disclose a redacted version of the supporting documentation and that actual witness statements would be disclosed when the Office of the Prosecutor had a clear directive from the Trial Chamber regarding adequate witness protection measures. The Office of the Prosecutor communicated that these precautionary measures were being undertaken to ensure the well-being of the witnesses pursuant to its obligations under the Statute and the ICTR Rules. This conversation was memorialized in a letter written to defence counsel on 8 July 1996 and communicated to him

through the Registry along with the redacted supporting documentation on or about 15 July 1996. See Letter to André Ferran dated 8 July 1996 attached hereto as Exhibit A.

To date, the Office of the Prosecutor has not given to defence counsel an unredacted version of the supporting material or the prior statements obtained by the Office of the Prosecutor from prosecution witnesses. However, the supporting material transmitted to defence counsel on or about 15 July 1996 contained excerpts from 22 different witness statements which supported the counts set forth in the indictment.

On 26 July 1996, defence counsel André FERRAN filed a preliminary motion on behalf of his client, the accused Clément KAYISHEMA.

This motion is discussed below.

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2 - ON THE MATTER OF THE FILED MOTION

2.1 - Dismissal on procedural grounds

The possibility for both parties to submit preliminary motions is provided for and governed by Rules 72 and 73 of the Rules of Procedure and Evidence (RPE).

Whereas Rule 72, entitled "General Provisions", stipulates the modalities by which a motion may be submitted to and examined before the Trial Chamber, Rule 73 lists the grounds of admissibility of such motions.

The latter Rule lists the preliminary motions that may be filed by the accused as follows:

- (i) Objections based on lack of jurisdiction;
- (ii) Objections based on defects in the form of the indictment;
- (iii) applications for the exclusion of evidence obtained from the accused or having belonged to him;
- (iv) applications for severance of crimes joined in one indictment under Rule 49, or for separate trials under Rule 82(B);
- (v) objections based on the denial of request for assignment of counsel.

The drafting of this rule, which states that "Preliminary motions by the accused shall include" clearly indicates that this list is restrictive.

However, the reading of the terms of the motion presently before your Chamber shows that its objective is to demonstrate that the Prosecutor has prevented the accused from exercising his right to bring forth the preliminary **motions that he is authorized to file pursuant to said Rule 73 of the RPE, and to have the Tribunal to find that the rights of the defence and the principles of fairness for trial have been violated on the basis of which the proceedings should be nullified and the applicant released.**

As presented, the motion does not satisfy any of the grounds of admissibility of preliminary motions exhaustively stipulated under Rule 73 of the RPE with respect to accused and must be declared INADMISSIBLE on procedural grounds.

2.2 - Alternatively, dismissal on the merits

In the unlikely event that the Trial Chamber should find the motion to be admissible and thus decide to thoroughly examine the merits of the filed motion, the Prosecutor would ask, alternatively, that the Trial Chamber declare it to be unfounded and dismiss it on the grounds hereafter.

As previously stated, in the terms of his motion, which definitively detail the merits of the request before the Tribunal, the accused calls for an annulment of the proceedings and his subsequent release, on the grounds that he allegedly did not, "**within the time-limit prescribed in Rule 73 of the RPE, have the opportunity to bring forth preliminary motions, due to the non-disclosure of the case files and related materials by the Prosecutor**" which in such a case allegedly constituted a "**definitive, irremediable violation**" of the rights of the Defence and of the principle of a fair trial, **circumstances which should prevent the indictment from being acted upon and put a stop to the related proceedings.**

These assertions are groundless.

On one hand, the Defence did receive the supporting materials and prior statements on 15 July 1996, as called for in Rule 66(A) of the RPE. And while the identifying information in these materials and statements has been redacted and some references temporarily removed on grounds relating to the protection of the interested persons, it cannot and does not mean that the accused "**had no knowledge whatsoever of the materials in the case file and the charges made against him**" (page 5 of the filed motion). Moreover, the Office of the Prosecutor has filed the type of motion provided for in Rule 69 of the RPE. On 15 July 1996, the accused was still within the normal 60 day time-limit in which he could bring forth any preliminary motion he so pleased. He also had the relative information which the RPE states must be provided to him in order for him to proceed. If he failed to do so, then the Prosecutor cannot be held responsible for such failure to act.

On the other hand, Rule 73, (B) of the RPE states the following: "**Any of the motions by the accused referred to in Sub-rule (A) shall be brought within sixty days after his initial appearance, and IN ANY CASE BEFORE THE HEARING ON THE MERITS**".

It emerges that the expressed sixty day time-limit is in no way imperative and that the accused still has the possibility of filing preliminary motions on his behalf, even after the expiration of the time-limitation, so long as such action is brought forth prior to the hearings on the merits. This rule merely conforms to the principle stated and expressed in the preceding Rule 72 as follows: "**the Trial Chamber shall dispose of preliminary motions IN LIMINE LITIS**". Moreover he will always be free, should the need arise, to request and obtain from the Tribunal, for the preparation of his Defence, such time as the Tribunal shall deem appropriate to grant him in order to respect the conditions for a fair trial as prescribed by Article 20(4)(b) of its Statute and Rule 73(c) of the RPE. These provisions are more directly relevant to the Tribunal than the (European) Convention for the Protection of Human Rights and Fundamental Freedoms, (which is only a source, a respectable one indeed, of jurisprudential inspiration in all rulings rendered within its jurisdictional body).

It thus appears that the assertion made in the filed motion that the rights of the defence and the principles of a fair trial have "irremediable and definitively" been violated, is **factually inaccurate and legally erroneous**.

3. ON THE MATTER OF THE CONCLUSION

Based on the foregoing, the Prosecutor respectfully calls upon the Trial Chamber:

- 3.1 - To dismiss the motion by Mr. KAYISHEMA on procedural grounds with no examination of the merits;

3.2 - Should the Trial Chamber decide to grant Mr. KAYISHEMA's motion, to proclaim it unfounded, and thus dismiss it.

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3.3 - To declare in either case that the proceedings shall continue their normal course in accordance with the Rules of Procedure and Evidence.

Kigali, On 2 September 1996

For the Prosecutor

The Deputy Prosecutor

Honoré Rakotomanana

UNITED NATIONS **NATIONS UNIES**
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

TRIAL CHAMBER 1

OR : FR

Before: **Judge Laïty Kama, Presiding Judge**
 Judge Lennart Aspegren
 Judge Yakov A. Ostrovsky

Registry: **Ms. Prisca Nyambe**
 Ms. Cécile Aptel

Decision of: **6 November 1996**

THE PROSECUTOR
VERSUS
CLEMENT KAYISHEMA

Case No. ICTR-95-1-T

DECISION ON THE PRELIMINARY MOTION
FILED BY THE DEFENCE

The Office of the Prosecutor:

Mr. Jonah Rahetlah
Ms. Elizabeth Ann Farr
Ms. Brenda Sue Thornton
Mr. Cheickh Mara

The Counsel for the Accused:

Mr. André Ferran

THE TRIBUNAL

Sitting as Trial Chamber 1, composed of Judge Laïty Kama as Presiding Judge, Judge Lennart Aspegren and Judge Yakov A. Ostrovsky;

CONSIDERING the indictment issued by the Prosecutor against Clément Kayishema pursuant to rule 47 of the Rules of Procedure and Evidence ("The Rules"), on the basis that there was sufficient evidence to provide reasonable grounds for believing that he has committed genocide, conspiracy to commit genocide, crimes against humanity and violations of article 3 common to the 1949 Geneva Conventions and Additional Protocol II thereto;

CONSIDERING the decision confirming this indictment, signed by Judge Navanethem Pillay on 28 November 1995;

CONSIDERING the preliminary motion filed by the Defence on 26 July 1996;

CONSIDERING the response to the aforementioned motion filed by the Prosecutor on 2 September 1996;

HAVING THEN HEARD the parties at the hearing held on 5 November 1996,

CONSIDERING the Statute and the Rules of the Tribunal, namely Rules 66 and 73;

AFTER HAVING DELIBERATED:

WHEREAS the Defence has filed before the Tribunal a preliminary motion in which it requests the annulment of the procedure, and consequently, the provisional release of Clément Kayishema, and the annulment of the procedure leading to an arrest warrant;

A. On the matter of the Defence's motions for the annulment of proceedings

WHEREAS, in support of its request, the Defence pleads that, since the case documents have not been made available to it by the Prosecutor, as provided for in Rule 66(A) of the Rules, within the sixty day time-limit set by Rule 73(B) in which preliminary motions may be filed by the Defence, its rights to file said motions were violated because it was foreclosed;

WHEREAS the Tribunal considers that disclosure under Rule 66 of the Rules is intended to ensure that the rights of the Defence are respected, out of concern for equal justice, since the said Rule provides for the Defence to obtain in a timely manner all the evidence that the Prosecutor intends to use at trial, so that the Defence may contest and possibly rebut it, and that the expression used in Rule 66(A) of the Rules: "As soon as practicable after the initial appearance (...)" must be interpreted in the light of the principles of equal justice, as stated above;

WHEREAS, in this regard, the Tribunal recalls that, although nothing inhibits references to regional Human Rights agreements, such as the African Charter on Human and Peoples' Rights or the European Covenant for the Protection of Human Rights and Fundamental Freedoms, the fact remains nonetheless that both the Statute of the Tribunal and its Rules refer to universal instruments of Human Rights, ratified by a large number of States, such as the Universal Declaration of Human Rights and particularly the International Covenant on Political and Civil Rights, and Article 14 of this Covenant which directly inspired the drafting of Article 20 of the Statute and of the provisions of the Rules concerning the rights of the accused;

Case No. ICTR-95-1-T

WHEREAS the Tribunal considers that Rule 73 of the Rules, which provides the Defence with the possibility to file preliminary motions, can only be applied if the Prosecutor has first complied with the provisions of Rule 66 of the Rules;

WHEREAS, in her comments on the motion by the Defence, the Prosecutor maintains, and without contest from said Defence, that on 15 July 1996, she disclosed to the Defence the supporting documentation to the indictment, in accordance with Rule 66 of the Rules, and that henceforth the Defence had the opportunity to file preliminary motions in application of Rule 73 of the Rules, since it was still within the sixty day time-limit provided by the said Rule which expired on 30 July 1996;

WHEREAS the Tribunal is of the opinion that, even if the versions of the indictment and the attached supporting documentation submitted by the prosecutor, including witness statements, were partially redacted, this could not have prevented the Defence, contrary to what it pleaded in court, from filing preliminary motions based on defects in the form of the indictment, or on the exclusion of evidence obtained from the accused or having belonged to him; this action was possible, since, during the hearing, the Defence counsel himself mentioned that the evidence from the indictment, which it received on 15 July 1996 or thereafter, was not only incomplete but also often illegible, and that in some cases, entire sections of the witness statements had been removed;

WHEREAS, finally the Tribunal deems that the Prosecutor, with regard to her disclosure of materials to the Defence on 15 July 1996, has complied with the provisions under Rule 66 of the Rules;

WHEREAS, in addition, it is the opinion of the Tribunal that even if the Prosecutor had not complied with the said provisions, the annulment of the disclosed materials or that of the proceedings, as moved by the Defence, could not have been ordered, as this sanction is not provided for by the Rules;

WHEREAS, in this regard, attention must be drawn once again to the differences that may exist between the Rules and various national legislations, which provide for the possibility of

sanctioning procedural errors with textual or substantive annulments, when, in the latter case, there is a prejudice to the very substance of a right or of a legislative or regulatory text;

WHEREAS in her written response of 2 September 1996 to the motion filed by the Defence, the Prosecutor indicated that: "To date, the Office of the Prosecutor has not disclosed to the Defence the complete versions of the supporting documentation or the previous statements made by witnesses for the prosecution collected by the Office of the Prosecutor", the Tribunal reminds the Prosecutor that, subject to an order of non-disclosure from the Tribunal, she is obliged to disclose to the Defence all materials provided under Rule 66(A) of the Rules which are presently in her possession;

FOR THE AFOREMENTIONED REASONS, the Tribunal deems that it cannot order an annulment, as moved by the Defence, as such sanction is not provided for by the Rules. It nonetheless reminds the Prosecutor of her obligation to disclose the materials currently in her possession, and to make them available to the Defence through the Registrar, in accordance with Rule 66 of the Rules, and requests the Prosecutor to comply with this obligation within fifteen days;

B. On the matter of the request for the provisional release of Clément Kayishema filed by the Defence

WHEREAS the Tribunal deems that, on the one hand, since the arrest warrant cannot be nullified, there can be no annulment of the procedure, and that, on the other hand and in any event, a provisional release may only be ordered in exceptional circumstances, as stated in Rule 65 of the Rules, such circumstances having not been demonstrated by the applicant;

FOR THESE REASONS,

THE TRIBUNAL

DECIDES not to grant the preliminary motion filed by the Defence neither for the annulment of the procedure, which as stated herein is not provided by the Rules, nor regarding the provisional release of Clément Kayishema,

REMINDS the Prosecutor of the obligation regarding the disclosure of materials as provided under Rule 66 of the Rules, subject to the provisions called for in the Tribunal's decision on the motion filed by the Prosecutor for an order for protection measures for victims and witnesses, and requests that she comply within fifteen days, from today's date.

Arusha, 6 November 1996

Laïty Kama
Presiding Judge

Lennart Aspegren
Judge

Yakov A. Ostrovsky
Judge

(Seal of the Tribunal)

UNITED NATIONS **NATIONS UNIES**
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

TRIAL CHAMBER 1

OR : FR

Before: **Judge Laïty Kama, Presiding Judge**
 Judge Lennart Aspegren
 Judge Yakov A. Ostrovsky

Registry: **Ms. Prisca Nyambe**
 Ms. Cécile Aptel

Decision of: **6 November 1996**

THE PROSECUTOR
VERSUS
CLEMENT KAYISHEMA

Case No. ICTR-95-1-T

DECISION ON THE JOINDER OF THE ACCUSED
AND SETTING THE DATE FOR TRIAL

The Office of the Prosecutor:

Mr. Jonah Rahetlah
Ms. Elizabeth Ann Farr
Ms. Brenda Sue Thornton
Mr. Cheickh Mara

The Counsel for the Accused:

Mr. André Ferran

THE TRIBUNAL

Sitting as Trial Chamber 1, composed of Judge Laïty Kama as Presiding Judge, Judge Lennart Aspegren and Judge Yakov A. Ostrovsky;

CONSIDERING the indictment issued by the Prosecutor against Clément Kayishema pursuant to Rule 47 of the Rules of Procedure and Evidence ("The Rules"), on the basis that there was sufficient evidence to provide reasonable grounds for believing that he has committed genocide, conspiracy to commit genocide, crimes against humanity and violations of article 3 common to the 1949 Geneva conventions and Additional Protocol II thereto;

CONSIDERING the decision confirming this indictment, signed by Judge Navanethem Pillay on 28 November 1995;

CONSIDERING the preliminary motion filed on 23 October 1996 by the Defence for postponement of the trial;

CONSIDERING the motion for joinder of the accused filed by the Prosecutor on 5 November 1996;

CONSIDERING the decision of the Tribunal of 29 October 1996, following the initial appearance of Obed Rusindana;

HAVING THEN HEARD the parties at the hearing held on 5 November 1996,

CONSIDERING the Statute and the Rules of the Tribunal;

AFTER HAVING DELIBERATED:

WHEREAS the Defence filed a motion before the Tribunal for postponement of the trial of Clément Kayishema to a later date, in order to enable it to prepare;

WHEREAS the Prosecutor, who is not opposed to the request by the Defence, also filed a motion for joinder of the trials of Clément Kayishema and of Obed Ruzindana, his co-accused in Case No. ICTR-95-1-T, should the Tribunal decide to grant the aforementioned motion;

WHEREAS the Rules provide for the possibility of joinder of the accused in Rule 48, which states that, "Persons accused of the same or different crimes committed in the course of the same transaction may be jointly charged and tried";

WHEREAS the Prosecutor argues in support of her request that Clément Kayishema and Obed Ruzindana are both presently awaiting trial before the Tribunal, that they are charged in the same indictment in Case No. ICTR-95-1-T, that these two individuals are accused of the same crimes of genocide, crimes against humanity and violations of article 3 common to the

Geneva Conventions and Additional Protocol II thereto, that these crimes were committed in the course of the same transaction, namely massacres perpetrated in the area of Bisesero, in Kibuye *Prefecture*, during the month of April 1994;

WHEREAS the possibility of a joinder of the accused had already been envisaged by the Tribunal in its decision of 29 October 1996, following the initial appearance of Obed Ruzindana;

WHEREAS, along with the Prosecutor, the Tribunal deems that the requested joinder would allow for a better administration of justice, by ensuring at the same time a more consistent and detailed perception of the evidence presented by the Prosecutor, better protection of the victims' and witnesses' physical and mental safety, and by eliminating the need for them to make several journeys and to repeat their testimony;

WHEREAS the Tribunal also deems that the requested joinder would obviate risks of contradiction in the decision rendered when related and indivisible facts are examined;

FOR THESE REASONS,

THE TRIBUNAL

ORDERS the joinder of the two accused Clément Kayishema and Obed Ruzindana in Case No. ICTR-95-1-T;

DECIDES that the trial date for Clément Kayishema shall consequently be postponed to the trial date set for Obed Ruzindana in Case No. ICTR-95-1-T, that is Thursday 20 February 1997 at 9:30 hours;

INSTRUCTS the Registrar to notify all parties concerned of this decision, including the Defence for Obed Ruzindana.

Arusha, 6 November 1996

Laïty Kama
Presiding Judge

Lennart Aspegren
Judge

Yakov A. Ostrovsky
Judge

(Seal of the Tribunal)

**THE INTERNATIONAL CRIMINAL
TRIBUNAL FOR RWANDA**

Case No. 95-1-I

IN THE TRIAL CHAMBER

Before:

Registrar: Dr. Andronico O. Adede

Date filed: 2 September 1996

THE PROSECUTOR

v.

CLEMENT KAYISHEMA

**MOTION BY THE OFFICE OF THE PROSECUTOR FOR ORDERS FOR
PROTECTIVE MEASURES FOR VICTIMS AND WITNESSES OF
CRIMES ALLEGED IN THE INDICTMENT**

**The Prosecutor
Judge Richard J. Goldstone**

**Counsel for the Defence
Mr. Andre Ferran**

**MOTION BY THE OFFICE OF THE PROSECUTOR FOR ORDERS FOR
PROTECTIVE MEASURES FOR VICTIMS AND WITNESSES OF
CRIMES ALLEGED IN THE INDICTMENT**

Pursuant to Rules 69 of the Rules of Evidence and Procedure of the International Criminal Tribunal for Rwanda (the "ICTR Rules"), the Office of the Prosecutor requests that the Trial Chamber issue an order for the temporary non-disclosure to the public and the defence of the identity of all prosecution witnesses and any information in the supporting material and prior statements of the witnesses which would reveal their identity. The Office of the Prosecutor also respectfully moves for an order sealing the unredacted version of the supporting material currently on file with the Court so that it will be withheld from the Tribunal's public records. In addition, the Office of the Prosecutor requests that the hearing on this motion be heard in closed session.

I. INTRODUCTION

On or about 6 April 1994, following the crash of the Rwandan President's plane. Soon thereafter, attacks on, and widespread killings of civilians began throughout Rwanda. In the Prefecture of Kibuye alone, between 7 April 1994 and July 1994, thousands of ethnic Tutsi civilians were killed. At the time of these killings, the accused, Clement Kayishema, was the Prefect of the Kibuye Prefecture. See Prosecutor against Clement Kayishema, Case No. ICTR-95-1-I.

On 28 November 1995, pursuant to Article 18 of the Statute and ICTR Rule 47, a Judge of the International Criminal Tribunal for Rwanda confirmed an indictment against the accused and seven others. The indictment was amended and subsequently confirmed on or about 29 April 1996. The 25 count indictment charges the accused with crimes relating to a series of massacres which occurred in Kibuye Prefecture, Rwanda in 1994. The charged crimes are conspiracy to commit genocide, genocide, crimes against humanity, violations of Article 3 Common to the Geneva Conventions and violations of Additional Protocol II.

Pursuant to ICTR Rule 47(A), additional material supporting the charges against the accused was submitted at the time of the indictment. This material included excerpts from statements of victims and witnesses which delineate the accused's involvement in the above-mentioned crimes. The statement excerpts were letter-coded to safeguard the identity of the witnesses, although the content of the some of the excerpts revealed the identity of several witnesses.

On 31 May 1996, the accused made his initial appearance before a Trial Chamber in Arusha, Tanzania and pled not guilty to the 25 counts contained in the indictment.

On 13 July 1996, the Office of the Prosecutor began its compliance with ICTR Rule 66 and tendered to the Registry for transmittal to the defence redacted versions of the supporting material which accompanied the indictment. These materials were given to defence counsel on or about 15 July 1996. Those parts of statement excerpts which could potentially identify the witnesses were removed. These redactions were made out of a concern for the safety of the witnesses due to reports of violence against genocide survivors and witnesses in Rwanda, particularly in Kibuye Prefecture. This concern was also based on statements made by several witnesses who expressed fear for their safety. Before disclosure was made to the defence, however, the issues concerning witness safety were discussed in a telephone conversation with defence counsel on 3 July 1996. In that conversation, the Office of the Prosecutor informed defence counsel that it would disclose a redacted version of the supporting documentation and that actual witness statements would be disclosed when the Office of the

ICTR 95-1-I

Prosecutor had a clear directive from the Trial Chamber regarding adequate witness protection measures. The Office of the Prosecutor communicated that these precautionary measures were being undertaken to ensure the well-being of the witnesses pursuant to its obligations under the Statute and the ICTR Rules. This conversation was memorialized in a letter written to defence counsel on 8 July 1996 and communicated to him through the Registry along with the redacted supporting documentation on or about 15 July 1996. See letter to André Ferran dated 8 July 1996 attached hereto as Exhibit A.

To date, the Office of the Prosecutor has not given to defence counsel an unredacted version of the supporting material or the prior statements obtained by the Office of the Prosecutor from prosecution witnesses. However, the supporting material transmitted to defence counsel on or about 15 July 1996 contained excerpts from 22 different witnesses which supported the counts set forth in the indictment.

II. DISCUSSION

The Office of the Prosecutor recognizes its obligations pursuant to ICTR Rule 66 to make available to the defence copies of the supporting material which accompanied the indictment as well as prior statements obtained by the Office of the Prosecutor from prosecution witnesses. However, the Office of the Prosecutor is also aware of the fact that since January 1996, the level of violence directed against survivors of and witnesses to the 1994 genocide has increased dramatically and that many survivors and witnesses have been killed. Specifically, 98 attacks have been reported and confirmed in the first half of the year, the majority of which took place in the month of June when 85 people died and many others were seriously injured. See Declaration of Ian Martin attached hereto as Exhibit B at paragraphs 9-10. The Office of the Prosecutor is specifically aware of the fact that there has been an escalation of violence against survivors and witnesses in the Prefecture of Kibuye where most of the witnesses in this case live. The threat is particularly high in the Kibuye

region as it borders the country of Zaire where many of those who participated in the 1994 genocide currently reside.

Article 21 of the Statute requires the establishment of measures for the protection of witnesses which include, among other things, closed proceedings and the protection of the victim's identity. The need for protection of witnesses is not a new concept as it has been recognized world-wide by various domestic courts and, more recently, by the International Criminal Tribunal for the Former Yugoslavia in Prosecutor against Dusko Tadic, IT-94-I-T, page 18 (10 August 1995). The security and protection of witnesses and survivors of the massacres are of utmost consideration to the Office of the Prosecutor. The Office of the Prosecutor, therefore, is currently undertaking a detailed analysis of the security needs of each witness and plans to make a motion pursuant to ICTR Rules 69, 75 and 79 requesting specific protective measures as soon as it is able to make an individual evaluation of the concerns of each witness. At the same time, however, the Office of the Prosecutor also recognizes its obligation to facilitate, at the earliest time, the transfer of witness statements to the defence so that the defence can begin preparing its case.

Therefore, the Office of the Prosecutor requests that, pursuant to ICTR Rule 69(A), the Trial Chamber order the temporary pre-trial non-disclosure to the public or the defence of the identity of all prosecution witnesses and any information in the supporting material and witness statements that would reveal their identity. The Office of the Prosecutor also respectfully moves for an order sealing the unredacted version of the supporting material currently on file with the Court so that they are withheld from the Tribunal's public records. In addition, the Office of the Prosecutor requests that the hearing on this motion be heard in closed session.

III. CONCLUSION

For the above reasons, the Office of the Prosecutor respectfully asks that the Trial Chamber grant the requested relief and order that the confidentiality of the witnesses be preserved and their identity not be disclosed to the public or temporarily to the defence.

Jonah Rahetlah
Senior Trial Attorney

Elizabeth Ann Farr
Assistant Trial
Attorney

Brenda Sue Thornton
Legal Officer

DECLARATION OF IAN MARTIN

I, Ian Martin, declare that the foregoing is true to the best of my knowledge and belief:

1. I am currently the Chief of Mission at the United Nations High Commissioner for Human Rights Field Operation in Rwanda ("HRFOR") which is based in Kigali, Rwanda. I have held this position since October, 1995. Prior to this, between April 1993 and December 1993, I served as the Deputy Executive Director and Director for Human Rights of the International Civilian Mission in Haiti of the United Nations and Organization of American States. Prior to that, between 1986 and October 1992, I was Secretary General of Amnesty International.
2. As Chief of Mission, I oversee the activities of the Human Rights Field Operation in Rwanda. As part of my responsibilities I supervise 70-75 Human Rights Field Officers ("the Officers") throughout Rwanda and review their reports.
3. The Officers fulfill several functions including, human rights promotion, education, working with the local judiciary, monitoring the returning of refugees and the tracking of human rights violations in Rwanda.
4. The Officers are divided into teams of 4-6 ("team") and are assigned to each prefecture in Rwanda, with the exception of Byumba Prefecture which was recently divided into two prefectures and is thus covered by one team.
5. Each team is required to file bi-monthly and monthly reports on its activities. In addition, as necessary, a team will file event-related reports pertaining to any serious incidents that may occur. These reports are made as quickly as possible after learning of an incident, usually within a day or two of the event.
6. In making a report certain guidelines must be adhered to by the Officers. These guidelines are designed to ensure that investigations are done thoroughly and in an unbiased manner. These guidelines lay out the mandate of the mission, provide general principles to be followed and specific instructions on how to conduct interviews, work with interpreters and verify and corroborate the information received. In addition, the guidelines provide instructions on reporting and its requirements, and set forth the need for confidentiality.
7. In Rwanda, the Officers have been requested to ask specific questions which are designed to provide detailed information as to what had occurred. Some of these questions include inquiries as to the status or classification of the victim. In particular, whether the victim is or was a witness to the events of the spring of 1994, a genocide survivor, a refugee or a relative of a member of a classified group.
8. Over the past several months I have received and reviewed numerous event-related reports in relation to attacks on survivors of and witnesses to the genocide of 1994. I have noted that the number of attacks has increased significantly since April of this year.

9. The event-related reports indicate that between January and June 1996, there were approximately 98 cases of attacks against genocide survivors or witnesses which occurred throughout Rwanda. Of these attacks, no cases were reported in January, one case was reported in February, 14 cases in March, 16 in April, 17 in May and 37 in June.
10. The attacks included approximately 85 killings, two attempted killings, three disappearances and several injuries. Of the 85 killings and attacks, the majority occurred in the Southern, Southwestern, Western and Northwestern regions of Rwanda. However, in the month of June approximately one dozen killings occurred in northern Kigali Rural Prefecture, just north of the nation's capital in the central part of the country.
11. The following cases are illustrative of the type of recent attacks on survivors of and witnesses to the genocide:
 - a. On April 10 Estephanie Mukarubera, of Shyara Cellule, Muhoro Sector, Mbazi commune, Butare Prefecture, left her residence to tend her field. Two days later, her mutilated body was found in the field. Her head and arms were cut off. The skull without hair and teeth was found in a neighboring sector, two kilometers away from where the dead body was found. According to information received by HRFOR, the victim was a survivor of the genocide and one of the sole witnesses to acts committed in her commune during the genocide.
 - b. On 22 April, Jeanne Nyiramondo, of Gacumbi cellule, Kilimbi sector, Rwamatatu Commune, Kibuye Prefecture, a school teacher at the primary school of Gacumbi and *Responsable de cellule* and a genocide survivor, was killed and decapitated by a group of 10 alleged members of the Interahamwe militia and two members of the ex-FAR. (See paragraph 14 for an explanation of Interahamwe militia and ex-FAR). The head of the victim was reportedly taken away by the perpetrators to Ijwi island. Mrs. Nyiramondo was the sole witness to acts committed in her cellule during the genocide. According to reports, she, as a genocide survivor, had repeatedly been the victim of death threats by a group alleged to be the perpetrators of the killing. The victim's spouse had reportedly paid a sum of money so the group would not carry out their threats.
 - c. During the night of 14 to 15 May 1996, at around 10:00 p.m., Dafroze Mukanjambibwa, a genocide survivor, and her three year-old daughter were killed with a hoe and knife at their residence in Gitambi Cellule, Murasa Sector, Gatara Commune, Cyangugu Prefecture, by a group of individuals said to have been members of the Interahamwe militia. Dafroze Mukanjambibwa's name was reportedly included on a death list.
 - d. During the night of 20 to 21 May 1996, Alexis Gatera, *Conseiller de secteur* and a survivor and/or witness to the genocide, was reportedly killed

with a hoe at his residence in Nyamugali Cellule, Nyamugali Sector, Gafunzo Commune, Cyangugu prefecture, by a group of at least four perpetrators said to have been members of Interahamwe militia. The head of the victim was cut off and taken away by perpetrators. The sister of the victim, a survivor and/or witness to the genocide, was seriously injured during the incident. It is reported that Mr. Gatera and his sister had received pamphlets on two separate occasions in which their names were included on a death list.

e. During the night of 18 to 19 June 1996, a group of 40 to 50 infiltrators from Ijwi island attacked a small village in Bunyamanza Cellule, Gitsimbwe Sector, Rwamatumu Commune, Kibbuye Prefecture. The village consists of 15 to 20 houses. Prior to the incident, approximately 60 genocide survivors lived there. The infiltrators reportedly surrounded the houses in the small village and went from house to house, killing the residents with guns and hatches. Reports on the total number of victims who died in the incident vary from 13 to 15. This number includes at least 10 genocide survivors, including three men, two women and five minors. Three of their relatives were also killed in the attack. According to a witness, two of the infiltrators stayed at the scene of the attack a few minutes longer threatening to come back to kill the remaining genocide survivors.

f. On Monday June 24, 1996, a group of approximately 10 unidentified armed individuals wearing civilian clothes attacked a group of three houses in Nyabitare Cellule, Minazi Sector, Rushashi Commune, Kigali Rural Prefecture, and killed a 70-year-old farmer, his 60 year-old wife, a daughter, a son and four other members of the family. The victims were all survivors of the genocide. They were shot and/or beaten to death.

g. On 27 June, 1996, a group of approximately 30 unidentified armed individuals attacked Kiruma Cellule, Nyamugeyo Sector, Muremure and Kinihira Cellules, Rubare Sector, Giciye Commune, Kabaya Sub-Prefecture, and Gisenyi Prefecture. The attack lasted approximately two hours. Twenty eight civilians were killed with guns, grenades and knives. The victims included 16 genocide survivors and 10 old caseload returnees. Of the victims, 17 were men, six women, and five minors. Additionally, six civilians were injured, including one genocide survivor.

12. I believe that in Rwanda people are being attacked and killed specifically because of their status as survivors or witnesses to the 1994 genocide. I base this belief on my experience, a review of all reports, the information contained in paragraph 11 above, and on the fact that I have counted on at least seven occasions that the names of the victims are reported to have been included on death lists.
13. Some of the killings in Rwanda especially in the prefectures of Butare, Cyangugu, Gisenyi and Kibuye, were done by way of decapitation and other forms of mutilation. I believe that the manner in which these killings are being perpetrated is intended to intimidate

other witnesses. I base this belief on the same reasons cited above in paragraph 12 and also on the fact that in the majority of attacks, the families and relatives of the victims were also targeted.

14. In the majority of the cases, based on the information I have received, I believe that the perpetrators are most likely members of the former Rwandees Armed Forces (ex-FAR), members of Interahamwe militia, or other insurgents opposed to the Government of Rwanda. Based on my training and experience, I believe that these perpetrators are either ethnically, politically and/or ideologically aligned with many of those who are accused by the International Criminal Tribunal for Rwanda.
15. Although the attacks have been primarily conducted by the above described perpetrators, I believe the attacks may have the effect of emboldening people within Rwanda to also carry out attacks on genocide survivors and witnesses. I base this opinion on what has been conveyed to me and what I have learned in the performance of my responsibilities.
16. Based on the above, I believe that the recent attacks have had some discernible effects on other genocide survivors and witnesses in Rwanda. First and foremost, the attacks, based on all reports, are strongly discouraging people from offering testimony about the events of 1994. Additionally, I have observed, based on the information reported to me, that survivors/witnesses are starting to move and congregate together in areas further from the "attack zones." I am informed that the overall effects of this is a much higher level of anxiety among survivors, particularly in the border areas.
17. As a result of the escalation of these types of incidents, I believe that witnesses or genocide survivors believe and have reasonable grounds to believe that by testifying publicly in any proceedings, about their knowledge or experience in the events which took place in the spring of 1994, they will be placing themselves and their families in serious jeopardy. This belief is based on my experience, my review of all reports, the information which I conveyed above, and my speaking with the Officers who relayed to me the concerns of the witnesses/survivors.

August 1, 1996.

IAN MARTIN

UNITED NATIONS

NATIONS UNIES

International Criminal Tribunal for Rwanda

TRIAL CHAMBER 1

OR: FR

Before: Judge Laïty Kama, Presiding Judge
Judge Lennart Aspegren
Judge Yakov A. Ostrovsky

Registry: Ms. Prisca Nyambe
Ms. Cécile Aptel

Decision of: 6 November 1996

**THE PROSECUTOR
VERSUS
CLEMENT KAYISHEMA
OBED RUZINDANA**

Case No. ICTR-95-1-T

**DECISION ON THE MOTION FILED BY THE PROSECUTOR ON THE
PROTECTION OF VICTIMS AND WITNESSES**

The Office of the Prosecutor:

**Mr. Jonah Rahetlah
Ms. Elizabeth Ann Farr
Ms. Brenda Sue Thornton
Mr. Cheickh Mara**

The Counsel for the Accused:

Me André Ferran

THE TRIBUNAL

Sitting as Trial Chamber 1, composed of Judge Laïty Kama as Presiding Judge, Judge Lennart Aspegren and Judge Yakov A. Ostrovsky;

CONSIDERING the indictment issued by the Prosecutor against Clément Kayishema pursuant to Rule 47 of the Rules of Procedure and Evidence ("The Rules"), on the basis that there was sufficient evidence to provide reasonable grounds for believing that he has committed genocide, conspiracy to commit genocide, crimes against humanity and violations of article 3 common to the 1949 Geneva conventions and Additional Protocol II thereto;

CONSIDERING the decision confirming this indictment, signed by Judge Navanethem Pillay on 28 November 1995;

CONSIDERING the preliminary motion filed on 2 September 1996 by the Prosecutor seeking the issuance of an order for protection measures for victims of and witnesses to the crimes alleged in the indictment;

CONSIDERING the response to the aforementioned motion filed by the Defence on 23 October 1996;

HAVING THEN HEARD the parties at the hearing held on 5 November 1996;

CONSIDERING the provisions regarding the protection of victims and witnesses in Articles 19 and 21 of the Statute of the Tribunal and in Rules 69 and 75 of the Rules;

CONSIDERING the relevant decisions rendered by the Tribunal on 26 and 27 September 1996 respectively in cases ICTR-96-3-T and ICTR-96-4-T;

AFTER HAVING DELIBERATED:

WHEREAS, for the protection of victims and witnesses, the Prosecutor has filed a motion before the Tribunal to order the non-disclosure of their identities as well as several other measures for the same purpose;

WHEREAS in support of this motion, the Prosecutor has pointed out that, according to various concordant reports from human rights organizations, since January 1996, there has been a considerable increase in the number of violent acts directed against victims of and witnesses to the genocide and other serious violations of international humanitarian law committed in Rwanda in 1994, which in numerous cases have led to the death of the said persons;

WHEREAS, according to the Prosecutor, the threat is particularly serious in the Kibuye area, on the border with Zaire, where a large number of those who participated in the genocide and other serious violations of international humanitarian law committed in Rwanda in 1994 now reside;

WHEREAS, while invoking the provisions of Rule 69(A) of the Rules, the Prosecutor requests that the Tribunal issue a temporary pre-trial order for the non-disclosure to the public and the Defence of the identity of all victims and witnesses for the prosecution, as well as all identifying information in their previous statements and in the supporting documentation which may reveal their identities;

A. On the matter of the request for the non-disclosure of the identity of victims and witnesses to the public and the media

WHEREAS the non-disclosure of the identity of victims and witnesses to the public and the media is not only provided for by the general provisions of Rule 69(A) of the Rules, which, in any event, impose conditions which do not seem to have been fulfilled by the Prosecutor during the 15 July 1996 disclosure of supporting documentation to the indictment, and to which the Tribunal shall return herein, but also this non-disclosure is specifically provided for under Rule 75 of the Rules where it is explicitly mentioned in paragraph (B);

THE TRIBUNAL is consequently of the opinion that, regarding the non-disclosure to the public and the media of the identity of the victims and witnesses, it is appropriate to grant the measures requested by the Prosecutor to which, in any case, the Defence is not opposed; that these measures are even more comprehensible in light of the many concordant reports issued by various sources which describe the particularly worrisome situation in Rwanda and the neighboring countries where those persons who may have, in one way or another, borne witness to the events of 1994 are found today;

B. On the matter of the request for the non-disclosure of the identity of victims and witnesses to the Defence

WHEREAS Rule 69(A) of the Rules, invoked by the Prosecutor in requesting the non-disclosure of the identity of victims and witnesses to the Defence, although, given its general nature, no distinction is made between non-disclosure to the public, to the media and to the Defence, nevertheless provides specific pre-conditions for such a measure to be applied;

WHEREAS Rule 69(A) of the Rules requires that the Prosecutor first request a Trial Chamber to order such measures and that the request be made under exceptional circumstances;

WHEREAS, in this case, the Tribunal notes *ex officio* that the Prosecutor independently decided not to disclose the identity of victims and witnesses to the Defence, without first requesting an order from a Trial Chamber as required under Rule 69(A) of the Rules, after demonstrating the existence of exceptional circumstances;

WHEREAS the Prosecutor wrongfully submitted to the Defence versions in which identifying information on victims and witnesses were redacted, even if, contrary to what the Defence has moved, the Prosecutor would have had the legal right to do so, had she first obtained an order to that effect;

WHEREAS, in any event, the Trial Chamber does not have the power to nullify the documents submitted to the Defence, since the Rules do not provide for such a sanction;

WHEREAS, in this regard, the Tribunal draws attention to the differences that exist between the Rules and the various national legislations, which provide for the possibility of sanctioning the procedural errors with textual or substantive annulments, when, in the latter case, there is a prejudice to the very substance of a right or a legislative or regulatory text; and that this should not be surprising, given the particular character of the Tribunal, composed of Judges representing the principal legal systems of the world, in application of Article 12(3)(c) of the Statute of the Tribunal who bore in mind the need to maintain a perfect balance between, on the one hand the rights of the accused to a fair trial and, on the other hand the rights of the victims and witnesses, as well as the interest of the international community that justice be done in the most diligent manner possible;

Case No. ICTR-95-1-T

FOR ALL THE ABOVE STATED REASONS, the Tribunal considers that there is cause to grant the Prosecutor's request for measures but however reminds the latter that, in any case and in accordance with the provisions of Rule 69(C) of the Rules, the identity of the victims and witnesses shall be disclosed before the commencement of trial and within a time frame which will allow for the Defence to prepare;

FOR THESE REASONS,

THE TRIBUNAL

DECIDES the following measures:

- (1) The names and addresses of persons for whom pseudonyms were used in the indictment and supporting documentation, as well as their location and all other identifying information shall not be disclosed to the public nor to the media.
- (2) The public and the media shall not take photographs or video recordings, nor make sketches of victims or witnesses when the latter enter the Tribunal, are present therein, or exit therefrom, without the authorization of the Trial Chamber and the parties.
- (3) The names, addresses and other identifying information of the victims and witnesses, as well as their locations, shall be kept under seal and shall not be placed in any file at the Tribunal.
- (4) In cases where the names, addresses and other identifying information of the victims and witnesses, as well as their locations appear in any existing files at the Tribunal, such information shall be expunged from said files.

- (5) The pseudonyms given to the victims and witnesses in the indictment and the supporting documentation shall be used each time reference is made to said victims and witnesses in court, in the proceedings of the Tribunal, or during discussions between the parties.
- (6) The names, addresses and other identifying information of the victims or witnesses, as well as their locations, shall not be disclosed to the Defence so long as the said victims or witnesses are not under the protection of the Tribunal. On this point, the attention of the Registrar is drawn to the need to establish adequate protection measures, if it had not already been done.
- (7) Subject to the provisions of Rules 69 and 75 of the Rules, the Prosecutor, in any case, shall disclose to the Defence the names of victims, witnesses, and their unredacted statements, in order to allow the Defence a sufficient amount of time to prepare for trial.

Arusha, 6 November 1996

Laïty Kama
Presiding Judge

Lennart Aspegren
Judge

Yakov A. Ostrovsky
Judge

(Seal of the Tribunal)

II

<p>Georges Anderson Nderubumwe Rutaganda ICTR-96-3-T</p>
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Indictment

Confirmation of the indictment

Warrant of arrest

Request for continued detention

Request in extreme emergency introduced by the defence

Prosecutor's response to the motion for provisional release

Decision on the request submitted by the Defence

Decision on the Preliminary motion submitted by the prosecutor
on the protection of witnesses

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR RWANDA**

CASE NO: ICTR-96-3-T

**THE PROSECUTOR OF
THE TRIBUNAL**

AGAINST

GEORGES ANDERSON NDERUBUMWE RUTAGANDA

INDICTMENT

The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to his authority under Article 17 of the Statute of the Tribunal charges:

GEORGES ANDERSON NDERUBUMWE RUTAGANDA

**with GENOCIDE, CRIMES AGAINST HUMANITY and VIOLATIONS OF
ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS, as set forth
below:**

Background

1. On April 6, 1994, a plane carrying President Juvenal Habyarimana of Rwanda and President Cyprien Ntaryamira of Burundi crashed at Kigali airport, killing all on board. Following the deaths of the two Presidents, widespread killings, having both political and ethnic dimensions, began in Kigali and spread to other parts of Rwanda.

The Accused

2. **Georges RUTAGANDA**, born in 1958 in Masango commune, Gitarama prefecture, was an agricultural engineer and businessman; he was general manager and proprietor of Rutaganda SARL. **Georges RUTAGANDA** was also a member of the National and Prefectoral Committees of the *Mouvement Républicain National pour le Développement et la Démocratie* (hereinafter, "MRND") and shareholder of *Radio Télévision Libre des Mille Collines*. On April 6, 1994, he was serving as the second vice president of the National Committee of the Interahamwe, the youth militia of the MRND.

General Allegations

3. Unless otherwise specified, all acts set forth in this indictment took place between 1 January 1994 and 31 December 1994 in the prefectures of Kigali and Gitarama, territory of Rwanda.

4. In each paragraph charging genocide, a crime recognized by Article 2 of the Statute of the Tribunal, the alleged acts were committed with intent to destroy, in whole or in part, a national, ethnical or racial group.

5. The victims in each paragraph charging genocide were members of a national, ethnical, racial or religious group.

6. In each paragraph charging crimes against humanity, crimes punishable by Article 3 of the Statute of the Tribunal, the alleged acts were committed as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds.

7. At all times relevant to this indictment, a state of internal armed conflict existed in Rwanda.

8. The victims referred to in this indictment were, at all relevant times, persons taking no active part in the hostilities.

9. The accused is individually responsible for the crimes alleged in this indictment. Under Article 6(1) of the Statute of the Tribunal, individual criminal responsibility is attributable to one who plans, instigates, orders, commits or otherwise aids and abets in the planning, preparation or execution of any of the crimes referred to in Articles 2 to 4 of the Statute of the Tribunal.

Charges

10. On or about April 6, 1994, **Georges RUTAGANDA** distributed guns and other weapons to Interahamwe members in Nyarugenge commune, Kigali.

11. On or about April 10, 1994, **Georges RUTAGANDA** stationed Interahamwe members at a roadblock near his office at the "Amgar" garage in Kigali. Shortly after he left the area, the Interahamwe members started checking identity cards of people passing the roadblock. The Interahamwe members ordered persons with Tutsi identity cards to stand on one side of the road. Eight of the Tutsis were then killed. The victims included men, women and an infant who had been carried on the back of one of the women.

12. In April 1994, on a date unknown, Tutsis who had been separated at a roadblock in front of the Amgar garage were taken to **Georges RUTAGANDA** and questioned by him. He thereafter directed that these Tutsis be detained with others at a nearby building. Later, **Georges RUTAGANDA** directed men under his control to take 10 Tutsi detainees to a deep, open hole near the Amgar garage. On **Georges RUTAGANDA's** orders, his men killed the 10 Tutsis with machetes and threw their bodies into the hole.

13. From April 7 to April 11, 1994, thousands of unarmed Tutsi men, women and children and some unarmed Hutus sought refuge at the Ecole Technique Officielle "ETO school") in Kicukiro sector, Kicukiro commune. The ETO school was considered a safe haven because Belgian soldiers, part of the United Nations Assistance Mission for Rwanda forces, were stationed there.

14. On or about April 11, 1994, immediately after the Belgians withdrew from the ETO school, members of the Rwandan armed forces, the gendarmerie and militia, including the Interahamwe, attacked the ETO school and, using machetes, grenades and guns, killed the people who had sought refuge there. The Interahamwe separated Hutus from Tutsis during the attack, killing the Tutsis. **Georges RUTAGANDA** participated in the attack at the ETO school, which resulted in the deaths of a large number of Tutsis.

15. The men, women and children who survived the ETO school attack were forcibly transferred by **Georges RUTAGANDA**, members of the Interahamwe and soldiers to a gravel pit near the primary school of Nyanza. Presidential Guard members awaited their arrival. More Interahamwe members converged upon Nyanza from many directions and surrounded the group of survivors.

16. On or about April 12, 1994, the survivors who were able to show that they were Hutu were permitted to leave the gravel pit. Tutsis who presented altered identity cards were immediately killed. Most of the remainder of the group were attacked and killed by grenades or shot to death. Those who tried to escape were attacked with machetes. **Georges RUTAGANDA**, among others, directed and participated in these attacks.

17. In April of 1994, on dates unknown, in Masango commune, **Georges RUTAGANDA** and others known to the Prosecutor conducted house-to-house searches for Tutsis and their families. Throughout these searches Tutsis were separated from Hutus and taken to a river. **Georges RUTAGANDA** instructed the Interahamwe to track all the Tutsis and throw them into the river.

18. On or about April 28, 1994, **Georges RUTAGANDA**, together with Interahamwe members, collected residents from Kigali and detained them near the Amgar garage. **Georges RUTAGANDA** and the Interahamwe demanded identity cards from the detainees. A number of persons, including Emmanuel Kayitare, were forcibly separated from the group. Later that day, Emmanuel Kayitare attempted to flee from where he was being detained and **Georges RUTAGANDA** pursued him, caught him and struck him on the head with a machete and killed him.

19. In June 1994, on a date unknown, **Georges RUTAGANDA** ordered people to bury the bodies of victims in order to conceal his crimes from the international community.

Counts 1-2
(Genocide)
(Crimes Against Humanity)

By his acts in relation to the events described in paragraphs 10-19 **Georges RUTAGANDA** committed:

- COUNT 1: **GENOCIDE**, punishable by Article 2(3)(a) of the Statute of the Tribunal; and
- COUNT 2: **CRIMES AGAINST HUMANITY** (extermination) punishable by Article 3(b) of the Statute of the Tribunal

Counts 3-4
(Crimes Against Humanity)
(Violations of Article 3 common to the Geneva Conventions)

By his acts in relation to the killings at the ETO school, as described in paragraph 14, **Georges RUTAGANDA** committed:

- COUNT 3: **CRIMES AGAINST HUMANITY** (murder) punishable by Article 3(a) of the Statute of the Tribunal; and
- COUNT 4: **VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS**, as incorporated by Article 4(a) (murder) of the Statute of the Tribunal.

Counts 5-6
(Crimes Against Humanity)
(Violations of Article 3 common to the Geneva Conventions)

By his acts in relation to the killings at the gravel pit in Nyanza, as described in paragraphs 15 and 16, **Georges Rutaganda** committed:

COUNT 5: **CRIMES AGAINST HUMANITY** (murder) punishable by Article 3(a) of the Statute of the Tribunal; and

COUNT 6: **VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS**, as incorporated by Article 4(a) (murder) of the Statute of the Tribunal.

Counts 7-8
(Crime Against Humanity)
(Violation of Article 3 common to the Geneva Conventions)

By killing Emmanuel Kayitare, as described in paragraph 18, **Georges Rutaganda** committed:

COUNT 7: **CRIME AGAINST HUMANITY** (murder) punishable by Article 3(a) of the Statute of the Tribunal; and

COUNT 8: **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS**, as incorporated by Article 4(a) (murder) of the Statute of the Tribunal.

Richard J. Goldstone
Prosecutor

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR RWANDA**

IN THE TRIAL CHAMBER

Before: Judge William H. Sekule
Registrar: Dr. Andronico A. Adede
On Behalf of the Prosecutor: Sara Darehshori

Decision of: 16th February 1996

DECISION ON THE REVIEW OF THE INDICTMENT

In the Matter of

GEORGES ANDERSON NDERUBUMWE RUTAGANDA

Case No. ICTR-96-3-I

I, William H. Sekule, Judge of the International Criminal Tribunal for Rwanda,

UPON RECEIVING an indictment from the Prosecutor pursuant to Article 17 and 18 of the Statute of the Tribunal, and Rule 47 of the Rules of Procedure and Evidence,

AND UPON HEARING the Prosecutor, pursuant to Rule 47(D) of the Rules of Procedure and Evidence, and

PURSUANT TO Articles 17 and 18 of the Statute of the Tribunal and Rules 28 and 47 of the Rules of Procedure and Evidence,

CONFIRM the indictment submitted by the Prosecutor with respect to each and every count of the indictment, and

STATE that from the material tendered by the Prosecutor, I am satisfied a *prima facie* case has been established with respect to each and every count as set out in the indictment, and the acts charges fall within the jurisdiction of the International Criminal Tribunal for Rwanda,

FURTHER ORDER, after consultation with the Prosecutor, that there be no public disclosure of the Supporting Documentation submitted in support of the indictment pursuant to Rule 53(B) of the Rules of Procedure and Evidence,

AND NOTE the prayer of the Prosecutor that an appropriate warrant of arrest for the accused, who is under provisional detention in Zambia pursuant to Rule 40 of the Rules of Procedure and Evidence, be issued and the further prayer for the continued detention of the accused there until arrangements for his transfer to the custody of the Tribunal are made.

William H. Sekule
Judge, Trial Chamber
International Criminal Tribunal for Rwanda

Dated this 16th day of February 1996,
At Arusha, Tanzania

Seal of the Tribunal
Case No. ICTR-96-3-I

**THE INTERNATIONAL CRIMINAL
TRIBUNAL FOR RWANDA**

Case No. ICTR-96-3-I

BEFORE A JUDGE OF THE TRIAL CHAMBER

Before: Judge William H. Sekule
Registrar: Dr. Andronico O. Adede
On behalf of the Prosecutor: Sara Darehshori

Decision of: 16 February 1996

THE PROSECUTOR

v.

GEORGES ANDERSON NDERUBUMWE RUTAGANDA

**WARRANT OF ARREST AND
REQUEST FOR CONTINUED DETENTION**

To: The Republic of Zambia

I, William H. Sekule, Judge of the International Criminal Tribunal for Rwanda,

CONSIDERING United Nations Security Council Resolution 978 of 27 February 1995, and Articles 19(2) and 28 of the Statute, and Rules 54 to 61 of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda,

CONSIDERING the indictment submitted by the Prosecutor against Georges Anderson Nderubumwe Rutaganda and my order confirming the indictment on the 16th day of February 1996, a copy of which is annexed to this warrant of arrest,

HEREBY DIRECT the authorities of the Republic of Zambia to arrest and to continue to detain on behalf of the International Criminal Tribunal for Rwanda:

Georges Anderson Nderubumwe Rutaganda, born in 1958 in Masango Commune, Gitarama Prefecture, territory of Rwanda,

Alleged to have committed, between about 6 April 1994 to 30 June 1994 in Gitarama and Kigali Prefectures in Rwanda, the following crimes: Genocide, Crimes Against Humanity and Violations of Article 3 common to the Geneva Conventions, within the competence of the International Criminal Tribunal for Rwanda by virtue of Articles 2, 3 and 4 respectively,

And to advise the said Georges Anderson Nderubumwe Rutaganda, in a language he understands, of his rights as set forth in Article 20 of the Statute and, *mutatis mutandis*, in Rules 42 and 43 of the Rules of Procedure and Evidence which are set out below, and of his right to remain silent, and to caution him that any statement he makes shall be recorded and may be used in evidence. The indictment and review of the indictment (and all other documents annexed to the present warrant) must also be brought to the attention of the accused,

REQUEST THAT the Republic of Zambia report forthwith to the Registrar of the International Criminal Tribunal for Rwanda if it is unable to execute the present warrant of arrest, indicating the reasons for its inability pursuant to Rule 59(A) of the Rules of Procedure and Evidence,

REQUEST THAT the Republic of Zambia report forthwith to the Registrar of the International Criminal Tribunal of Rwanda if it is unable to continue to detain Georges Anderson Nderubumwe Rutaganda, indicating the reasons for its inability pursuant to Rule 57 of the Rules of Procedure and Evidence.

William H. Sekule
Judge, Trial Chamber
International Criminal Tribunal for Rwanda

Dated this 16th day of February 1996,
At Arusha, Tanzania

UNITED NATIONS **NATIONS UNIES**
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No: ICTR-96-3-T

TRIAL CHAMBER

THE PROSECUTOR
V.
GEORGES ANDERSON NDERUBUMWE RUTAGANDA

DEFENCE COUNSEL: LUC DE TEMMERMAN

DECISION:
ORDER FOR CONTINUED DETENTION AWAITING TRIAL

THE TRIBUNAL, sitting as Judge Laïty Kama, Presiding Judge, Judge Lennart Aspegren, and Judge Navanethem Pillay, in Trial Chamber 1,

CONSIDERING the indictment against Georges Anderson Nderubumwe Rutaganda submitted by the Prosecutor and confirmed on 16 February 1996 by Judge William H. Sekule,

CONSIDERING the transfer of the accused to the Tribunal on 26 May 1996,

CONSIDERING the initial appearance of the accused on 30 May 1996 before the Trial Chamber 1,

PURSUANT TO Rules 62 and following of the Rules of Procedure and Evidence,

HEREBY ORDERS the detention on remand of Georges Anderson Nderubumwe Rutaganda and enjoins the Commanding Officer of the United Nations Detention Unit to continue to detain him until further order.

Arusha, 30 May 1996,

Laïty Kama
Presiding Judge

Lennart Aspegren
Judge

Navanethem Pillay
Judge

(Seal of the Tribunal)

Case No: ICTR-96-3-T

ORIGINAL French

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Dear Dr. Adede,

The Registrar,

Re: Detainee RUTAGANDA

I would like to submit herewith the request for the release on bail of my client, Mr. G. RUTAGANDA.

I have made all the necessary arrangements for the admission of my client at the BORDET Hospital, in BRUSSELS, where a doctor and a qualified male nurse are awaiting him.

The survival of a human being in the coming few months depends on your diligence. I am also sending copy of this request to the Belgian Minister of Justice and also to the relevant immigration authorities for visa purpose.

Please note that I will be leaving Arusha on Monday 9 September around 12h00 and that I am expecting to hear from you by Wednesday, 11 September 1996, at the latest by 15h00.

Yours very sincerely,

Arusha, 8 September 1996

L. De Temmerman

P.S. Mr. JACOB is in Kigali and there is need to call an **EMERGENCY** session of the Trial Chamber of the International Criminal Tribunal for Rwanda.

REQUEST IN EXTREME EMERGENCY

Case ICTR 96-3-T
The Prosecutor vs. RUTAGANDA

Honorable Judges,

Considering that Mr. RUTAGANDA was indicted on 30 May 1996 by the Trial Chamber 1 of the International Criminal Tribunal for Rwanda;

Considering the indictment by the Prosecutor of the International Criminal Tribunal for Rwanda;

Considering the initial appearance of Mr. RUTAGANDA before the Trial Chamber of the International

Criminal Tribunal for Rwanda on 30 May 1996 and his decision to plead NOT GUILTY on all the charges;

Considering that the date set for merits judgment is 17 October 1996;

Considering the medical report submitted by Dr. MHANDO, the medical doctor accredited to the International Criminal Tribunal for Rwanda, and which report was made available to Mr. Rutaganda's defence counsel this day, 7 September 1996 (annex 1).

THE FACTS

Whereas Mr. RUTAGANDA had to flee his country, Rwanda, after the victory of the RPF on 16 July 1994.

Whereas Mr. RUTAGANDA has applied for a refugee status in Zambia.

Whereas Mr. RUTAGANDA was arrested in late September 1995 in Lusaka further to a request made by the Rwandese Embassy in Pretoria, South Africa (annex 2).

Whereas Mr. RUTAGANDA, after having been detained in atrocious conditions, was finally indicted by the Prosecutor of the International Criminal Tribunal for Rwanda without being examined or interviewed.

Whereas around May 1996 he was transferred to Arusha for his initial appearance before the Tribunal, on 30 May 1996.

Whereas since that date Mr. RUTAGANDA has been detained at the Arusha prison, International Criminal Tribunal for Rwanda Section, under the control and responsibility of the United Nations.

Whereas Mr. RUTAGANDA has not yet had the opportunity of being interviewed in the French language by a staff member from the relevant department in the Office of the Prosecutor of the International Criminal Tribunal for Rwanda.

Whereas Mr. RUTAGANDA had been complaining of numerous health problems during his detention.

Whereas doctors have informed him that he is suffering from []

Whereas Mr. RUTAGANDA's health has been deteriorating by the day and his life expectancy is not more than six month, according to his attending physician.

THE LAW

Whereas Rule 64 of the Rules of Procedure and Evidence provides that "upon his transfer to the Tribunal, the accused shall be detained in the facilities provided by the host country or by another country".

Whereas the same rule provides that the President may, on the application of a party, request modification of the conditions of detention of an accused.

Whereas Rule 65 of the Rules provides that release of a detained accused may be ordered by a Trial Chamber in exceptional circumstances, after hearing the host country and only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person.

Whereas Mr. RUTAGANDA does not want to die as "a presumed guilty" without having had the chance of defending himself before the Tribunal.

Whereas the medical care he is receiving is by no means appropriate for his health condition in Arusha (see the doctor's report).

Whereas the health condition of Mr. RUTAGANDA does not allow him at this moment to appear before the Tribunal.

Whereas the medical report is even anticipating unreservedly Mr. RUTAGANDA's death within a very short time.

Whereas Mr. RUTAGANDA's counsel was invited to come to Arusha on 2 September 1996 as matter of urgency because his client was seriously ill.

Name of disease deleted in the original document.

Whereas the same counsel has been ignored by the Registry of the Tribunal and the Office of the Prosecutor since Mr. RUTAGANDA was characterized as a "suspect" (22 November 1995 - annex 3).

Whereas the counsel of Mr. RUTAGANDA has drawn the attention of the Prosecutor to the inhumane conditions of detention in LUSAKA and to the innocence of his client.

Whereas his client, who feels that he has been wrongly accused of "genocide", has requested in a letter dated 4 June 1996 that Mr. AMADOU, a security officer of the International Criminal Tribunal for Rwanda and officer of the UNAMIR in Kigali from April 1994 to July 1994, be heard as a witness for the defence (annex 4).

Whereas the Office of the Registrar of the International Criminal Tribunal for Rwanda has hidden this witness and his interrogation from Mr. RUTAGANDA's counsel, and claims that it has "examined" the said witness on a confidential basis (annex 5).

Whereas this independent witness, who could testify to the numerous moves made by Mr. RUTAGANDA to save the lives of innocent TUTSIS in KIGALI in April 1994, has been recently taken away from the services of the International Criminal Tribunal for Rwanda.

Whereas Mr. RUTAGANDA's health has deteriorated rapidly from that moment.

Whereas this health condition and its development have never been made known to either Mr. RUTAGANDA himself or his counsel.

Whereas Mr. RUTAGANDA was admitted in hospital on 5 September, and whereas even after having been tested positive the result was not communicated to either the counsel or the detainee himself.

Whereas from the above facts it appears that we have a case of exceptional circumstances.

Whereas Mr. RUTAGANDA takes note that he is suffering from [] * and that he will surely not survive beyond six months.

Whereas Mr. RUTAGANDA is determined to struggle for his survival and prove, before the TRIBUNAL, his innocence in the Rwandees tragedy.

Whereas his counsel, after lengthy discussions, has accepted to continue to defend a "convict on the death roll" so that humankind knows the truth on the Rwandese tragedy.

* Name of disease deleted in the original.

Whereas Mr. RUTAGANDA is aware that his chances to appear before the International Criminal Tribunal for Rwanda depend EXCLUSIVELY on the quality of the treatment he will be receiving in the next few months.

Whereas the accused, together with his counsel, has drawn a medical programme that will enable him to face his judges within six months.

Whereas he is requesting the International Criminal Tribunal for Rwanda that the following measures be taken:

PRIMARILY

A THE IMMEDIATE MEASURES

To arrange for the evacuation of Mr. RUTAGANDA to the BORDET hospital in BRUSSELS (Belgium) where

- (1) The diagnosis made by Dr. Peter A. MHANDO in Arusha on 3 September 1996 will be cross-checked;
- (2) He will receive the appropriate treatment for [] *
- (3) Arrangements should be made for the transfer of his family to Belgium to help him to morally survive his disease;
- (4) Instructions should be given for the release of funds to cover the costs of his treatment in this specialized hospital in Brussels;
- (5) His return to Arusha should be ordered as soon as his health condition allows him to travel.

B PROCEDURAL MEASURES

1. To provisionally postpone the beginning of his trial on the merits by the Trial Chamber 1 of the International Criminal Tribunal for Rwanda to 1 March 1997;
2. To allow Mr. RUTAGANDA to receive the appropriate medical treatment for his condition; that the treatment must be administered at the BORDET hospital in BRUSSELS and that there is need, therefore, to organize his evacuation to that hospital where he will be under the permanent supervision of Dr. COGGE M. and the specialized medical staff, designated by the defence;

3. To arrange for his "release on bail" under the control of the security officers of the International Criminal Tribunal for Rwanda, so that he can undergo the required medical treatment, and also to order the release of the required funds until the date he is discharged;
4. To appoint a team of forensic pathologists of whom one shall be appointed by the Office of the Prosecutor, one by the defence and one by the Tribunal. Their mission will include:
 - I. To assess Mr. RUTAGANDA's health condition;
 - ii. To determine the cause of the disease, if possible;
 - iii. To determine the appropriate treatment for Mr. RUTAGANDA so that he can appear as soon as possible before the Tribunal or, otherwise, determine if it is impossible for him to cannot appear before the Tribunal;
 - iv. If possible, to determine the date by which Mr. RUTAGANDA was contaminated by [] * and in any event, to describe the development of the disease from the date of his imprisonment in LUSAKA late September 1995.
 - v. To submit a report 30 days after their appointment.
5. To instruct the Finance Department of the International Criminal Tribunal for Rwanda to make available the funds necessary for his defence counsel to pursue his defence, as per the budget estimate submitted to that effect to the Tribunal and the Registry, and attached hereto as annex 6;
6. To take legal cognizance that Mr. RUTAGANDA mortgages the real estate and personal estate he owned before he was forced by the RPF to flee the country (the list of which is attached as annex 7) in order to refund the expenses incurred by the Tribunal for his medical treatment, as such treatment would be necessary for the Tribunal to know the truth. (The said estates are now being occupied on the account of the new regime).

* Name of disease deleted in the original.

AT A SUBSIDIARY LEVEL

To take legal cognizance of the likelihood of Mr. RUTAGANDA's death in the next few months due to lack of care and the refusal on the part of the International Criminal Tribunal for Rwanda to search for the truth.

Arusha, 8 September 1996

Luc De Temmerman

UNITED NATIONS

NATIONS UNIES

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA**

CASE NO: ICTR-96-3-T

THE PROSECUTOR

AGAINST

GEORGES ANDERSON NDERUBUMWE RUTAGANDA

**Prosecution's Response
To
Motion for Provisional Release**

I. Introduction

1. On September 8, 1996 Nderubumwe George Rutaganda (hereinafter the Accused) submitted a request to Trial Chamber 1 entitled "Request of Extreme Urgency". In this motion, the Defence asked for the trial, set currently for 17 October 1996, to be postponed until 1 March 1997 due to Mr. Rutaganda's failing health. But the primary thrust of the motion was a prayer for the Accused's immediate provisional release. In sum, the Defence argued that the Accused is not at present sufficiently healthy to stand trial before the International Tribunal for Rwanda. Consequently, Defence has asked the Tribunal to release the accused for a period of six months, send the Accused to Belgium, and be financially liable for his subsequent treatment at Brussels" Bordet Hospital. If sent to Bordet, the Defence specifically asks that the Court order the following: verification of Dr. Peter A. Mhando's diagnosis made in Arusha on 3 September 1996; implementation of the accepted course of treatment for his malady; financial provisions for the Accused's family to travel to and from Brussels; financial allowances for the Accused's family to remain in Brussels and provide moral and emotional support to hospital; and, provisions for the Accused's return to Arusha, Tanzania as soon as his health so allows.

2. Because the Accused has demonstrated good cause for a continuance, i.e. deteriorating health condition, Prosecution has no objection to the request that the trial be postponed to 1 March 1997.

3. However, Prosecution objects to all other requests because there is no existing basis in law or in fact for the release and transfer of the Accused. Further, Rule 65 of the Rules of Procedure and Evidence of the International Tribunal for Rwanda places a heavy burden on the Accused to establish that provisional release is necessary. The Rule specifically marks three different elements that must be adequately addressed. Release may be ordered by a Trial Chamber only: a) under exceptional circumstances, b) after the accused has satisfied the Chamber that he will appear for the trial; and, c) after he has fully demonstrated that, if released, he will not pose any danger to victims, witness or other persons. Prosecution submits that the Defence in its motion entitled "Request of Extreme Urgency" did not carry its burden in satisfying the Court on any of the above-referred points.

II. Factual Background

4. On 16 February 1996, the Accused was charged with eight counts of genocide, crimes against humanity, and violations of Article 3 Common to the Geneva Conventions. He was arrested in Zambia and transferred to Arusha, where he has been in the custody of the International Tribunal for Rwanda at the UN detention facility since 26 May 1996. On 30 May 1996 before the Tribunal's First Chamber the Accused, accompanied by his attorney, made his initial appearance. He plead not guilty to all counts with which he was charged. In agreement with Defence Attorney the trial date was set for 17 October 1996 before the First Trial Chamber.

5. Since the arrival of the Accused at the UN detention facility, he has been under the medical care of Dr. Peter Mhando, accredited medical practitioner and medical consultant to the Tribunal, for a number of medical problems. The Accused's health condition is reportedly serious, and presently he is under close medical observation receiving the best medical attention available in Arusha.¹

III. Response to the Dense's Prayer for Postponement of the Trial Date

6. In view of Mr. Rutaganda's deteriorating health, and in keeping with the principle of a fair and just trial, it is the Prosecutor's position that the Accused must be capable of defending the allegations made against him. Therefore, the Prosecutor has no objections to the deferral of the date for the Accused's trial-on-the-merits from 17 October

¹ In making the instant request, the accused has made certain allegations concerning the conduct of the Prosecutor and the Registrar during the pre-trial proceedings. These allegations are irrelevant to the motion for release. The prosecution notes for the record, however, that the allegations are factually incorrect. Specifically, it is not the case that the prosecution refused to interview the accused; to the contrary, the prosecution initiated an interview, but counsel for the accused refused to proceed with the necessary interpretation. Prosecution has also handled all request made by the accused or his counsel in an appropriate manner. With respect to the allegations concerning the Registrar's possession of an exculpatory witness statement given by a Tribunal Security Officer, the prosecution notes that it has no information concerning such a witness statement. Prosecution will of course turn over any exculpatory information in its possession and accept any exculpatory information offered by the defense.

1996 to 1 March 1997 because Mr. Rutaganda's health to be at present physically unable to stand trial.

IV. Response to the Dense's Prayer for Provisional Release

7. At the outset, Prosecution reiterates its original position that the detention of the Accused in this case is irrefutably lawful, justified, and entirely consistent with international standards. In the context of explicitly recognizing the rights of accused persons in, *inter alia*, Article 20, the Statute outlines a carefully designed procedure to be followed in order to fairly and effectively try cases before the uniquely placed *ad hoc* International Tribunal. In particular, Article 18 (1) and Articles 19 (2) and (3) of the Statute establish a procedure which envisages the presence of the accused before the Tribunal, and the custody of the accused at the Tribunal, for the duration of the judicial proceedings:

18(1) The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a *prima facie* case has been established by the Prosecutor, he or she shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.

19(2) A person against whom an indictment has been confirmed shall, pursuant, to an order or an arrest warrant of the International Tribunal for Rwanda, be taken into custody, immediately informed of the charges against him or her and transferred to the International Tribunal for Rwanda.

19(3) The Trial Chamber shall read the indictment, satisfy itself that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. The Trial chamber shall then set the date for trial.

8. Mr. Rutaganda is charged with serious violations of international humanitarian law; he was the vice-president of the Interahamwe militia. Further, he has been officially indicted by the International Tribunal and his indictment has been confirmed by the Honourable Judge Sekule. Thus, this International Court has deemed that a *prima facie* case exists against the Accused. In light of that, and under the Tribunal's Statute, following the confirmation of an indictment, he may be lawfully arrested and detained.

9. It is true that most national jurisdictions and international law generally allow for provisional release pending trial. Yet, Rule 65(A), states that once detained, an accused "may not be released ...". The fundamental premise of this rule is based on the assumption that those whom the International Tribunal for Rwanda indicts are suspected of having committed a crime so grave in nature that provisional release is as a general rule not to be contemplated. Admittedly, "... in exceptional circumstances" and "where it is satisfied that the accused will appear for trial and not pose a danger to any victim, witness or other person" the Trial Chamber may order the accused released for a specified time period. However, the onus

is placed squarely on the defendant to prove that exceptional circumstances exist, and that all the necessary safeguards set out by Rule 65(B) have been satisfactorily addressed.

A. The International Standards and Rules Concerning Provisional Release

10. The relevant international instruments, namely, the *International Covenant on Civil and Political Rights* (Art. 9(3)), the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (Art. 5(3)), and the *American Convention on Human Rights* (Art. 7(5)), state that as a general rule an accused awaiting trial should not be detained. Yet, a closer look at the drafting record of the conventions, the leading commentaries, and general State practice, show that it is not an accused's absolute right to be free pending trial. Indeed, when questions concerning provisional release arise courts of law conduct a balancing test. On one side of the scale lies the accused's right to be free awaiting trial, while on the other side of the scale is the potential risk the accused poses to society if he is free. His liberty may be curtailed on the basis of well-founded, essential reasons, including, the nature of the offense, the possibility of absconding, the interfering with witnesses and suppressing evidence, repetition of offense, and the previous record of the accused.

11. The Statute and Rule 65 stand in full conformity with these international standards. That is to say, the Tribunal is fully justified to deny an accused his freedom because the crimes over which this Court has jurisdiction are so serious in nature that they comprise wellfounded, and essential reasons. For example, then, if an individual is accused of genocide the balance is struck in favour of confinement because the crime is of the most serious nature; if convicted the penalty is so severe that escape from prosecution becomes a potential risk; and, given the nature of the crime, it is highly likely that a perpetrator would interfere with victims, witnesses or any other person. Therefore, the Statute envisages the Accused's detention, and Rule 65, which permits the exception to this general rule, authorizes provisional release only when the essential reasons for detention no longer exist.

B. The Requirements of Rule 65 for Provisional Release

12. Under Rule 65(B) the Trial Chamber may order provisional release only if the Accused satisfactorily speaks to the three enumerated elements: a) that exceptional circumstances exist; b) that the accused will appear for trial; and, c) that the accused will not pose a danger to any victim witness or other person. It is the Prosecutor's contention that in his motion to the Court the Accused did not adequately address any of the above-outlined elements.

13. First, "exceptional circumstances" must exist to justify the accused's release. The standard is deliberately sit high because in all other circumstances and for reasons already explained the accused must be detained. It is submitted that the Accused in this case does not

adequately demonstrate that an "exceptional circumstance" exists by arguing that he is physically ill.

In attaining provisional release, it is insufficient for a defendant to claim that he is unhealthy. On the contrary, the Detainee must prove to the Court that the medical attention with which he is provided in Arusha, Tanzania does not meet the recognized international standard of treatment of detention so as to make the situation an exceptional one. Far from proving this first factor of the Rule 65(B) test, the attorney for the defendant has simply offered that in Brussels the Defendant would receive specialized health care. However, the attorney has not indicated the nature of the specialized care, whether the Defendant is in dire need of this specialized care, whether the hospital in Brussels offers this care which he can not get in Arusha. In fact, the Defence has not once mentioned the quality of health care already provided to the accused by the Tribunal in Arusha at a hospital on which some five hundred thousand citizens of Tanzania rely for all their medical needs.

14. Second, it is the position of the Prosecutor that Mr. Rutaganda, if provisionally released, would not return to Arusha to stand trial. The Defence proposes that the Tribunal can ensure the Defendant's return by keeping him under full and proper custody while in Brussels. Legally, an accused is either in detention or he is on provisional release. If a person is on provisional release, the Tribunal cannot remain responsible for him.

It should also be noted that the Tribunal depends acutely on the assistance of countries when performing its mandate. As such, if the Detainee is released the Tribunal will necessarily rely heavily on the Belgian government to provide proper control over the Accused while in Brussels. As already mentioned, no such guarantee has been provided to the Tribunal by the Belgian Government.

The Accused is now seeking release to Belgium. But, it is necessary the Belgium be consulted and its ensuing decision be made known to the Tribunal prior to the hearing. The underlying concept behind this safeguard is to ensure that the Court will be well-informed on the cooperation it may expect from the country wherein the defendant is legally to be found. This information is a crucial factor in determining to temporarily set free one presumed of having committed serious crimes. Since no evidence has been produced on Belgium's reply to the request, and in the absence of a showing that Belgium would accept the Detainee, it is suggested that any consideration of a request for provisional release is premature.

Additionally, the Court must keep in mind that Defendant is a man of considerable wealth, connections and influence with many friends outside of Tanzania ready to assist him if given a chance. Therefore, it is only too possible that if Mr. Rutaganda is released, even for a limited period, he will not appear for his trial-on-the-merits. As can be seen in his brief to the Court the Defence has offered very little in terms of guaranteeing this return to Arusha.

15. Third, the Prosecutor gravely fears that the possible release of the Defendant would pose a serious danger to the lives of numerous victims living in the area where the

alleged offenses with which he has been charged were committed. That the Defendant has plead not guilty to the allegations in his initial appearance, of course does not assuage any of these misgivings.

As has been previously mentioned, the Defendant was the vice-president of the interahamwe militia and as such charged with the most serious crimes under international law. Further, the interahamwe militia, once under the command of the Accused, have been making incursions from their base in Zaire into Rwanda where hundreds of genocide survivors have again been massacred. Therefore, there is a legitimate fear for the safety of witnesses and victims if the defendant is released provisionally.

IV. Conclusion

17. Because of the current state of the Accused's health, Prosecution does not in any way object to the request that the trial be postponed to 1 March 1997.

18. Under rule 65 of the Rules of Evidence and Procedure for the International Tribunal for Rwanda, those accused and in custody at the UN detention center should not be released pending trial. However, if "exceptional circumstances" should arise provisional release may be offered. If so, the onus fall squarely on the Detainee to satisfactorily speak to a four-element test. In this case, Mr. Rutaganda has been unable to demonstrate exceptional circumstances that would justify his release from a lawful detention. Further, even if the Accused had demonstrated that exceptional circumstances did exist, he did not address the remaining requirements under Rule 65(B). He has offered no evidence regarding Belgium's willingness to allow the defendant into the country. More importantly, he has not adequately guaranteed the court that he will appear to trial, and that he will present no danger to any persons. Therefore, he has failed to establish the necessary safeguards in the event that he is released. In light of the above, the Prosecutor submits that Mr. Rutaganda's request for provisional release be denied.

The accused is charged for his participation in serious crimes involving mass murder and many forms of inhumane treatment. As has been explained above, there are very real possibilities of flight and interference. In this context, the Prosecutor is strongly opposed to the Accused's motion for provisional release.

For the Prosecutor

The Deputy Prosecutor
Honoré Rakotomanana

23 September 1996

25 September 1996

UNITED NATIONS **NATIONS UNIES**
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
IN THE TRIAL CHAMBER 1

Before: **Judge Yakov A. Ostrovsky, Presiding Judge**
 Judge Lennart Aspegren
 Judge Navanethem Pillay

Registry: **Mr. Frederik Harhoff**
 Ms. Prisca Nyambe

Decision of: **25 September 1996**

PROSECUTOR
v.
GEORGES ANDERSON NDERUMBUMWE RUTAGANDA

DECISION ON THE REQUEST SUBMITTED BY THE DEFENCE

The Office of the Prosecutor:

Judge Honoré Rakotomanana, Deputy-Prosecutor
Mr. Yacob Haile-Mariam
Mr. Mohamed Chande Othman

The Counsel for the Accused:

Mr. Luc De Temmerman

Case No. ICTR-96-3-T

THE TRIBUNAL,

sitting as the Trial Chamber 1 of the International Criminal Tribunal for Rwanda ("the Tribunal"), composed of Judge Yakov A. Ostrovsky, Presiding Judge, Judge Lennart Aspegren, and Judge Navanethem Pillay,

UPON RECEIVING a request submitted on 8 September 1996 by Luc De Temmerman, acting as the Counsel of Georges Anderson Nderumbumwe Rutaganda, and the Prosecutor's response dated 23 September 1996,

HAVING HEARD the parties to the hearing held on 25 September 1996, without the presence of the accused who has been hospitalized,

CONSIDERING the indictment submitted by the Prosecutor against Georges Anderson Nderumbumwe Rutaganda, pursuant to Rule 47 of the Rules of Procedure and Evidence ("the Rules"), based on the existence of reasonable grounds for believing that he has committed a genocide, crimes against humanity, and violations of Article 3 common to the Geneva Conventions; and the decision of confirmation of this indictment by Judge William H. Sekule on 16 February 1996; and the warrant of arrest and order for continued detention delivered subsequently on 16 February 1996 by Judge William H. Sekule, and transmitted to the Zambian Authorities,

CONSIDERING that the accused has been transferred to the Tribunal's custody in Arusha on 26 May 1996, and detained there since that date,

CONSIDERING that Georges Anderson Nderumbumwe Rutaganda, assisted by his counsel, Luc De Temmerman, appeared initially on 30 May 1996 before the Trial Chamber 1, composed of Judge Laïty Kama, Presiding Judge, Judge Lennart Aspegren and Judge Navanethem Pillay, as provided for in Rule 62 of the Rules, and that the trial date was then officially set for 17 October 1996,

NOTING that, since his transfer to the Tribunal's custody, Georges Anderson Nderumbumwe Rutaganda has been seriously ill and has been constantly provided with all the necessary and appropriate medical attention, and has been transferred to a civilian hospital since 5 September 1996, and that he, while hospitalized, has been visited by his wife,

NOTING that the Defence has requested that the trial be postponed to 1 March 1997 and the Georges Anderson Nderumbumwe Rutaganda be provisionally released,

NOTING that the Prosecutor agrees to the postponement of the trial and objects to the provisional release of Georges Anderson Nderumbumwe Rutaganda,

TAKING INTO ACCOUNT the evidence provided by Dr. Peter A. Mhando, Medical Officer of the Tribunal's Detention Facilities, accredited medical consultant to the Tribunal, in both the submitted confidential clinical summary dated 24 September 1996 and during his audition *in camera* during the above-mentioned hearing,

THE TRIBUNAL

DECIDES that the date of the beginning of the trial of Georges Anderson Nderumbumwe Rutaganda is postponed to 6 March 1997,

DECIDES that a sufficient case under Rule 65 has not been made out to the Trial Chamber at this particular time, both on legal and practical basis, for the immediate provisional release of Georges Anderson Nderumbumwe Rutaganda,

Case No. ICTR-96-3-T

DIRECTS the Defence to address any requests relating to the calculation and payment of remuneration, or to reimbursement of expenses, incurred by his assignment as a defence lawyer by the Tribunal to the Registrar, pursuant to Article 30 of the Directive on Assignment of defence Counsel, who shall make a decision after consulting the President and, if necessary, the Advisory Panel,

INSTRUCTS the Registrar to take all the necessary measures for the execution of this order.

Arusha, 25 September 1996,

Yakov A. Ostrovsky
Presiding Judge

Lennart Aspegren
Judge

Navanethem Pillay
Judge

(Seal of the Tribunal)

Case No. ICTR-96-3-T

UNITED NATIONS **NATIONS UNIES**
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
IN THE TRIAL CHAMBER 1

Before: **Judge Yakov A. Ostrovsky, Presiding Judge**
 Judge Lennart Aspegren
 Judge Navanethem Pillay

Registry: **Mr. Frederik Harhoff**
 Ms. Prisca Nyambe

Decision of: **26 September 1996**

PROSECUTOR
vs.
GEORGES ANDERSON NDERUMBUMWE RUTAGANDA

Case No. ICTR-96-3-T

DECISION ON THE PRELIMINARY MOTION
SUBMITTED BY THE PROSECUTOR
FOR PROTECTIVE MEASURES FOR WITNESSES

The Office of the Prosecutor:

Judge Honoré Rakotomanana, Deputy-Prosecutor
Mr. Yacob Haile-Mariam
Mr. Mohamed Chande Othman
Mr. Pierre-Richard Prosper

The Counsel for the Accused:

Mr. Luc de Temmerman
Mr. Kennedy Ogeto
Mr. Evans Monari

THE TRIBUNAL,

SITTING as the Trial Chamber 1 of the International Criminal Tribunal for Rwanda ("the Tribunal"), composed of Judge Yakov A. Ostrovsky as Presiding Judge, Judge Lennart Aspegren and Judge Navanethem Pillay,

CONSIDERING the indictment submitted on 13 February 1996 by the Prosecutor against Georges Anderson Nderubumwe Rutaganda pursuant to Rule 47 of the Rules of Procedure and Evidence ("the Rules") and confirmed by the Tribunal on 16 February 1996,

BEING SEIZED OF the motion and brief dated 23 August 1996 from the Prosecutor for orders for protective measures for witnesses to crimes alleged in counts 1 through 8 of the indictment,

HAVING HEARD the parties to the hearing of this motion held on 26 September 1996 without the presence of the accused, who has been hospitalized,

CONSIDERING the provisions for protection of victims and witnesses contained in Articles 19 and 21 of the Statute of the Tribunal, and in Rules 69 and 75 of the Rules,

TAKING INTO CONSIDERATION the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia, notably its decisions of 10 August 1995 and 14 November 1995,

NOTING the decision taken by the Tribunal on 25 September 1996 to postpone the beginning of the trial against the accused until 6 March 1997 and to dismiss the request made by the Defence for provisional release of the accused,

FOR THESE REASONS

DECIDES to grant the following relief:

- (1) That the names, addresses, whereabouts, and other identifying data concerning the persons given pseudonyms in the indictment and the supporting documents shall not be disclosed to the public or the media.
- (2) That the public and the media shall not photograph video record, or sketch witnesses while entering the Tribunal building, exiting from the Tribunal building, or while they are in the Tribunal building, without leave of the Trial Chamber and parties.

(3) That the names, addresses, whereabouts, and other identifying data concerning the witnesses referred to in the supporting documents and/or any disclosed witness statements shall be divulged neither to the media, the public, nor the defence until such time that the witnesses are brought under the protection of the Tribunal.

(4) That the names, addresses, whereabouts, and other identifying information concerning the witnesses shall be sealed and not included in any Tribunal public records.

(5) To the extent that any names, addresses, whereabouts of, and identifying information concerning the witnesses be expunged from those documents.

(6) That the pseudonyms given to the witnesses in the indictment and supporting documents shall be used whenever referring to these witnesses in the Tribunal proceedings and discussions among the parties to trial.

Case No. ICTR-96-3-T

(7) That the Prosecutor shall disclose the names and unredacted statements of the witnesses to the defence in sufficient time to allow the defence to prepare for trial, subject to Rule 69.

Arusha, 26 September 1996

Yakov A. Ostrovsky
Presiding Judge

Lennart Aspegren
Judge

Navanethem Pillay
Judge

(Seal of the Tribunal)

26 September 1996

III

Jean-Paul Akayesu
ICTR-96-4-T

Indictment

Confirmation of indictment

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO: ICTR-96-

THE PROSECUTOR
OF THE TRIBUNAL

AGAINST

JEAN PAUL AKAYESU

INDICTMENT

The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to his authority under Article 17 of the Statute of the Tribunal, charges:

JEAN PAUL AKAYESU

with **GENOCIDE, CRIMES AGAINST HUMANITY and VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS**, as set forth below:

Background

1. On April 6, 1994, a plane carrying President Juvenal Habyarimana of Rwanda and President Cyprien Ntaryamira of Burundi crashed at Kigali airport, killing all on board. Following the deaths of the two Presidents, widespread killings, having both political and ethnic dimensions, began in Kigali and spread to other parts of Rwanda.

2. Rwanda is divided into 11 prefectures, each of which is governed by a prefect. The prefectures are further subdivided into communes which are placed under the authority of bourgmestres. The bourgmestre of each commune is appointed by the President of the Republic, upon the recommendation of the Minister of the Interior. In Rwanda, the bourgmestre is the most powerful figure in the commune his *de facto* authority in the area is significantly greater than that which is conferred upon him *de jure*.

The Accused

3. **Jean Paul AKAYESU**, born in 1953 in Murehe sector, Taba commune, served as bourgmestre of that commune from April 1993 until June 1994. Prior to his appointment as bourgmestre, he was a teacher and school inspector in Taba.

4. As bourgmestre, **Jean Paul AKAYESU** was charged with the performance of executive functions and the maintenance of public order within his commune, subject to the authority of the prefect. He had exclusive control over the communal police, as well as any gendarmes put at the disposition of the commune. He was responsible for the execution of laws and regulations and the administration of justice, also subject only to the prefect's authority.

General Allegations

5. Unless otherwise specified, all acts and omissions set forth in this indictment took place between 1 January 1994 and 31 December 1994, in the commune of Taba, prefecture of Gitarama, territory of Rwanda.

6. In each paragraph charging genocide, a crime recognized by Article 2 of the Statute of the Tribunal, the alleged acts or omissions were committed with intent to destroy, in whole or in part, a national, ethnical group.

7. The victims in each paragraph charging genocide were members of a national, ethnical, racial or religious group.

8. In each paragraph charging crimes against humanity, crimes recognized by Article 3 of the Tribunal Statute, the alleged acts or omissions were committed as part of a widespread or systematic attack against a civilian population on national, political, ethnic or racial grounds.

9. At all times relevant to this indictment, a state of internal armed conflict existed in Rwanda.

10. The victims referred to in this indictment were, at all relevant times, persons not taking an active part in the hostilities.

11. The accused is individually responsible for the crimes alleged in this indictment. Under Article 6(1) of the Statute of the Tribunal, individual criminal responsibility is attributable to one who plans, instigates, orders, commits or otherwise aids and abets in the planning, preparation or execution of any of the crimes referred to in Articles 2 to 4 of the Statute of the Tribunal.

Charges

12. As bourgmestre, **Jean Paul AKAYESU** was responsible for maintaining law and public order in his commune. At least 2000 Tutsis were killed in Taba between April 7 and the end of June, 1994, while he was still in power. The killings in Taba were openly committed and so widespread that, as bourgmestre, **Jean Paul AKAYESU** must have known about them. Although he had the authority and responsibility to do so, **Jean Paul AKAYESU**

never attempted to prevent the killing of Tutsis in the commune in any way or called for assistance from regional or national authorities to quell the violence.

13. On or about 19 April 1994, before dawn, in Gishyeshye sector, Taba commune, a group of men, one of whom was named François Ndimubanzi, killed a local teacher, Sylvere Karera, because he was accused of associating with the Rwandan Patriotic Front ("RPF") and plotting to kill Hutus. Even though at least one of the perpetrators was turned over to **Jean Paul AKAYESU**, he failed to take measures to have him arrested.

14. The morning of April 19, 1994, following the murder of Sylvere Karera, **Jean Paul AKAYESU** led a meeting in Gishyeshye sector at which he sanctioned the death of Sylvere Karera and urged the population to eliminate accomplices of the RPF, which was understood by those present to mean Tutsis. Over 100 people were present at the meeting. The killing of Tutsis in Taba began shortly after the meeting.

15. At the same meeting in Gishyeshye sector on April 19, 1994, **Jean Paul AKAYESU** named at least three prominent Tutsis - Ephrem Karangwa, Juvénal Rukundakuvuga and Emmanuel Sempabwa - who had to be killed because of their alleged relationships with the RPF. Later that day, Juvénal Rukundakuvuga was killed in Kanyinya. Within the next few days, Emmanuel Sempabwa was clubbed to death in front of the Taba *bureau communal*.

16. **Jean Paul AKAYESU**, on or about April 19, 1994, conducted house-to-house searches in Taba. During these searches, residents, including Victim V, were interrogated and beaten with rifles and sticks in the presence of **Jean Paul AKAYESU**. **Jean Paul AKAYESU** personally threatened to kill the husband and child of Victim U if she did not provide him with information about the activities of the Tutsis he was seeking.

17. On or about April 19, 1994, **Jean Paul AKAYESU** ordered the interrogation and beating of Victim X in an effort to learn the whereabouts of Ephrem Karangwa. During the beating, Victim X's fingers were broken as he tried to shield himself from blows with a metal stick.

18. On or about April 19, 1994, the men who, on **Jean Paul AKAYESU**'s instructions, were searching for Ephrem Karangwa destroyed Ephrem Karangwa's house and burned down his mother's house. They then went to search the house of Ephrem Karangwa's brother-in-law in Musambira commune and found Ephrem Karangwa's three brothers there. The three brothers - Simon Mutijima, Thaddée Uwanyiligira and Jean Chrysostome Gakuba - tried to escape, but **Jean Paul AKAYESU** blew his whistle to alert local residents to the attempted escape and ordered the people to capture the brothers. After the brothers were captured, **Jean Paul AKAYESU** ordered and participated in the killings of the three brothers.

19. On or about April 19, 1994, **Jean Paul AKAYESU** took 8 detained men from the Taba *bureau communal* and ordered militia members to kill them. The militia killed them with clubs, machetes, small axes and sticks. The victims had fled from Runda commune and had been held by **Jean Paul AKAYESU**.

20. On or about April 19, 1994, **Jean Paul AKAYESU** ordered the local people and militia to kill intellectual and influential people. Five teachers from the secondary school of Taba were killed on his instructions. The victims were Theogene, Phoebe Uwineze and her fiance (whose name is unknown), Tharcisse Twizeyumuremye and Samuel. The local people and militia killed them with machetes and agricultural tools in front of the Taba *bureau communal*.

21. On or about April 20, 1994, **Jean Paul AKAYESU** and some communal police went to the house of Victim Y, a 68 year old woman. **Jean Paul AKAYESU** interrogated her about the whereabouts of the wife of a university teacher. During the questioning, under **Jean Paul AKAYESU**'s supervision, the communal police hit Victim Y with a gun and sticks. They bound her arms and legs and repeatedly kicked her in the chest. **Jean Paul AKAYESU** threatened to kill her if she failed to provide the information he sought.

22. Later that night, on or about April 20, 1994, **Jean Paul AKAYESU** picked up Victim W in Taba and interrogated her also about the whereabouts of the wife of the university teacher. When she stated she did not know, he forced her to lay on the road in front of his car and threatened to drive over her.

23. Thereafter, on or about April 20, 1994, **Jean Paul AKAYESU** picked up Victim Z in Taba and interrogated him. During the interrogation, men under **Jean Paul AKAYESU**'s authority forced Victims Z and Y to beat each other and used a piece of Victim Y's dress to strangle Victim Z.

Counts 1-3
(Genocide)
(Crimes against Humanity)

By his acts in relation to the events described in paragraphs 12-23, **Jean Paul AKAYESU** is criminally responsible for:

COUNT 1: **GENOCIDE**, punishable by Article 2(3)(a) of the Statute of the Tribunal;

COUNT 2: Complicity in **GENOCIDE**, punishable by Article 2(3)(e) of the Statute of the Tribunal; and

COUNT 3: **CRIMES AGAINST HUMANITY** (extermination), punishable by Article 3(b) of the Statute of the Tribunal.

Count 4
(Incitement to Genocide)

By his acts in relation to the events described in paragraphs 14 and 15, **Jean Paul AKAYESU** is criminally responsible for:

COUNT 4: Direct and Public incitement to Commit **GENOCIDE**, punishable by Article 2(3)(c) of the Statute of the Tribunal.

Counts 5-6
(Crimes Against Humanity)
(Violations of Article 3 common to the Geneva Conventions)

By his acts in relation the murders of Juvénal Rukundakuvuga, Emmanuel Sempabwa, Simon Mutijima, Thaddée Uwanyiligira and Jean Chrysostome Gakuba, as described in paragraphs 15 and 18, **Jean Paul AKAYESU** committed:

COUNT 5: **CRIMES AGAINST HUMANITY** (murder) punishable by Article 3(a) of the Statute of the Tribunal; and

COUNT 6: **VIOLATIONS OF ARTICLE 4 COMMON TO THE GENEVA CONVENTIONS**, as incorporated by Article 4(a)(murder) of the Statute of the Tribunal.

Counts 7-8
(Crimes Against Humanity)
(Violations of Article 3 common to the Geneva Conventions)

By his acts in relation the murders of 8 detained men in front of the *bureau communal* as described in paragraph 19, **Jean Paul AKAYESU** committed:

COUNT 7: **CRIMES AGAINST HUMANITY** (murder) punishable by Article 3(a) of the Statute of the Tribunal; and

COUNT 8: **VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS**, as incorporated by Article 4(a)(murder) of the Statute of the Tribunal.

Counts 9-10
(Crimes Against Humanity)
(Violations of Article 3 common to the Geneva Conventions)

By his acts in relation the murders of 5 teachers in front of the *bureau communal* as described in paragraph 20, **Jean Paul AKAYESU** committed:

COUNT 9: **CRIMES AGAINST HUMANITY** (murder) punishable by Article 3(a) of the Statute of the Tribunal; and

COUNT 10: **VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS**, as incorporated by Article 4(a)(murder) of the Statute of the Tribunal.

Counts 11-12
(Crimes Against Humanity)
(Violations of Article 3 common to the Geneva Conventions)

By his acts in relation the beatings of Victims U, V, W, X, Y and Z as described in paragraphs 16, 17, 22 and 23, **Jean Paul AKAYESU** committed:

COUNT 11: **CRIMES AGAINST HUMANITY** (torture), punishable by Article 3(f) of the Statute of the Tribunal; and

COUNT 12: **VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS**, as incorporated by Article 4(a)(cruel treatment) of the Statute of the Tribunal.

Richard J. Goldstone
Prosecutor

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

IN THE TRIAL CHAMBER

Before: Judge William H. Sekule
Registrar: Dr. Andronico O. Adede
On Behalf of the Prosecutor: Sara Darehshori

Decision of: 16th February 1996

DECISION ON THE REVIEW OF THE INDICTMENT

In the Matter of

JEAN PAUL AKAYESU

Case No. ICTR-96-4-I

I, William H. Sekule, Judge of the International Criminal Tribunal for Rwanda,

UPON RECEIVING an indictment from the Prosecutor, pursuant to Article 17 and 18 of the Statute of the Tribunal, and Rule 47 of the Rules of Procedure and Evidence,

AND UPON HEARING the Prosecutor, pursuant to Rule 47(D) of the Rules of Procedure and Evidence, and

PURSUANT TO Articles 17 and 18 of the Statute of the Tribunal and Rules 28 and 47 of the Rules of Procedure and Evidence,

CONFIRM the indictment submitted by the Prosecutor with respect to each and every count of the indictment, and

STATE that from the material tendered by the Prosecutor, I am satisfied a *prima facie* case has been established with respect to each and every count as set out in the indictment, and the acts charged fall within the jurisdiction of the International Criminal Tribunal for Rwanda,

FURTHER ORDER, after consultation with the Prosecutor, that there be no public disclosure of the Supporting Documentation submitted in support of the indictment pursuant to Rule 53(B) of the Rules of Procedure and Evidence,

AND NOTE the prayer of the Prosecutor that an appropriate warrant of arrest for the accused, who is under provisional detention in Zambia pursuant to Rule 40 of the Rules of Procedure and Evidence, be issued and the further prayer for the continued detention of the accused there until arrangements for his transfer to the custody of the Tribunal are made.

William H. Sekule
Judge, Trial Chamber
International Criminal Tribunal for Rwanda

Dated this 16th day of February 1996,
At Arusha, Tanzania

Seat of the Tribunal
Case No. ICTR-96-4-I

**THE INTERNATIONAL CRIMINAL
TRIBUNAL FOR RWANDA**

Case No. ICTR-96-4-I

BEFORE A JUDGE OF THE TRIAL CHAMBER

Before: Judge William H. Sekule
Registrar: Dr. Andronico O. Adede
On Behalf of the Prosecutor: Sara Darehshori

Decision of: 16 February 1996

THE PROSECUTOR

v.

JEAN PAUL AKAYESU

**WARRANT OF ARREST AND
REQUEST FOR CONTINUED DETENTION**

To: The Republic of Zambia

I, William H. Sekule, Judge of the International Criminal Tribunal for Rwanda,

CONSIDERING United Nations Security Council Resolution 978 of 27 February 1995, and Articles 19(2) and 28 of the Statute, and Rules 54 to 61 of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda,

CONSIDERING the indictment submitted by the Prosecutor against Jean Paul Akayesu and my order confirming the indictment on the 16th day of February 1996, a copy of which is annexed to this warrant of arrest,

HEREBY DIRECT the authorities of the Republic of Zambia to arrest and to continue to detain on behalf of the International Criminal Tribunal for Rwanda:

Jean Paul Akayesu, born in 1953 in Murehe Sector, Taba Commune, Gitarama Prefecture, territory of Rwanda,

Alleged to have committed, between about 18 April 1994 to 30 June 1994, in Gitarama Prefecture, territory of Rwanda, the following crimes: Genocide, Complicity in Genocide, Incitement to Genocide, Crimes Against Humanity and Violations of Article 3 common to the Geneva Conventions, within the competence of the International Criminal Tribunal for Rwanda by virtue of Articles 2, 3 and 4 respectively,

And to advise the said Jean Paul Akayesu, in a language he understands, of his rights as set forth in Article 20 of the Statute and, *mutatis mutandis*, in Rules 42 and 43 of the Rules of Procedure and Evidence which are set out below, and of his right to remain silent, and to caution him that any statement he makes shall be recorded and may be used in evidence. The indictment and review of the indictment (and all other documents annexed to the present warrant) must also be brought to the attention of the accused,

REQUEST THAT the Republic of Zambia, report forthwith to the Registrar of the International Criminal Tribunal for Rwanda if it is unable to execute the present warrant of arrest, indicating the reasons for its inability pursuant to Rule 59(A) of the Rules of Procedure and Evidence and

REQUEST THAT the Republic of Zambia report forthwith to the Registrar of the International Criminal Tribunal for Rwanda if it is unable to continue to detain Jean Paul Akayesu, indicating the reasons for its inability pursuant to Rule 57 of the Rules of Procedure and Evidence.

William H. Sekule
Judge, Trial Chamber
International Criminal Tribunal for Rwanda

Dated this 16th day of February 1996,
At Arusha, Tanzania

UNITED NATIONS NATIONS UNIES
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No: ICTR-96-4-T

TRIAL CHAMBER 1

THE PROSECUTOR

V.

JEAN PAUL AKAYESU

DEFENCE COUNSEL: JOHAN SCHEERS

DECISION:

ORDER FOR CONTINUED DETENTION AWAITING TRIAL

THE TRIBUNAL, sitting as Judge Laïty Kama, Presiding Judge, Judge Lennart Aspegren, and Judge Navanethem Pillay, in Trial Chamber 1,

CONSIDERING the indictment against Jean-Paul Akayesu submitted by the Prosecutor and confirmed on 16 February 1996 by Judge William H. Sekule,

CONSIDERING the transfer of the accused to the Tribunal on 26 May 1996,

CONSIDERING the initial appearance of the accused on 30 May 1996 before the Trial Chamber 1,

PURSUANT TO Rules 62 and following of the Rules of Procedure and Evidence,

HEREBY ORDERS the detention on remand of Jean Paul Akayesu and enjoins the Commanding Officer of the United Nations Detention Unit to continue to detain him until further order.

Arusha, 30 May 1996,

Laïty Kama
Presiding Judge

Lennart Aspegren
Judge

Navanethem Pillay
Judge

(Seal of the Tribunal)

Case No: ICTR-96-4-T

UNITED NATIONS

NATIONS UNIES

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA**

CASE NO: ICTR-96-4-I

THE PROSECUTOR

AGAINST

JEAN PAUL AKAYESU

**MOTION ON BEHALF OF PROSECUTOR FOR
ORDERS FOR PROTECTIVE MEASURES FOR WITNESSES TO CRIMES
ALLEGED IN COUNTS 1 THROUGH 12 OF THE INDICTMENT**

Pursuant to Article 21 of the Statute and Rule of Procedure and evidence (Rule) Rule 75, the Office of the Prosecutor requests that this Trial Chamber order the nondisclosure of the identity, the whereabouts or identifying information of all the witnesses to the public and media. The Office of the Prosecutor further requests, pursuant to Article 21 of the Statute and Rule 69(A), that the Trial Chamber order the temporary nondisclosure to the defence of the identity, the whereabouts or identifying information of all the witnesses until such witnesses are brought under the protection of the Tribunal. The Office of the Prosecutor also requests that any hearing on this motion be held in closed session.

MEASURES REQUESTED

The prosecutor requests the Trial Chamber to grant an order for the following reliefs:

- (1) That the names, addresses, whereabouts, and other identifying data concerning the persons given pseudonyms in the indictment and the supporting documents shall not be disclosed to the public or the media.

- (2) That the public and the media shall not photograph, video record, or sketch witnesses while entering the Tribunal building, exiting from the Tribunal building, or while they are in the Tribunal building, without leave of the Trial Chamber and parties.
- (3) That the names, addresses, whereabouts, and other identifying data concerning the witnesses referred to in the supporting documents and/or any disclosed witness statements shall be divulged neither to the media, the public, nor to the defence until such time that the witnesses are brought under the protection of the Tribunal.
- (4) That all the hearings to litigate the issue of protective measures for the witnesses shall be held in close session.

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- (5) That the names, addresses, whereabouts of, and identifying information concerning the witnesses shall be sealed and not included in any Tribunal public records.
- (6) To the extent that any names, addresses, whereabouts of, and identifying information concerning the witnesses is contained in existing public records, those names, addresses, whereabouts of, and identifying information concerning the witnesses be expunged from those documents.
- (7) That the pseudonyms given to the witnesses in the indictment and supporting documents shall be used whenever referring to these witnesses in the Tribunal proceedings and discussions among the parties to trial.
- (8) That if the defence requires any information with respect to any of the witnesses, the defence must serve the prosecution with a request for such information as soon as possible.
- (9) That prior to such disclosure to the defence, the Trial Chamber must be satisfied that the witnesses are either under the protection of the Tribunal, the risk of danger no longer exists or that measures are in place which ensure that the information divulged will not endanger the witnesses.
- (10) That should the accused and the defence be provided the names, address, whereabouts of, and identifying information concerning the witnesses the defence or any representative who is acting pursuant to the instructions or request of the defence, shall under pain of penalty not disclose the names, addresses, whereabouts of, and identifying information concerning the witnesses to the public or media except to the limited extent that disclosure is necessary to adequately investigate the witness and only after obtaining leave from the Chamber. Further, that such disclosure be done in such a way to minimize the risk of the witnesses' names being divulged to the public at large or the media.

- (11) That the Prosecutor shall disclose the names and unredacted statements of the witnesses to the defence in sufficient time to allow the defence to prepare for trial, however, only after the Chamber is satisfied that the witnesses are under the protection of the Tribunal or that the risk of danger is no longer present.
- (12) That the Office of the Prosecutor be given leave to amend its motion on witness protection concerning the witnesses or specific witnesses if there exist a change of, or previously undiscovered circumstances.

Honoré Rakotomanana
Deputy Prosecutor

16 August 1996

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR RWANDA

THE PROSECUTOR

v.

JEAN PAUL AKAYESU

CASE NO. ICTR-96-4-I

**BRIEF IN SUPPORT OF MOTION ON BEHALF OF
THE PROSECUTOR FOR ORDERS FOR PROTECTIVE
MEASURES FOR WITNESS OF CRIMES ALLEGED
IN COUNTS 1 THROUGH 12 OF THE INDICTMENT**

The Prosecutor respectfully asks the Trial Chamber to grant the relief sought. The protective measures requested are appropriate, and protect the accused's rights and the rights of the witness. Any hearing on this motion should be in camera to prevent accidental disclosure of the identity of the witness prior to a determination by this chamber as to what protective measures may be appropriate.

STATEMENT OF FACTS

1. Between January 1996 and the beginning of July 1996, the level of violence directed against survivors of and witnesses to the 1994 genocide ("survivors/witnesses") has increased dramatically in Rwanda. 98 attacks have been reported and confirmed in the first half of this year. The majority of the attacks took place in the month of June. See, Exhibit "A, Declaration of Ian Martin, paragraph 9. The result of these attacks was 85 deaths and numerous cases of serious injury. Id., at 10.

2. The method by which the attacks are being carried out is usually violent involving in decapitation and mutilation often resulting in death. It appears that no area of Rwanda is immune. Attacks have occurred in the South, Southwest, West, Northwest and

Central regions of Rwanda. As a result, survivors/witnesses are fearful for their lives and the lives of their families, also see, Exhibit "B", Declaration of Halvard Tomta.

3. Many of the attacks most likely have been, and are being, perpetrated by the former Rwandese Armed Forces (ex-FAR), members of Interahamwe militia, or insurgents opposed to the current government of Rwanda. These perpetrators are either ethnically, politically and/or ideologically aligned with many of those who are now accused by the International Criminal Tribunal for Rwanda. See, Exhibit "A", para. 14. Their purpose appears to be to eliminate survivors/witnesses and to intimidate the community and other potential witnesses. Id, paras. 11 and 13.

4. Several of those who have been attacked and killed have had their names on "death lists" earlier compiled by the attackers. These lists are being used to identify survivor/witnesses, track them and exterminate them. See, Id, at 15.

5. In the case at bar, the Prosecutor has a well founded fear for the safety of the witnesses he will present some of whom are genocide survivors. The apprehension the witnesses have expressed for the safety of their families is also well founded. They too have apprehension for their safety as well as that of their families. See, Exhibit "B", para. 5. This apprehension has resulted in one witness not sleeping in her home for fear of being attacked in the night. Id, at para. 6. Additionally, it is believed by many witnesses that the defendant, and others who participated in the killings in 1994 have a large network of friends and associates who would not hesitate to harm them and their families should they testify publicly before the Tribunal. Id, at para. 8. Thus, many believe that by testifying publicly they and their families will be targeted and will very likely be attacked or killed.

It is with the above in mind that the Office of the Prosecutor requests the relief stated in its motion.

ARGUMENT

6. Article 19 of the Statute of the International Criminal Tribunal for Rwanda (hereinafter Statute) mandates that the Trial Chamber give "due regard for the protection of victims and witnesses". Article 21 of the Statute mandates that provisions be made "for the protection of victims and witnesses". It further mandates that protective measures shall include in camera proceedings and protection of the victim's identity. Pursuant to those mandates the Tribunal has promulgated several rules which relate to protecting victims' and witnesses' identity from the public and, in some instances, from the defence.

7. Rule 69 allows the Prosecutor to apply for non-disclosure of the identity of a victim or witness who may be in danger or at risk until the witness is brought under the protection of the Tribunal.

8. Rule 75 allows either party of a victim or witness to request a Trial Chamber to order appropriate measures for the privacy and protection of a witness. Subpart (B) of the Rule specifically includes non-disclosure to the public and to the media of any records identifying the victim, the use of pseudonyms, and closed sessions as measures that may be taken to prevent disclosure of the identity and whereabouts of victims or witnesses or persons related to or associated with them.

9. Rule 75 is more expansive than Rule 69 in the protections granted to victims and witnesses. Subpart (A) empowers this Trial Chamber to make appropriate orders for the "privacy and protection" of the victim or witness. Rule 75 (B) permits in camera proceedings to protect the privacy and security of the victims and witnesses while the need for protective orders is being litigated. Subpart (B) also includes several measures which the Chamber may order to protect the privacy and security of victims and witnesses, including use of pseudonyms, closed sessions, and testimony by one way closed circuit television.

10. Rule 79 (A) (ii) allows sessions to be closed to the public and press for reasons of the "safety, security or non-disclosure of the identity of a victim or witness as provided in Rule 75".

11. In determining what protective orders are appropriate, the Trial Chamber must apply a balancing test. Article 20 subpart 1, mandates: "... full respect for the rights of the accused and due regard for the protection of victims and witnesses". Article 20 which specifically addresses the rights of the accused, guarantees the accused the "right to a fair and public hearing, subject to Article 21 ..." (Article 20 subpart 2.) Article 21 provides for protection of victims and witnesses. It sanctions the very principle of the need to protect victims and witnesses.

12. Rule 69 balances the rights of both the accused and victims and witnesses in two ways. First, the Prosecutor may make application under this Rule only in exceptional circumstances. Second, in those cases where the identity of the victims or witnesses must be disclosed to the accused and the defence, subpart (B) of the Rule, requires that the identity be disclosed in sufficient time prior to the trial to allow adequate time for preparation of the defence". This disclosure to the defence is qualified, however. It is "subject to Rule 75 ...".

13. Rule 75 strikes that balance by requiring that the protective measures taken be "consistent with the rights of the accused". In respect to this motion, the relevant rights of the accused are the right to have adequate time for the preparation of his defence (Article 20 subpart 4(b); to examine, or have examined, the witnesses against him (Article 20 subpart 4(e)). The Tribunal Rules have interpreted the Articles to give the accused the right to know the names of the witnesses the Prosecutor intends to call to prove the guilt of the accused and in rebuttal to the defences of alibi and any special defence of which the defence has given notice (Rule 67(A)(I); the right to open sessions unless otherwise provided (Rule 78); the right that "witnesses shall, in principle, be heard directly" by the Trial Chamber (Rule 90(A)).

14. Where the balance is struck will depend on the facts of each case. In this case the balance that is struck should result in non-disclosure to the defence of the name of, or

identifying data about, all the witnesses, at least until the defence has shown that such disclosure is required to afford the accused a fair trial.

15. In Striking this balance, circumstances of the accused and the witness must be evaluated in light of the unique mandate of this Tribunal which places victim and witness protection in the same document containing the basic principles of this Tribunal, the Statute. The Statute mandates that victim and witness protection be an essential ingredient in defining the meaning of fair trial. With that unique context in mind, it may be that factors listed in some cases in other jurisdictions are helpful guidance.

16. In Prosecutor V. Dusko Tadic IT-94-I-T (a copy attached as provided by the International Criminal Tribunal for former Yugoslavia) in addressing this issue, the Chamber for the International Criminal Tribunal for the former Yugoslavia recognized that there is growing acceptance in many domestic jurisdictions of the need "to protect the identity of victims and witnesses from the public when special interest is involved". This acceptance has allowed for the press and public to be excluded from proceedings in order to protect the lives of the parties. Id. Typically this has been done in situations where appears likely that harm will result from the testimony ..." Tadic, at p. 19. With this in mind, the Chamber for the International Criminal Tribunal for the former Yugoslavia reasoned that in the International Criminal Tribunal arena,

"sufficient considerations to justify confidentiality may be found in the fear of reprisals during an ongoing conflict, particularly given the mandated duty of the International Tribunal to protect victims and witnesses and the inability of the International Tribunal to guarantee the safety of the victim or witness due to the lack of a fully-funded and operational witness protection program ...

Tadic, at p. 21. The Chamber therefore, granted the Prosecutor's request and ordered among other reliefs that the identities and whereabouts of the witnesses should not be divulged to the public and the media. Id. There is not only fear reprisals, but also actual evidence of retribution and retaliation. The information put forth before the Chamber demonstrates that in some parts of Rwanda acts of aggression continue to be waged. Survivors and potential witnesses are being attacked, killed and intimidated at an alarming rate. The likelihood that the witnesses are being attacked, killed and intimidated at an alarming rate. The likelihood that the witnesses will be attacked or killed if their names and whereabouts are revealed to the media or the public is extremely high.

17. In *Jarvie and Another v. The Magistrates 'Court of Victoria At Brumswick and Others* (1994), VR 84, (copy attached as provided by Prof. Chinkin), the court seemed to consider the risk of harm to the witness balanced against a showing by the defence that there is good reason to believe that disclosure may be of substantial assistance to the defence in combating the prosecution case. In determining whether or not there exists a legitimate risk to the witness' security or privacy, or to the security or privacy of the witness' relatives, both the witness' subjective assessment of risk and an objective assessment of risk should be considered. The prosecution agrees that, where legitimate security and privacy concerns exist, the defence must particularize their requests for information and why the requested information will be of substantial assistance to them.

18. In extending this protection to the trial stage, the Chamber for the International Criminal Tribunal for the former Yugoslavia determined that there are five factors which can be used as guidance and should exist prior to granting this measure which infringes on the right of the accused. The Chamber felt that-first, there must exist a real fear for the safety of the witness or his family. This fear may be based on objective criteria as well as on fears expressed by persons other than the witness, such as the Prosecutor. Second, the testimony of the witness must be important to the Prosecutor. It must be of the type that it would be unfair to make the Prosecutor proceed without it. Third, there must not exist prima facie evidence of untrustworthiness of the witness. "There should be no grounds for supposing that the witness is impartial or has an axe to grind". Fourth, there is an ineffectiveness or non-existence of a witness protection program. Here, the Chamber focused on whether there was a long term witness protection program or a mechanism in place to protect the witnesses once they leave the premises of the Tribunal. Lastly, the safeguard must be strictly necessary in that all less restrictive measures available will not accomplish the protection desired. Id.¹

19. In the case before the Chamber, the less intrusive Rule 69(A) protection should be granted. Here, not only do we have exceptional circumstances which justify a Rule 69(A) non-disclosure, but also many of the five "Tadic" factors cited above exist. The Office of the Prosecutor, as well as the witnesses, have a real fear of danger or risk of danger for all victims, witnesses and their families. As noted above, the number of attacks on survivor/witnesses continue to escalate with witnesses dying and being intimidated weekly. These victims and witnesses, whose testimony is important and critical, have yet to be "brought under the protection of the Tribunal". Under the circumstances referred to in the attached declarations, there are no less restrictive measures available that will accomplish the desired protection. With the existence of these concerns and exceptional circumstances, the non-disclosure of the identity, and the other protective measures requested in the motion, and the production of redacted statements of the witnesses and the assignment of pseudonyms to accomplish the desired protection is strictly necessary.

20. Given this witness' circumstances, the prosecution submits that the proper balance is struck in protecting the witness' identity from the public and media. The appropriate balance in this situation also includes non-disclosure of the witness' name and identity from the defence until such time as the defence can show that specific identifying information is necessary to ensure the accused receives a fair trial.

21. Proposed order number 11 provides a procedure whereby the defence can request information it feels necessary. If the prosecution agrees and believes that the information requested will not reveal the identity of the witness or his family, the prosecution will comply. If the prosecution receives a request the answer to which will impose a substantial risk of disclosure, the prosecution has two options. The first option would apply where the prosecution believes the information is necessary for a fair trial. At that point the prosecution and the witness would discuss the consequences of disclosure and make a decision. If the decision is to continue to withhold the identity of the witness, the prosecution would either proceed without the witness or, if that is not possible, withdraw the count(s) to

¹ If after considering these factors, it is determined that anonymity is required, the non-disclosure will last until "there are no longer reasons to fear for the security of the witness". Id. at 30.

which the witness' testimony is necessary. The second option would apply where the prosecution determines that the information is not, in its opinion, necessary to a fair trial, the prosecution would inform the defence of that and the defence could request the Trial Chamber to order disclosure. Thus, the procedure set forth in requested order number 10 has the additional benefit of narrowing the issues the Trial Chamber must decide.

22. Providing appropriate measures to protect the security and privacy of witnesses will have a positive impact beyond the well-being of this witness in this case. If the security and privacy concerns of witnesses are protected, other potential witnesses, in this case and in future cases, will feel more free to come forward with their information. Conversely, if appropriate protection is not given, and as a result a victim or witness, or family member of a victim or witness is killed, physically harmed, harassed, intimidated or otherwise harmed; there would be such a chilling effect on victims and witnesses that we may not have witnesses for this case or for future cases. Victims and witnesses must be able to expect fair treatment, just as all accused must be able to expect fair treatment.

23. In so far as the requested measures impact on the right to a public hearing, unfortunately, this public exposure is what most often places the victims' and witnesses' security and privacy at risk. Given the particularized security concerns of this witness, the requested curtailment of this right to a public hearing is appropriate. The curtailment is necessary for the protection of the privacy and security of the witness, and is in the interests of justice.

24. The witness will appear at trial to testify. The accused will have the opportunity to examine them. Thus, the accused will have the opportunity to challenge the testimony of the witnesses. The Trial Chamber will have the opportunity to observe the demeanor of the witnesses and to note the manner in which they responds to questioning and to attack their testimony. The rights of the accused will be protected and the risk of harm to the witnesses and their family members will be minimized.

25. The measures the Prosecutor is requesting provide fair treatment to the witnesses and to this accused. The measures comply with the letter and the spirit of the Articles and Rules which govern this trial. They are consistent with the spirit and intent of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which was adopted by the United Nations General Assembly in 1985. The measures strike the appropriate balance between the accused and the witness. They do not deprive the accused of a fair trial, nor of the right to examine or have examined the witnesses against him. The measures guarantee the accused a fair trial while minimizing the risk which disclosure to the accused may cause to these victims and witnesses.

CONCLUSION

The Prosecutor respectfully requests the Trial Chamber to grant the motion and issue the requested orders concerning all the witnesses.

DECLARATION OF IAN MARTIN

I, Ian Martin, declare that the foregoing is true to the best of my knowledge and belief:

1. I am currently the Chief of Mission at the United Nations High Commissioner for Human Rights Field Operation in Rwanda ("HRFOR") which is based in Kigali, Rwanda. I have held this position since October, 1995. Prior to this, between April 1993 and December 1993, I served as the Deputy Executive Director and Director for Human Rights of the International Civilian Mission In Haiti of the United Nations and Organization of American States. Prior to that, between 1986 and October 1992, I was Secretary General of Amnesty International
2. As Chief of Mission, I oversee the activities of the Human Rights Field Operation in Rwanda. As part of my responsibilities I supervise 70-75 Human Rights Field Officers ("the Officers") throughout Rwanda and review their reports.
3. The Officers fulfill several functions including, human rights promotion, education, working with the local judiciary, monitoring the returning of refugees and the tracking of human rights violations in Rwanda.
4. The Officers are divided into teams of 4-6 ("team") and are assigned to each prefecture in Rwanda, with the exception of Byumba Prefecture which was recently divided into two prefectures and is thus covered by one team.
5. Each team is required to file bi-monthly and monthly reports on its activities. In addition, as necessary, a team will file event-related reports pertaining to any serious incidents that may occur. These reports are made as quickly as possible after learning of an incident, usually within a day or two of the event.
6. In making a report certain guidelines must be adhered to by the Officers. These guidelines are designed to ensure that investigations are done thoroughly and in an unbiased manner. These guidelines lay out the mandate of the mission, provide general principles to be followed and specific instructions on how to conduct interviews, work with interpreters and verify and corroborate the information received. In addition, the guidelines provide instructions on reporting and its requirement, and set forth the need for confidentiality.
7. In Rwanda, the Officers have been requested to ask specific questions which are designed to provide detailed information as to what had occurred. Some of these questions include inquiries as to the status or classification of the victim. In particular, whether the victim is or was a witness to the events of the spring of 1994, a genocide survivor, a refugee or a relative of a member of a classified group.

8. Over the past several months I have received and reviewed numerous event-related reports in relation to attacks on survivors of and witnesses to the genocide of 1994. I have noted that the number of attacks has increased significantly since April of this year.
9. The event-related reports indicate that between January and June 1996, there were approximately 98 cases of attacks against genocide survivors or witnesses which occurred throughout Rwanda. Of these attacks, no cases were reported in January, one case was reported in February, 14 cases in March, 16 in April, 17 in May and 37 in June.
10. The attacks included approximately 85 killings, two attempted killings, three disappearances and several injuries. Of the 85 killings and attacks, the majority occurred in the Southern, Southwestern, Western and Northwestern regions of Rwanda. However, in the month of June approximately one dozen killings occurred in northern Kigali Rural Prefecture, just north of the nation's capital in the central part of the country.
11. The following cases are illustrative of the type of recent attacks on survivors of and witnesses to the genocide:
 - a. On April 10 Estephanie Mukarubera, of Shyara Cellule, Muhoro Sector, Mbazi commune, Butare Prefecture, left her residence to tend her field. Two days later, her mutilated body was found in the field. Her head and arms were cut off. The skull without hair and teeth was found in a neighboring sector, two kilometers away from where the dead body was found. According to information received by HRFOR, the victim was a survivor of the genocide and one of the sole witnesses to acts committed in her commune during the genocide.
 - b. On 22 April, Jeanne Nyiramondo, of Gacumbi cellule, Kilimbi sector, Rwamatatu Commune, Kibuye Prefecture, a school teacher at the primary school of Gacumbi and *Responsable de cellule* and a genocide survivor, was killed and decapitated by a group of 10 alleged members of the Interahamwe militia and two members of the ex-FAR. (See paragraph 14 for an explanation of Interahamwe militia and ex-FAR). The head of the victim was reportedly taken away by the perpetrators to Ijwi island. Mrs. Nyiramondo was the sole witness to acts committed in her cellule during the genocide. According to reports, she, as a genocide survivor, had repeatedly been the victim of death threats by a group alleged to be the perpetrators of the killing. The victim's spouse had reportedly paid a sum of money so the group would not carry out their threats.
 - c. During the night of 14 to 15 May 1996, at around 10:00 p.m., Dafroze Mukanjambibwa, a genocide survivor, and her three year-old daughter were killed with a hoe and knife at their residence in Gitambi Cellule, Murasa Sector, Gatara Commune, Cyangugu Prefecture, by a group of individuals said to have

been members of the Interahamwe militia. Dafroze Mukanjambibwa's name was reportedly included on a death list.

d. During the night of 20 to 21 May 1996, Alexis Gatera, *Conseiller de secteur* and a survivor and/or witness to the genocide, was reportedly killed with a hoe at his residence in Nyamugali Cellule, Nyamugali Sector, Gafunzo Commune, Cyangugu prefecture, by a group of at least four perpetrators said to have been members of Interahamwe militia. The head of the victim was cut off and taken away by perpetrators. The sister of the victim, a survivor and/or witness to the genocide, was seriously injured during the incident. It is reported that Mr. Gatera and his sister had received pamphlets on two separate occasions in which their names were included on a death list.

e. During the night of 18 to 19 June 1996, a group of 40 to 50 infiltrators from Ijwi island attacked a small village in Bunyamanza Cellule, Gitsimbwe Sector, Rwamatumu Commune, Kibbuye Prefecture. The village consists of 15 to 20 houses. Prior to the incident, approximately 60 genocide survivors lived there. The infiltrators reportedly surrounded the houses in the small village and went from house to house, killing the residents with guns and hatches. Reports on the total number of victims who died in the incident vary from 13 to 15. This number includes at least 10 genocide survivors, including three men, two women and five minors. Three of their relatives were also killed in the attack. According to a witness, two of the infiltrators stayed at the scene of the attack a few minutes longer threatening to come back to kill the remaining genocide survivors.

f. On Monday June 24, 1996, a group of approximately 10 unidentified armed individuals wearing civilian clothes attacked a group of three houses in Nyabitare Cellule, Minazi Sector, Rushashi Commune, Kigali Rural Prefecture, and killed a 70-year-old farmer, his 60 year-old wife, a daughter, a son and four other members of the family. The victims were all survivors of the genocide. They were shot and/or beaten to death.

g. On 27 June, 1996, a group of approximately 30 unidentified armed individuals attacked Kiruma Cellule, Nyamugeyo Sector, Muremure and Kinihira Cellules, Rubare Sector, Giciye Commune, Kabaya Sub-Prefecture, and Gisenyi Prefecture. The attack lasted approximately two hours. Twenty eight civilians were killed with guns, grenades and knives. The victims included 16 genocide survivors and 10 old caseload returnees. Of the victims, 17 were men, six women, and five minors. Additionally, six civilians were injured, including one genocide survivor.

12. I believe that in Rwanda people are being attacked and killed specifically because of their status as survivors or witnesses to the 1994 genocide. I base this belief on my experience, a review of all reports, the information contained in paragraph 11 above, and on the fact that I have counted on at least seven occasions that the names of the victims are reported to have been included on death lists.
13. Some of the killings in Rwanda especially in the prefectures of Butare, Cyangugu, Gisenyi and Kibuye, were done by way of decapitation and other forms of mutilation. I believe that the manner in which these killings are being perpetrated is intended to intimidate other witnesses. I base this belief on the same reasons cited above in paragraph 12 and also on the fact that in the majority of attacks, the families and relatives of the victims were also targeted.
14. In the majority of the cases, based on the information I have received, I believe that the perpetrators are most likely members of the former Rwandese Armed Forces (ex-FAR), members of Interahamwe militia, or other insurgents opposed to the Government of Rwanda. Based on my training and experience, I believe that these perpetrators are either ethnically, politically and/or ideologically aligned with many of those who are accused by the International Criminal Tribunal for Rwanda.
15. Although the attacks have been primarily conducted by the above described perpetrators, I believe the attacks may have the effect of emboldening people within Rwanda to also carry out attacks on genocide survivors and witnesses. I base this opinion on what has been conveyed to me and what I have learned in the performance of my responsibilities.
16. Based on the above, I believe that the recent attacks have had some discernible effects on other genocide survivors and witnesses in Rwanda. First and foremost, the attacks, based on all reports, are strongly discouraging people from offering testimony about the events of 1994. Additionally, I have observed, based on the information reported to me, that survivors/witnesses are starting to move and congregate together in areas further from the "attack zones." I am informed that the overall effects of this is a much higher level of anxiety among survivors, particularly in the border areas.

17. As a result of the escalation of these types of incidents, I believe that witnesses or genocide survivors believe and have reasonable grounds to believe that by testifying publicly in any proceedings, about their knowledge or experience in the events which took place in the spring of 1994, they will be placing themselves and their families in serious jeopardy. This belief is based on my experience, my review of all reports, the information which I conveyed above, and my speaking with the Officers who relayed to me the concerns of the witnesses/survivors.

August 1, 1996.

IAN MARTIN

DECLARATION OF HALVARD TOMTA

I, Halvard Tomta, do solemnly declare the following statement is true to the best of my knowledge and belief:

1. I am an investigator for the office of the Prosecutor for the International Criminal Tribunal for Rwanda. I have been so assigned since August 1995.
2. I am a Team Leader of an investigation team which has been investigating the events which occurred in the territory of Rwanda between January 31, 1994 to December 31, 1994. More specifically, my team has investigated the events which occurred in Commune of Taba involving defendant Jean-Paul Akayesu.
3. In the course of my duties, I have spent weeks speaking with approximately twenty witnesses who were eyewitnesses to events in Taba and are witnesses against the defendant. The witnesses know and are known to the defendant and are material witnesses to counts 1-12 of the indictment.
4. During our conversations, I have discussed with the witnesses their reservations in testifying before the International Criminal Tribunal for Rwanda.
5. Some of the witnesses have stated that they believe that by testifying before the Tribunal, their lives and the lives of their family members could be in danger.
6. One witness has stated to my team that she will not sleep in her house for fear of being attacked in the night. She stated that she leaves her house at dusk, finds a friend to accommodate her for the night, and returns at dawn.
7. Witnesses have explained to me that they believe that they and their families are vulnerable due to the fact that they still reside in Rwanda where the defendant has friends and associates.
8. These witnesses believe the defendant, and others who participated in the killings in 1994 have a large network of friends and associates could harm them and their families should they testify publicly before the Tribunal. As a result, the witnesses believe they may jeopardize the lives of their families by testifying before the Tribunal.
9. I believe, based on my conversations with numerous witnesses and the investigation I have conducted, that this fear has been precipitated by increasing reports of attacks on survivors and witness in the press and United Nations Human Rights Observer's report of April 1996.
10. The witnesses further inform me that they have not given any interviews or spoken with any media organizations.

11. Some witnesses have stated that they are prepared to testify in circumstances where their identity and the identity of their families are completely protected from the public.
12. At the present time, all prosecution witnesses have yet to be brought under the protection of the Tribunal. I have a real fear for the safety of the witnesses and their families. This fear is based on my knowledge of the events referred to in Ian Martin's declaration, as well as things learned in the course of my own investigations.
13. I believe, based on my experience, interviews of the witnesses and conversation with my team members that the testimony of all witnesses the prosecution will present is important and in some cases critical. I further believe, based on all information known to date, that the testimony of these witnesses is trustworthy.

August 2, 1996

HALVARD TOMTA.

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

CHAMBER 1 - CHAMBRE 1

**Before: Judge Yakov A. Ostrovsky, Presiding Judge
Judge Lennart Aspegren
Judge Navanethem Pillay**

**Registrar: Mr. Frederik Harhoff
Ms Prisca Nyambe**

Decision of: 27 September 1998

**The Prosecutor
vs
Jean-Paul AKAYESU**

Case No. ICTR-96-4-T

**DECISION ON THE PRELIMINARY MOTION
SUBMITTED BY THE DEFENCE
ON THE FORM OF THE INDICTMENT AND EXCLUSION OF EVIDENCE**

The Office of the Prosecutor:

**Judge Honoré Rakotomanana
Mr. Yacob Haile-Mariam
Mr. Mohamed Chande Othman
Mr. Pierre-Richard Prosper**

**Counsel for the Accused:
Mr. Johan Scheers**

REASONS FOR DECISION

On May 27 1996, the Defence filed a motion under Rule 73 of the Rules of Procedure and Evidence ("the Rules"), in which a number of complaints and objections were raised.

During the oral presentation of his motion, however, the Counsel for the Defence departed significantly from his written submission and limited himself to raising a number of complaints regarding the conditions of detention of the suspect in custody in Zambia and the delay in communicating the indictment and the supporting material to him.

The Chamber does not wish to contend the fact that the suspect was arrested by the Zambian authorities upon request or a suggestion presented through the Rwandan Embassy in Pretoria, nor is the Chamber inclined to deny the possibility that the detention facilities in Lusaka may have been inadequate. Both objections, however, are beyond the realm of the Tribunal's competence. As neither of these elements, anyway, can invalidate the arrest or the transfer of the accused to the jurisdiction of the Tribunal, the Chamber feels that there is very little it can do about it.

The Chamber also notes that there has been, apparently, some delay in communication of the indictment and the supporting material in French to the Counsel for the Defence. The Office of the Prosecutor, however, is not bound by any specific time-limit in the Rules, save the provision in Rule 66 that it shall be done "as soon as practicable". Having heard the arguments of the Prosecutor, the Chamber is unable to establish that the Prosecutor is in violation of the Rules.

The Chamber further notes that some of the issues raised by the Defence lie beyond the framework of his written submission. As regards in particular the allegation made by the Defence that the witnesses to be brought by the Prosecutor are not reliable, the Chamber wishes to emphasise that this question remains to be examined during trial.

The Chamber, therefore, finds itself faced at this stage of the proceedings with a number of complaints presented by the Defence, which altogether appear as insufficient basis for a substantial ruling under Rule 73 of the Rules and the grounds stipulated therein.

THE TRIBUNAL,

SITTING as Trial Chamber 1 of the International Criminal Tribunal for Rwanda ("the Tribunal"), composed of Judge Yakov A. Ostrovsky as Presiding Judge, Judge Lennart Aspegren and Judge Navanethem Pillay,

CONSIDERING the indictment submitted on 13 February 1996 from the Prosecutor against Jean-Paul Akayesu pursuant to Rule 47 of the Rules and confirmed by the Tribunal on 16 February 1996,

TAKING INTO ACCOUNT that the Accused was arrested by the Zambian authorities on 10 October 1995, pursuant to the Tribunal's Warrant of Arrest of 16 February 1996, and was subsequently transferred to the Tribunal's Detention Unit on 26 May 1996,

BEING SEIZED OF the motion filed by the Defence on 27 May 1996 in which the Defence raises several objections based on defects in the form of the indictment and on exclusion of evidence obtained from the Accused or having belonged to him, but in which the Defence further requests that the Accused be released

HAVING THEN HEARD the pleading of the Defence in the course of the hearing of this motion held on 26 September 1996, during which, however, the Counsel for the Defence limited himself in essence to raising complaints about the conditions of custody in Zambia and delays in communicating the indictment and the supporting material to him, without any further reference to his written request for release of the Accused, all of which leaves the Chamber with insufficient basis for a substantial ruling under Rule 73 of the Rules,

TAKING IN ACCOUNT that the Defence has raised issues beyond the framework of the motion,

CONSIDERING FURTHER the Prosecutor's Brief in response to the Defendant's preliminary motion and accompanying documents, submitted on 5 September 1996,

HAVING ALSO HEARD the oral arguments of the Prosecutor to the complaints raised by the Defence Counsel during the hearing held on 26 September 1996, and noting his readiness to supply the Defence with the necessary documents,

TAKING INTO CONSIDERATION the reply provided by the Registrar to the questions raised by the Defence during the hearing held on 26 September 1996,

FOR THESE REASONS,

TAKES NOTICE of each issue upon its merits.

Arusha, 27 September 1996

Yakov A. Ostrovsky
Presiding Judge

Lennart Aspegren
Judge

Navanethem Pillay
Judge

(Seal of the Tribunal)

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

CHAMBER 1 - CHAMBRE 1

**Before: Judge Yakov A. Ostrovsky, Presiding Judge
Judge Lennart Aspegren
Judge Navanethem Pillay**

**Registrar: Mr. Frederik Harhoff
Ms Prisca Nyambe**

Decision of: 27 September 1998

**The Prosecutor
vs
Jean-Paul AKAYESU**

Case No. ICTR-96-4-T

**DECISION ON
POSTPONEMENT OF THE TRIAL**

The Office of the Prosecutor:

**Judge Honoré Rakotomanana
Mr. Yacob Haile-Mariam
Mr. Mohamed Chande Othman
Mr. Pierre-Richard Prosper**

Counsel for the Accused:

Mr. Johan Scheers

THE TRIBUNAL

SITTING as Trial Chamber 1 of the International Criminal Tribunal for Rwanda ("the Tribunal"), composed of Judge Yakov A. Ostrovsky as Presiding Judge, Judge Lennart Aspegren and Judge Navanethem Pillay,

BEING SEIZED during the hearing held on 27 September 1996 with a request made by the Defence for the postponement of the trial on the grounds that the preparation of the defence has been hampered by various logistic and material problems, in particular problems related to the late disclosure of documents to the Defence by the Prosecutor, and access to the witnesses for the Defence,

MINDFUL of allowing the accused reasonable time to prepare his defence,

NOTING that the Prosecutor is not opposed to a short postponement of the trial,

FOR THESE REASONS,

DECIDES that the trial of Jean-Paul Akayesu shall start on 31 October 1996, at 9.30 hours.

Arusha, 27 September 1996

Yakov A. Ostrovsky
Presiding Judge

Lennart Aspegren
Judge

Navanethem Pillay
Judge

(Seal of the Tribunal)

International Criminal Tribunal for Rwanda

TRIAL CHAMBER 1

Before: Judge Laïty Kama, Presiding Judge
Judge Lennart Aspegren
Judge Navanethem Pillay

Registrar: Mr. Frederik Harhoff
Ms Prisca Nyambe

Date: 31 October 1996

**THE PROSECUTOR
VERSUS
JEAN-PAUL AKAYESU**

Case No. ICTR-96-4-T

**DECISION CONCERNING A REPLACEMENT OF
AN ASSIGNED DEFENCE COUNSEL AND
POSTPONEMENT OF THE TRIAL**

The Office of the Prosecutor:

**Mr. Honoré Rakotomanana
Mr. Yacob Haile-Mariam
Mr. Mohamed Chande Othman
Mr. Pierre-Richard Prosper**

Counsel for the Accused:

Mr. Johan Scheers / Mr. Michael G. Karnavas

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ("The Tribunal"), sitting in Trial Chamber 1 composed of Presiding Judge Laïty Kama, Judge Lennart Aspegren and Judge Navanethem Pillay;

CONSIDERING the indictment submitted by the Prosecutor against Mr. Jean-Paul Akayesu according to Rule 47 of the Rules on Procedure and Evidence ("the Rules"), based on the existence of sufficient proof to establish beyond a reasonable doubt that he has committed genocide, complicity in genocide, crimes against humanity and violations of Article 3 common to the 1949 Geneva Conventions and of Additional Protocol II;

CONSIDERING the decision confirming this indictment signed by Judge William H. Sekule on 16 February 1996;

BEING SEIZED BY a motion filed by the Defence under Rule 73 of the Rules for further postponement of the case due to non-submission of documentary evidence from the Prosecutor and to lack of sufficient time and funds available to the Defence to defend the accused properly;

HAVING HEARD, during today's session, Mr. Michael G. Karnavas' request for a further postponement of the case for 6 months;

HAVING ALSO HEARD during this session the Prosecution's objection to any further postponement of the case;

CONSIDERING the official assignment by the Tribunal on 10 May 1996 of Mr. Johan Scheers as defence counsel for the accused;

HAVING RECEIVED a letter from the assigned counsel, Mr. Scheers, in which he indicated that he would not be present at the trial today due to unsettled financial claims between himself and the Tribunal, but that the rights of the accused would be sufficiently protected by the provisional presence of Mr. Karnavas as defence counsel in his place;

TAKING INTO ACCOUNT Mr. Karnavas' oral request, at the beginning of this session, to represent the accused during the session;

TAKING ALSO INTO CONSIDERATION Mr. Karnavas' wish to be assigned by the Tribunal as the leading counsel for the defence;

HAVING HEARD AS WELL the accused, who had no objection to being represented by Mr. Karnavas during this session, but who did not wish to exclude Mr. Scheers as his defence counsel if two or more counsels could be assigned to him;

HAVING BEEN INFORMED by the Registrar that Mr. Scheers is currently the only counsel officially assigned to the accused, that under the existing rules there can be only one counsel assigned at any time, and that Mr. Karnavas' name appears on the list of defence counsels, held by the Registrar according the Rule 45 of the Rules, from which defence lawyers can be assigned;

TAKING INTO ACCOUNT the provisions in Rule 45 of the Rules and Articles 15 and 19 of the Directive on Assignment of Defence Counsel (hereinafter the ("Directive"));

AFTER HAVING DELIBERATED,

GIVEN that article 15 of the Directive on Assignment of Defence Counsel allows for assignment of one counsel only to each accused;

CONSIDERING that the Chamber, according to Article 19 (A) and (D) of the Directive, in exceptional cases only, may grant the request of an accused to be assigned another counsel for his defence, in which case the Registrar shall withdraw the assignment and immediately assign a new counsel to the accused;

TAKING INTO ACCOUNT that the officially assigned defence counsel has not appeared before the Tribunal on the scheduled date for commencing the trial on 31 October 1996, which was fixed by the Chamber on 27 September 1996, due to unresolved financial claims presented to the Registrar;

BEING OF THE OPINION that a financial dispute with the Registrar does not constitute an acceptable reason for refusing to appear on the scheduled trial date, which was fixed in agreement with the assigned counsel;

FINDING, therefore, that the non-appearance of the assigned counsel, based on reasons which are neither acceptable nor justifiable, provides an exceptional circumstance in this case within the meaning of Article 19 of the Directive;

CONSIDERING the request made by the accused before the Tribunal to have Mr. Karnavas assigned as his defence counsel without, however, excluding for all time Mr. Scheers as co-counsel, if and when the Directive is amended to this effect;

CONSIDERING that the Registrar has confirmed that the name of Mr. Karnavas does appear on the list of defence counsels approved by the Tribunal;

TAKING INTO ACCOUNT the importance which the Tribunal concedes to the rights of the accused as recognized by Article 14 of the United Nations International Covenant on Civil and Political Rights;

RECOGNIZING the need for the defence counsel to have adequate time to prepare the defence;

HEREBY:

GRANTS the request made by Mr. Jean-Paul Akayesu for replacement of defence counsel;

INSTRUCTS the Registrar to withdraw the assignment of Mr. Johan Scheers as defence counsel for Mr. Jean-Paul Akayesu according to article 19 of the Directive and to immediately assign Mr. Michael G. Karnavas as new counsel for defence of the accused;

DECIDES to postpone the trial proceedings until 9 January 1997.

Arusha, 31 October 1996

Laïty Kama
President

Lennart Aspegren
Judge

Navanethem Pillay

(Seal of the Tribunal)

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

THE PROSECUTOR

V

JEAN PAUL AKAYESU

**DEFENCE MOTION FOR AN EXPEDITED IN-CAMERA HEARING
RE PROSECUTORIAL MISCONDUCT AND OTHER RELATED MATTERS**

Jean Paul AKAYESU, by and through his attorney, Michael G. Karnavas, hereby requests an expedited in-camera hearing. This motion is based on the attached sealed affidavit of counsel.

Respectfully Submitted,

Michael G. Karnavas
ATTORNEY FOR JEAN PAUL AKAYESU

AFFIDAVIT

MICHAEL GEORGE KARNAVAS, upon his oath deposes and states as follows:

1. On October 31, 1996, immediately after the courtroom proceedings I witnessed a press conference conducted by the Deputy Prosecutor and Chief Trial Attorney. During the press conference the Deputy Prosecutor made certain allegations, asserting that I had been unethical in court, having stolen Avoc. Scheers client away, without Mr. Scheers knowledge.

2. Immediately after the Prosecutor's press conference I was asked to respond to questions by the press.

3. While I was responding to questions, the Deputy Prosecutor and Chief Trial Attorney began to distribute a private letter addressed to Justice Arbour regarding the possibility of employment within the ICTR Prosecution office.

4. The Deputy Prosecutor and Chief Trial Attorney in collaboration with Gerard Gahima RPA-Chef de Cabinet of the Ministry of Justice (whose brother was considered the Secretary General of the RPF and who is currently the Ambassador of the United States of America) began to go over the letter with journalists.

5. That while I was responding to a question, Mr. Gahima began to quote from the letter and then requesting whether I was ethically fit to represent Mr. AKAYESU, whether the Alaska Bar Association should be notified, and other sorts of provocative questions that were clearly designed to embarrass me, weaken or destroy my relationship with Mr. AKAYESU and perhaps force me to resign from representing the "beast" as Mr. Gahima characterized Mr. AKAYESU.

6. That after the press conference I approached one of the prosecutors to inform them of my intentions to file this motion herein, and to enquire whether he thought it was "ethical" to which he replied "and what you did in court, was that ethical?"

7. After this incident I visited with Mr. AKAYESU to inform him of the events and to advise him that in my opinion he should seriously reconsider whether he still wished to have me represent him. I told him that while I would vigorously represent him, I had a strong opinion that I would be less effective in mounting a defence given that most witnesses suffer from extreme paranoia and suspicions, would be less likely to trust me, particularly since it has

come to my attention that certain people - outside the case - are openly questioning whether I, the "American lawyer from Kigali", am a "Tutsi spy".

8. I explained to Mr. AKAYESU the contents in the letter and my reasons and convictions expressed therein. I further explained to Mr. AKAYESU that it was only after the hearings on September 26 and after seeing that the two commercial lawyers in court were unfamiliar with the trial process that I approached Mr. Scheers to give him some advise on the points I believed he needed to make on the record. I told Mr. AKAYESU that I offered my assistance to Mr. Scheers because I believed that Mr. Scheers impressed me as an attorney with very strong convictions for his client, but lacking the skills to provide the best possible defence.

9. I explained to Mr. AKAYESU that "trust" and "confidence" is essential to the attorney-client relationship. I acknowledged that my letter would justify my immediate replacement and that perhaps he should do so in the best interest of his case. I further explained that given the publication of the letter and press comments by the Prosecution, I had seriously damaged his case and I would be less effective in locating witnesses that would trust me to appear on his behalf.

10. After spending approximately one (1) hour with Mr. AKAYESU, he assured me that he continued to trust me and that he had confidence that I would vigorously represent him.

11. I told Mr. AKAYESU that I was dutybound to bring this matter to the court so he could go "on record" so he could express his thought on this issue and for the court to determine whether there is cause to sanction me for any ethical violation or even strike me off the list of defence counsel. I further explained to Mr. AKAYESU that in my opinion the Prosecution was interfering with the attorney client relationship and their conduct might even amount to an obstruction of justice and so for these reasons, it was also important to flush out these issues.

12. That I believe, as an experienced criminal defence lawyer, the Deputy Prosecutor and Chief Trial Attorney have behaved unethically warranting a full hearing for the following reasons:

a) By collaborating with the RPF "unofficial" Minister of Justice, the prosecution has demonstrated a bias toward the Tutsi/RPF social class which is demonstrated by the fact that no RPF members are being investigated in Rwanda for Crimes Against Humanity during 1994. The bias and compromising position of the Prosecution is further evident in the manner in which they purposefully refused to exercise their primary jurisdiction with regard to Mr. Karamira, by handing him over to the RPF government who, with Mr. Gahima is the point man for Ministry of Justice, blackmailed the Prosecution by giving them an ultimatum - to give up Karamira or leave Rwanda. (This version of events I learned from ICTR investigators and other diplomatic officials). This is

significant given that Rwanda with no viable judicial system, will impose the death penalty. By collaborating with Mr. Gahima, the Prosecution office is undermining the very purpose of the Tribunal.

b) That by making this private letter public, the prosecution has directly interfered with Mr. AKAYESU's defence in that:

i) The prosecution has attempted to drive a wedge between the attorney and the client

ii) The prosecution has made it much more difficult for the defence to conduct a proper investigation

iii) the prosecution has put counsel for the defence at a much high risk. In July, Hutu extremists announced a \$1000 bounty for any American killed

iv) the Prosecution, with the collaboration of Mr. Gahima, have attempted to sabotage the case

v) a continuance may be needed as a result of the above mentioned matters.

13. Prior to the October 31 hearing, Mr. Scheers and I had discussed extensively our respective roles in this case. Mr. Scheers would remain primarily in Brussels as the primary attorney, and I would be in Arusha full-time as the trial attorney. Mr. AKAYESU had been consulted and was in full agreement.

14. During the afternoon of October 30, I met with two senior legal officers of the Registry, both of whom expressed their concern for Mr. Scheers' absence. I was told that under the current rules, only one assigned counsel was possible and that perhaps I could not appear in the absence of Mr. Scheer. I telephoned Mr. Scheers to inform him and get an answer to the question - "What is your status in this case?" posed to me by the Registry. Mr. Scheer replied "Michael, tell them it is very very clear, if Mr. Adede does what he is supposed to do, if he pays me like he promised, I will be there."

16. Prior to the hearing on October 31, I met with Mr. AKAYESU to inform him what had transpired. I informed him that I might not be able to proceed; that if a postponement was not granted I was dutybound to withdraw from the case, since it would be unethical of me to go forward to trial unprepared; that Mr. Scheers should remain as primary attorney in the case but he risked being on trial as early as "today". I explained all the rules and the differences between ICTY and ICTR and told him that the rules might be amended "soon" but until then, he could only have one assigned counsel. I asked Mr. AKAYESU to think of his options and I

specifically refused to answer his question of "What should I do, I want Scheers, but I also want you?"? I merely told him that either way it did not matter, because I was not going to go forward to trial and that I was confident that if I could get the Tribunal's attention they would, having no choice, make the only just decision i.e. give us a postponement. At no time did I encourage or instruct Mr. AKAYESU to chose me over Mr. Scheers, though he was quite clear that I would be the trial lawyer, something that Mr. Scheers was most insistent upon.

MEMORANDUM

TO: DR ANDRONICO ADEDE, REGISTRAR

FROM: MICHAEL G. KARNAVAS, ATTORNEY TO J P AKAYESU

RE: MR. AKAYESU'S REQUEST FOR NEW COUNSEL

DATE: 15 November 1996

As Mr. Akayesu's assigned counsel, I am obliged to inform you that Mr. Akayesu today seems to have unequivocally expressed his interest in replacing me as his assigned counsel. It is my understanding that he wishes to have Mr. Scheers reassigned.

Today I visited Mr. Akayesu and confronted him with his letters to the Registrar and the Tribunal dated 11 and 12 November 1996. I requested an explanation, particularly since yesterday I had a two-hour visit with him and at no time did he express to me his sentiments reflected in his letters. In fact, he seemed rather pleased with the number of motions I outlined to him that are currently being researched and prepared for his defence.

It was not until last night that I learned of the contents of his letters and frankly I was both amazed and shocked, especially since I have repeatedly offered to resign and allow Mr. Scheers to be reassigned in the event he felt uncomfortable with me as his defence counsel for whatever reasons.

I visited Mr. Akayesu today in hopes of sorting out his new founded assertions which I take exceptions to. Mr. Akayesu simply refused to discuss the matter and requested to return to his cell. Mr. Akayesu's change of heart and views regarding my assignment seems to have occurred, coincidentally, with the incarceration of two additional inmates, which may or may not explain this episode, given that there is no segregation of the inmates.

Given Mr. Akayesu's request for Mr. Scheers to be reassigned to this case and his unwillingness to accept his currently assigned counsel, it behooves the Registrar to bring this matter immediately to the Tribunal's attention and urge that a hearing to be scheduled forthwith. Mr. Akayesu is entitled to have counsel of his choice. We all must respect his wishes.

Please accept my apologies for this most unfortunate situation.

Respectfully yours,

Michael G. Karnavas
Attorney for J.P. AKAYESU

cc Presiding Judge Laïty Kama
OTP

UNITED NATIONS NATIONS UNIES
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

TRIAL CHAMBER 1

OR : FR

Before: **Judge Laïty Kama, Presiding Judge**
 Judge Lennart Aspegren
 Judge Yakov A. Ostrovsky

Registry: **Ms. Prisca Nyambe**
 Mr. Jean-Pelé Fomété
 Ms. Cécile Aptel

Decision of: **20 November 1996**

THE PROSECUTOR
AGAINST
JEAN-PAUL AKAYESU

Case No: ICTR-96-4-T

DECISION ON THE REQUEST OF THE ACCUSED
FOR THE REPLACEMENT OF ASSIGNED COUNSEL

The Office of the Prosecutor
Mr. Pierre-Richard Prosper

The Counsel for the Accused:
Mr. Michael G. Karnavas

THE TRIBUNAL,

Sitting as Trial Chamber 1, composed of Judge Laïty Kama as Presiding Judge, Judge Lennart Aspegren and Judge Yakov A. Ostrovsky;

CONSIDERING the indictment issued by the Prosecutor against Jean-Paul Akayesu, pursuant to Rule 47 of the Rules of Procedure and Evidence ("The Rules") on the basis that there was sufficient evidence to provide reasonable grounds for believing that he has committed genocide, complicity in genocide, crimes against humanity and violations of Article 3 common on the 1949 Geneva Conventions and Additional Protocol II thereto;

CONSIDERING the decision confirming this indictment, signed by Judge William H. Sekule on 16 February 1996;

CONSIDERING the decision of the Tribunal of 31 October 1996 adjourning the date of hearing to 9 January 1997 and authorising, upon the request of the accused, the replacement of Mr. Johan Scheers by Mr. Michael G. Karnavas as assigned counsel for the accused;

CONSIDERING the letter of 11 November 1996 addressed by Jean-Paul Akayesu to the President of the Tribunal;

CONSIDERING the memorandum of 15 November 1996 addressed to the Registrar by Mr. Karnavas in his capacity as counsel for Jean-Paul Akayesu, taking note of the request for his replacement by Mr. Scheers;

CONSIDERING the letter of 18 November 1996 addressed to the Registrar by Jean-Paul Akayesu in reply to the aforementioned memorandum;

CONSIDERING Article 20 of the Statute, Rule 45 of The Rules and Articles 2, 15 and 19 of the Directive on Assignment of Defence Counsel ("Directive");

HAVING THEN HEARD all parties concerned at the hearing of 20 November 1996 held in camera following the order issued from the bench by the present Trial Chamber on the basis of the protection of the interests of justice, in accordance with Rule 79 (A)(iii) of The Rules;

AFTER HAVING DELIBERATED:

WHEREAS Jean-Paul Akayesu has requested the replacement of Mr. Karnavas, the reason being the latter's behaviour which he considers inappropriate and which, in his opinion, would result in a total lack of confidence in the ability of his counsel to act fully for his defence;

WHEREAS Mr. Karnavas takes exception to all the grievances set forth by Jean-Paul Akayesu, while not objecting, however, to the request made by his client and that, in that regard, he himself had written in his memorandum of 15 November 1996:

"Given the fact that Mr. Akayesu (...) is unwilling to accept his currently assigned counsel, it behoves the Registrar to bring this matter immediately to the Tribunal's attention and urge that a hearing be scheduled forthwith. Mr. Akayesu is entitled to have counsel of his choice. We all must respect his wishes";

WHEREAS the Tribunal, without taking a position in the conflict between the accused Akayesu and Mr. Karnavas, notes however that given the present circumstances and the resulting lack of confidence of the accused in his counsel, there was indeed an exceptional case, as provided in paragraph (D) of Article 19 of the Directive, as a condition for the replacement of assigned counsel upon decision by a Chamber;

WHEREAS the Tribunal consequently considers it appropriate to accede to the request made by Jean-Paul Akayesu for the replacement of his counsel;

FOR THESE REASONS

THE TRIBUNAL

GRANTS the second request of Jean-Paul Akayesu for the replacement of assigned counsel;

INSTRUCTS the Registrar to assign without delay a new counsel to Jean-Paul Akayesu in strict compliance with Article 20.4(d) of the Statute, Rule 45 (C) (iii) of the Rules and with the Directive, taking into account the need to ensure the effective commencement of the trial on the merits on 9 January 1997 at 9:30 am, as scheduled.

Arusha, 20 November 1996

Laïty Kama
Presiding Judge

Lennart Aspegren
Judge

Yakov A. Ostrovsky
Judge

(Seal of the Tribunal)

IV

Obed Ruzindana
ICTR-96-10-T

Indictment

Confirmation of indictment

Warrant of arrest, order for surrender

Decision following the initial appearance

Prosecutor's response to Defence's request for a hearing on discovery issues

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO: ICTR-

**THE PROSECUTOR OF
THE TRIBUNAL**

AGAINST

**ELIZAPHAN NTAKIRUTIMANA
GERARD NTAKIRUTIMANA
OBED RUZINDANA
CHARLES SIKUBWABO**

INDICTMENT

1. The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to his authority under Article 17 of the Statute of the International Criminal Tribunal for Rwanda ("the Statute of the Tribunal") charges:

**ELIZAPHAN NTAKIRUTIMANA
GERARD NTAKIRUTIMANA
OBED RUZINDANA
CHARLES SIKUBWABO**

with **GENOCIDE, COMPLICITY IN GENOCIDE, CONSPIRACY TO COMMIT GENOCIDE**, and **CRIMES AGAINST HUMANITY** as set forth below.

2. The present indictment charges persons responsible for serious violations of international humanitarian law committed in the Territory of Rwanda during the month of April 1994 at Mugonero Complex in Gishyita commune, Kibuye prefecture, where hundreds of men, women and children were killed and a large number of persons wounded.

3. THE ACCUSED

3.1. **Elizaphan Ntakirutimana** is believed to have been born in 1924 in Ngoma sector, Gishyita commune, Kibuye prefecture. During the time of the events referred to in this indictment, he was the Pastor of the Seventh day Adventist Church in Mugonero.

3.2. **Gerard Ntakirutimana** is believed to have been born in 1957 in Ngoma sector, Gishyita commune, Kibuye prefecture. During the time of the events referred to in this indictment, he was a physician at Mugonero hospital.

3.3. **Obed Ruzindana** is believed to have been born in 1959 in Gisovu sector, Gisovu commune, Kibuye prefecture. During the time of the events referred to in this indictment, he was a businessman in Kibuye prefecture.

3.4. **Charles Sikubwabo** is believed to have been born in the early to mid-1940s in Gishyita sector, Gishyita commune, Kibuye prefecture. During the time of the events referred to in this indictment, he was the Burgomaster of Gishyita commune.

4. A CONCISE STATEMENT OF THE FACTS

4.1. During the events referred to in this indictment, Rwanda was divided into eleven prefectures, one of which was Kibuye. Each Prefecture was governed by a Prefect. The Prefectures were further divided into communes, each of which was governed by a Burgomaster. The Burgomaster was the representative of the executive power in the communes and was in charge of the governmental functions within the commune.

4.2. During the events referred to in this indictment, Tutsis were identified as members of an ethnic or racial group.

4.3. On 6 April 1994, the plane transporting President Juvénal Habyarimana of Rwanda crashed on its approach to Kigali airport, Rwanda. Attacks and murders of civilians began soon thereafter throughout Rwanda.

4.4. During the month of April 1994, a large number of men, women, and children from various places sought shelter from the attacks which were taking place throughout Kibuye prefecture. Many assembled inside Mugonero Complex, which consisted of several buildings, including a church, an infirmary, and a hospital. [hereinafter referred to as "the Complex"]. The majority of these men, women, and children were Tutsi and were unarmed.

4.5. Many of those men, women and children who sought refuge in the Complex did so because **Elizaphan Ntakirutimana** instructed them to go there.

4.6. After the men, women, and children gathered in the Complex, **Gérard Ntakirutimana** and others separated Tutsi individuals from the others. Those who were not Tutsi were allowed to leave the Complex.

4.7. On or about the morning of 16 April 1994, a convoy, consisting of several vehicles followed by a large number of individuals armed with various weapons went to the complex. Individuals in the convoy includes, among others, **Elizaphan Ntakirutimana, Gérard Ntakirutimana, Obed Ruzindana, Charles Sikubwabo**, members of the National Gendarmerie, communal police, militia, and civilians.

4.8. The individuals in the convoy, including **Elizaphan Ntakirutimana, Gérard Ntakirutimana, Obed Ruzindana, and Charles Sikubwabo** participated in an attack on the men, women and children in the Complex which continued throughout the day.

4.9. The attack resulted in hundreds of deaths and a large number of wounded among the men, women, and children who had sought refuge at the Complex.

4.10. During the months following the attack on the Complex, **Elizaphan Ntakirutimana, Gérard Ntakirutimana, Obed Ruzindana, and Charles Sikubwabo** searched for and attacked Tutsi survivors and others, killing or causing serious bodily or mental harm to them.

4.11. Before the attack on the Complex, **Charles Sikubwabo** knew or had reason to know that his subordinates, including members of the National Gendarmerie and communal police under his control, were about to participate in the attack on the men, women, and children, and did not take necessary and reasonable measures to prevent the attack. In addition, after the attack, **Charles Sikubwabo** did not punish the perpetrators.

5. CHARGES

By their acts in relation to the events referred to above, each of the accused are individually responsible for the crimes alleged below pursuant to Article 6(1) of the Tribunal Statute. In addition or alternatively, **Charles Sikubwabo**, in his capacity as Burgomaster, is individually responsible as a superior for the acts of his subordinates for the crimes alleged below pursuant to Article 6(3) of the Statute of the Tribunal.

Count 1: **Elizaphan Ntakirutimana, Gérard Ntakirutimana, Obed Ruzindana, and Charles Sikubwabo**, during the month of April 1994, in Gishyita commune, Kibuye Prefecture, in the Territory of Rwanda, are responsible for the killing or causing of serious bodily or mental harm to members of the Tutsi population of Rwanda with the intent to destroy, in whole or in part, an ethnic or racial group as such, and have thereby committed **GENOCIDE** as recognized by Article 2(3)(a) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal;

Count 2: **Elizaphan Ntakirutimana, Gérard Ntakirutimana, Obed Ruzindana, and Charles Sikubwabo**, during the month of April 1994, in Gishyita commune, Kibuye Prefecture, in the Territory of Rwanda, were complicit in the killing or causing of serious bodily or mental harm to members of the Tutsi population of Rwanda with the intent to destroy, in whole or in part, an ethnic or racial group as such, and have thereby committed **COMPLICITY IN GENOCIDE** as recognized by Article 2(3)(e) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal;

Count 3: **Elizaphan Ntakirutimana, Gérard Ntakirutimana, Obed Ruzindana, and Charles Sikubwabo** during the month of April 1994, in Gishyita commune, Kibuye Prefecture, in the Territory of Rwanda, did conspire, with each other and others, to kill or cause serious bodily or mental harm to members of the Tutsi population of Rwanda with the intent to destroy, in whole or in part, an ethnic or racial group as such, and have thereby committed **CONSPIRACY TO COMMIT GENOCIDE** as recognized by Article 2(3)(b) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal;

Count 4: **Elizaphan Ntakirutimana, Gérard Ntakirutimana, Obed Ruzindana, and Charles Sikubwabo** during the month of April 1994, in Gishyita commune, Kibuye Prefecture, in the Territory of Rwanda, are responsible for the murder of civilians, as part of a widespread and systematic attack against a civilian population on political, ethnic, or racial grounds, and have thereby committed a **CRIME AGAINST HUMANITY** as recognized by Article 3(a) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal;

Count 5: **Elizaphan Ntakirutimana, Gérard Ntakirutimana, Obed Ruzindana, and Charles Sikubwabo**, during the month of April 1994, in Gishyita commune, Kibuye Prefecture, in the Territory of Rwanda, are responsible for the extermination of civilians, as part of a widespread and systematic attack against a civilian population on political, ethnic, or racial grounds, and have thereby committed a **CRIME AGAINST HUMANITY** as recognized by Article 3(b) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal;

Count 6: **Elizaphan Ntakirutimana, Gérard Ntakirutimana, Obed Ruzindana, and Charles Sikubwabo**, during the month of April 1994, in Gishyita commune, Kibuye Prefecture, in the Territory of Rwanda, did commit other inhumane acts, including, but not limited to, the infliction of serious

bodily and/or mental harm on civilians as part of a widespread and systematic attack against a civilian population on political, ethnic, or racial grounds, and have thereby committed a **CRIME AGAINST HUMANITY** as recognized by Article 3(i) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

_____ 1996
Arusha, Tanzania

For the Prosecutor
The Deputy Prosecutor

Judge Honore Rakotomanana

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

IN THE TRIAL CHAMBER

Before: Justice T.H. Khan
Deputy Registrar: Mr. Hugues Vérita
On behalf of the Prosecutor: Mr. Yacob Haile-Mariam

Decision of: 20th June 1996

DECISION ON THE REVIEW OF THE INDICTMENT

In the matter of

OBED RUZINDANA

Case No. ICTR-96-10-I

I, Justice T.H. Khan, Judge of the International Criminal Tribunal for Rwanda,

UPON RECEIVING an indictment from the Prosecutor pursuant to Articles 17 and 18 of the Statute of the Tribunal, and Rule 47 of the Rules of Procedure and Evidence,

AND UPON HEARING the Prosecutor, represented by Mr. Yacob Haile-Mariam, pursuant to Rule 47(D) of the Rules of Procedure and Evidence, and having perused the documents placed before me at the time of hearing, and

PURSUANT TO Articles 17 and 18 of the Statute of the Tribunal and Rules 28 and 47 of the Rules of Procedure and Evidence,

CONFIRM the indictment submitted by the Prosecutor with respect to each and every count of the indictment, and

HOLD that from the materials tendered by the Prosecutor, I am satisfied that a *prima facie* case has been established with respect to each and every count as set out in the indictment, and the acts charged fall within the jurisdiction of the International Criminal Tribunal for Rwanda,

FURTHER ORDER, after consultation with the Prosecutor, that there be no public disclosure of the Supporting Documentation submitted in support of the indictment, pursuant to Rule 53(B) of the Rules of Procedure and Evidence,

AND NOTE the prayer of the Prosecutor that an appropriate warrant of arrest for the accused, who is believed to be in Kenya, pursuant to Rule 40 of the Rules of Procedure and Evidence, be issued and the further prayer for the continued detention of the accused there until arrangements for his transfer to the custody of the Tribunal are made.

Justice T.H. Khan
Judge, Trial Chamber
International Criminal Tribunal for Rwanda

Dated this 21st day of June 1996,
At Arusha, Tanzania

Seat of the Tribunal

Case No. ICTR-96-10-I

UNITED NATIONS

NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

ARUSHA INTERNATIONAL CONFERENCE CENTRE

P.O. Box 6016 - Arusha, Tanzania

Fax: 255 57 4373 • 255 57 4000

Tel: 255 578 3181 Ext. 1258 • 255 57 4372 (Direct)

Case No. ICTR-96-10-I

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

BEFORE A JUDGE OF THE TRIAL CHAMBER

Before: Justice T.H. Khan

Deputy Registrar: Mr. Hugues Vérita

Decision of: 20th June 1996

IN THE MATTER OF THE CASE No. ICTR-96-10-I

THE PROSECUTOR

v.

OBED RUZINDANA

WARRANT OF ARREST

ORDER FOR SURRENDER

To: The Republic of Kenya,

I, Justice T.H. Khan, Judge of the International Criminal Tribunal for Rwanda,

CONSIDERING the United Nations Security Council Resolution 955 of 8 November 1994 and Resolution 978 of 27 February 1995, and Articles 19(2) and 28 of the Statute of the International Criminal Tribunal for Rwanda, and Rules 54 to 61 of the Rules of Procedure and Evidence adopted by the International Criminal Tribunal for Rwanda.

CONSIDERING the Indictment submitted by the Prosecutor against Obed Ruzindana, and confirmed by me a Judge of the International Criminal Tribunal for Rwanda, on 20th June 1996, a copy of which is annexed to this warrant of arrest.

HEREBY DIRECT the Authorities of the Republic of Kenya to search for, arrest and surrender to the International Criminal Tribunal for Rwanda:

Obed Ruzindana, believed to have been born in 1959, in Gisovu Sector, Gisovu Commune, Prefecture of Kibuye in Rwanda. He is now believed to be in Kenya.

He is alleged to have committed in or about April 1994 in Rwanda, the following crimes: Genocide, in violation of Article 2(3)(a) and (b), Complicity in Genocide in violation of Article 2(3)(e), Conspiracy to commit Genocide in violation of Article 2(3)(b), Crimes against Humanity in violation of Article 3(a), Crimes against Humanity in violation of Article 3(b), Crimes against Humanity in violation of Article 3(i).

And to advise the said Obed Ruzindana at the time of his arrest, and in a language he understands, of his rights as set forth in Article 20 of the Statute and, *mutatis mutandis*, in Rules 42 and 43 of the Rules of Procedure and Evidence which are set out below, and of his right to remain silent, and to caution him that any statement he makes shall be recorded and may be used in evidence. The indictment and review of the Indictment (and all other documents annexed to the present Warrant) must also be brought to the attention of the accused,

REQUEST THAT the Republic of Kenya, upon the arrest of Obed Ruzindana, promptly notify the Registrar of the International Criminal Tribunal for Rwanda, for the purposes of arranging his transfer to the custody of the International Criminal Tribunal for Rwanda pursuant to Rule 57 of the Rules of Procedure and Evidence,

REQUESTS THAT the Republic of Kenya report forthwith to the Registrar of the International Criminal Tribunal for Rwanda if it is unable to execute the present Warrant of Arrest, indicating the reasons for its inability pursuant to Rule 59 (A) of the Rules of Procedure and Evidence.

Justice T.H. Khan
International Criminal Tribunal for Rwanda

Dated this 21st day of June 1996,
At Arusha, Tanzania.
Registrar
Arusha, Tanzania

UNITED NATIONS

NATIONS UNIES

**Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda**

CHAMBRE 2 - CHAMBER 2

Cases N°: ICTR-95-1-T and ICTR-96-10-T

**Before: Judge Laïty Kama, Presiding Judge
Judge Lennart Aspegren
Judge Yakov A. Ostrovsky**

**Registrar: Mr. Andronico O. Adede
Ms. Cécile Aptel**

Decision of: 29 October 1996

**THE PROSECUTOR
vs
Obed RUZINDANA**

DECISION FOLLOWING THE INITIAL APPEARANCE

The Office of the Prosecutor:

**Mr. Yacob Haile-Mariam
Mr. Mohamed Chande Othman
Ms. Brenda-Sue Thornton**

Counsel for the Accused:

Mr. Pascal Besnier

THE TRIBUNAL, sitting as Judges Laïty Kama, Presiding Judge, Lennart Aspegren and Yakov A. Ostrovsky in Trial Chamber 2,

CONSIDERING the first indictment against Obed Ruzindana submitted by the Prosecutor and confirmed on 28 November 1995 by Judge Navanethem Pillay, subsequently amended (Case No. ICTR-95-1-T), and the second indictment submitted by the Prosecutor and confirmed on 20 June 1996 by Judge Tafazzal H. Khan (Case No. ICTR-96-10-T);

TAKING NOTE of the transfer of the accused to the Tribunal's Detention Unit on 22 September 1996,

CONSIDERING the initial appearance of the accused on 29 October 1996 before the Trial Chamber 2,

GIVEN THAT, during the initial appearance, the accused pleaded not-guilty to all of the counts in the first indictment, and also not-guilty to all of the counts in the second indictment,

PURSUANT TO Rule 62 and the provisions thereafter of the Rules of Procedure and Evidence,

THE TRIBUNAL DECIDES

- 1.) to set a date of the trial on the merits regarding the first indictment (Case No. ICTR-95-1-T) for Thursday, 20 February 1997, at 09:30 hours, while reserving the right to decide at a later date on joining the present hearing with the trial of Clément Kayishema scheduled for Thursday, 7 November 1996, if it is so required in the interest of justice;
- 2.) to set a date for the trial on the merits regarding the second indictment (Case No. ICTR-96-10-T), for Thursday, 8 May 1997, at 09:30 hours;
- 3.) to detain Obed Ruzindana on remand enjoining the Commanding Officer of the Tribunal's Detention Unit to continue to detain him until ordered otherwise.

Arusha, 29 October 1996

Laïty Kama
Presiding Judge

Lennart Aspegren
Judge

Yakov A. Ostrovsky
Judge

(Seal of the Tribunal)

Cases No. ICTR-95-1-T and ICTR-96-10-T

**THE INTERNATIONAL CRIMINAL
TRIBUNAL FOR RWANDA**

**Case No. 95-1-T
Case No. 96-10-T**

IN THE TRIAL CHAMBER

Before:

Registrar: Dr. Andronico O. Adede

Date filed: 11 December 1996

THE PROSECUTOR

V.

OBED RUZINDANA

**OFFICE OF THE PROSECUTOR'S RESPONSE TO DEFENCE'S REQUEST FOR A
HEARING ON DISCOVERY ISSUES**

**The Prosecutor: Mr. Jonah Rahetlah
Ms. Elizabeth Ann Farr
Ms. Brenda Sue Thornton**

Counsel for the Accused: Mr. Pascal Besnier

**OFFICE OF THE PROSECUTOR'S RESPONSE TO DEFENCE'S REQUEST
FOR A HEARING ON DISCOVERY ISSUES**

Background

The Defendant, Obed Ruzindana, was indicted by the International Criminal Tribunal for Rwanda (ICTR) on 29 April 1996 and again on 17 June 1996 for massacres in Kibuye Prefecture in 1994 wherein thousands of men, women and children were killed and wounded. He was arrested in Kenya on 20 September 1996 and made his initial appearance before the ICTR Trial Chamber on 29 October 1996 at which he pled not guilty to all counts in both indictments. He was appointed counsel, Maître Pascal Besnier.

In October, the Registry provided Maître Besnier with a copy of the indictments as well as the supporting documentation for each indictment. However, the Registry provided defence counsel with a copy of the supporting documentation for the First Amended Kibuye Indictment which had been redacted by the Office of the Prosecutor for disclosure to co-defendant, Clement Kayishema. Thus, the version currently in the possession of the Maître Besnier, provided by the Registry, is not the correct version.

Maître Besnier now requests a hearing to discuss transmission of the supporting documentation, witness statements and other material from the Office of the Prosecutor to the defence.

Discussion

Rule 66(A) and (B) of the Rules of Procedure and Evidence (the "Rules"), provide:

- A) The Prosecutor shall make available to the defence, as soon as practicable after the initial appearance of the accused, copies of the supporting material which accompanied the indictment when confirmation was sought as well as all prior statements obtained by the Prosecutor from the accused or from prosecution witnesses.
- B) The Prosecutor shall upon request, subject to Sub-rule (C), permit the defence to inspect any books, documents, photographs and tangible objects in his custody or

control, which are material to the preparation of the defence, or are intended for use by the Prosecutor as evidence at trial or were obtained from or belonged to the accused.

The Office of the Prosecutor recognizes its obligations pursuant to the Rules to provide the defence with copies of the supporting material, witness statements and statements from the accused. Similarly, the Office of the Prosecutor recognizes its obligations to permit the defence to inspect physical evidence. However, because of the responsibility borne by the Office of the Prosecutor for the protection of witnesses, the disclosure of these materials is subject to some limitation, which the Office of the Prosecutor is in the process of clarifying with the Trial Chamber.

On 6 December 1996, the Office of the Prosecutor filed a motion before the Trial Chamber requesting an order for specific witness protection measures. One of these measures is the redaction of witness names and other identifying information from the witness statements or other material given to the defence until such time that the Tribunal is assured that the witnesses have been afforded an adequate mechanism for protection; and allowing, until such a mechanism is in place, the Prosecutor to disclose any materials provided to the defence in a redacted form.

On 3 December 1996, the Office of the Prosecutor contacted Maître Besnier and discussed the pending motion for witness protection and the request for redaction of witness identifying information. The Office of the Prosecutor informed Maître Besnier and Maître Besnier agreed that redacted versions of documents would be communicated to the defence in order to facilitate its preparation pending the hearing on the motion for witness protection. Thus, an appropriate version of the supporting documentation as well as redacted witness statements will be transmitted to Maître Besnier forthwith.

Finally, Rule 66 (B) requires the Office of the Prosecutor to allow inspection of certain physical items in its possession. The parties will agree on a mutually convenient time for counsel to travel to Kigali, Rwanda for this purpose allowing ample time for the preparation of the defence.

Conclusion

The Office of the Prosecutor respectfully informs the Trial Chamber that, pending a specific order allowing redaction of witness identification information, the Office of the Prosecutor has made a preliminary disclosure of witness statements in order to facilitate the preparation of the defence. The Office of the Prosecutor will make Rule 66 (B) material available to the defence at a mutually convenient time.

For the Prosecutor

Jonah Rahetlah

Elizabeth Ann Farr

Brenda Sue Thornton

V

Elie Ndayambaje
ICTR-96-8-I

Indictment

Confirmation of indictment

Warrant of arrest, order for surrender

Decision following the initial appearance

Application by the Prosecutor for a formal request for deferral
by the Kingdom of Belgium

Decision by the Trial Chamber on the application by the Prosecutor
for a formal request for deferral to the competence of the ICTR

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO: ICTR-96- -I

THE PROSECUTOR OF THE TRIBUNAL

AGAINST

ELI NDAYAMBAJE

INDICTMENT

The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to his authority under Article 17 of the Statute of the International Criminal Tribunal for Rwanda, charges:

ELIE NDAYAMBAJE

with **GENOCIDE, CRIMES AGAINST HUMANITY** and **VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, as set forth below:

The Accused

1. **ELIE NDAYAMBAJE** was born on March 8, 1958 in sector Cyumba, Kibayi commune, in the prefecture of Butare. He was burgomaster of Muganza commune, also in the prefecture of Butare, from 1983 until at least 1992. After 1992 he was actively involved in communal activities while studying at the National University of Rwanda. On June 22, 1994, **ELIE NDAYAMBAJE** was formally reinstated as burgomaster of Muganza commune.

Concise Statement of the Facts

2. Rwanda is divided into prefectures, each of which is governed by a prefect. The prefectures are further subdivided into communes which are placed under the authority of burgomasters.

3. At all times relevant to this indictment, Tutsis were identified as an ethnic or racial group.

4. On April 6, 1994, the plane transporting President Juvénal Habyarimana of Rwanda crashed on its approach to Kigali airport, Rwanda. Attacks and murders of civilians began soon thereafter throughout Rwanda.

5. At all times relevant to this indictment, a state of armed conflict existed in Rwanda and the victims referred to in this indictment were persons not taking an active part in the hostilities.

6. On or about April 19, 1994, houses in sector Kibayi, Muganza commune, Butare prefecture, territory of Rwanda, were burned down. Men, women and children from Kibayi and neighboring sectors (hereinafter "the refugees") gathered at the Muganza commune office. From there they began to flee towards Burundi. The refugees were predominantly Tutsis and were not taking part in the hostilities. Many brought with them their personal possessions, including valuable livestock.

7. Soldiers and communal policemen stopped the refugees in the neighboring sector of Gisagara in Ndora commune, Butare prefecture, on or about April 20, 1994. Soldiers and policemen forced the refugees to a nearby hill called Kabuye and separated the Tutsis from the other refugees. In Kabuye and in Gisagara, soldiers forced the Tutsis to relinquish their traditional tools. **ELIE NDAYAMBAJE** transported the policemen to Gisagara.

8. On or about April 22, 1994, **ELIE NDAYAMBAJE**, together with communal police, gendarmerie, soldiers and armed civilians attacked with weapons and traditional tools the refugees who had gathered in Kabuye. Many Tutsis were killed and injured. At night armed civilians surrounded the surviving Tutsis and prevented them from escaping.

(1 page missing?)

COUNT 3: **CRIMES AGAINST HUMANITY**, a violation of article 3(a) of the Statute of the Tribunal, the **MURDER** of Tutsis and others as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds;

COUNT 4: **CRIMES AGAINST HUMANITY**, a violation of article 3(i) of the Statute of the Tribunal, **OTHER INHUMANE ACTS**, including but not limited to the deprivation of livelihood, destruction of property and the causing of bodily harm and serious mental anguish to Tutsis and others as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds; and

COUNT 5: **VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, as incorporated by Article

4(a) of the Statute of the Tribunal, the violence to life, health and physical or mental well being of persons not taking an active part in the hostilities during an armed conflict.

For the Prosecutor,
The Deputy Prosecutor

Judge Honoré Rakotomanana

June 17, 1996

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

IN THE TRIAL CHAMBER

Before: Justice T.H. Khan
Deputy Registrar: Mr. Hugues Vérita
On behalf of the Prosecutor: Mr. Yacob Haile-Mariam

Decision of: 20th June 1996

DECISION ON THE REVIEW OF THE INDICTMENT

In the Matter of

ELIE NDAYAMBAJE

Case No. ICTR-96-8-I

I, Justice T.H. Khan, Judge of the International Criminal Tribunal for Rwanda,

UPON RECEIVING an indictment from the Prosecutor pursuant to Articles 17 and 18 of the Statute of the Tribunal, and Rule 47 of the Rules of Procedure and Evidence,

AND UPON HEARING the Prosecutor, represented by Mr. Yacob Haile-Mariam, pursuant to Rule 47 (D) of the Rules of Procedure and Evidence, and having perused the documents placed before me at the time of hearing, and

PURSUANT TO Articles 17 and 18 of the Statute of the Tribunal and Rules 28 and 47 of the Rules of Procedure and Evidence,

CONFIRM the indictment submitted by the Prosecutor with respect to each and every count of the indictment, and

HOLD that from the materials tendered by the Prosecutor, I am satisfied that a *prima facie* case has been established with respect to each and every count as set out in the indictment, and the acts charged fall within the jurisdiction of the International Criminal Tribunal for Rwanda,

FURTHER ORDER, after consultation with the Prosecutor, that there be no public disclosure of the Supporting Documentation submitted in support of the indictment, pursuant to Rule 53(B) of the Rules of Procedure and Evidence,

AND NOTE the prayer of the Prosecutor that an appropriate warrant of arrest for the accused, who is believed to be in Belgium, pursuant to Rule 40 of the Rules of Procedure and Evidence, be issued and the further prayer for the continued detention of the accused there until arrangements for his transfer to the custody of the Tribunal are made.

Justice T.H. Khan
Judge, Trial Chamber
International Criminal Tribunal for Rwanda

Dated this 21st day of June 1996,
At Arusha, Tanzania

Seat of the Tribunal
Case No. ICTR-96-8-I

UNITED NATIONS

NATIONS UNIES

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
ARUSHA INTERNATIONAL CONFERENCE CENTRE**

**P.O. Box 6016 - Arusha, Tanzania
Fax: 255 57 4373 • 255 57 4000
Tel: 255 578 3181 Ext. 1258 • 255 57 4372 (Direct)**

Case No. ICTR-96-8-I

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
BEFORE A JUDGE OF THE TRIAL CHAMBER**

Before: Justice T.H. Khan

Registrar: Mr. Hugues Vérita

Decision of: 20th June 1996

IN THE MATTER OF THE CASE No. ICTR-96-8-I

THE PROSECUTOR

v.

ELIE NDAYAMBAJE

WARRANT OF ARREST

ORDER FOR SURRENDER

To: The Kingdom of Belgium,

I, Justice T.H. Khan, Judge of the International Criminal Tribunal for Rwanda,

CONSIDERING the United Nations Security Council Resolution 955 of 8 November 1994 and Resolution 978 of 27 February 1995, and Articles 19(2) and 28 of the Statute of the International Criminal Tribunal for Rwanda, and Rules 54 to 61 of the Rules of Procedure and Evidence adopted by the International Criminal Tribunal for Rwanda.

CONSIDERING the indictment submitted by the Prosecutor against Elie Ndayambaje, and confirmed by me a Judge of the International Criminal Tribunal for Rwanda on 20th June 1996, a copy of which is annexed to this warrant of arrest,

HEREBY DIRECT the Authorities of the Kingdom of Belgium to search for, arrest and surrender to the International Criminal Tribunal for Rwanda:

Elie Ndayambaje, born on March 8, 1958 in the Sector of Cyumba, Commune of Kibayi, Prefecture of Butare in Rwanda. He is now believed to be in Belgium.

He is alleged to have committed in or about April 1994 in Rwanda, the following crimes: Genocide, in violation of Article 2(3)(a) and (b), or alternatively complicity in Genocide in violation of Article 2(3)(e), Crimes against Humanity in violation of Article 3(b), the Extermination of Tutsis, Crimes against Humanity in violation of Article 3(i), other inhumane acts, Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II in violation of Article 4(a) of the Statute of the Tribunal.

And to advise the said Elie Ndayambaje at the time of his arrest, and in a language he understands, of his rights as set forth in Article 20 of the Statute and, *mutatis mutandis*, in Rules 42 and 43 of the Rules of Procedure and Evidence which are set out below, and of his right to remain silent, and to caution him that any statement he makes shall be recorded and may be used in evidence. The indictment and review of the Indictment (and all other documents annexed to the present Warrant) must also be brought to the attention of the accused,

REQUEST THAT the Kingdom of Belgium, upon the arrest of Elie Ndayambaje, promptly notify the Registrar of the International Criminal Tribunal for Rwanda, for the purposes of arranging his transfer to the custody of the International Criminal Tribunal for Rwanda pursuant to Rule 59 (A) of the Rules of Procedure and Evidence,

REQUESTS THAT the Kingdom of Belgium report forthwith to the Registrar of the International Criminal Tribunal for Rwanda if it is unable to execute the present Warrant of Arrest, indicating the reasons for its inability pursuant to Rule 59 (A) of the Rules of Procedure and Evidence.

Justice T.H. Khan
International Criminal Tribunal for Rwanda

Dated this 21st day of June 1996,
At Arusha, Tanzania
Registrar
Arusha, Tanzania

International Criminal Tribunal for Rwanda

CHAMBER 2

OR: ENG

Before: Judge Yakov A. Ostrovsky, Presiding Judge
Judge Lennart Aspegren
Judge Navanethem Pillay

Registrar: Ms. Prisca M. Nyambe
Mr. Jean-Pelé Fomété
Ms. Cécile Aptel

Decision of: 29 October 1996

THE PROSECUTOR
versus
Elie NDAYAMBAJE

Case No.: ICTR-96-8-I

DECISION FOLLOWING THE INITIAL APPEARANCE

The Office of the Prosecutor:

Mr. Yacob Haile-Mariam
Mr. Pierre-Richard Prosper
Mr. Robert Petit
Ms. Adelaide E. Whest

Counsel for the Accused

Mr. Charles Choungang

THE TRIBUNAL, sitting as Trial Chamber 2 composed of Judge Yakov A. Ostrovsky, Presiding Judge, Judge Lennart Aspegren and Judge Navanethem Pillay;

CONSIDERING the indictment against Eli Ndayambaje submitted by the Prosecutor and confirmed by Judge Tafazzal H. Khan on 20 June 1996, who issued a warrant of arrest and order for surrender of the accused on that same date;

TAKING NOTE of the transfer of the accused to the Tribunal's Detention Unit on 8 November 1996;

CONSIDERING the initial appearance of the accused this 29 November 1996 before this Chamber;

BEING OF THE OPINION that the Registrar's assignment of Mr. Charles Tchoungang as defence counsel for the accused was in strict conformity with Article 20 of the Statute of the Tribunal, Rule 45(C) of the Rules of Procedure and Evidence ("the Rules") and Article 10 of the Directive of Assignment of Defence Counsel;

GIVEN THAT, during the initial appearance, the accused pleaded not-guilty to all of the five counts in the indictment;

PURSUANT TO Rule 62 and the following rules in the Rules;

THE TRIBUNAL DECIDES

TO FIX the date of the trial on the merits for Tuesday, 20 May 1997, at 9:30 hours;

TO ORDER the Prosecution to ensure that the defence counsel is in possession no later than 14 January 1997 of the supporting material and all existing evidence to be brought against the accused, i.e. at least 7 days before the status conference between the parties scheduled for 21 January 1997; and

TO MAINTAIN THE DETENTION ON REMAND of Elie Ndayambaje and to enjoin the Commanding Officer of the Tribunal's Detention Unit to continue to detain him until further order.

Arusha, 29 November 1996

Yakov A. Ostrovsky
Presiding Judge

Lennart Aspegren
Judge

Navanethem Pillay
Judge

IN THE TRIAL CHAMBER
OF THE INTERNATIONAL CRIMINAL
TRIBUNAL FOR RWANDA

APPLICATION BY THE PROSECUTOR
FOR A FORMAL REQUEST FOR DEFERRAL
BY THE KINGDOM OF BELGIUM IN
RESPECT OF

ELINDAYAMBAJE
JOSEPH KANYABASHI
ALPHONSE HIGANIRO

- I. I, Richard J. Goldstone, Prosecutor, pursuant to Article 8(2) of the Statute of the International Tribunal for the prosecution of persons responsible for genocide or other serious violations of international humanitarian law committed in Rwanda or committed in neighbouring States by Rwandans during 1994 (referred to respectively as the "Statute" and "the Tribunal") and in accordance with Rule 9(iii) of the Rules of Procedure and Evidence ("the Rules") propose to the Trial Chamber, in relation to investigations and criminal proceedings being conducted by the Kingdom of Belgium respecting serious violations of international humanitarian law committed in the prefecture of Butare in the territory of Rwanda between April 1994 and June 1994, involving Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro that a formal request be made to the Kingdom of Belgium that its courts defer to the competence of the Tribunal.
- II. Pursuant to Rule 10 of the Rules, I propose that the Trial Chamber issue a formal request to the Kingdom of Belgium in the following terms:
- A) The Courts of Belgium defer to the competence of the Tribunal in regard to all investigations and criminal proceedings in respect of Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro.
- B) In regard to all such investigations and criminal proceedings of Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro, the Tribunal requests that the Kingdom of Belgium forward to the Tribunal the results of said investigations, criminal proceedings, copies of the court's records and judgements, if any.

III. I make this proposal for the following reasons:

A) National investigations have been instituted against Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro by the Kingdom of Belgium for crimes alleged to have taken place in the Prefecture of Butare and elsewhere in Rwanda.

B) I am currently conducting investigations into crimes within the jurisdiction of the Tribunal that have taken place in the Prefecture of Butare in which Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro are suspects.

C) The national investigations involve issues closely related to, or otherwise involve, significant factual and legal questions which may have implications for investigations or prosecutions before the Tribunal.

IV. The basis of my proposal appears in the attached schedule.

Dated this eight day of January 1996
Arusha
Tanzania

Richard J. Goldstone
Prosecutor

SCHEDULE

1. INVESTIGATIONS BEING CONDUCTED BY THE KINGDOM OF BELGIUM

1.1 In February 1995 the Kingdom of Belgium decided to commence investigations in relation to Elie Ndayambaje, (a prominent member of the commune of Muganza in the Prefecture of Butare who was appointed Bourgmestre of Muganza in June 1994), Joseph Kanyabashi, the Bourgmestre of the commune of Ngoma in the Prefecture of Butare; and Alphonse Higaniro, a former Minister and Director of the Para-statal SORWAL in the Commune of Butare, in the Prefecture of Butare.

1.2 The investigations being conducted by the Kingdom of Belgium in relation to Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro involve investigations into allegations of murder and incitement to murder Tutsis and moderate Hutus in the Prefecture of Butare.

1.3 On April 27, 1995 a warrant of arrest was issued by the Judge responsible for the investigations against Alphonse Higaniro who was subsequently arrested that day in the territory of Belgium.

1.4 On June 28, 1995 a warrant of arrest was issued by the Judge responsible for the investigations against Elie Ndayambaje and Joseph Kanyabashi who were subsequently arrested that day in the territory of Belgium.

1.5 The Chamber of Council in Brussels, Belgium, issued three orders to prolong the arrests of the three detained persons, which orders have been confirmed monthly in accordance with the applicable provisions of Belgian law. All three persons remain in custody in Belgium.

1.6 Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro are suspected of having committed crimes under the Criminal Law of the Kingdom of Belgium (Law of 16 June 1993, article 1), including international crimes of grave breaches of the Geneva Conventions of 12 August 1949 and of the Additional Protocols of 8 June 1977.

1.7 The Judge responsible for the investigations, further to three *commissions rogatoires*, has conducted investigations in the Republic of Rwanda.

2. INVESTIGATIONS BY THE PROSECUTOR

2.1 The Prosecutor is investigating allegations of serious violations of international humanitarian law that occurred in the territory of the Republic of Rwanda including the

massacres which occurred between April and June 1994 in the Prefecture of Butare in which Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro were allegedly involved.

2.2 The current investigations of the Prosecutor relating to Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro include the incidents referred to in paragraph 1.2 above. The Prosecutor's investigations include interviews of witnesses and the collection of documents in order to determine the truth of the allegations that the massacres, in particular in the Prefecture of Butare, were planned and resulted in the deliberate mass killing of a large number of people protected under international law.

2.3 A significant focus of the investigations of the Prosecutor relates to persons in positions of authority who were responsible for serious violations of international humanitarian law in the territory of the Republic of Rwanda.

2.4 Insofar as investigations referred to in paragraph 2.3 relate to persons in positions of authority, the allegations of criminal responsibility of Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro are central.

2.4.1 Elie Ndayambaje was born on 8 March 1958 in the Commune of Muganza in the Prefecture of Butare. He was Bourgmestre of Muganza until 1992. He left Muganza between 1992 and April 1994 to finish his study at the University of Butare. After 6 April 1994 he returned to Muganza. He was officially appointed Bourgmestre by the interim government in June 1994. Around 20 April 1994, he is believed to have taken part in several meetings held in the Commune of Muganza in preparation of the massacres in the Commune. He is alleged to be involved in a massacre which took place on the hill of Kabuya, commune of Ndora, not far from the Commune of Muganza. This massacre resulted in the deaths of thousands of civilians.

2.4.2 Joseph Kanyabashi was born in 1937 in the sector Mpare of the Commune of Huye in the Prefecture Butare. He was the oldest Bourgmestre in the Prefecture of Butare. From 20 April 1994, the massacres started throughout the Prefecture of Butare, also in the Commune of Ngoma, where Joseph Kanyabashi remained in charge as Bourgmestre. He is alleged to have distributed arms to participants in the massacres. He is also believed to have incited individuals to murder Tutsis.

2.4.3. Alphonse Higaniro was born in 1949 in the Commune of Gaseke in the Prefecture of Gisenyi. He is married to Alphonsine Akingeye, the daughter of President Habyarimana's personal physician who died in the plane crash of 6 April 1994. Alphonse Higaniro, a former Minister, became in 1992 the general director of the Para-statal SORWAL, a match factory in Butare. He is believed to have used his position as director of the SORWAL factory to hire, organize, group and arm the Interahamwe militias and other militias in Butare.

2.5. In order to develop the pending investigation, the Prosecutor must collect further essential evidence and obtain full access to the statements, documents and other

findings of the investigations in relation to Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro conducted by the Kingdom of Belgium.

3. SIGNIFICANT FACTUAL AND LEGAL QUESTIONS

3.1 If the Kingdom of Belgium continues investigations which are similar to those being conducted by the Prosecutor, significant risks are created which may have implications for investigations before the Tribunal, including but not limited to:

3.1.1 Confusion amongst witnesses and cooperating organisations or governments concerning the scope and authority of the different investigations and the different rules and confidentiality protections which govern the two investigations. Repeated interviews of witnesses by different investigators (particularly those from different organisations) should be avoided. Otherwise, witnesses become confused and distrustful of giving multiple accounts of the same incidents.

3.1.2 Creation of an undue burden on witnesses. Some witnesses, especially those who have suffered trauma and those who are at physical risk as a result of their cooperation, may be unwilling or unable to cooperate fully and effectively with multiple investigations. In certain situations witnesses who are seen to have contact with any investigator may have their lives placed in danger, or may become the subject of threats.

3.1.3 Unnecessarily compromising the credibility of witnesses due to the inadvertent creation of multiple statements where the statements were taken under different conditions, in - sometimes- different languages and for different purposes.

3.1.4 Potential evidentiary problems resulting from different procedures such as those concerning evidence collection and preservation, the taking of statements and the questioning of suspects.

3.2 If the Kingdom of Belgium proceeds to trial before the Prosecutor completes his investigation, the following significant factual and legal issues may have implications for investigations and prosecutions before the Tribunal:

3.2.1 By virtue of Article 9.2 of the Tribunal (*Non bis in idem*) there are limitations on the subsequent prosecution before the International Tribunal of persons who have already been tried by a national court for acts constituting serious violations of international humanitarian law. Belgium penal law does not have criminal provisions for the offenses of genocide and crimes against humanity. If Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro are prosecuted under Belgian law for their acts, but the Prosecutor of the International Tribunal determines that their acts amount to genocide or to crimes against humanity, he may be prevented by the terms of Article 9 of the Statute from bringing a prosecution characterizing their acts as genocide or crimes against humanity.

3.2.2 Critical witnesses who have testified in a public national trial and who are subject to be called as witnesses for a trial before the Tribunal will be exposed to greater risk as their identities and evidence have been made public.

3.2.3 Witnesses who have experienced stress or trauma by giving evidence to a national court may be unwilling to do so a second time before the Tribunal. This creates the potential danger of evidence becoming lost to the Tribunal.

3.2.4 There is a potential of inadvertently creating inconsistent sworn testimony.

3.2.5 International publicity which would result from a trial in a Belgian court of the three persons, may create a perception of prejudice in the minds of the accused or the public and may have implications for a fair trial before the Tribunal.

3.2.6 The legal precedents created and the finding of fact made by a national court and the Tribunal in regard to the three persons and the crimes they allegedly have committed, if in conflict, will be undesirable and not in the interest of justice.

4. OTHER RELEVANT CONSIDERATIONS

4.1. The Kingdom of Belgium has been very cooperative and has proposed that its investigations of Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro be deferred to the Tribunal.

4.2. A deferral of the investigations to the Tribunal is likely to encourage governments, non governmental organisations and other sources to furnish to the Tribunal additional information.

4.3. The Kingdom of Belgium considers it more reasonable that the Prosecutor take over the investigations because it is in a better position to investigate and prosecute crimes committed on the territory of Rwanda. The Tribunal is not constrained by national boundaries and therefore is better able to obtain witness assistance and evidence world-wide.

4.4. Given that many witnesses critical to the Prosecutor's investigations are in Rwanda and its neighbouring states and may be reluctant to travel to Belgium to testify in a national trial, the Prosecutor is better able to collect evidence during investigations and present it in trials before the Tribunal in Arusha.

Dated this 8th day of January 1996

Arusha,
Tanzania

Richard J. Goldstone
Prosecutor

UNITED NATIONS

NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

IN THE TRIAL CHAMBER OF THE
INTERNATIONAL CRIMINAL
TRIBUNAL FOR RWANDA

IN THE MATTER OF:
Case Number: ICTR-96-2-D

And

IN THE MATTER OF:
AN APPLICATION
BY THE PROSECUTOR
FOR A FORMAL REQUEST FOR
DEFERRAL BY THE KINGDOM OF
BELGIUM

And

IN THE MATTER OF:
ELIE NDAYAMBAJE
JOSEPH KANYABASHI
AND ALPHONSE HIGANIRO

**DECISION OF THE TRIAL CHAMBER ON THE APPLICATION BY THE
PROSECUTOR FOR A FORMAL REQUEST FOR DEFERRAL TO THE
COMPETENCE OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
IN THE MATTER OF ELI NDAYAMBAJE, JOSEPH KANYABASHI AND
ALPHONSE HIGANIRO (PURSUANT TO RULES 9 AND 10 OF THE RULES OF
PROCEDURE AND EVIDENCE)**

Considering the Application dated 8 January 1996 ("the Application"), filed by the Prosecutor of the International Criminal Tribunal for Rwanda ("the International Tribunal"),

Noting that the Trial Chamber has been designated by the President of the International Tribunal pursuant to Rule 9 of the Rules of Procedure and Evidence ("the Rules") of the International Tribunal to answer the Application,

Taking into account the letter dated 27 December 1995 from Stefaan De Clerck, Minister of Justice of Belgium, submitted to the Trial Chamber by the Prosecutor,

Having read and taken note of the letter dated 28 December 1995 from Johan Scheers, Defence Council of Joseph Kanyabashi,

Having heard the Prosecutor at a public sitting held in Arusha on 10 January 1996

I - The Application

1. This is an application by Richard J. Goldstone, Prosecutor of the International Criminal Tribunal for Rwanda, made pursuant to article 8 (2) of the Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for Genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, and in accordance with Rule 9 (iii) of the Rules of Procedure and Evidence, seeking an order from the Trial Chamber in relation to investigations and criminal proceedings being conducted by the Kingdom of Belgium respecting serious violations of International Humanitarian Law committed in the Prefecture of Butare in the territory of Rwanda between April 1994 and June 1994, involving Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro, that a formal request be made to the Kingdom of Belgium that its courts defer to the competence of the Tribunal.
2. Pursuant to Rule 10 of the Rules, the Prosecutor has requested the Trial Chamber for issuing a formal request to the Kingdom of Belgium in the following terms:
 - a) The courts of Belgium defer to the competence of the Tribunal in regard to all investigations and all criminal proceedings in respect of the above-mentioned three persons.
 - b) In regards to all such investigations and criminal proceedings of Eli Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro, the Tribunal requests that the Kingdom of Belgium forward to the Tribunal the results of said investigations, criminal proceedings, copies of the courts' records and judgements if any.
 - c) The reasons advanced by the learned Prosecutor in support of his proposal are:
 - 1) National investigations have been instituted against Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro by the Kingdom of Belgium for crimes alleged to have taken place in the Prefecture of Butare and elsewhere in Rwanda.
 - 2) The learned Prosecutor has been conducting investigations into crimes within the jurisdiction of the Tribunal that have taken place in the Prefecture of Butare in which Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro are suspects.
 - 3) The national investigations in both issues closely related to, or otherwise involved, significant factual and legal questions which may have implications for investigations or prosecutions before the Tribunal.

3. In Support of this application the learned Prosecutor has furnished facts which, in brief, are that in February 1995 The Kingdom of Belgium decided to commence investigations in relation to Elie Ndayambaje, a prominent member of the commune of Muganza in the Prefecture of Butare who was appointed the Bourgmestre of Muganza in June 1994; Joseph Kanyabashi, Bourgmestre of the commune of Goma in the Prefecture of Butare; and Alphonse Higaniro, a former Minister and Director of the para-statal SORWAL in the commune of Butare in the Prefecture of Butare. These investigations involve investigations into allegations of murder and incitement to murder Tutsis and moderate Hutus in the Prefecture of Butare. On April 27 1995, a warrant of arrest was issued by the Judge responsible for the investigation against Elie Ndayambaje and Joseph Kanyabashi who were subsequently arrested that day in the territory of Belgium. The Chamber of Council in Brussels, Belgium, issued three orders to prolong the arrest of the said three detained persons, which orders have been confirmed monthly in accordance with the applicable provisions of Belgian Law. The said three persons are suspected of having committed crimes under the criminal law of the Kingdom of Belgium (Law of 16 June 1993, article 1), including international crimes of grave breaches of the Geneva Conventions of 12 August 1949 and the Additional Protocol of 8 June 1977. The learned Judge responsible for the investigations against the said three persons has conducted investigations in the Republic of Rwanda.

4. The learned Prosecutor has further stated that he has been investigating allegations of serious violations of International Humanitarian Law that occurred in the territory of the Republic of Rwanda including the massacres which occurred between April 1994 and June 1994 in the same Prefecture of Butare, in which the said three persons were allegedly involved. The Prosecutor's investigations include interviews of witnesses and the collection of documents in order to determine the truth of the allegations that the massacres, in particular in the Prefecture of Butare, were planned and resulted in the deliberate mass killing of a large number of people protected under international law. According to the learned Prosecutor the said three persons are central figures who are alleged to have played crucial roles in the perpetration of the alleged massacres in the Prefecture of Butare.

5. The learned Prosecutor has further submitted that in order to develop the pending investigations, he must collect further essential evidence and obtain full access to the statements, documents and other findings of the investigations in relation to the said three persons, and that if the Kingdom of Belgium continues investigations which are similar to those being conducted by the Prosecutor, significant risks are created which may have implications for investigations before the Tribunal, leading to various confusions and complications. At the time of hearing, the learned Prosecutor made elaborate submissions on these points. He has also pointed out that there may arise the question of double jeopardy in case of the said three persons if they are tried in the courts of the Kingdom of Belgium.

6. The learned Prosecutor has further stated in the application that the Kingdom of Belgium has been very cooperative and has proposed that its investigations against the said three persons be deferred to this Tribunal: that the Kingdom of Belgium considers it more reasonable that the

Prosecutor take over the investigations because he is in a better position to investigate and prosecute crimes committed on the territory of Rwanda. In this connection we may mention that at the time of hearing the learned Prosecutor has also submitted before the Tribunal authentic photostat copy of a letter dated 27 December 1995 by Stefaan De Clerck, the Minister of Justice of the Kingdom of Belgium, addressed to the Prosecutor, Mr. Richard J. Goldstone, wherein it has been mentioned that: "Belgium's position has always been of support for the establishment of international tribunals for Rwanda and the Former Yugoslavia and, insofar as possible, of collaboration with your office so that it may accomplish the task it has set forth."

II - The Decision

THE TRIAL CHAMBER BASED ON THE FOREGOING DETERMINES AS FOLLOWS:

Considering all the matters before it and addressed in the public hearing, and

Taking into account the provisions of Article 8(2) of the Statute, and

Considering the requirements contained in Rule 9(iii) of the Rules,

the Trial Chamber consisting of Judge Sekule, as Presiding Judge, Judge Khan and Judge Ostrovsky, being seized of the Application made by the Prosecutor,

HEREBY GRANTS the said Application,

FORMALLY REQUESTS the Kingdom of Belgium to defer to the International Tribunal the criminal proceedings currently being conducted in its national courts against the said Eli Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro,

INVITES the Kingdom of Belgium to take all necessary steps, both legislative and administrative, to comply with this Formal Request and to notify the Registrar of the International Tribunal of the steps taken to comply with this Formal Request, and

REQUESTS that the Government of the Kingdom of Belgium forward to the International Tribunal the results of its investigation and a copy of the records of its national court.

The Trial Chamber requests the Registrar of the International Tribunal to notify the Government of the Kingdom of Belgium of this Decision and Order.

Dated this 11th day of January 1996.
Arusha

William Hussein Sekule
Presiding Judge
Trial Chamber 2

VI

Anatole Nsengiyumva
ICTR - 96 - 12 - I

Indictment

Confirmation of indictment

Affidavit by Luc Côte

Order of provisional detention and of transfer

Decision on the continued detention on remand of the accused

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR RWANDA**

CASE NO: ICTR-96- -I

**THE PROSECUTOR
OF THE TRIBUNAL**

AGAINST

ANATOLE NSENGIYUMVA

INDICTMENT

1. The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to his authority under Article 17 of the Statute of the International Tribunal for Rwanda (hereinafter, "the Statute of the Tribunal"), charges:

ANATOLE NSENGIYUMVA

with **DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE, CRIMES AGAINST HUMANITY, and VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, as set forth below.

2. The present indictment charges **Anatole NSENGIYUMVA** with serious violations of international humanitarian law committed in Gisenyi prefecture, in the territory of Rwanda, during the months of April through June 1994.

3. **THE ACCUSED**

Anatole NSENGIYUMVA was born on September 4, 1950 in Satinsya commune, Gisenyi prefecture, which is located in northwestern Rwanda. At the time of the events referred to in this indictment, he was a lieutenant-colonel in the Rwandan Armed Forces and served as commander of military operations in Gisenyi prefecture, a position to which he was appointed on June 13, 1993. He is currently in detention in Yaounde, Cameroon.

4. A CONCISE STATEMENT OF THE FACTS

- 4.1. During the events referred to in this indictment, Tutsis were identified as an ethnic or racial group.
- 4.2. On April 6, 1994, the plane transporting President Juvénal Habyarimana of Rwanda crashed on its approach to the airport in Kigali, the capital of Rwanda. Widespread killings began soon thereafter in Kigali and also in other parts of the country.
- 4.3. At all times relevant to this indictment, a state of armed conflict existed in Rwanda. The victims referred to in this indictment were persons not taking an active part in the hostilities.
- 4.4. On the morning of April 7, 1994, **Colonel Anatole NSENGIYUMVA** presided over a meeting in Gisenyi prefecture, during which he ordered the participants to organize the killing of civilians.
- 4.5. On the same morning, **Colonel Anatole NSENGIYUMVA** called for soldiers of the Rwandan Armed Forces and militia members in Gisenyi prefecture to kill Tutsis.
- 4.6. On the afternoon of April 7, 1994 in Gisenyi prefecture, **Colonel Anatole NSENGIYUMVA** ordered a Tutsi man, his wife, and their children to get into the back of the truck in which he was riding. When the man and his sons failed to comply with this order, individuals accompanying **Colonel Anatole NSENGIYUMVA** struck the man and one of his sons with machetes, killing the man and severely injuring the son, in the presence of the man's wife and daughter.
- 4.7. Prior to the attack described in paragraph 4.6, **Colonel Anatole NSENGIYUMVA** knew or had reason to know that his subordinates were about to attack the Tutsi man and his son, and failed to take necessary or reasonable measures to prevent the attack.
- 4.8. During the months of April through June 1994, **Colonel Anatole NSENGIYUMVA** presided over meetings of several hundred interahamwe militia at Umuganda stadium in Gisenyi prefecture, where he urged those in attendance to resume the killing of Tutsis.

5. CHARGES

By his acts in relation to the events referred to above, **Colonel Anatole NSENGIYUMVA** is individually responsible, under Article 6(1) of the Statute of the Tribunal, for the crimes alleged below. With respect to Counts 2 and 3, **Colonel**

Anatole NSENGIYUMVA is, in his capacity as commander of military operations in Gisenyi prefecture, additionally or alternatively responsible as a superior for the criminal acts of his subordinates, under Article 6(3) of the Statute of the Tribunal.

COUNT 1: By his acts in relation to the events described in paragraph 4.8, **Colonel Anatole NSENGIYUMVA**, during the months of April through June 1994, in Gisenyi prefecture, in the territory of Rwanda, did directly and publicly incite others to kill or cause serious bodily or mental harm to members of the Tutsi population of Rwanda with the intent to destroy, in whole or in part, an ethnic or racial group as such, and has thereby committed **DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE**, as recognized by Article 2(3)(c) of the Statute of the Tribunal and punishable in reference to Articles 22 and 23 of the same Statute;

COUNT 2: By his acts in relation to the events described in paragraphs 4.6 and 4.7, **Colonel Anatole NSENGIYUMVA**, in or around the month of April 1994, in Gisenyi prefecture, in the territory of Rwanda, was responsible for the murder of a Tutsi civilian as part of a widespread or systematic attack against a civilian population on political, ethnic, or racial grounds, and has thereby committed a **CRIME AGAINST HUMANITY**, as recognized by Article 3(a) of the Statute of the Tribunal and punishable in reference to Articles 22 and 23 of the same Statute;

COUNT 3: By his acts in relation to the events described in paragraphs 4.6 and 4.7, **Colonel Anatole NSENGIYUMVA**, in or around the month of April 1994, in Gisenyi prefecture, in the territory of Rwanda, was responsible for other inhumane acts against Tutsi civilians as part of a widespread or systematic attack against a civilian population on political, ethnic, or racial grounds, and has thereby committed **CRIMES AGAINST HUMANITY**, as recognized by Article 3(i) of the Statute of the Tribunal and punishable in reference to Articles 22 and 23 of the same Statute;

COUNT 4: By his acts in relation to the events described in paragraph 4.4, **Colonel Anatole NSENGIYUMVA**, in or around the month of April 1994, in Gisenyi prefecture, in the territory of Rwanda, did order others to commit violence to life, health and physical or mental well-being of persons not taking an active part in the hostilities

during an armed conflict, and has thereby committed **VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, as recognized by Article 4(a) of the Statute of the Tribunal and punishable in reference to Articles 22 and 23 of the same Statute.

For the Prosecutor,
The Deputy Prosecutor

Judge Honoré Rakotomanana

Kigali, Rwanda
July 11, 1996

**THE INTERNATIONAL CRIMINAL
TRIBUNAL FOR RWANDA**

IN THE TRIAL CHAMBER

Before: Judge Yakov A. Ostrovsky
Deputy Registrar: Mr. Hugues Verita
On behalf of the Prosecutor: Mr. Pierre-Richard Prosper
Decision of: 12 July 1996

DECISION ON THE REVIEW OF THE INDICTMENT

In the matter of

ANATOLE NSENGIYUMVA

Case No. ICTR-96-12-I

I, Yakov A. Ostrovsky, Judge of the International Criminal Tribunal for Rwanda,

UPON RECEIVING an indictment from the Prosecutor pursuant to Articles 17 and 18 of the Statute of the Tribunal, and Rule 47 of the Rules of Procedure and Evidence,

AND UPON HEARING the Prosecutor, represented by Mr. Pierre-Richard Prosper, pursuant to Rule 47(D) of the Rules of Procedure and Evidence, and having examined the documents submitted to me during the hearing,

PURSUANT TO Articles 17 and 18 of the Statute of the Tribunal and Rules 28 and 47 of the Rules of Procedure and Evidence,

CONFIRM the indictment submitted by the Prosecutor with respect to each and every count of the indictment, and

STATE that from the material tendered by the Prosecutor, I am satisfied a *prima facie* case has been established with respect to each and every count as set out in the indictment, and the acts charged fall within the jurisdiction of the International Criminal Tribunal for Rwanda,

FURTHER ORDER, after consultation with the Prosecutor, that there be no public disclosure of the Supporting Documentation submitted in support of the indictment pursuant to Rule 53(B) of the Rules of Procedure and Evidence,

AND NOTE the prayer of the Prosecutor that an appropriate warrant of arrest for the accused, who is under provisional detention in Cameroon, be issued.

Yakov A. Ostrovsky
Trial Chamber Judge
International Criminal Tribunal for Rwanda

Dated this 12th day of July 1996
At Arusha, Tanzania

Seat of the Tribunal
Case No. ICTR-96-12-I

**INTERNATIONAL CRIMINAL TRIBUNAL
FOR RWANDA**

CASE NO:

THE PROSECUTOR OF THE TRIBUNAL**AGAINST****ANATOLE NSENGIYUMVA****REQUEST FOR TRANSFER AND PROVISIONAL DETENTION
UNDER ARTICLE 40bis OF THE RULES OF PROCEDURE AND EVIDENCE OF
THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

TO ONE OF THE HONORABLE JUDGES DECIDING PURSUANT TO RULE 28 OF
THE RULES OF PROCEDURE AND EVIDENCE OF THE INTERNATIONAL
CRIMINAL TRIBUNAL FOR RWANDA:

The undersigned, Richard J. Goldstone, Prosecutor, pursuant to his authority under Rules 28 and 40 bis of the Rules of Procedure and Evidence, adopted according to Article 14 of the Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for Genocide and other such violations committed in the territory of neighboring States in 1994 (hereinafter, "the Statute" and "the Tribunal"), requests the issuance of an order for the transfer to the premises of the detention unit of the Tribunal and an order for the provisional detention of **Anatole NSENGIYUMVA**, a Colonel in the Rwandan Army, on the following grounds:

1. **Anatole NSENGIYUMVA** is currently detained in Yaounde, Cameroon, by the Cameroonian authorities.

2. The Office of the Prosecutor is currently pursuing investigations to determine the responsibility of **Anatole NSENGIYUMVA** for crimes committed on Rwandan territory and within the Tribunal's jurisdiction, namely:
 - A. GENOCIDE, a violation of Article 2 of the Tribunal Statute;
 - B. CRIMES AGAINST HUMANITY, violations of Article 3 of the Tribunal Statute;
 - C. VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, which contravene Article 4 of the Tribunal Statute.

3. It appears from these investigations, particularly the information contained in the affidavit annexed hereto, that there is a reliable and consistent body of material which tends to show that **Anatole NSENGIYUMVA** may have committed crimes which give rise to the following provisional charges:

COUNT 1: To have committed, on Rwandan territory, notably in the prefecture of Gisenyi between January and July 1994, in his capacity as Commander of Military Operations for the Rwandan Armed Forces in Gisenyi, by planning, conspiracy, direct and public incitement, order, commission, omission, complicity or by otherwise aiding or abetting in the planning, preparation or execution of genocidal acts against the Tutsi population of Rwanda, with intention to destroy, in whole or in part, a national, ethnic or racial group, as such, thereby committing the crime of genocide embodied in Articles 2 and 6 of the Tribunal Statute;

COUNT 2: To have been involved, on Rwandan territory, notably in the prefecture of Gisenyi between January and July 1994, in his capacity as Commander of Military Operations for the Rwandan Armed Forces in Gisenyi, by his acts or omissions, in widespread and systematic attacks against a civilian population on national, political, ethnic or racial grounds, namely against the Tutsi population of Rwanda, thereby committing crimes against humanity, embodied in Articles 3 and 6 of the Tribunal Statute;

COUNT 3: To have been involved, on Rwandan territory, notably in the prefecture of Gisenyi between January and July 1994, in his capacity as Commander of Military Operations for the Rwandan Armed Forces in Gisenyi, by his acts or omissions, in violence to life, health and physical or mental well-being of the civilian population of Rwanda, in the course of an armed conflict of a non-international character, thereby committing serious violations of Article 3 common to the Geneva Conventions of August 12, 1949

and of Additional Protocol II of June 8, 1977, crimes embodied in Articles 4 and 6 of the Tribunal Statute.

4. The Prosecutor considers the provisional detention of **Anatole NSENGIYUMVA** to be a necessary measure in order to prevent the escape of the suspect, injury to or intimidation of victims or witnesses, or the destruction of evidence, and to be otherwise a necessary measure to conduct of the investigation.

ACCORDINGLY, MAY IT PLEASE THE HONORABLE JUDGE:

GRANT ALL ASPECTS OF THE PRESENT REQUEST AND THEREBY:

- a) Declare that there is a reliable and consistent body of material which tends to show that **Anatole NSENGIYUMVA** may have committed crimes over which the Tribunal has jurisdiction;
- b) Acknowledge that provisional charges held by the Prosecutor against **Anatole NSENGIYUMVA**, i.e. provisional charges of genocide, crimes against humanity, and serious violations of Common Article 3 of the Geneva Conventions of August 18, 1949 and of Additional Protocol II of June 8, 1977, crimes provided for at Articles 2, 3 and 4 of the Tribunal Statute;
- c) Order the transfer of **Anatole NSENGIYUMVA** to the premises of the detention unit of the Tribunal;
- d) Order, based on the above-mentioned provisional charges, the provisional detention of the suspect **Anatole NSENGIYUMVA** for an initial period of thirty days.

Place:

Date:

For the Prosecutor,

Honoré Rakotomanana,
Deputy Prosecutor

UNITED NATIONS

NATIONS UNIES

INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR GENOCIDE AND OTHER SERIOUS VIOLATIONS OF INTERNATIONAL LAW COMMITTED IN THE TERRITORY OF RWANDA AND RWANDAN CITIZENS RESPONSIBLE FOR GENOCIDE AND OTHER SUCH VIOLATIONS COMMITTED IN THE TERRITORY OF NEIGHBORING STATES BETWEEN 1 JANUARY AND 31 DECEMBER 1994

TRIBUNAL INTERNATIONAL CHARGE DE POURSUIVRE LES PERSONNES PRESUMÉES RESPONSABLES D'ACTES DE GENOCIDE OU D'AUTRES VIOLATIONS GRAVES DU DROIT INTERNATIONAL HUMANITAIRE COMMIS SUR LE TERRITOIRE DU RWANDA ET LES CITOYENS RWANDAIS PRESUMÉS RESPONSABLES DE TELS ACTES OU VIOLATIONS COMMIS SUR LE TERRITOIRE D'ÉTATS VOISINS ENTRE LE 1 JANVIER ET LE 31 DECEMBER 1994

Office of the Prosecutor

Bureau du Procureur

The Deputy Prosecutor

Le Procureur adjoint

Amshoro Hotel, P.O. Box 749, Kigali, Rwanda

Tel. +(255) 84266 Tel. +(1-212) 963-996, extn 11013/17 Fax +1-212) 963 4001

AFFIDAVIT

I, Luc Côté, as the leader of the team carrying out investigations at the national level for the Office of the Prosecutor of the International Criminal Tribunal for Rwanda, attest that the investigation conducted to date has produced the following information concerning **Anatole NSENGIYUMVA**:

- 1) Colonel Anatole Nsengiyumva was born in the prefecture of Gisenyi, Rwanda.
- 2) He was Chief of Intelligence of the Rwandan Army (G-2) until he was appointed to the post of Commander of military operations of the prefecture of Gisenyi following the publication of a document written by him and entitled "Definition and Identification of ENI (enemy). Article 1 stated that "the main enemy was the Tutsi from inside and outside Rwanda".
- 3) In April 1994, he was still in command of military operations in Gisenyi.
- 4) On 4 April 1994, he attended a private dinner at the late President Habyarimana's, once again showing the privileged nature of his links with the President's "inner circle" (Akazu).
- 5) Witnesses saw the suspect in the market square in Gisenyi, giving orders to the Interahamwe and assuring them of his support should they run into difficulties.
- 6) He cooperated regularly with the Head of the Gendarmerie in Gisenyi, some elements of which, along with elements of the Army, supported the militiamen responsible for the massacres perpetrated in various places in the prefecture of Gisenyi, especially in the parish of Nyundo.

7) On 20 May 1994, the suspect sent a cable ordering the gendarmerie in Cyangugu to:

"locate and arrest immediately Mister Mukanyiwa (Tutsi businessman) and his suite STOP Take them directly to the barracks of the Gendarmerie in Cyangugu for useful purposes STOP Whereas this individual had elected to take refuge in the RPF zone, or he might probably be in his home area in Karangiro rescuing Tutsi at the Kamarampaka stadium STOP Act strictly and fast and prevent him from fleeing abroad STOP Urgent action required FULL STOP".

8) All facts stated in this affidavit result from investigations conducted by the Prosecutor's Office and are true to the best of my knowledge.

In witness thereof,

Place: Kigali

Date: 15 May 1996

Luc Côté
Team Leader
Office of investigation

UNITED NATIONS

NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case Number: ICTR-96-9-DP

THE JUDGE

THE PROSECUTOR
VERSUS
ANATOLE NSENGIYUMVA

DECISION:
ORDER OF PROVISIONAL DETENTION
AND OF TRANSFER

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case Number: ICTR-96-9-DP

DECISION ON THE APPLICATION
BY THE PROSECUTOR FOR TRANSFER AND PROVISIONAL DETENTION
IN THE MATTER OF ANATOLE NSENGIYUMVA
(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 the 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:

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 Anatole Nsengiyumva.

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 was arrested by the Cameroonian authorities in the evening of 27 March 1996 pursuant to an international warrant of arrest issued by the Rwandan authorities. To date, he is being held by the Cameroonian prison authorities and is the object of a procedure of extradition at the request of the Rwandan authorities.

4. The Office of the Prosecutor is presently conducting investigations on crimes allegedly committed by Anatole Nsengiyumva.
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 developed during the hearing indicate that there exist good reasons to believe that Anatole Nsengiyumva 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.

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 Anatole

Nsengiyumva may indeed have committed crimes over which the Tribunal has jurisdiction.

5. The Tribunal is convinced that there are risks that Anatole Nsengiyumva 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 Anatole Nsengiyumva 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 Anatole Nsengiyumva the conditions set forth in Rule 40 *bis* (B) of the Rules and that it should be favourably received.

III- 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 Anatole Nsengiyumva allegedly committed offences which come within the Tribunal's jurisdiction,

Noting that the Prosecutor provisionally charges Anatole Nsengiyumva, 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 Anatole Nsengiyumva for a maximum period of thirty days,

ORDERS the transfer of Anatole Nsengiyumva to the Tribunal's detention unit,

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

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

Arusha, 17 May 1996

For the International Criminal Tribunal for Rwanda,

Lennart Aspegren
Judge

UNITED NATIONS



NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Arusha International Conference Centre
PO Box 6016, Arusha, Tanzania
Fax: 255 57 4373/4000 or 1 212 963 23 43
Tel.: 255 57 4207-11/4365-72 or 1 212 963 2849/2850

Decision on the Continued Detention on Remand of

Anatole Nsengiyumva (born 4 September 1950)

(Pursuant to Rule 40 bis (D) 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 the said Statute,

Considering the decision rendered by the Tribunal on 17 May 1996 for the detention on remand and transfer to the Tribunal’s Detention Unit of Anatole Nsengiyumva.

Considering the request (the “request”) made by the Prosecutor of the Tribunal on 13 June 1996 and the affidavits attached to it,

Having heard today, at a hearing held in Yaoundé, the representatives of the Prosecutor, acting under Rules 37 and 38 of the Rules, and the detainees and his counsel,

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

Decides and orders as follows:

I-Request

1. the Request is made by the Prosecutor of the Tribunal, pursuant to the rule 40 bis of the Rules, seeking an order for the continued detention on remand and the transfer to the Tribunal's Detention unit of Anatole Nsengiyumva.

II-Justification

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 Rules, or the suspect is otherwise detained by the State authorities:
- (ii) After hearing the Prosecutor, the Judge, considering 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 be otherwise necessary for the conduct of the investigation (…)

(D) The provisional detention of a suspect shall be ordered for a period of not exceeding 30 days from the signing of the provisional detention order. At the end of that period, at the Prosecutor's request, the Judge who made the order, or another Judge of the same Trial Chamber, may decide, subsequent to an inter parties hearing of the Prosecutor and the suspect assisted by his counsel, to extend the detention for a period not exceeding 30 days, if warranted by the needs of the investigation (…)”

3. The suspect, Anatole Nsengiyumva, was arrested by the Cameroonian authorities on March 1996 pursuant to an international warrant of arrest issued by the Rwanda authorities. On 17 May 1996, at a hearing held in Arusha, the Tribunal ordered the detention on remand and transfer to the Tribunal's Detention Unit of Anatole Nsengiyumva. To date, he is being held by the Cameroonian prison authorities.

4. The request made by the Prosecutor, the elements made known to the Tribunal by the affidavits attached to the request, and the indications and information developed

during the hearing indicate that there still exist good reasons to believe that Anatole Nsengiyumva 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. The request, however, has above all set forth reasons which seem to justify the continued detention on remand of Anatole Nsengiyumva. These reasons relate, inter alia, to the material security conditions in the territory of Rwanda.

5. The Tribunal is convinced that there still are risks that Anatole Nsengiyumva 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, and that there also exist reasons related to the sources and conditions of the investigations conducted by the Prosecutor, which justify and require the continued detention on remand of Anatole Nsengiyumva.

In particular, the Tribunal took as a basis of information set forth in the affidavits attached to the request, which show that the security situation in the Prefecture of Cyangugu has suddenly deteriorated, adversely affecting the normal conduct of the investigations and causing some witnesses to be inaccessible.

6. The Government of Cameroon, according to the statements made by the Representatives of the Prosecutor and the Tribunal, would be cooperative and would receive favorably a positive decision on the request for the continued detention on remand of Anatole Nsengiyumva.

7. In the light of the foregoing, the Tribunal is of the opinion that the request for the continued detention on remand and transfer of Anatole Nsengiyumva made by the Prosecutor meets with the conditions set forth in Rule 40 bis (D) of the Rules and that it should be favorably received.

8. The request for the continued detention was submitted by the Prosecutor on 13 June 1996, that is before the expiry of the duration of detention on remand.

For a number of reasons, the Tribunal has not been able to consider the question or the question on the continued detention on remand of Anatole Nsengiyumva before the expiry date on 16 June 1996 of the period in accordance with the Tribunal's decision on 17 May 1996. Since 17 June, he has however been detained again under Cameroonian law. At this stage, instead of considering an order for a new thirty day period of detention in accordance with paragraph (A) of Rule 40 bis of the Rules, the Tribunal, intending to comply with the aim and functions of article 40 bis in general and its paragraph (D) in particular, favors instead the continued detention on remand of Anatole Nsengiyumva for a maximum period of 30 days yet from the expiry date of the first period of detention, so as to continue the detention on remand under Rule 40 bis (D) of the Rules.

9. In his request, not only did the Prosecutor request the continued detention on remand of Anatole Nsengiyumva, but also the confirmation of the order for the transfer of Anatole Nsengiyumva to the Tribunal's Detention Unit. Since the Tribunal's decision on the transfer of Anatole Nsengiyumva to the Tribunal's Detention Unit under Rule 40 bis (B) of the Rules has not yet been effected by the Cameroonian authorities, the Tribunal is of the opinion that its order of transfer is still in effect. Consequently, the Tribunal does not need to confirm the validity of that order, but only to remind the Government of Cameroon to effect such transfer as soon as possible.

III-Decision

THE TRIBUNAL, BASED ON THE FOREGOING DETERMINES AS FOLLOWS:

Considering all the matters raised in the Prosecutor's request and by Anatole Nsengiyumva's counsel and addressed at the hearing.

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

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

Considering that the Prosecutor has submitted sufficient reasons to show and justify the need for the continued detention on remand in order to complete his investigations and criminal proceedings against Anatole Nsengiyumva;

Noting that Anatole Nsengiyumva is still detained by the Cameroonian authorities and that his transfer to the Tribunal's Detention Unit has however not yet been implemented despite the Tribunal's decision of 17 May 1996:

Given the request before made by the Prosecutor,

Hereby Grants the said request,

Orders the continued detention on remand of Anatole Nsengiyumva for a maximum period of thirty days, names from 17 June 1996 to 16 July 1996 inclusive;

Requests the Government of Cameroon to effect as soon as possible the Tribunal's order of 17 May 1996 for the transfer of Anatole Nsengiyumva to the Tribunal's Detention Unit;

Lastly, the Tribunal requests the Registrar to notify the Government of Cameroon and to inform the Government of Rwanda of the Decision.

Yaoundé, 18 June 1996

For the Tribunal

Lennart Aspegren
Judge

UNITED NATIONS



NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Arusha International Conference Centre

PO Box 6016, Arusha, Tanzania

Fax: 255 57 4373/4000 or 1 212 963 23 43

Tel.: 255 57 4207-11/4365-72 or 1 212 963 2849/2850

Case No: ICTR-96-9-DP

THE JUDGE

THE PROSECUTOR

AGAINST

ANATOLE NSENGIYUMVA

(ASSISTED BY MR. BENJAMIN ONDIGUI)

DECISION: CONTINUED DETENTION ON REMAND/ CORR.

The Decision of 18 June 1996 ordering the continued detention on remand of Anatole Nsengiyumva, pursuant to Rule 40 bis of the Rules of Procedure and Evidence, contains some typing errors.

The French version of the original document, as signed by me, contains two errors on the second page. Paragraph 1 should read “a prolongation”, and paragraph 2 should read “le Juge considÈre la dÈtention provisoire comme une mesure nÈcessaire”.

The English version of the original document, as signed by me, contains an error on the third page, Paragraph 3 should read “by the Cameroonian authorities on 27 March 1996”.

21 September 1996

Lennart Aspegren
Judge

VII

Joseph Kanyabashi ICTR-96-15-I

Indictment

Confirmation of Indictment

Decision following the initial appearance

Application by the Prosecutor for a
formal request for deferral by the Kingdom
of Belgium

Decision by the Trial Chamber on
application by the Prosecutor for a formal
request for deferral to the competence of
the ICTR

**INTERNATIONAL CRIMINAL TRIBUNAL
FOR RWANDA**

CASE NO ICTR-96-I

THE PROSECUTOR OF THE TRIBUNAL

AGAINST

JOSEPH KANYABASHI

Indictment

The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to his authority under Article 17 of the Statute of the International Criminal Tribunal for Rwanda (hereinafter “Statute of the Tribunal”), charges

JOSEPH KANYABASHI

With **Genocide, complicity in genocide, direct and public incitement to commit genocide, and violations of common article 3 and of Additional protocol II**, as set forth below:

The Accused

1. Joseph KANYABASHI was born in Mpare sector, Huye commune in the prefecture of Butare, Rwanda in 1937. In April of 1974, he became burgomaster of Ngoma commune. He remained in that position until he fled on July 4, 1994. Joseph KANYABASHI is currently detained in Belgium.

Concise Statement of Facts

1. Rwanda is divided into prefectures, each of which is governed by a prefect. The prefectures are subdivided into communes which are placed under the authority of burgomasters. Communes are further subdivided into sectors, each of which is represented by a councillor.
2. At all times relevant to this indictment, Tutsis were identified as an ethnic or racial group.
3. On April 6, 1994, the plane transporting President JuvÈnal Habyarimana of Rwanda and President Cyprien Ntaryamira of Burundi crashed on its approach to Kigali airport, Rwanda. Following the deaths of the two presidents, widespread killings began in Kigali and also in other parts of the country.

4. At all times relevant to this indictment, a state of armed conflict existed in Rwanda and the victims referred to in this indictment were persons not taking an active part in the hostilities.
5. Between March and June of 1994, Joseph Kanyabashi facilitated the military training of local residents and distributed weapons and ammunition to the counillors of sectors in his commune.
6. On or about April 19, after interim president Sindikubwabo's delivered a speech in Butare encouraging people to fight the enemy, Joseph Kanyabashi gave a speech in support f the interim president, encouraging the population to follow Sindikubwabo's instructions. Shortly thereafter, widespread attacks on Tutsis began in the area.
7. In late April or early May, 1994, Joseph Kanyabashi held a meeting for the inhabitants of Ngoma and Matyazo sectors. At the meeting, Joseph Kanyabashi encouraged Tutsis to come out of their hiding places and assured them safety. The following day, the Tutsis who came out of hiding were killed.
8. In or around April 1994, Joseph Kanyabashi replaced councillors of sectors in his commune with persons known to have participated in or at least have been sympathetic to the killing of Tutsis.
9. 10 In or around April, 1994, Joseph Kanyabashi asked Tutsis seeking refuge at the Matyazo dispensary to remain there for their own safety. A short time later, Joseph Kanyabashi ordered soldiers to shoot them. Several people were killed.
10. In early May, 1994, Joseph Kanyabashi assured several Tutsi refugees from Mare commune who were seeking refuge at the Butare University Hospital that they would be protected. He later lead the Tutsis away from the hospital and they were eventually believed to have been killed.
11. On or about May 15, 1994, more Tutsis were taken from University of Butare hospital and killed. Joseph Kanyabashi accompanied the soldiers who checked their identity cards of patients at the hospital and was present when soldiers removed the Tutsis and people without identity cards from the hospital.
12. In or around May, 1994, on at least one occasion, Joseph Kanyabashi drove through the town of Butare and spoke to the population through a megaphone. He encouraged the population to systematically search for the "enemy" in the commune. Immediately afterwards, more Tutsis were killed in Ngoma commune.
13. In or around May, 1994, Joseph Kanyabashi held at least two meetings in Cyarwa sector, Ngoma commune at which he encouraged local residents to kill Tutsis. In the days following the meetings, Tutsis in the area were attacked.
14. In or around late May, 1994, Joseph Kanyabashi escorted Tutsis seeking refuge at the prefecture office to Nyange cellule where they were later attacked by the communal police and civilians. Some of the survivors returned to the prefecture office. Over the following weeks, Joseph Kanyabashi selectively removed some of these survivors at night. They were reportedly killed in a nearby forest.
15. In or around late April, 1994, Joseph Kanyabashi together with communal police, escorted two busloads of Tutsi refugees from the prefecture offices in Butare to

Rango forest. The Tutsi refugees were detained in a fenced in area where they were starved and beaten. Some died from this treatment. Those who remained were liberated in early July, 1994.

Charges

Pursuant to Article 6(1), in relation to his actions at the events described above which occurred in the months of April through June, 1994, in Ngoma commune, Butare prefecture, territory of the Republic of Rwanda, Joseph Kanyabashi is individually responsible for:

COUNT 1: GENOCIDE, a violation of article 2(3)(a) and (b) of the Statute of the Tribunal, the killing or causing of serious bodily or mental harm to members of the Tutsi population of Rwanda with the intent to destroy in whole or in part an ethnic or racial group, punishable in reference to Article 22 and 23 of the Statute.

And additionally or alternatively,

COUNT 2: COMPLICITY IN GENOCIDE, a violation of article 2(3)(e) of the Statute of the Tribunal and punishable in reference to Articles 22 and 23 of the same Statute;

COUNT 3: CRIMES AGAINST HUMANITY, a violation of article 3(h) of the Statute of the Tribunal, the PERSECUTION of Tutsis and others as part of a widespread or systematic attack against a civilian population on political, ethnic, or racial grounds, punishable in reference to Article 22 and 23 of the Statute; and

COUNT 4: VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTION AND OF ADDITIONAL PROTOCOL II, as incorporated by Article 4(a) of Statute of the Tribunal, the violence to life, health and physical or mental well being of persons not taking an active part in the hostilities, punishable in reference to Article 22 and 23 of the Statute.

Pursuant to Article 6(1), in relation to his speeches to the population through the megaphone in May, 1994, as described in paragraph 14, and his speech following the speech of interim president Sindikubwabo on April 19, 1994, as described in paragraph 7, all of which occurred in Ngoma commune, Butare prefecture, territory of the Republic of Rwanda, Joseph KANYABASHI is individually responsible for:

COUNT 5: DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE, a violation of article 2(3)(c) of the Statute of the Tribunal, punishable in reference to Articles 22 and 23 of the same Statute.

For the Prosecutor
The Deputy Prosecutor

Judge Honoré Rakotomanana

Kigali, Rwanda
July 11, 1996

UNITED NATIONS



NATIONS UNIES

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA**

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**INTERNATIONAL CRIMINAL
TRIBUNAL FOR RWANDA**

In Trial Chamber 1

Before: Judge Yakov A. Ostrovsky
Deputy Registrar: Mr. Hugues Vérita
On behalf of Prosecutor: Ms. Brenda Sue Thornton
Decision of: 15 July 1996

DECISION ON THE REVIEW OF THE INDICTMENT

In the Matter of

JOSEPH KANYABASHI

Case No. ICTR-96-15-I

I, Yakov A. Ostrovsky, Judge of the International Criminal Tribunal for Rwanda,

Upon receiving an indictment from the Prosecutor, pursuant to Articles 17 and 18 of the Statute of the Tribunal, and Rule 47 of the Rules of procedure and Evidence,

And upon hearing the Prosecutor, represented by Ms. Brenda Sue Thornton, pursuant to Rule 47 (D) of the Rules of Procedure and Evidence and taking into consideration the documents submitted during the hearing,

Pursuant to Article 17 and 18 of the Statute of the Tribunal and Rules 28 and 47 of the Rules of Procedure and Evidence,

Confirm the indictment submitted by the Prosecutor with respect to each and every count of the indictment, and

State that from the material tendered by the Prosecutor, I am satisfied a prima facie case has been established with respect to each and every count as set out in the indictment, and that the acts fall within the jurisdiction of the International Criminal Tribunal for Rwanda,

Further order, after consultations with the Prosecutor, that there be no public disclosure of the Supporting Documentation submitted in support of the indictment, pursuant to Rule 53 (B) of the Rules of Procedures and Evidence.

And note the prayer of the Prosecutor that an appropriate warrant of arrest for the accused who is under detention in Belgium, pursuant to Rule 40 of the rules of Procedure and Evidence, be issued and arrangements be made for his transfer to the custody of the Tribunal.

Judge Yakov A. Ostrovsky
Trial Chamber 1
International Criminal Tribunal for Rwanda

Dated this 15th day of July, 1996,
At Arusha, Tanzania

Seat of the Tribunal
Case No ICTR-96-15-I

UNITED NATIONS



NATIONS UNIES

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
CHAMBER 2**

Before Judge Tafazzal H. Khan, Presiding Judge
Judge Lennart Aspegren
Judge Navanethem Pillay

Registry: Ms. Prisca M. Nyambe
Mr. Jean-Pelé Fomété

Decision of: 29 November 1996

THE PROSECUTOR

Versus

Joseph KANYABASHI

Case No: ICTR-96-15-I

DECISION FOLLOWING THE INITIAL APPEARANCE

The Office of the Prosecutor:

Mr. Yacob Haile-Mariam
Mr. Pierre-Richard Prosper
Ms. Adelaide E. Whest

Counsel for the Accused:

Mr. Evans Monari

The Tribunal, sitting as Trial Chamber 2 composed of Judge Tafazzal H. Khan, Presiding Judge, Judge Lennart Aspegren and Judge Navanethem Pillay;

Considering the indictment against Joseph Kanyabashi submitted by the Prosecutor and confirmed by Judge Yakov A. Ostrovsky on 15 July 1996, who issued a warrant of arrest and an order for surrender of the accused on that same date;

Taking Note of the transfer of the accused from Belgium to the Tribunal's Detention Unit on 8 November 1996;

Considering the initial appearance of the accused this 29 November 1996 before this Chamber,

Giving serious consideration to the concerns expressed by the accused concerning the difficulties in communicating with his assigned defence counsel through an interpreter;

Being of the opinion, however, that the Registrar, in assigning Mr. Evans Monari as defense counsel for the accused, has complied properly with the provisions in Article 20 of the Statute of the Tribunal, Rule 45© of the Rules of Procedure and Evidence ("the Rules") and Article 10 of the Directive on Assignment of Defence Counsel ("the Directive");

Being convinced, therefore, that at this stage of the proceedings, the rights of the accused to counsel have been respected;

Given that, during today's initial appearance, the accused declined to plead for five counts of the indictment claiming he was insufficiently represented by defense counsel, for which reason the Chamber registered a plea of being not-guilty to all counts on his behalf;

Reminding the accused of the provision in Article 19(D) of the Directive, which entitled him to request assignment of another counsel for his defense, should the difficulties in communicating with the assigned counsel amount to an exceptional circumstance at any later stage of the proceedings;

Pursuant to Rule 62 and the following provisions in the Rules;

The Tribunal Decides

To Fix the date of the trial on the merits for Tuesday 8 April 1997, at 9:30 hours;

To Maintain In Detention on Remand Joseph Kanyabashi and to enjoin the Commanding Officer of the Tribunal's Detention Unit to continue to detain him until ordered otherwise.

Arusha, 29 December 1996

T.H. Khan,
Presiding Judge

Lennart Aspegren,
Judge

Navanethem Pillay,
Judge

**IN THE TRIAL CHAMBER
OF THE INTERNATIONAL CRIMINAL
TRIBUNAL FOR RWANDA**

**APPLICATION BY THE PROSECUTOR FOR A
FORMAL REQUEST FOR A DEFERRAL BY THE KINGDOM OF BELGIUM IN
RESPECT OF**

**ELIE NDAYAMBAJE
JOSEPH KANYABASHI
ALPHONSE HIGANIRO**

I. I, Richard J. Goldstone, Prosecutor, pursuant to Article 8(2) of the Statute of the International Tribunal for the prosecution of persons responsible for genocide or other serious violations of international humanitarian law committed in Rwanda or committed in neighboring States by Rwandans during 1994 (referred to respectively as the "Statute" and "the Tribunal") and in accordance with Rule 9(iii) of the Rules of Procedure and Evidence ("the Rules") propose to the Trial Chamber, in relation to investigations and criminal proceedings being conducted by the Kingdom of Belgium respecting serious violations of international humanitarian law committed in the prefecture of Butare in the territory of Rwanda between April 1994 and June 1994, involving Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro that a formal request be made to the Kingdom of Belgium that its courts defer to the competence of the Tribunal.

II. Pursuant to Rule 10 of the Rules, I propose that the Trial Chamber issue a formal request to the Kingdom of Belgium in the following terms:

A) The Courts of Belgium defer to the competence of the Tribunal in regard to all investigations and criminal proceedings in respect of Elie Ndayambaje, Joseph Kanyabashi, and Alphonse Higaniro.

B) In regard to all such investigations and criminal proceedings of Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro, the Tribunal requests that the Kingdom of Belgium forward to the Tribunal the result of said investigations, criminal proceedings, copies of the court's records and judgements, in any.

III. I make this proposal for the following reasons:

A) National investigations have instituted against Elie Ndayambaje, Joseph Kanyabashi, and Alphonse Higaniro by the Kingdom of Belgium for crimes alleged to have taken place in the Prefecture of Butare and elsewhere in Rwanda.

B) I am currently conducting investigations into crimes within the jurisdiction of the Tribunal that have taken place in the Prefecture of Butare in which Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro are suspects.

C) The national investigations involve issues closely related to, or otherwise involve, significant factual and legal questions which may have implications or prosecutions before the Tribunal.

IV. The basis of my proposal appears in the attached schedule.

Dated this eighth day of January 1996

Arusha
Tanzania

Richard J. Goldstone
Prosecutor

SCHEDULE

1. INVESTIGATIONS BEING CONDUCTED BY THE KINGDOM OF BELGIUM

1.1 In February 1995 the Kingdom of Belgium decided to commence investigations in relation to Elie Ndayambaje, (a prominent member of the commune of Muganza in the Prefecture of Butare who was appointed Bourgmestre of Muganza in June 1994). Joseph Kanyabashi, the Bourgmestre of the commune of Ngoma in the prefecture of Butare; and Alphonse Higaniro, a former Minister and Director of the Para-statal SORWAL in the Commune of Butare, in the Prefecture of Butare.

1.2 The investigations being conducted by the Kingdom of Belgium in relation to Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro involve investigations into allegations of murder and incitement to murder Tutsis and moderate Hutus in the Prefecture of Butare.

1.3 On April 27, 1995, a warrant of arrest was issued by the Judge responsible for the investigations against Alphonse Higaniro who was subsequently arrested that day in the territory of Belgium.

1.4 On June 28, 1995 a warrant of arrest was issued by the Judge responsible for the investigations against Elie Ndayambaje and Joseph Kanyabashi who were subsequently arrested that day in the territory of Belgium.

1.5 The Chamber of Council in Brussels, Belgium, issued three orders to prolong the arrests of the three detained persons, which orders have been confirmed monthly in accordance with the applicable provisions of Belgian law. All three persons remain in custody in Belgium.

1.6 Elie Ndayambaje, Joseph Kanyabashi, and Alphonse Higaniro are suspected of having committed crimes under the Criminal Law of the Kingdom of Belgium (Law 16 of June 1993, article 1), including international crimes of grave breaches of the Geneva Conventions of 12 August 1949 and the Additional Protocols of 8 June 1977.

1.7 The Judge responsible for the investigations, further to three *commissions rogatoires*, has conducted investigations in the Republic of Rwanda.

2. INVESTIGATIONS BY THE PROSECUTOR

2.1 The Prosecutor is investigating allegations of serious violations of international humanitarian law that occurred in the territory of Rwanda including the massacres which occurred between April and June 1994 in the Prefecture of Butare in which Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro were allegedly involved.

2.2 The current investigations of the Prosecutor relating to Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro include the incidents referred to in paragraph 1.2 above. The Prosecutor's investigations include interviews of witnesses and the collection of documents in order to determine the truth of the allegations that the massacres, in particular in the Prefecture of Butare, were planned and resulted in the deliberate mass killing of a large number of people protected under international law.

2.3 A significant focus of the investigations of the Prosecutor relates to persons in positions of authority who were responsible for serious violations of international humanitarian law in the territory of the Republic of Rwanda.

2.4 Insofar as investigations referred to in paragraph 2.3 relate to persons in positions of authority, the allegations of criminal responsibility of Elie Ndayambaje, Joseph Kanyabashi and of Alphonse Higaniro are central.

2.4.1 Elie Ndayambaje was born on 8 March 1958 in the Commune of Muganza in the Prefecture of Butare. He was Bourgmestre of Muganza until 1992. He left Muganza between 1992 and April 1994 to finish his study at the University of Butare. After 6 April he returned to Muganza. He was officially appointed Bourgmestre by the interim government in June 1994. Around 20 April 1994, he is believed to have taken part in several meetings held in the Commune of Muganza in preparation of the massacres in the Commune. He is alleged to be involved in a massacre which took place on the hill of Kabuya, commune of Ndora, not far from the Commune of Muganza. This massacre resulted in the deaths of thousands of civilians.

2.4.2 Joseph Kanyabashi was born in 1937 in the sector Mpare of the Commune of Huye in the Prefecture of Butare. He was the oldest Bourgmestre in the Prefecture of Butare. From 20 April 1994, the massacres stated throughout the Prefecture of Butare, also in the Commune of Ngoma, where Joseph Kanyabashi remained in Charge as Bourgmestre. He is alleged to have distributed arms to participants in the massacres. He is also believed to have incited individuals to murder Tutsis.

2.4.3 Alphonse Higaniro was born in 1949 in the Commune of Gaseke in the Prefecture of Gisenyi. He is married to Alphonsine Akingeye, the daughter of President Habyarimana's personal physician who died in the plane crash of 6 April 1994. Alphonse Higaniro, a former Minister, became in 1992 the general director of the Para-statal SORWAL, a match factory in Butare. He is believed to have used his position as director of the SORWAL factory to hire, organize, group and arm the Interhamwe militias and other militias in Butare.

2.5 In order to develop the pending investigations, the Prosecutor must collect further essential evidence and obtain full access to the statements, documents and

other findings of the investigations in relation to Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro conducted by the Kingdom of Belgium.

3. SIGNIFICANT FACTUAL AND LEGAL QUESTIONS

3.1 If the Kingdom of Belgium continues investigations which are similar to those being conducted by the Prosecutor, significant risks are created which may have implications for investigations before the Tribunal, including but not limited to:

3.1.1 Confusion amongst witnesses and cooperating organizations or governments concerning the scope and authority of the different investigations and the different rules and confidentiality protections which govern the town investigations. Repeated interviews of witnesses by different investigators (particularly those from different organizations) should be avoided. Otherwise, witnesses become confused and distrustful of giving multiple accounts of the same incidents.

3.1.3 Unnecessarily compromising the credibility of witnesses due to the inadvertent creation of multiple statements where the statements were taken under different conditions, in –sometimes- different languages and for different purposes.

3.1.4 Potential evidentiary problems resulting from different procedures such as those concerning evidence collection and preservation, the taking of statements and the questioning of suspects.

3.2 If the Kingdom of Belgium proceeds to trial before the Prosecutor completes his investigation, the following significant factual and legal issues may have implications for investigations and prosecutions before the Tribunal:

3.2.1 By virtue of Article 9.2 of the Tribunal (*Non bis in idem*) there are limitations on the subsequent prosecution before the International Tribunal of persons who have already been tried by a national court for acts constituting serious violations of international humanitarian law. Belgium penal law does not have criminal provisions for the offenses of genocide and crimes against humanity.

3.2.2 Critical witnesses who have testified in a public national trial and who are subject to be called as witnesses from a trial before the Tribunal will be exposed to greater risks as their identities and evidence have been made public.

3.2.3 Witnesses who have experienced stress or trauma by giving evidence to a national court may be unwilling to do so a second time before the Tribunal. This creates the potential danger of evidence becoming lost to the Tribunal.

3.2.4 There is a potential of inadvertently creating inconsistent sworn testimony.

3.2.5 International publicity which would result from a trial in a Belgian court of the three persons, may create a perception of prejudice in the minds of the accused or the public and may have implications for a fair trial before the Tribunal.

3.2.6 The legal precedents created and the findings of fact made by a national court and the Tribunal in regard to the three persons and the crimes they allegedly have committed, if in conflict, will be undesirable and not in the interest of justice.

4. OTHER RELEVANT CONSIDERATIONS

4.1 The kingdom of Belgium has been very cooperative and has proposed that its investigations of Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro be deferred to the Tribunal.

4.2 A deferral of the investigations to the Tribunal is likely to encourage governments, non governmental organizations and other sources to furnish to the Tribunal additional information.

4.3 The Kingdom of Belgium considers it more reasonable that the Prosecutor take over the investigations because it is in a better position to investigate and prosecute crimes committed on the territory of Rwanda. The Tribunal is not constrained by national boundaries and therefore is better able to obtain witness assistance and evidence world-wide.

4.4 Given that many witnesses critical to the Prosecutor's investigation are in Rwanda and its neighboring states and may be reluctant to travel to Belgium to testify in a national trial, the Prosecutor is better able to collect evidence during investigations and present it in trials before the Tribunal in Arusha.

Dated this 8th of January 1996
Arusha,
Tanzania.

Richard J. Goldstone,
Prosecutor

UNITED NATIONS



NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

In the Trial Chamber of the
International Criminal
Tribunal for Rwanda

IN THE MATTER OF: CASE NUMBER ICTR-96-2-D
AND

IN THE MATTER OF:

AN APPLICATION BY THE PROSECUTOR FOR A FORMAL REQUEST FOR
DEFERRAL BY THE KINGDOM OF BELGIUM AND IN THE MATTER OF: ELIE
NDAYAMBAJE, JOSEPH KANYABASHI, AND ALPHONSE HIGANIRO

**Decision Of The Trial Chamber On The Application By The Prosecutor For A
Formal Request For Deferral To The Competence Of The International Criminal
Tribunal For Rwanda In The Matter Of Elie Ndayambaje, Joseph Kanyabashi And
Alphonse Higaniro (Pursuant To Rules 9 And 10 Of The Rules Of Procedure And
Evidence)**

Considering the Application dated 8 January 1996 (“the Application”), filed by the
Prosecutor of the International Criminal Tribunal for Rwanda (“the international
Tribunal”),

Noting that the Trial Chamber has been designated by the President of the
International Tribunal pursuant to Rule 9 of the Rules of Procedure and Evident (“the
Rules”) of the International Tribunal to answer the Application,

Taking into account the letter dated 27 December 1995 from Stefaan De Clerck,
Minister of Justice of Belgium, submitted to the Trial Chamber by the Prosecutor,

Having read and taken note f the letter dated 28 December 1995 from Johan Scheers,
Defence Council of Joseph Kanyabashi,

Having heard the Prosecutor at a public sitting held in Arusha on 10 January 1996,

I-The Application

1. This is an application by Richard J. Goldstone, Prosecutor of the International Criminal Tribunal for Rwanda, made pursuant to article 8 (2) of the Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian law committed in the Territory of Rwanda and Rwandan citizens responsible for Genocide and other such violations committed in the territory of neighboring States, between 1 January 1994 and 31 December 1994, and in accordance with Rule 9(iii) of the Rules of Procedure and Evidence, seeking an order from the Trial Chamber in relation to investigations and criminal proceedings being conducted by the Kingdom of Belgium respecting the serious violations of international Humanitarian Law committed in the Prefecture of Butare in the territory of Rwanda between April 1994 and June 1994, involving Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro, that a formal request be made to the Kingdom of Belgium that its courts defer to the competence of the Tribunal.

2. Pursuant to Rule 10 of the Rules, the Prosecutor has requested the Trial Chamber for issuing a formal request to the Kingdom of Belgium in the following terms:

- a) The courts of Belgium defer to the competence of the Tribunal in regard to all investigations and all criminal proceedings in respect of the above-mentioned three persons.
- b) In regards to all such investigations and criminal proceedings, of Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro, the Tribunal requests that the Kingdom of Belgium forward to the Tribunal the results fo the said investigations, criminal proceedings, copies of the courts' records and judgements if any.
- c) The reasons advanced by the learned Prosecutor in support of this proposal are:
 - 1) National investigations have been instituted against Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro by the Kingdom of Belgium for crimes alleged to have taken place in the Prefecture of Butare and elsewhere in Rwanda.
 - 2) The learned Prosecutor has been conducting investigations into crimes within the jurisdiction of the Tribunal tht have taken place in the Prefecture of Butare in which Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro are suspects.
 - 3) The national investigations in both issues closely related to, or otherwise involved, significant factual and legal questions which may have implications for investigations or prosecutions before the Tribunal.

3. In support of his application the learned Prosecutor has furnished facts which, in brief, are that in February 1995 the Kingdom of Belgium decided to commence investigations in relation to Elie Ndayambaje, a prominent member of the commune of Muganza in the Prefecture of Butare who was appointed the Bourgmestre of Muganza in June 1994; Joseph Kanyabashi, Bourgmestre of the commune of Goma in the Prefecture of Butare; and Alphonse Higaniro, a former Minister and Director of the Para-statal SORWAL in the commune of Butare. These investigations involve investigations into allegations of murder and incitement to murder Tutsis and moderate Hutus in the Prefecture of Butare. On April 27, 1995, a warrant of arrest was issued by the Judge responsible for the investigation against Alphonse Higaniro who was subsequently arrested that day in the territory of Belgium. On June 28, 1995, a warrant of arrest was issued by the Judge responsible for the investigation against Elie Ndayambaje and Joseph Kanyabashi who were subsequently arrested that day in the territory of Belgium. The Chamber of Council in Brussels, Belgium, issued three orders to prolong the arrest of the said three detained persons, which orders have been confirmed monthly in accordance with the applicable provisions of Belgian law. The said three persons are suspected of having committed crimes under the criminal law of the Kingdom of Belgium (Law 16 June 1993, article 1), including international crimes of grave breaches to the Geneva Conventions of 12 August 1946 and the Additional Protocol of 8 June, 1977. The learned Judge responsible for the investigations against the said three persons has conducted investigations in the Republic of Rwanda.
4. The learned Prosecutor has further stated that he has been investigating the allegations of serious violations of International Humanitarian Law that occurred in the territory of the Republic Rwanda including the massacres which occurred between April 1994 and June 1994 in the same Prefecture of Butare in which the said three persons were allegedly involved. The Prosecutor's investigations include interviews of witnesses and the collection of documents in order to determine the truth of the allegations that the massacres, in particular in the Prefecture of Butare, were planned and resulted in the deliberate mass killing of a large number of people protected under international law. According to the learned Prosecutor the said three persons are central figures who are alleged to have played crucial roles in the perpetration of the alleged massacres in the Prefecture of Butare.
5. The learned Prosecutor has further submitted that in order to develop the pending investigations, he must collect further essential evidence and obtain full access to the statements, documents and other findings of the investigations in relation to the said three persons, and that if the Kingdom of Belgium continues investigations which are similar to those being conducted by the Prosecutor, significant risks are created which may have implications for investigations

before the Tribunal, leading to various confusions and complications. At the time of hearing, the learned Prosecutor made elaborate submissions on these points. He has also pointed out that there may arise the question of the double jeopardy in case of the said three persons if they are tried in the courts of the Kingdom of Belgium.

6. The learned Prosecutor has further stated in the application that the Kingdom of Belgium has been very cooperative and has proposed that its investigations against the said three persons deferred to this Tribunal; that the kingdom of Belgium considers it more reasonable that the Prosecutor take over the investigations because he is in a better position to investigate and prosecute crimes committed on the territory of Rwanda. In this connection we may mention that at the time of hearing the learned Prosecutor has also submitted before the Tribunal authentic photostat copy of a letter dated 27 December 1995 by Stefaan De Clerck, the Minister of Justice of the Kingdom of Belgium, addressed to the Prosecutor, Mr. Richard J. Goldstone, wherein it has been mentioned that “Belgium’s position has always been of support for the establishment of international tribunals for Rwanda and the Former Yugoslavia and, insofar as possible, of collaboration with your office so that it may accomplish the task it has set forth.”

II-The Decision

The Trial Chamber Based on the foregoing Determines as Follows:

Considering all the matters before it and addressed in the public hearing, and

Taking into account the provisions of Article 8(2) of the Statute, and

Considering the requirements contained in Rule 9(iii) of the Rules,

The Trial Chamber consisting of Judge Sekule, as Presiding Judge, Judge Khan and Judge Ostrovsky, being seized of the Application made by the Prosecutor,

Hereby Grants the said Application,

Formally Requests the Kingdom of Belgium to defer to the International Tribunal the criminal proceedings currently being conducted in its national courts against the said Elie Ndayambaje, Joseph Kanyabashi and Alphonse Higaniro,

Invites the Kingdom of Belgium to defer to the International Tribunal the criminal proceedings currently being conducted in its national courts against the said Elie Ndayambaje, Joseph Kanyabashi, and Alphonse Higaniro,

Requests that the Government of the Kingdom of Belgium forward to the International Tribunal the results of its investigation and a copy of the records of its national court.

The Trial Chamber requests the Registrar of the International Tribunal to notify the Government of the Kingdom of Belgium of this Decision and Order.

Dated this 11th day of January 1996.

Arusha

William Hussein Sekule
Presiding Judge
Trial Chamber 2

VIII

Ferdinand Nahimana ICTR-96-11-I

Indictment:

Confirmation of Indictment:

Warrant of arrest, order for surrender:

Order of provisional detention and of
transfer:

Decision on the continued detention on
remand of the accused:

UNITED NATIONS



NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No. ICTR-96-11-I

The Prosecutor of the Tribunal Against Ferdinand Nahimana

Indictment

1. the Prosecutor of the International Criminal Tribunal for Rwanda, pursuant of his authority under Article 17 of the Statute of the International Criminal Tribunal for Rwanda (“the Statute of the Tribunal”) charges:

FERDINAND NAHIMANA

With **CONSPIRACY TO COMMIT GENOCIDE, DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE, COMPLICITY IN GENOCIDE, AND CRIMES AGAINST HUMANITY** As Set Forth Below

2. The Accused

Ferdinand Nahimana is believed to have been born on 15 June 1950 in the Republic of Rwanda. During the time of the events alleged in this indictment, he was a senior representative of a radio company, Radio Television Libre des Milles Collines, SA (hereinafter referred to as RTLM SA) and its commercial radio station, Radio des Milles Collines (hereinafter referred to as RTLM.)

The accused is currently [*unreadable*] Cameroon.

3. Concise Statement of the Facts

3.1 At all times relevant to this indictment, Tutsis were identified as a racial or ethnic group.

3.2 In or around 1993, Ferdinand Nahimana and others planned and created RTLM SA. RTLM was an integral part of RTLM SA. RTLM operated within the territory or

Rwanda during the time of the events alleged in this indictment. In addition to being involved in the creation of the RTLM SA, Ferdinand Nahimana was instrumental in the establishment of RTLM.

3.3 During the time of the events alleged in this indictment, Ferdinand Nahimana exercised control, or had the opportunity to exercise control, over the programming, operation and finances of RTLM SA and RTLM.

3.4 Between 1 January 1994 and approximately 31 July 1994, RTLM was used to broadcast messages designed to achieve inter-ethnic hatred and encourage the population to kill, commit acts of violence and persecutions against the Tutsi population and others on political grounds.

3.5 During the period alleged in this indictment, Tutsis and others were killed and suffered serious bodily or mental harm as the result of the RTLM broadcasts.

3.6 From a date unknown to the Prosecutor through the period alleged in this indictment, Ferdinand Nahimana by himself and/or with others planned, directed and defended the broadcasts made by RTLM.

3.7 During [*unreadable*] of the broadcasts alleged in this indictment, Ferdinand Nahimana knew or had reason to know of the broadcasts and the effects of the broadcast on the population. Ferdinand Nahimana could have taken reasonable measures to change or prevent the broadcasts, but failed to do so.

3.8 During the period of the broadcasts Ferdinand Nahimana knew or had reason to know that his subordinates in TRLM had facilitated and/or broadcast such broadcasts, and failed to take the necessary and reasonable measures to prevent such broadcasts or punish the subordinates.

4. Charges

Count 1: Ferdinand Nahimana, between 1 January 1994 and 31 July 1994, in the Territory of the Republic of Rwanda, conspired with others to kill or cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or part, an ethnic or racial group as such, and has thereby committed **Conspiracy to Commit Genocide**, a crime pursuant to Articles 2(3)(b) and 6(1) and punishable in reference to Article 22 and 23 of the Statute of the Tribunal.

Count 2: Ferdinand Nahimana, between 1 about 1 January 1994 and 31 July 1994, in the Territory of the Republic of Rwanda, is responsible for the direct and public incitement of the population to kill or cause serious bodily or mental harm to members of the Tutsi population, with the intent to destroy in whole or in part an

ethnic or racial group, as such and has thereby committed **Direct and Public Incitement to Commit Genocide**, a crime pursuant to Articles 2(3)(C), and 6(1) and punishable in reference to Article 22 and 23 of the Statute of the Tribunal;

Count 3: Ferdinand Nahimana, between 1 January 1994 and July 1994, in the Territory of the Republic of Rwanda, was complicit in the killing or causing of serious bodily or mental harm to members of the Tutsi population, with intent to destroy, in whole or part, an ethnic group as such and is thereby responsible for **Complicity in Genocide**, a crime recognized by Articles 2(3)(e) and 6(1) and punishable in reference to Article 22 and 23 of the State of the Tribunal; and

Count 4: Ferdinand Nahimana, between about 1 January 1994 and 31 July 1994, in the Territory of the Republic of Rwanda, is responsible for the persecution on political or racial ground of civilians as part of a widespread or systematic attack against a civilian population on political, ethnic, or racial grounds, and has thereby committed a **Crime Against Humanity**, a crime recognized by Articles 3(h), 6(1) and/or 6(3) and punishable in reference to Article 22 and 23 of the Statute of the Tribunal.

12 July 1996
Kigali, Rwanda

For the Prosecution
The Deputy Prosecutor

Honore Rakotomanana

UNITED NATIONS



NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

International Criminal Tribunal for Rwanda Trial Chamber

Before: Judge Yakov A. Ostrovsky
Deputy Registrar: Mr. Hugues Vérita
On behalf of the Prosecutor: Mr. Pierre-Richard Prosper
Decision of: 12 July 1996

DECISION ON THE INDICTMENT REVIEW

In the case of:

Ferdinand Nahimana

Case No: ICTR-96-11-I

I, Judge Yakov A. Ostrovsky, Judge for the International Criminal Tribunal for Rwanda,

Having Received from the Prosecutor the indictment, pursuant to Articles 17 and 18 of the Statute of the Tribunal, and Rule 47 of the Rules of Procedure and Evidence of the Tribunal,

And Having Heard the Prosecutor, represented by Mr. Pierre-Richard Prosper, pursuant to Rule 47(D) of the Rules of Procedure and Evidence, and having examined the documents submitted during the hearing,

Pursuant to Articles 17 and 18 of the Statute of the Tribunal and Rules 28 and 47 of the Rules of Procedure and Evidence,

Confirm the indictment submitted by the Prosecutor, with respect to each and every count of the indictment and,

Hold that from the materials tendered by the Prosecutor, the Tribunal is satisfied that a prima facie case has been established with respect to each and every count as set out in the indictment, and the acts charged fall within the jurisdiction of the Tribunal,

Furthermore Order, after consultation with the Prosecutor, that there be no public disclosure of the supporting documentation submitted with the indictment, pursuant to Rule 53(B) of the Rules of Procedure and Evidence,

And Note the prayer of the Prosecutor that a warrant of arrest be issued for the accused, who is in provisional custody in Cameroon.

[signature]

Judge Yakov, A. Ostrovsky

Trial Chamber

International Criminal Tribunal for Rwanda

Arusha (Tanzania), 12 July 1996

Tribunal Headquarters

Case n°: ICTR-96-11-I

[seal of the Tribunal]

UNITED NATIONS



NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Arusha International Conference Centre

PO Box 6016, Arusha, Tanzania

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International Criminal Tribunal for Rwanda Before a Judge of the Trial Chamber

The Judge: Yakov A. Ostrovsky

Assisted by: Mr. Hugues VÈrita, Deputy Registrar

Ruling made on 12 July 1996

In the Matter of Case No. ICTR-96-11-I

The Prosecutor

vs.

Ferdinand Nahimana

WARRANT OF ARREST AND ORDER FOR SURRENDER

Addressed to: The Republic of Cameroon

I, Yakov A. Ostrovsky, Judge of the International Criminal Tribunal for Rwanda,

Considering the United Nations Security Council Resolution 955 of 8 November 1994 and 978 of 27 February 1995, and Articles 19(2) and 28 of the Statute of the Tribunal, and Rules 54 and 61 of the Rules of Evidence of the Tribunal,

Considering the indictment submitted by the Prosecutor and confirmed by myself, Yakov A. Ostrovsky, Judge of the International Criminal Tribunal for Rwanda, on the 12th day of July 1996, and copy of which is attached to this warrant of arrest,

Hereby Directs the Cameroonian authorities to arrest and surrender to the International Criminal Tribunal for Rwanda:

Ferdinand Nahimana, born on 15 June 1950, currently detained provisionally in Cameroon.

He is accused of having committed the following crimes between January 1994 and July 1994 in the territory of Rwanda; conspiracy to commit genocide, direct and public incitement to commit genocide, complicity in genocide and crimes against humanity, all of which fall within the competence of the International Criminal Tribunal for Rwanda under Rules 2 and 3 of the Statute.

And to advise the accused, Ferdinand Nahimana, in a language he understands, of his rights as set forth in Article 20 of the Statute, and *mutatis mutandis*, in Rules 42 and 43 of the Rules, attached hereto, and of his right to remain silent, and to caution him that any statement he makes shall be recorded and may be used against him as evidence. The indictments and the confirmation thereof (and all other documents attached to this warrant) should be brought to the knowledge of the accused;

Request the Republic of Cameroon to get in touch with the Registrar of the International Criminal Tribunal for Rwanda for arranging the transfer of the accused, pursuant to Rule 57 of the Rules of Procedure and Evidence,

Request that the Republic of Cameroon report forthwith to the Registrar if they are unable to execute the present Warrant of arrest, indicating the reasons for their inability, pursuant to Rule 57 of the Rules of Procedure and Evidence,

Judge Yakov A. Ostrovsky
International Criminal Tribunal for Rwanda

Done at Arusha, Tanzania.
On this 12th day of July 1996

The Registrar,
Arusha, Tanzania

UNITED NATIONS



NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No. ICTR-96-8-DP

The Judge

The Prosecutor

Versus

Ferdinand Nahimana

**DECISION:
ORDER OF PROVISIONAL DETENTION
AND OF TRANSFER**

UNITED NATIONS



NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case Number ICTR-96-8-DP

Decision On The Application By The Prosecutor For The Transfer And Provisional Detention In The Matter Of Ferdinand Nahimana (Pursuant To Rule 40 bis 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:

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 Ferdinand Nahimana

II-Justification

2. Rule 40 bis of the Rules states that:

“(…)

(B) The Judge shall order the transfer and provisional detention of the suspects 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 Rules, or the suspect s 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 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, Ferdinand Nahimana, was arrested by the Cameroonian authorities in the evening of 27 March 1996 pursuant to an international warrant of arrest issued by the Rwandan authorities. To date, he is being held by the Cameroonian prison authorities and is the object of a procedure of extradition at the request of the Rwandan authorities.

4. The office of the Prosecutor is presently conducting investigations on crimes allegedly committed by Ferdinand Nahimana.

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 developed during the hearing indicate that there are good reasons to believe that Ferdinand Nahimana might have committed offences such as genocide, crimes against humanity, and violations of Article 3 common to the Geneva Conventions and Additional Protocol II.

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 Ferdinand Nahimana may indeed have committed crimes over which the Tribunal has jurisdiction.

5. the Tribunal is convinced that there are risks that Ferdinand Nahimana 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 Ferdinand Nahimana 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 Ferdinand Nahimana 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 Ferdinand Nahimana allegedly committed offences which come within the Tribunal's jurisdiction.

Noting that the Prosecutor provisionally charges Ferdinand Nahimana 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 Protocols of 8 June 1977, offences set forth in Article 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 Ferdinand Nahimana for a maximum period of thirty days.

Orders the transfer of Ferdinand Nahimana to the Tribunal's detention unit,

Formally Requests that the Government of the Cameroons to comply with the request from the Tribunal.

The Trial Chamber requests the Registrar of the International Criminal Tribunal for Rwanda to notify the Government of the Cameroons of this Decision and Order.

Arusha, 17 May 1996

For the International Criminal Tribunal for Rwanda

Lennart Aspegren
Judge

UNITED NATIONS



NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Arusha International Conference Centre

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DECISION ON THE CONTINUED DETENTION ON REMAND OF

Ferdinand Nahimana (born 15 June 1950)

(Pursuant to Rule 40 bis (D) of the Rules of Procedure and Evidence)

The International Criminal Tribunal for Rwanda (the “Tribunal”), sitting 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 the said Statute,

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

Noting the decision rendered by the Tribunal on 12 March 1996 for the Kingdom of Belgium to defer to the competence of the Tribunal in relation to all investigations and criminal proceedings being conducted concerning the activities of the RTLM as well as persons involved in the case of RTLM,

Considering the decision rendered by the Tribunal on 17 May 1996 for the detention on remand and transfer to the Tribunal’s Detention Unit of Ferdinand Nahimana,

Considering the request (the “request”) made by the Prosecutor of the Tribunal on 13 June 1996 and the affidavits attached to it,

Having heard today, at a hearing held in Yaoundé, the representative of the Prosecutor, acting under Rules 37 and 38 of the Rules, and the detainee and his counsel,

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

Decides and orders as follows:

I-Request

1. The request is made by the Prosecutor of the Tribunal, pursuant to Rule 40 bis of the Rules, seeking an order for the continued detention on remand and the transfer to the Tribunal's Detention Unit of Ferdinand Nahimana.

II-Justification

2. Rule 40 bis of the Rules states that:

“(…)

(B) The Judge shall order the transfer and provisional detention of the suspects 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 Rules, 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 or intimidation of a victim or witness or the destruction of evidence, or to be otherwise necessary for the conduct of the investigation (Ö)”.

(D) the provisional detention of a suspect shall be ordered for a period not exceeding 30 days from the signing of the provisional detention order. At the end of that period, at the Prosecutor's request, the Judge who made the order, or another Judge of the same Trial Chamber, may decide, subsequent to an *inter-partes* hearing of the Prosecutor and the suspect, assisted by his counsel, to extend the detention for a period not exceeding 30 days, if warranted by the needs of the investigations (Ö)”

3. The suspect, Ferdinand Nahimana, was arrested by the Cameroonian authorities in the evening of 27 March 1996 pursuant to an international warrant of arrest issued by the Rwandan authorities. On 17 May 1996, at a hearing held in Arusha, the Tribunal ordered the detention on remand and transfer to the Tribunal's Detention

Unit of Ferdinand Nahimana. To date, he is being held by the Cameroonian authorities.

4. The request made by the Prosecutor, the elements made known to the Tribunal by the affidavits attached to the request, and the indications and information developed during the hearing indicate that there still exist good reasons to believe that Ferdinand Nahimana might have committed offences such as genocide, crimes against humanity, and violations of Article 3 of the Geneva Conventions and of Additional Protocol II. The request, however, has above all set forth reasons which seem to justify the continued detention on remand of Ferdinand Nahimana. These reasons relate, *inter alia*, to the material security conditions in the territory of Rwanda, and to the fact that the Prosecutor has not yet received the records of investigations and criminal proceedings concerning the Radio Television Libre des Milles Collines (RTL) and persons involved in that case, as called for in the order for deferral issued by the Tribunal on 12 March 1996 and addressed to the Government of the Kingdom of Belgium.
5. The Tribunal is convinced that there are still risks that Ferdinand Nahimana 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, and that there are also exist reasons related to the source and conditions of the investigations conducted by the Prosecutor, which justify and require the continued detention on remand of Ferdinand Nahimana.

In particular, the Tribunal took as a basis the information set forth in the affidavits attached to the request, which show that the records concerning the suspects have not yet been sent from Belgium and also that the security situation in the western part of Rwanda has suddenly deteriorated, adversely affecting the normal conduct of the investigations and causing some witnesses to be inaccessible.

6. The Government of Cameroon, according to the statements made by the Representatives of the Prosecutor and the Tribunal, would be cooperative and would receive favorably a positive decision on the request for the continued detention on remand of Ferdinand Nahimana.

7. In the light of the foregoing, the Tribunal is of the opinion that the request for the continued detention on remand and transfer of Ferdinand Nahimana made by the Prosecutor meets with conditions set forth in Rule 40 bis (D) of the Rules and that it should be received favorably.

8. The request for the continued detention, dated 13 June 1996, was submitted to the Registrar on 16 June 1996, that is before the expiry of the duration of

detention on remand.

For a number of reasons, the Tribunal has not been able to consider the question of the continued detention on remand of Ferdinand Nahimana before the expiry, on 16 June 1996, of the period in accordance with Tribunal's decision of 17 May 1996. Since 17 June 1996, he has however been detained again under Cameroonian law. At this stage, instead of considering an order for a new thirty day period of detention in accordance with paragraph (A) of Rule 40 bis of the Rules, the Tribunal, intending to comply with the aims and functions of article 40 bis in general and of its paragraph (D) in particular, favors instead the continued detention on remand of Ferdinand Nahimana for a maximum period of 30 days yet from the expiry date of the first period of detention, so as to continue the detention on remand under Rule 40 bis (D) of the Rules.

9. In his request, not only did the Prosecutor request the continued detention on remand of Ferdinand Nahimana, but also the confirmation of the order for the transfer of Ferdinand Nahimana to the Tribunal's Detention Unit. Since the Tribunal's decision on the transfer of Ferdinand Nahimana to the Tribunal's Detention Unit under Rule 40 bis (B) of the Rules has not yet been effected by the Cameroonian authorities, the Tribunal is of the opinion that its order of transfer is still in effect. Consequently, the Tribunal does not need to confirm the validity of that order, but only to remind the Government of Cameroon to effect such a transfer as soon as possible.

III-Detention

The Tribunal, Based on the Foregoing Determines As Follows:

Considering all the matters raised in the Prosecutor's request and the by Ferdinand Nahimana's counsel and addressed at the hearing,

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

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

Considering that the Prosecutor has submitted sufficient reasons to show and justify the need for the continued detention on remand in order to complete his investigations and criminal proceedings against Ferdinand Nahimana;

Noting that Ferdinand Nahimana is still detained by the Cameroonian authorities and that his transfer to the Tribunal's Detention Unit has however not yet been implemented despite the Tribunal's decision of 17 May 1996;

Given the request before it made by the Prosecutor,

Hereby Grants the said request,

Orders the continued detention on remand of Ferdinand Nahimana for a maximum period of thirty days, namely from 17 June 1996 to 16 July 1996 inclusive;

Requests the Government of Cameroon to effect as soon as possible the Tribunal's order of 17 May 1996 for the transfer of Ferdinand Nahimana to the Tribunal's Detention Unit;

Lastly, the Tribunal requests the Registrar to notify the Government of Cameroon and to inform the Government of the Kingdom of Belgium and the Government of Rwanda of this Decision.

Yaoundé, 18 June 1996

For the Tribunal

Lennart Aspegren
Judge

UNITED NATIONS



NATIONS UNIES

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA**

Before the Judge Lennart Aspegren

21 September 1996

The Prosecutor
Vs.
Ferdinand Nahimana

Case No. ICTR-96-8-DP

DECISION: CONTINUED DETENTION ON REMAND/CORR.

UNITED NATIONS



NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA

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International Criminal Tribunal for Rwanda

Case No. ICTR-96-8-DP

The Judge

The Prosecutor

Against

Ferdinand Nahimana

(Assisted by Mr. Benjamin Ondigui)

DECISION: CONTINUED DETENTION ON REMAND/ CORR.

The Decision of 18 June 1996 ordering the continued detention on remand of Ferdinand Nahimana, pursuant to Rule 40, bis of the Rules of Procedure and Evidence, contains some typing errors.

The French version of the original document, as signed by me, contains two errors on the second page. Paragraph 1, should read “*la prolongation*”, and paragraph 2 should read “*le Juge considÈre la dÈtention provisoire comme une mesure nÈcessaire*”.

The English version of the original document, as signed by me, contains an error on the first page. Paragraph 4 beginning with “Noting (. . .) should read as follows:

“**Noting** the decision rendered by the Tribunal on 12 March 1996 for the Kingdom of Belgium to defer to the competence of the Tribunal in relation to all investigations

and criminal proceedings being conducted concerning the activities of the RTLM as well as persons involved in the case of RTLM”.

21 September 1996

Lennart Aspegren
Judge

IX

Théoneste Bagosora ICTR-96-7-I

Indictment:

Confirmation of Indictment:

Warrant of arrest, order for surrender:

Application by the Prosecutor for a formal request for deferral by the Kingdom of Belgium:

Decision by the Trial Chamber on the application by the Prosecutor for a formal request for deferral to the competence of the ICTR:

Request from the Prosecutor for transfer and provisional detention:

Order of provisional detention and of transfer:

Request from the Prosecutor for an order for an extension of a provisional detention order and for a transfer order:

Affidavit by Luc Côté:

Affidavit by James Lyons:

Decision on the continued detention on remand of the accused:

The International Criminal Tribunal for Rwanda

Case No. ICTR-96-7-I
The Prosecutor
of the Tribunal
Against

Théoneste Bagosora

Indictment

The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to his authority under Article 17 of the Statute for Rwanda (hereinafter, “the Statute of the Tribunal”), charges:

THÉONESTE BAGOSORA

WITH GENOCIDE, CRIMES AGAINST HUMANITY, VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II AS SET FORTH BELOW

The present indictment charges Théoneste Bagosora
With serious violations of international humanitarian law committed throughout the territory of Rwanda from January to July 1994, in the course of which thousands of men, woman and children were killed and a great number of people injured.

1. The Accused

1.1 Théoneste Bagosora was born on 16 August 1941, in Giciye commune (Gisenyi prefecture). He is the son of Mwalimu Bagirubwiko and Anathasie Ntabayazi. He married Isabelle Uzanyizoga. They have had seven children.

1.2 In 1964 he graduated from the *Ecole des Officiers* in Kigali with the rank of second lieutenant; he later obtained the “*Brevet d’Etudes Militaires Supérieures de l’Ecole de guerre française*”. He was appointed second in command at the *Ecole Supérieure Militaire* in Kigali and subsequently Commander of Kanombe military camp. In June 1992 he was appointed *Directeur de Cabinet* at the Ministry of Defense. Retired from the Rwanda Army on 23 September 1993, he continued to serve in the office of *Directeur de Cabinet* at the Ministry of Defense. He was still serving in this office on 6 April 1994 and continued to do so until he left the country in July 1994.

1.3 Théoneste Bagosora was arrested in the territory of the Republic of Cameroon on 9 March 1996 by the Cameroonian authorities and is currently in detention in Yaoundé.

2. Concise Statement of Facts

A) General

2.1 During the events referred to in this indictment, the Tutsi were identified as an ethnic or racial group

2.2 During the events referred to in this indictment, there was in Rwanda a widespread and/ or systematic attack against a civilian population on political, ethnic or racial grounds.

2.3 During the events referred to in this indictment, a state of armed conflict existed in the territory of Rwanda, between the Rwandan Patriotic Front (RPF) and the government forces. The victims referred to in this indictment were persons not taking an active part in the hostilities.

2.4 On 6 April 1994, between 20:00 and 21:00 hours, a plane transporting President Juvénal Habyarimana of Rwanda, among others, exploded on its approach to Kigali airport (Rwanda). There were no survivors. Immediately thereafter, killings occurred, mainly targeting Tutsi civilians.

2.5 Théoneste Bagosora clearly and publicly expressed his anti-Tutsi ideas two days before the events.

A) Control and exercise power

2.6 On 6 April 1994, after the death of the Rwandan President, Théoneste Bagosora forthwith assumed official and *de facto* control of military and political affairs in Rwanda.

2.7 The Rwandan Army (AR) and the Gendarmerie nationale (GN) were headed by two distinct General Staffs, under the responsibility of the Ministry of Defense. The Rwandan Government Forces (RGF), which included the Rwandan Army (AR) and the Gendarmerie nationale (GN), did not have their own General Staff, and were under the direct responsibility of the Ministry of Defense.

2.8 On 6 April 1994, after the crash of the President's aircraft, the highest civil and military authorities were unable to fulfill their duties. The President died in the air crash; the Chief of the General Staff (AR), colonel Déogratias Nsabimana died with

him. The Minister of Defense, Augustin Bizimana, was on mission in the Republic of Cameroon with the Chief of Intelligence (G2) of the General Staff (AR), Colonel Ntiwiragabo. The Chief of Operations (G3) of the General Staff (AR) was on mission in Egypt. In the absence of the Minister of Defense, Théoneste Bagosora, *Directeur de Cabinet*, acted in his stead and headed operations.

2.9 In this capacity, Théoneste Bagosora, chaired the first meeting, mainly consisting of officers from the two General Staffs, held on 6 April 1994 from about 21:00 hours at the *Ecole Supérieure Militaire* (ESM) in Kigali. At that meeting, Théoneste Bagosora and some other Officers expressed the intention to take power. Furthermore, Théoneste Bagosora objected to any consultation of the Prime Minister, Mrs. Agathe Uwilingiyimana. Security problems were also raised, including the activities of the Presidential Guard which alarmed the Commander of Chief UNAMIR, General Roméo Dallaire.

2.10 That same night, Théoneste Bagosora went to see Dr. JR Booh Booh, the Special Representative of the Secretary-General of the United Nations. He introduced himself to the Special Representative s his point of reference in all talks. The discussed centered on how to fill the constitutional vacuum left by the President's death. Théoneste Bagosora again objected to any consultation with the Prime Minister.

2.11 In the night of 6 to 7 April 1994, in his capacity as *Directeur do Cabinet* at the ministry of Defense, Théoneste Bagosora signed the first official communiqué announcing the death of the President and of the other aircraft passengers.

2.12 On 7 April, at about 7:00 hours, Théoneste Bagosora convened and participated in a meeting at the Ministry of Defense with the available members of the executive committee of the MRND Party, for the purpose of designating a new President.

2.13 On 7 April, at about 9:00 hours, Théoneste Bagosora, still representing the civilian and political authorities, had a meeting with the US Ambassador at the latter's residence. That meeting was intended to include the representatives of other diplomatic missions, who were unable however to arrive to the Ambassador's residence because of the prevailing problems and insecurity in the city.

2.14 On about 7 April, at about 10:00 hours, a further meeting of RGF Officers was held at the ESM. It was mainly composed of the commanding officers of the operational sectors in Rwanda, the military camp commanders and the General Staff officers (AR and GN). Théoneste Bagosora also chaired that meeting. He reiterated his opinion that the military should take power but was again put in the minority by a majority of the participants. Théoneste Bagosora moreover objected to any

intervention by the Prime Minister and to the implementation of the Arusha Accords. The meeting officialized the establishment of a “Crisis Committee”, composed of the senior officers, including Théoneste Bagosora.

2.15 At the same meeting, in the morning of 7 April, Théoneste Bagosora was informed that some Belgian soldiers from UNAMIR were threatened with death at Kigali military camp, a hundred meters away. Théoneste Bagosora, at that moment, neither ordered the officers involved not to cause physical harm to the UNAMIR Belgian soldiers and to free them, nor did he take any other necessary steps to protect them.

2.16 On 8 April, Théoneste Bagosora convened the representatives of the political parties and started discussions with a view of forming a new government. On the same day, he presented the Crisis Committee the people chosen to constitute the interim government, as well as the new President. Almost all of these people came from the so-called “power” wings of the various political parties, who subscribed to pro-Habyarimana tendencies, were close to the MRND and were strongly opposed to the Arusha Accords. No prominent member of the Tutsi population of Rwanda was included in the discussions, nor in the new government.

2.17 Théoneste Bagosora had the possibility to be in contact, by radio, or by other means, with the commanders of the Rwanda Army units, which were the most involved in the events described in paragraphs 2.18 to 2.23 below, namely the Presidential Guard, the Para-commando Battalion and the Reconnaissance Battalion. His rank, his office, as well as the personal contacts that Théoneste Bagosora had with the commanders of these units and the fact that he came from the same region as they did and/or held the same political convictions, gave Théoneste Bagosora, in the regionalized context of the exercise of power in Rwanda, *de jure* and *de facto* authority over these various people.

C) Responsibility for Acts of Subordinates

2.18 From the outset, in the night of 6 to 7 April, roadblocks manned by soldiers, some of which were reinforced by armoured vehicles, were established on the city’s main roads; units of the Rwandan Army took full control of the city of Kigali.

2.19 Forthwith, widespread and systematic attacks took place against civilians, mainly targeting the Tutsi population. The murder of Tutsi started in Kigali and spread throughout Rwanda in the ensuing days resulting in open and widespread slaughter of an incalculable number of Tutsi men, women and children.

2.20 The killing was principally perpetrated by RGF soldiers. The Para-commando units, the Reconnaissance units, and the Presidential Guard were the most involved in committing these crimes.

2.21 From the outset, in the night of 6 to 7 April, in Kigali, the Presidential Guard (GP) moved the main representatives of the MRND in order to protect them. At the same time, the Presidential Guard tracked down, arrested and killed prominent figures of the Tutsi community and the main leaders of the political opposition. Thus, the President of the Constitutional Court, the Prime Minister, the President of the PSD and Minister of Agriculture, the Vice-President of the PL and Minister of Labour and Social Affairs, as well as a member of the political bureau of the MDR and Minister of Information, were killed. The selective assassination of these leaders was intended to avoid sharing power as agreed in the Arusha Accords and to insure that like-minded Hutu extremists handpicked by Théoneste Bagosora gain control of the situation in Rwanda.

2.22 In the morning of 7 April 1994, the Prime Minister, Mrs. Agathe Uwilingiyimana, was assassinated by members of the Rwanda Army, in particular the Presidential Guard and the reconnaissance battalion. Théoneste Bagosora had several times already refused to involve her in any decision regarding the formation of the new government.

2.23 On 7 April 1994, in the morning, ten soldiers from the Belgian contingent of the United Nations Assistance Mission for Rwanda (UNAMIR), entrusted with the task of protecting the Prime Minister, Mrs. Agathe Uwilingiyimana, were disarmed by the Presidential Guard, taken away and killed by RGF soldiers at Kigali military camp. These events took place at the same moment as, and a hundred meters away from, the meeting being chaired by Théoneste Bagosora, as mentioned in paragraph 2.14 and 2.15. Although he was informed that the lives of the Belgian soldiers were seriously threatened, Théoneste Bagosora made no comment and took no action to insure their security.

3. The Charges

Théoneste Bagosora, as *Directeur de Cabinet* at the Ministry of Defense, being a superior and recognized as such, knew or had reason to know that his subordinates were about to commit one or several of the acts referred to in articles 2 to 4 of the Statute of the Tribunal or had done so, and failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof; Théoneste Bagosora is responsible for these crimes pursuant to article 6 (3) of the Statute of the Tribunal.

Count 1: By his acts or omissions in relation to the events described in paragraphs 2.1 to 2.23, Théoneste Bagosora, between 1 January 1994 and 14 July 1994, mainly during the month of April 1994, in the Territory of Rwanda, is responsible for the killing of, and additionally or alternatively, for causing serious bodily or mental harm to members of the Tutsi population of Rwanda with the intent to destroy, in whole or in part, an ethnic or racial group, as such, and has thereby committed the crime of GENOCIDE, as recognized by articles 2(2)(a) and 2(2)(b) of the Statute of the Tribunal and punishable in reference to article 22 and 23 of the same Statute;

Count 2: by his acts or omissions in relation to the events described in paragraphs 2.1 to 2.23, Théoneste Bagosora, between 1 January 1994 and 14 July 1994, mainly during the months of April 1994, in the territory of Rwanda, is responsible for the murder of, and additionally or alternatively, extermination, or again additionally or alternatively, persecution, and finally, additionally or alternatively, other inhumane acts, committed as part of a widespread and systematic attack on a civilian population on political, ethnic or racial grounds, and has thereby committed CRIMES AGAINST HUMANITY, as recognized by articles 3(a), 3(b), 3(h), 3(I) of the Statute of the Tribunal and punishable in reference to Articles 22 and 23 of the same Statute;

Count 3: By his acts or omissions during an internal armed conflict, in relation to the events described in paragraph 2.23, Théoneste Bagosora, on 7 April 1994, is responsible for violence to life and in particular to the murder of the ten soldiers from the Belgian contingent of UNAMIR, and has thereby committed serious violations of article 3 common to the GENEVA CONVENTIONS of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto, as recognized by article 4(a) of the Statute of the Tribunal and punishable in reference to articles 22 and 23 of the same Statute;

Count 4: By his acts or omissions during an internal armed conflict, in relation to the events described in paragraphs 2.1 to 2.22, Théoneste Bagosora, between 1 January 1994 and 14 July 1994, mainly during the month of April 1994, in the territory of Rwanda, is responsible for violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment, and has thereby committed serious violations of article 3 common to the GENEVA CONVENTIONS of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto, as recognized by article 4(a) of the Statute of the Tribunal and punishable in reference to articles 22 and 23 of the same Statute;

5 August 1996

Richard J. Goldstone
Prosecutor

UNITED NATIONS



NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No. ICTR-96-7-I

**The Prosecutor
Against**

Théoneste Bagosora

The Judge

DECISION:

CONFIRMATION OF INDICTMENT

10 August 1996

Before: Judge Lennart Aspegren
On behalf of the Registrar: Frederik Harhoff

**DECISION ON THE CONFIRMATION OF THE INDICTMENT
AGAINST THÉONESTE BAGOSORA**

The International Criminal Tribunal for Rwanda, sitting as Judge Lennart Aspegren, designated by the President of the Tribunal,

Upon Receiving on 9 August 1996 from the Prosecutor Richard Goldstone, represented by Jonah Rahetlah, the attached indictment, pursuant to Articles 17 and 18 of the Statute of the Tribunal, and Rule 47 of the Rules of Procedure and Evidence of the Tribunal,

And Upon Hearing the Prosecutor, in Arusha on 9 August 1996, pursuant to Rule 47 (D) of the Rules,

Noting the decision rendered by the Tribunal on 17 May 1996 for the Kingdom of Belgium to defer to the competence of the Tribunal in relation to all investigations and criminal proceedings being conducted in the matter of Théoneste Bagosora, and the decision of 9 July 1996 rendered by the Belgian *Cour de cassation*, confirming the deferral,

Considering the decision rendered by the Tribunal on 17 May 1996 for the detention of remand for a maximum period of thirty days and transfer to the Tribunal's Detention Unit of Théoneste Bagosora,

Considering Further the decision rendered by the Tribunal on 18 June 1996 for the continued detention on remand of Théoneste Bagosora for another maximum period of thirty days,

Considering Lastly the decision rendered by the Tribunal on 15 July 1996 for the continued detention on remand of Théoneste Bagosora for a third and final maximum period of thirty days,

Noting that **Théoneste Bagosora** is to date being detained in Yaoundé by the Cameroonian authorities,

THE TRIBUNAL

Pursuant to Article 17 and 18 of the Statute and Rules 28 and 47(D) of the Rules,

Holds that from the materials tendered by the Prosecutor, the Tribunal is satisfied that a *prima facie* case has been established with respect to each and every count as set out in the indictment, and that the acts charged fall within the jurisdiction of the Tribunal,

Confirms the indictment submitted by the Prosecutor, with respect to each and every count of the indictment,

Orders, after consultation with the Prosecutor, that there be no public disclosure of the Supporting Documentation submitted with the indictment, pursuant to Rule 53(B) of the Rules,

And Notes the prayer of the Prosecutor that an appropriate warrant of arrest for the accused be issued.

The Tribunal requests the Registrar to notify the Cameroonian Government, then to notify the accused, Théoneste Bagosora, and to inform the Belgian and Rwanda Governments of the Decision.

Arusha 10 August 1996

For the Tribunal,

Lennart Aspegren
Judge

UNITED NATIONS



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INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No. ICTR-96-7-I

The Prosecutor

Against

Théoneste Bagosora

The Judge

WARRANT OF ARREST

10 August 1996

Before:
On behalf of the Registrar:

Judge Lennart Aspegren
Frederik Harhoff

Warrant of Arrest Against

Théoneste Bagosora

The International Criminal Tribunal for Rwanda, sitting as Judge Lennart Aspegren, designated by the President of the Tribunal,

Considering the United Nations Security Council Resolution 978 of 27 February 1995, and Articles 19(2) and 28 of the Statute of the Tribunal, and Rules 54 and 61 of the Rules of Procedure and Evidence of the Tribunal,

Considering the indictment submitted by the Prosecutor, Richard Goldstone, represented by Jonah Rahetlah, against Théoneste Bagosora, and the decision of 10 August 1996, confirming said indictment,

Hereby Directs the Cameroonian authorities to arrest and continue to remand in custody, on behalf of the Tribunal:

Théoneste Bagosora, born on 16 August 1941, in Gicyie Commune, Rwanda,

Directs the Cameroonian authorities:

To advise the accused, Théoneste Bagosora, in a language he understands:

- of the indictment, the publicly non-disclosed supporting material, and the decision confirming the indictment, each of which is annexed in copy to this warrant of arrest,
- of his rights as set forth in Article 20 of the Statute and *mutatis mutandis*, in Rules 42 and 43 of the Rules which are set out below, and
- of his right to remain silent;

and to caution him that any statements he makes shall be recorded and may be used in evidence,

Requests That the Cameroonian authorities report forthwith to the Registrar of the Tribunal if they are unable to execute the present Warrant of Arrest, indicating the reasons for their inability pursuant to Rule 59 (A) of the Rules,

Further Requests That the Cameroonian authorities report forthwith to the Registrar if they are unable to continue to remand Théoneste Bagosora in custody, indicating the reasons for their inability pursuant to Rule 57 of the Rules.

Arusha, 10 August 1996

For the Tribunal

Lennart Aspegren
Judge

UNITED NATIONS



NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No: ICTR-96-7-D

The Prosecutor of the Tribunal

APPLICATION FOR A FORMAL REQUEST FOR DEFERRAL

UNITED NATIONS



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**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA**

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Case No: ICTR-96-7-D

**In the Trial Chamber
of the International Criminal
Tribunal for Rwanda**

**Application By The Prosecutor
For A Formal Request For A Deferral
By The Kingdom Of
Belgium In Respect Of**

Colonel Théoneste Bagosora

- I. I, Richard Goldstone, Prosecutor, pursuant to Article 8(2) of the Statute of the International Tribunal for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in Rwanda or committed in neighboring states by Rwandan Citizens during 1994 (referred to respectively as the “Statute” and the “Tribunal”), in accordance with Rule 9(iii) of the Rules of Procedure and Evidence (“the Rules”) proposed to the Chamber that a formal request be made to the Kingdom of Belgium that its courts defer to the competence of the Tribunal, in relation to investigations and criminal proceedings being conducted by the Kingdom of Belgium regarding serious violations of international humanitarian law committed on the territory of the Republic of Rwanda between April and July 1994, including the murder of ten Belgian soldiers of UNAMIR, and in which Colonel Théoneste Bagosora is involved as a suspect.

II. Pursuant to Rule 10 of the Rules, I propose that the Trial Chamber issue a formal request for deferral to the Kingdom of Belgium in the following terms:

- A) That the Courts of Belgium defer to the competence of the Tribunal in regard to all investigations and criminal proceedings regarding Colonel Théoneste Bagosora.
- B) That the Kingdom of Belgium forward to the Tribunal the result of said investigations and criminal proceedings against Colonel Théoneste Bagosora, and copies of all courts record and judgements, if already.

III. I make this request for the following reasons:

- A) The Kingdom of Belgium has instituted investigations and criminal proceedings against Colonel Théoneste Bagosora for murder and violations of the Geneva Conventions of 12 August 1949 and of additional Protocol II of 8 June 1977, allegedly committed in the territory of Rwanda during the year 1994.
- B) I am currently conducting investigations in respect of crimes committed in the territory of Rwanda which are within the competence of the International Tribunal, and in respect of which Colonel Théoneste Bagosora is a suspect.
- C) The national investigations involve factual or legal questions which may have implications for the current investigations by the Office of the Prosecutor or prosecutions before the Tribunal.

IV. The basis of my proposal appears in the attached schedule.

Dated the 15 May, 1996, Arusha Tanzania

For the Prosecutor
The Deputy Prosecutor

Judge Honoré Rakotomanana

Schedule

1. Investigation Conducted by the Kingdom of Belgium

1.1 On 8 April 1994, the Belgian military “auditorat” opened an investigation against Colonel Théoneste Bagosora, Director of the Cabinet of the Ministry of Defense under the regime of former President Habyarimana of Rwanda and effectively in charge as of 6 April 1994. The civilian courts carried on the investigation, pursuant to an order from the Tribunal of the First Instance in Brussels, dated 24 April 1995, which assigned the case to Examining Magistrate D. Vandermeersch who issued an international warrant of arrest for Colonel Théoneste Bagosora on 29 May 1995.

1.2 The current investigations of the Kingdom of Belgium against Colonel Théoneste Bagosora involve allegations of murder and crimes of international law which constitute serious violations of the Geneva Conventions of 12 August 1949 and of additional Protocols I and II of 8 June 1977. He is charged with direct responsibility for the massacres which followed an attack against the plane of the President of the Republic of Rwanda Habyarimana on 6 April 1994, and for the murder on 7 April 1994, of 10 UNAMIR soldiers from the Belgian contingent stationed in Kigali, Rwanda.

1.3 On 9 March 1996, Colonel Théoneste Bagosora was apprehended by the Cameroonian authorities on their territory, in execution of an international warrant of arrest, issued by the Belgian examining magistrate responsible for investigating the case. Colonel Théoneste Bagosora is presently being held in custody by the Cameroonian authorities, pending any decision to extradite him.

1.4 The Belgian courts have charged Colonel Théoneste Bagosora with the following crimes as specified in the charges laid by the King’s Prosecutor before the Tribunal of First Instance in Brussels:

1. Murder, violation of Articles 392 and 394 of the Belgian Criminal Code;
2. Violations of the law of 16 June 1993, Articles 1 and 7, regarding the suppression of serious violations of the Geneva Conventions of 12 August 1949 and of additional Protocols I and II of 8 June 1977.

1.5. The Belgian examining magistrate carried out investigations in a number of countries, including Rwanda, by way of rogatory commissions.

2. Investigations by the Prosecutor

2.1 The Prosecutor is investigating charges of genocide, serious violations of international humanitarian law, and crimes against humanity that occurred in the

territory of Rwanda. The Prosecutor is investigating in particular the massacres committed between April and July 1994 in the territory of Rwanda, including the murder of 10 soldiers of UNAMIR from the Belgian contingent, for which Colonel Théoneste Bagosora is alleged by witnesses to be partly responsible.

2.2 The current investigations by the Prosecutor regarding Colonel Théoneste Bagosora include the incidents described in paragraph 1.2 above. As part of these investigations, the Prosecutor is proceeding to interview witnesses and collect documents to determine the merits of the allegations that massacres were planned and led to the mass murder of a large number of victims protected under international law.

2.3 The Prosecutor's investigations focus mainly on persons in positions of authority, who were responsible for serious violations of international humanitarian law in the territory of the Republic of Rwanda.

2.4 To the extent that the investigations referred to in paragraph 2.3 relate to persons in positions of authority, Colonel Théoneste Bagosora's alleged criminal responsibility seems most important.

Théoneste Bagosora was born on 16 August 1941, in Giciye commune (Gisenyi prefecture). He is the son of Mwalimu Bagirubwiko and Anathasie Ntabayazi. He married Isabelle Uzanyizoga. They have had seven children.

He graduated from the *Ecole des Officiers de Kigali* with the rank of Second Lieutenant. He holds a *Brevet d'études militaires supérieures (BEMS)* from the *Ecole de Guerre française* (1981). He was Second in Command of the *Ecole*. [unreadable].

It was also de facto under the auspices and authority of Colonel Théoneste Bagosora that the interim government of Rwanda was formed on 8 April 1994. It was Colonel Théoneste Bagosora who contacted and convened the politicians to form the government, all of whom stemmed from political factions closest to the regime of the late President Habyarimana, contrary to the Arusha accords of 4 August 1993. The negotiations took place at the Cabinet of the Ministry of Defense, and the government was sworn in on 9 April 1994.

2.5 In order to develop his ongoing investigations, the Prosecutor must collect further essential evidence and obtain full access to statements, documents and other findings from the investigations by the Kingdom of Belgium on Colonel Théoneste Bagosora.

3. Significant Factual and Legal Questions

3.1 If the Kingdom of Belgium continues investigations which are similar to those being conducted by the Prosecutor, significant risks are created which may have implications for investigations before the Tribunal, including but not limited to:

3.1.1 Confusion amongst witnesses and cooperating organizations or governments concerning the scope and authority of the different investigations and the different rules and confidentiality protections which govern the town investigations. Repeated interviews of witnesses by different investigators (particularly those from different organizations) should be avoided. Otherwise, witnesses become confused and distrustful of giving multiple accounts of the same incidents.

3.1.2 Creation of undue burden on witnesses who are heard repeatedly. Some witnesses, especially those who have suffered trauma and those who are at physical risk as a result of their cooperation, may be unwilling or unable to cooperate fully and effectively with multiple investigations. In certain situations, witnesses who are known to have had contacts with any investigators may have their lives placed in danger, or may become the subject of threats.

3.1.3 Unnecessarily compromising the credibility of witnesses due to the inadvertent creation of multiple statements where the statements were taken under different conditions, sometimes in different languages and for different purposes.

3.1.4 Potential evidentiary problems resulting from different procedures such as those concerning evidence collection and preservation, the taking of statements and the questioning of suspects.

3.2 If the Kingdom of Belgium proceeds to trial before the Prosecutor completes his investigation, the following significant factual and legal issues may have implications for investigations and prosecutions before the Tribunal:

3.2.1 By virtue of Article 9.2 of the Tribunal (*Non bis in idem*) there are limitations on the subsequent prosecution before the International Tribunal of persons who have already been tried by a national court for acts constituting serious violations of international humanitarian law. Belgium penal law does not have criminal provisions for the offenses of genocide and crimes against humanity. If Colonel Théoneste Bagosora is prosecuted under Belgian law for his acts, but the Prosecutor of the International Tribunal determines that his acts amount to genocide or to crimes against humanity, Article 9 of the Statute may prevent the latter from prosecuting Colonel Théoneste Bagosora for such crimes.

3.2.2 Critical witnesses who have testified in a public national trial and who are subject to be called as witnesses from a trial before the Tribunal will be exposed to greater risks as their identities and evidence have been made public.

3.2.3 Witnesses who have experienced stress or trauma by giving evidence to a national court may be unwilling to do so a second time before the Tribunal. This creates the potential danger of evidence becoming lost to the Tribunal.

3.2.4 There is a potential of inadvertently creating inconsistent sworn testimony.

3.2.5 International publicity which would result from a trial in a Belgian court of the three persons, may create a perception of prejudice in the minds of the accused or the public and may have implications for a fair trial before the Tribunal .

3.2.6 The possible incompatibility between the precedents created and the factual findings by a national court and by the Tribunal in respect of the suspect and the crimes he has allegedly committed, should trials be held by each jurisdiction, would be undesirable and not in the interest of justice.

4. Other Relevant Considerations

4.1 The Kingdom of Belgium has always been cooperative and is unlikely to be reluctant to accede this request.

4.2 A deferral of the investigations to the Tribunal is likely to encourage governments, non-governmental organizations and other sources to furnish additional information to the Tribunal.

4.3 In addition, it is preferable that the Prosecutor take over the investigations, because it is in a better position than the Kingdom of Belgium to investigate and prosecute crimes committed in the Territory of Rwanda. The Tribunal is not bound by national borders; therefore, it can more easily obtain witnesses assistance and collect evidence world-wide.

4.4 Given that many witnesses critical to the Prosecutor's investigations are in Rwanda and its neighboring States and may be reluctant to travel to Belgium to testify in a national trial, the Prosecutor is in a better position to collect evidence during investigation and present it in trials before the Tribunal in Arusha.

Dated this 15th day of May 1996, Arusha, Tanzania

For the Prosecutor
The Deputy Prosecutor

Judge Honoré Rakotomanana

UNITED NATIONS



NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No: ICTR-96-7-D

Trial Chamber 1

**DECISION ON THE APPLICATION BY THE PROSECUTOR FOR A FORMAL
REQUEST FOR DEFERRAL**

UNITED NATIONS



NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

In the Trial Chamber of the International Criminal Tribunal for Rwanda

Case No: ICTR-96-7-D

And

In The Matter Of: An Application By The Prosecutor For A Formal Request For Deferral By The Kingdom Of Belgium

And

In The Matter Of Théoneste Bagosora

Decision Of The Trial Chamber On The Application By The Prosecutor For A Formal Request For Deferral To The Competence Of The International Criminal Tribunal For Rwanda In The Matter Of Théoneste Bagosora (Pursuant To Rules 9 And 10 Of The Rules Of Procedure And Evidence)

Considering the Request dated 15 May 1996 (“the Request”), filed by the Prosecutor of the International Criminal Tribunal for Rwanda (“The International Tribunal”),

Noting that Trial Chamber 1 has been designated by the President of the International Tribunal pursuant to Rule 9 of the Rules of Procedure and Evidence (“the Rules”) of the International Tribunal to answer the Application.

Having heard the Prosecutor at a public sitting held in Arusha on 16 May 1996,

I-The Request

1. This is an application by the Prosecutor of the International Criminal Tribunal for Rwanda, made pursuant to article 8 (2) of the Statute of the International Criminal Tribunal for Prosecution of Persons Responsible for Genocide and other Serious

Violations of international Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for such acts or violations committed in the territory of neighboring States, between 1 January 1994 and 31 December 1994, and in accordance with Rule 9(iii) of the Rules of Procedure and Evidence, seeking an order from the Trial Chamber in relation to investigations and criminal proceedings being conducted by the Kingdom of Belgium respecting serious violations of International Humanitarian Law committed in the Prefecture of Kibuye in the territory of Rwanda between April 1994 and July 1994 by Théoneste Bagosora, for a formal request to be made to the Kingdom of Belgium for its courts to defer to the competence of the Tribunal.

2. Pursuant to Rule 10 of the Rules, the Prosecutor has requested the Trial Chamber to issue a formal request to the Kingdom of Belgium in the following terms:

- a) The courts of Belgium defer to the competence of the Tribunal in regard to all investigations and all criminal proceedings in respect to Théoneste Bagosora
- b) In regards to all such investigations and criminal proceedings of Théoneste Bagosora the Tribunal requests that the Kingdom of Belgium forward to the Tribunal the results of said investigations, criminal proceedings, copies of the courts' records and judgements concerning Théoneste Bagosora, if any.
- c) The reasons advanced by the Prosecutor in support of his proposals are:
 1. Investigations have been instituted against Théoneste Bagosora by the Kingdom of Belgium for murder and violations of the Geneva Conventions of 12 August 1949 and of Additional Protocols I and II of 8 June 1977, which were allegedly committed in the territory of Rwanda during 1994
 2. The Prosecutor has been conducting investigations into crimes allegedly committed by Théoneste Bagosora which fall within the jurisdiction of the Tribunal.
 3. That national investigations instituted by the kingdom of Belgium closely relate to, or otherwise involve, significant factual and legal questions which have implications for investigations or prosecutions before the Tribunal.

3. In his request the Prosecutor has furnished facts which, in brief, are that as early as 8 April 1994, the Belgian military office opened an investigation against Colonel Théoneste Bagosora, Director of the Cabinet of the Ministry of Defense under the regime of former President Habyarimana. The Belgian civilian courts carried on the investigation, pursuant to an order from the Tribunal of the First Instance in Brussels, dated 24 April 1995. The Examining Magistrate, Judge D. Vandermeersch, issued an international warrant of arrest for Colonel Théoneste Bagosora on 29 May 1995. On 9 March 1996, Colonel Théoneste Bagosora was apprehended by the Cameroonian authorities. To this day, he is still held by the Cameroonian authorities, pending a decision on his extradition.

4. The current investigations by the Kingdom of Belgium against Colonel Théoneste Bagosora involve allegations of murder and crimes of international law which constitute serious violations of the Geneva Conventions of 12 August 1949 and of Additional Protocols I and II of 8 June 1977. Théoneste Bagosora is alleged *inter alia* to have been directly responsible for the massacres which followed the attack against President Habyarimana on 6 April 1994, and for the murder, on 7 April of 10 soldiers from the Belgian contingent of the United Nations Assistance Mission to Rwanda.

5. The Prosecutor has submitted that in order to develop the ongoing investigations, he must collect further essential evidence and obtain full access to the statements, documents, and other findings of the investigations conducted by the Kingdom of Belgium in relation to Théoneste Bagosora. In his investigations, the Prosecutor is collecting evidence in order to determine the merits of the allegations that the massacres were planned and led to the mass murder of a great many victims who were protected under international law. The investigations by the Prosecutor focus mainly on persons in position of authority, who were responsible for serious violations international humanitarian law. To the extent that the investigations relate to persons in position of authority, Colonel Théoneste Bagosora's alleged criminal responsibility seems most important. Indeed, Théoneste Bagosora, born in 1941 in Gicyie commune, was successively Second in Command of the *Ecole Supérieure Militaire* in Kigali, Commander of the military camp in Kanombe and Director of the Cabinet of the Ministry of Defense, a position he continued to hold during the April 1994 events., though he had already retired in September 1993. A native of the same region as former President Habyarimana, he had become one of his close associates and participated in the Arusha accords as a military adviser. The aim of the Prosecutor's investigations is to assess Théoneste Bagosora's responsibility for the events and massacres which followed the attack on the presidential plane on 6 April. It is stated in the request that within six hours of the attack against the presidential plane on 6 April 1994, while the massacres were starting in Rwanda, Théoneste Bagosora allegedly assumed de facto control of the army and the country. The aim of the Prosecutor's investigations is therefore to assess Théoneste Bagosora's responsibility for said massacres.

6. According to the Prosecutor, if the Kingdom of Belgium continues investigations which are similar to his investigations, a number of confusions and complications might occur. It could turn out to be detrimental to investigations before the Tribunal, in particular in relation to testimonies. It is indeed to be feared that witnesses might become reluctant to appear before successive investigators and would no longer be willing to cooperate fully and effectively in the questioning. Testimonies might thus lose credibility as the number of questionings in different conditions increases, whereas some other witnesses might even be exposed to threats and see their lives put in danger.

II-Analysis of the merits of the request

7. Article 7 of the Statute of the International Tribunal extends its justification to the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.

Article 8 of the Statute states that:

“1. The International Tribunal for Rwanda and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.

2. The International Tribunal for Rwanda shall have primacy over national courts of all States. At any stage of the procedure, the International Tribunal for Rwanda may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal for Rwanda.”

Such primacy, however, can only be exercised if a formal request is addressed to the national court to defer to the competence of the International Tribunal. The Rules specify the modalities for exercising this right.

8. Rule 9 of the Rules states that:

“Where it appears to the Prosecutor that in any such investigations of criminal proceedings instituted in the courts of any State:

- i) (...)
- ii) (...)
- iii) What is in issue is closely related to, or otherwise involves, significant factual or legal questions which may have implications for investigations or prosecutions before the Tribunal,
(...)

9. In order to meet the conditions for a deferral, the Prosecutor therefore must demonstrate:

- a) that national investigations or criminal proceedings have been instituted against said Théoneste Bagosora by the Kingdom of Belgium respecting crimes which come under the jurisdiction of the International Tribunal;
- b) that investigations are being conducted by the Prosecutor on serious violations of international humanitarian law allegedly committed in the territory of Rwanda or in the territory of neighboring States between 1 January 1994 and 31 December 1994, in particular in respect to the violations allegedly committed by Théoneste Bagosora;
- c) that these investigations or criminal proceedings are closely related and otherwise involve significant factual or legal questions which may have implications for the Prosecutor's investigations or prosecutions.

10. The Prosecutor states that an investigation has been instituted by the Kingdom of Belgium in respect of acts allegedly committed by Théoneste Bagosora, which might also come within the jurisdiction of the Tribunal. This is supported by documents provided by the Prosecutor in support of his case, including: the order for an investigation against Théoneste Bagosora, under the charges of murder and serious violations of the Geneva Conventions of 12 August 1949 and of additional Protocols I and II of 8 June 1977, issued by the Prosecutor of the King of Belgium on 21 April 1995, the Order of 24 April 1995 issued by the President of the Tribunal of the First Instance of Brussels nominating an Examining Magistrate to pursue the case, and the international warrant of arrest issued on 29 May 1995 by the Belgian Examining Magistrate responsible for the case against Théoneste Bagosora.

11. The Prosecutor indicates that his office is investigating the crimes allegedly committed by Théoneste Bagosora.

12. The Prosecutor considers, not without reasons, that the continuation of parallel investigations by the Belgian courts and the International Tribunal might be detrimental to the investigations, including the testimonies. As they are repeated, testimonies can indeed lose their credibility, not to mention the risk of causing the witnesses to be distrustful; moreover the witnesses might be traumatized and even threatened of bodily harm.

13. Moreover, the Prosecutor rightly observes that Article 9.2 of the Tribunal's Statute, concerning the principle of *non bis in idem*, sets limit to the subsequent prosecution by the Tribunal of persons who have been tried by a national court for acts constituting serious violations of international humanitarian law. And, in the case of Théoneste Bagosora, as Belgian law does not contain any provision concerning genocide or crimes against humanity, it was only for murder and serious violations of the Geneva Conventions of 12 August 1949 and Additional Protocols I and II of 8 June 1977 that the Belgian authorities were able to prosecute him, giving the facts that he is charged with. Therefore, should the Prosecutor subsequently

with to prosecute Théoneste Bagosora for the same fact, characterizing them as genocide and crimes against humanity, he would not be able to do so, if Théoneste Bagosora had already been tried by Belgian jurisdictions.

14. Finally and in addition, according to the Prosecutor's request, the Kingdom of Belgium has always been cooperative and it is expected that the latter would not be reluctant to accede to this request. Moreover, at the hearing on 16 May 1996, the representative of the Prosecutor stated that, in a telephone conversation with the authorities of the Belgian Ministry of Justice, the Government of the Kingdom of Belgium indicated its goodwill and its willingness to comply fully with the decisions of the International Tribunal, including in the case concerning Théoneste Bagosora. The representative of the Prosecutor has confirmed that to that end, a law was enacted on 22 March 1996 by the Kingdom of Belgium.

15. In the light of the foregoing, the Judges of the Trial Chamber are of the opinion that the request for deferral by the Belgian judicial authorities in the case of Théoneste Bagosora complies the provisions of Rule 9 of the Rules of Procedure and Evidence, and that such request should be favourably received.

III-The Decision

The Trial Chamber Based on the Foregoing Determines as Follows:

Considering all the matters before it and addressed in the public hearing,

Taking into Account the provisions of Article 8 (2) of the Statute, and

Considering the requirements contained in Rule 9(iii) of the Rules,

The Trial Chamber consisting of Judge Laity Kama, as Presiding Judge, Judge Lennart Aspegren, and Judge Navanethem Pillay, being seized of the Request made by the Prosecutor,

Hereby Grants the said Request,

Formally Requests the Government of the Kingdom of Belgium to defer to the International Tribunal all investigations and criminal proceedings being conducted against Théoneste Bagosora,

Invites the Government of the Kingdom of Belgium to take all necessary steps, both legislative and administrative, to comply with this formal request and to notify the Registrar of the International Tribunal of the steps taken to comply with this formal request,

Requests that the Government of the Kingdom of Belgium forward to the International Tribunal the results of its investigations and criminal proceedings and a copy of the court's records and the judgement, if already delivered.

The Trial Chamber requests the Registrar of the International Tribunal to notify the Government of the Kingdom of Belgium of this Decision.

Dated this 17th day of May 1996
Arusha

Laity Kama,
President

Lennart Aspegren,
Judge

Navanethem Pillay,
Judge

UNITED NATIONS



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INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No:

The Prosecutor of the Tribunal

Against

Théoneste Bagosora

**REQUEST FOR TRANSFER AND PROVISIONAL DETENTION UNDER ARTICLE
40 BIS OF THE RULES OF PROCEDURE AND EVIDENCE OF THE
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

TO ONE OF THE HONORABLE JUDGES DECIDING PURSUANT TO RULE 28 OF
THE RULES OF PROCEDURE AND EVIDENCE OF THE INTERNATIONAL
CRIMINAL TRIBUNAL FOR RWANDA:

The undersigned, *Richard J. Goldstone*, Prosecutor, pursuant to his authority under Rules 28 and 40 bis of the Rules of Procedure and Evidence, adopted according to Article 14 of the Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for Genocide and other such violations committed in the Territory of neighboring States in 1994 (hereinafter, "The Statute" and "the Tribunal"), requests the issuance of an order for the transfer to the premises of the detention unit of the Tribunal and an order for the provisional detention of Théoneste Bagosora, on the following grounds:

1. Théoneste Bagosora is currently detained in Yaoundé, Cameroon, by the Cameroonian authorities.
2. The Office of the Prosecutor is currently pursuing investigations to determine the responsibility of Théoneste Bagosora for crimes committed on Rwandan territory and within the Tribunal's jurisdiction, namely:
 - A. GENOCIDE, a violation of Article 2 of the Tribunal Statute;

- B. CRIMES AGAINST HUMANITY, violations of Article 3 of the Tribunal Statute;
- C. VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOLS I AND II, which contravene Article 4 of the Tribunal Statute.

3. It appears from these investigations, particularly the information contained in the affidavit annexed hereto, that there is a reliable and consistent body of material which tends to show that Théoneste Bagosora may have committed crimes which give rise to the following **provisional charges**:

COUNT 1: To have committed, on Rwandan territory, between January and July 1994, by planning, conspiracy, direct and public incitement, order, commission, omission, complicity, or by otherwise aiding or abetting in the planning, preparation or execution of genocidal acts against the Tutsi population of Rwanda, with intent to destroy, in whole or in part, a national ethnic or racial group, as such, thereby committing the crime of genocide embodied in Articles 2 and 6 of the Tribunal Statute;

COUNT 2: To have been involved, on Rwandan territory, between January and June 1994, by his acts or omissions, in widespread and systematic attacks against a civilian population on national, political, ethnic or racial grounds, namely against the Tutsi population of Rwanda, thereby committing crimes against humanity, embodied in Articles 3 and 6 of the Tribunal Statute;

COUNT 3: To have been involved, on Rwandan territory, notably in the prefecture of Cyangugu, between January and July 1994, by his acts or omissions, in violence to life, health and physical or mental well-being of the civilian population of Rwanda, in the course of an armed conflict of a non-international character, thereby committing serious violations of Article 3 common to the Geneva Conventions of August 12, 1949 and of Additional Protocol II of June 8, 1977, crimes embodied in Articles 4 and 6 of the Tribunal Statute.

4. The Prosecutor considers the provisional detention of Théoneste Bagosora to be a necessary measure in order to prevent the escape of the suspect, injury to or intimidation of victims or witnesses, or the destruction of evidence, and to be otherwise a necessary measure to conduct of the investigation.

Accordingly, May it Please the Honorable Judge:

Grant All Aspects Of The Present Request And Thereby:

- A) Declare that there is a reliable and consistent body of material which tends to show that Théoneste Bagosora may have committed crimes over which the Tribunal has jurisdiction;
- B) Acknowledge that provisional charges held by the Prosecutor against Théoneste Bagosora, i.e. provisional charges of genocide, crimes against humanity, and serious violations of Common Article 3 of the Geneva Conventions of August 8, 1949 and additional Protocol II of June 8, 1977, crimes provided for at Articles 2, 3, and 4 of the Tribunal Statute;
- C) Order the transfer of Théoneste Bagosora to the premises of the detention unit of the Tribunal;
- D) Order, based on the above-mentioned provisional charges, the provisional detention of the suspect Théoneste Bagosora for an initial period of thirty days.

Place: Kigali

Date: 16th May 1996

For the Prosecutor

Honoré Rakotomanana,
Deputy Prosecutor.

UNITED NATIONS



NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No: 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 No: 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 Judge 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:

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-Justifications

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 Rules, or the suspect is otherwise detained by the State authorities:
 - (ii) After hearing the Prosecutor, the Judge, considering 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 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 developed 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. 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 the 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 Articles 28 of the Statute,

Considering that the Prosecutor has gathered serious and concordant indications which tend to show that Théoneste Bagosora allegedly committed offences which come under 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 1994 and of Additional Protocols II of 8 June 1977, offences set forth in Article 2, 3, and 4 of the Statute of the Tribunal,

Given the request made by the Prosecutor,

Hereby Grants the said request,

Orders the provisional detention of the 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 Cameroon comply with this request from the Tribunal.

The Tribunal requests the Registrar of the International Tribunal to notify the Government of Cameroon 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

UNITED NATIONS



NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Arusha International Conference Centre

PO Box 6016, Arusha, Tanzania

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Tel.: 255 57 4207-11/4365-72 or 1 212 963 2849/2850

Case No: ICTR-96-7-D

The Prosecutor of the Tribunal

Against

Théoneste Bagosora

**REQUEST FOR AN ORDER FOR AN EXTENSION OF A PROVISIONAL
DETENTION ORDER AND FOR A TRANSFER ORDER BOTH UNDER ARTICLE
40 BIS OF THE RULES OF PROCEDURE AND EVIDENCE OF THE
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

TO ONE OF THE HONORABLE JUDGES DECIDING PURSUANT TO RULE 28 OF
THE RULES OF PROCEDURE AND EVIDENCE OF THE INTERNATIONAL
CRIMINAL TRIBUNAL FOR RWANDA:

The undersigned, *Richard J. Goldstone*, Prosecutor, pursuant to his authority under Rules 28 and 40 bis of the Rules of Procedure and Evidence, adopted according to Article 14 of the Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for Genocide and other such violations committed in the Territory of neighbouring States in 1994 (hereinafter, "The Statute" and "the Tribunal"), requests the issuance of an order for an order of extension of a provisional detention order an or an order for the transfer to the premises of the detention unit of the Tribunal of Théoneste Bagosora, on the following grounds:

1. On 17 May 1996, Justice Aspegren, deciding for the Tribunal, issued an order for the provisional detention and the transfer of Théoneste Bagosora, pursuant to rule 40 bis of the Rules.

2. To this day, Théoneste Bagosora has not been transferred to the premises of the detention unit of the Tribunal and is still detained in Yaoundé, Cameroon, by the Cameroonian authorities.

3. The Office of the Prosecutor is still pursuing its investigations concerning Théoneste Bagosora for crimes committed in the territory of Rwanda and within the jurisdiction of the Tribunal, namely:

A. GENOCIDE, a violation of Article 2 of the Tribunal Statute;

B. CRIMES AGAINST HUMANITY, violation of Article 3 of the Tribunal Statute;

C. VIOLATIONS OF ARTICLE COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, which contravenes Article 4 of the Tribunal Statute.

4. The Prosecutor is not yet ready to file an indictment against Théoneste Bagosora, for the following reasons:

4.1 The Tribunal has not yet received the files concerning all investigations and criminal proceedings instituted by the Kingdom of Belgium against Théoneste Bagosora as requested by the deferral order dated 17 May, 1996.

4.2 The sudden breakdown in the safety conditions in the territory of Rwanda has slowed down the progress of the investigations.

5. The Prosecutor still considers the provisional detention of Théoneste Bagosora to be a necessary measure in order to prevent the escape of the suspect, injury to or intimidation of victims or witnesses, or the destruction of evidence, and to be otherwise a necessary measure to conduct of the investigation.

Accordingly, May it Please the Honorable Judge:

GRANT ALL ASPECTS OF THE PRESENT REQUEST AND THEREBY:

a) Decide that the special circumstances of the present investigation warrant the extension of the detention of Théoneste Bagosora and his transfer to the premises of the detention unit of the Tribunal;

b) Order the extension of the provisional detention of Théoneste Bagosora for a further period of not exceeding 30 days;

- c) Confirm the transfer order of Théoneste Bagosora to the premises of the detention unit of the Tribunal.

Place: Kigali

Date: 31 June 1996

For the Prosecutor

Honore Rakotomanana,
Deputy Prosecutor

UNITED NATIONS



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INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

AFFIDAVIT

I, Luc Côté, leader of the team conducting investigations at the national level for the Office of the Prosecutor of the International Criminal Tribunal for Rwanda, solemnly declare the following regarding the request for extension of provisional detention of Théoneste Bagosora.

- 1) The Tribunal has not yet received the files concerning all the investigations and criminal proceedings instituted by the Kingdom of Belgium in regards to Théoneste Bagosora, as requested by the deferral order dated 17 May 1996; these files are essential for the preparation of the indictment of Théoneste Bagosora.
- 2) Since May 17, 1996, the safety conditions in the Rwandese territory have deteriorated considerably, specially in the Western part of the country. This has perturbed the normal progress of the investigations by making several witnesses unreachable.
- 3) In spite of this, the investigations have continued on in Kigali as well as outside the country. Several persons have been heard concerning the facts stated in the affidavit concerning the initial request presented on 16 May, 1996.
- 4) All the fact mentioned in this affidavit are true to the best of my knowledge.

In Witness thereof: Kigali, 13 June, 1996

Luc Côté
Cef d'Equipe
Bureau des enquêtes

UNITED NATIONS



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**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA**

**AMAHORO, HOTEL
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Office of the Prosecutor
Bureau du Procureur
Fax: 1-212 963 4001
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AFFIDAVIT

Investigation re: Théoneste Bagosora

I, James Lyons, Commander of Investigations of the International Criminal Tribunal for Rwanda, declare under my oath of office that because of the security situation in the Rwandan territory, in particular in the western region of the country, I judged it necessary to restrict our investigations from going in that area. This decision was taken in light of verbal and written security reports detailing insurgency infiltrations, armed attacks on vehicles and anti-tank mining activities on some roads. Civilians were killed during these incidents. This decision is also justified by the difficulties experienced with radio communication.

During last week, our technicians have managed to improve the quality of our communication in enhancing the power of the relay station. We are now studying ways of ensuring a safer operation method for teams if investigators going throughout the country. The security risk to investigators in the field is relatively recent and all precautions have to be taken to provide our personnel with a protection against violent acts. I am convinced that if we had been able to work in all regions, our investigations would have progressed in a timely fashion.

James Lyons, 15 June 1996

UNITED NATIONS



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INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

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Case No: ICTR-96-7-D

Decision On the Continued Detention on Remand of

Théoneste Bagosora (born 16 August 1941)

(Pursuant to Rule 40 bis (D) 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 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 (D) adopted on May 1996 by the Judges of the Tribunal pursuant to Article 14 of the Statute,

Noting the decision rendered by the Tribunal on 17 May 1996 for the detention on remand and transfer to the Tribunal’s Detention Unit of Théoneste Bagosora.

Considering the request (the “request”) made by the Prosecutor of the Tribunal on 13 June 1996 and the affidavits attached to it,

Having Heard today, at a hearing held in YaoundÉ, the representatives of the Prosecutor, acting under Rules 37 and 38 of the Rules, and the detainee and his counsel,

Keeping In Mind the rights of the suspect as provided for, *inter alia*, in Article 20 of the Statute,

Decides and orders as follows:

I-Request

1. The request is made by the Prosecutor of the Tribunal, pursuant to Rule 40 bis of the Rules, seeking an order for the continued detention on remand and the transfer to the Tribunal's Detention Unit 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 Rules, or the suspect is otherwise detained by the State authorities;
- (ii) After hearing the Prosecutor, the Judge, considering 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 be otherwise necessary for the conduct of the investigation (...)

(D) The provisional detention of a suspect shall be ordered for a period of not exceeding 30 days from the signing of the provisional detention order. At the end of that period, at the Prosecutor's request, the Judge who made the order, or another Judge of the same Trial Chamber, may decide, subsequent to an inter parties hearing of the Prosecutor and the suspect assisted by his counsel, to extend the detention for a period not exceeding 30 days, if warranted by the needs 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 investigative magistrate. The suspect is also the subject of a request for extradition made by the Rwandan authorities. On 17 May 1996, at a hearing held in Arusha, the

Tribunal requested the Government of the Kingdom of Belgium to defer to the competence of the Tribunal in relation to all investigations and criminal proceedings being conducted in the matter of Théoneste Bagosora. Thus, on 17 June 1996 the Tribunal ordered the detention on remand and transfer to the Tribunal's Detention Unit of Théoneste Bagosora. To date, he is being held by the Cameroonian prison authorities.

4. The request made by the Prosecutor, the elements made known to the Tribunal by the affidavits attached to the request, and the indications and information developed during the hearing indicate that there still 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. The request, however, has above all set forth reasons which seem to justify the continued detention on remand of Théoneste Bagosora. These reasons relate, *inter alia*, to the material security conditions in Rwanda and to the fact that the Prosecutor has not yet received the records of the investigations and criminal proceedings undertaken by the Kingdom of Belgium as requested by the Tribunal in its order for deferral made on 17 May 1996.

5. The Tribunal is convinced that there still are risks that Théoneste Bagosora may escape, that he may evade Justice, that he may try, directly or indirectly to harm victims and witnesses, and that he may try to destroy evidence, and that there also exist reasons related to the sources and conditions of the investigations conducted by the Prosecutor, which justify and require the continued detention on remand of Théoneste Bagosora.

The Tribunal based its judgement in particular on the information set forth in the affidavits attached to the request, which show that the security situation in the Western Rwanda has suddenly deteriorated, adversely affecting the normal conduct of the investigation and causing some witnesses to be inaccessible.

6. The Government of Cameroon, according to the statements made the Representatives of the Prosecutor and of the Tribunal, would be cooperative and would receive favorably a positive decision on the request for the continued detention on remand of Théoneste Bagosora.

7. In the light of the foregoing, the Tribunal is of the opinion that the request for the continued detention on remand and transfer of Théoneste Bagosora made by the Prosecutor meets with the conditions set forth in Rule 40 bis (D) of Rules and that it should be favorably received.

8. The request for the continued detention, dated 13 June 1996, was submitted to the Registrar on 16 June 1996, that is before the expiry of the duration of detention on

demand.

For a number of reasons, the Tribunal has not been able to consider the question of the continued detention on remand of Théoneste Bagosora before the expiry date on 16 June 1996 of the period in accordance with the Tribunal's decision of 17 May 1996. Since 17 June 1996, he has however been detained again under Cameroonian Law. At this stage, instead of considering an order for a new thirty day period of detention in accordance with paragraph (A) of Rule 40 bis of the Rules, the Tribunal, intending to comply with the aims and functions of article 40 bis in general, and of its paragraph (D) in particular, favors instead the continued detention on remand of Théoneste Bagosora for a maximum period of 30 days yet from the expiry date of the first period of detention, so as to continue the detention on remand under Rule 40 bis (D) of the Rules.

10. In his request, not only did the Prosecutor request the continued detention on remand of Théoneste Bagosora, but also the confirmation of the order for the transfer of Théoneste Bagosora to the Tribunal's Detention Unit. Since the Tribunal's decision on the transfer of Théoneste Bagosora to the Tribunal's Detention Unit under Rule 40 bis (B) of the Rules has not yet been effected by the Cameroonian authorities, the Tribunal is of the opinion that its order of transfer is still in effect. Consequently, the Tribunal does not need to confirm the validity of that order, but only to remind the Government of Cameroon to effect such transfer as soon as possible.

III-Detention

The Tribunal, Based on the Foregoing Determines as Follows:

Considering all the matters raised in the Prosecutor's request and by Théoneste Bagosora's counsel and addressed at the hearing,

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

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

Considering that the Prosecutor has submitted sufficient reasons to show and justify the need for the continued detention on remand in order to complete his investigation and criminal proceedings against Théoneste Bagosora;

Noting that Théoneste Bagosora is still detained by the Cameroonian authorities and that his transfer to the Tribunal's Detention unit has however not yet been implemented despite the Tribunal's decision of May 17, 1996;

Given the request before it made by the Prosecutor,

Hereby Grants the said request,

Orders the continued detention on remand of Théoneste Bagosora for a maximum period of thirty days, namely from 17 June 1996 to 16 July 1996 inclusive;

Requests The Government of Cameroon to effect as soon as possible the Tribunal's order of 17 May 1996 for the transfer of Théoneste Bagosora to the Tribunal's Detention Unit;

Lastly, the Tribunal requests the Registrar to notify the Government of Cameroon and to inform the Government of the Kingdom of Belgium and the Government of Rwanda of this Decision.

Yaoundé, 18 June 1996

For the Tribunal

Lennart Aspegren
Judge

UNITED NATIONS



NATIONS UNIES

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA**

Before the Judge Lennart Aspegren

21 September 1996

THE PROSECUTOR

VS.

THÉONESTE BAGOSORA

Case No: ICTR-96-7-DP

DECISION: CONTINUED DETENTION ON REMAND/ CORR.

UNITED NATIONS



NATIONS UNIES

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA**

Arusha International Conference Centre
PO Box 6016, Arusha, Tanzania
Fax: 255 57 4373/4000 or 1 212 963 23 43
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Case No: ICTR-96-7-DP
21 September 1996

The Judge

THE PROSECUTOR
AGAINST
THÉONESTE BAGOSORA

DECISION: CONTINUED DETENTION ON REMAND/ CORR.

The Decision of 18 June 1996 ordering the continued detention on remand of Théoneste Bagosora, pursuant to Rule 40 bis of the Rules of Procedure and Evidence, contains some typing errors.

The French version of the original document, as signed by me, contains two errors on the second page. Paragraph 1 should read “*la* prolongation”, and paragraph 2 should read “le Juge considÈre la dÈtention provisoire *comme* une mesure nécessaire”.

The English version of the original document, as signed by me, contains an error on the third page. Paragraph 3 should read “by the Cameroonian authorities on 9 March 1996.”.

21 September 1996

Lennart Aspegren
Judge

André Ntagerura
ICTR-96-10-I

Indictment:

Confirmation of indictment:

Warrant of arrest, order for surrender:

Request from the Prosecutor for the transfer
and provisional detention of the accused:

Affidavit by Luc Côté

Order of provisional detention and of
transfer of the accused:

Request from the Prosecutor for an order for
an extension of the provisional detention
and for a transfer order:

Affidavit by Luc Côté :

Affidavit by Alphonse Breau :

Decision on the continued detention on
remand of the accused :

**UNITED NATIONS
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

Case No: ICTR-96-10-I

The Prosecutor of the Tribunal
Against André Ntagerura

Indictment

The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to his authority under Article 17 of the Statute of the International Criminal Tribunal for Rwanda (“the Statute of the Tribunal”) charges:

André Ntagerura

With GENOCIDE, CONSPIRACY TO COMMIT GENOCIDE, COMPLICITY IN GENOCIDE, CRIMES AGAINST HUMANITY, AND VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, as set forth below:

The Accused

André Ntagerura, is believed to have been born in 1950 in Karengera commune, Cyangugu prefecture, in the Republic of Rwanda. He is the son of Innocent Nsabuwinye and Angeline Mtibwira. At the time of the events referred to in this indictment, he was the Minister of Transport and Communications of the Republic of Rwanda. The accused is currently in detained in the republic of Cameroon.

Concise Statement of Facts

General

1. During the events referred to in this indictment, Rwanda was divided into eleven prefectures, one of which was Cyangugu.
2. During the period referred to in this indictment, the Tutsi were identified as a racial or ethnic group.
3. During the period referred to in this indictment, there were in Rwanda widespread and/ or systematic attacks directed against a civilian population on political, ethnic or racial grounds.
4. During the events referred to in this indictment, a state of non-international, armed conflict existed in Rwanda. The victims referred to in this indictment were protected persons and were taking no active part in the hostilities.

5. On 6 April 1994, the plane carrying President Juvénal Habyarimana of Rwanda, crashed on its approach to Kigali airport, Rwanda, killing all on board. Soon thereafter, attacks on, and the killing of, civilians began throughout Rwanda.

Control and exercise of Authority

6. During the period referred to in this indictment, André Ntagerura was a senior cabinet Minister, and a prominent member of the ruling party, the *Mouvement républicain national pour la démocratie et le développement* (MRND), formerly the *Mouvement révolutionnaire national pour le développement*, in southwestern Rwanda.
7. As a member of the MRND, André Ntagerura was involved in preparing the policies of the MRND.
8. André Ntagerura, was the Minister of Transport and Communications of the Republic of Rwanda. As Minister of Transport he was responsible for, among other things, the assignment for use of all government owned vehicles.

Other Relevant and material facts

9. From 1991 through the period referred to in this indictment, André Ntagerura had strong political and community ties to Cyangugu prefecture, Rwanda. André Ntagerura frequently traveled to Cyangugu prefecture, and conducted MRND party meetings, as well as meetings of *Conseillers*, and *Bourgmestres* in the prefecture.
10. During the period referred to in this indictment, the Interahamwe militia (“Interahamwe”) were an affiliate of MRND.
11. During 1994, and especially between February and March 1994, André Ntagerura allowed and/ or authorized the use of government vehicles, specifically buses, for the transport of the Interahamwe militia, as well as for the transport of arms and ammunition to and throughout Cyangugu prefecture and elsewhere.
12. From 1991 through the period referred to in his indictment, André Ntagerura encouraged, and participated in the training of the Interahamwe militia in Cyangugu prefecture.
13. From January 1993 through the period referred to in this indictment, arms and ammunition were frequently distributed in Cyangugu prefecture. On some occasions, these arms were stored in the house of a man known as Yousouf Munyakazi. These arms were later distributed to the Interahamwe in Cyangugu prefecture.
14. During the period referred to in this indictment, André Ntagerura was often seen in the company of, and publicly supporting, Yousouf Munyakazi and the Interahamwe in Cyangugu prefecture.
15. During the period referred to in this indictment, Yousouf Munyakazi was heard to express anti-Tutsi sentiment in the presence of André Ntagerura.

16. During the period referred to in this indictment, Yousouf Munyakazi was a principle member and leader of the Interahamwe in Cyangugu prefecture. He was one of the central persons responsible for executing MRND orders. Many of these order came from André Ntagerura.
17. The killing of civilians in Cyangugu prefecture began in the course of the month of February 1994, and it was orchestrated and perpetrated by the Interahamwe and other groups.
18. From early April through July 1994, attacks on Tutsi civilians occurred and resulted in the death of an estimated one hundred thousand or more people and countless injured in Cyangugu prefecture.
19. During the period of these attacks, André Ntagerura continued to remain active in Cyangugu prefecture and acted as a supervisor. On one occasion after April 1994, he attended a meeting chaired by the Interim President of the Republic, Theodore SINDIKUBWABO, who congratulated the community for having killed the Tutsi.

Charges

Count1: From February 1994 to 31 July 1994, in Cyangugu prefecture, in the territory of the Republic of Rwanda, André Ntagerura is responsible for killing, or causing of serious bodily or mental harm to, members of the Tribunal population with the intent to destroy, in whole or in part, an ethnic or racial group, as such, and has thereby committed GENOCIDE, a crime recognized by Article 2(2)(a),(b), attributed to him by virtue of Article 6(1), and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

Count2: From January through July 1994, in the Territory of the Republic of Rwanda, André Ntagerura, conspired with others to kill, or cause serious bodily or mental harm to, members of the Tutsi population with intent to destroy, in whole or part, an ethnic or racial group, as such, and is thereby responsible for CONSPIRACY To COMMIT GENOCIDE, a crime recognized by Article 2(3)(b), attributed to him by virtue of Article 6(1), and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

Count 3: From around February 1994 to 31 July 1994, in the territory of the Republic of Rwanda, André Ntagerura was complicit in killing, or causing of serious bodily or mental harm, to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic or racial group, as such, and is thereby responsible for COMPLICITY IN GENOCIDE, a crime recognized by Article 2(3)(e), attributed to him by virtue of Article 6(1), and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

Count 4: From around February 1994 to 31 July 1994, in the territory of the Republic of Rwanda, André Ntagerura is responsible for the extermination of civilians as part of a widespread and/ or systematic attack against a civilian population on political, ethnic, or racial grounds, and has thereby committed a CRIME AGAINST HUMANITY, a crime recognized by Article 3(b), attributed to him by virtue of Article 6(1), and punishable in reference to Article 22 and 23 of the Statute of the Tribunal.

Count 5: From around 6 April 1994 to 31 July 1994, in Cyangugu prefecture, in the territory of Rwanda, André Ntagerura, in the context of a non-international, armed conflict, is responsible for violence to life, health and physical or mental well-being of protected persons, in particular murder as well as cruel treatment, and has thereby committed VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, a crime recognized by Article 4(a), attributed to him by virtue of Article 6(1), and punishable in reference to Article 22 and 23 of the Statute of the Tribunal.

Count 6: From January through July 1994, André Ntagerura, as Minister of Transport and Communications, in the Republic of Rwanda, being a superior and recognized as such, knew or had reason to know that his subordinates, in this case the civil servants and officials within the Ministry or dependent upon it, were preparing to commit or had committed acts referred in Article 2 or 4 of the Statute of the Tribunal, specifically acts of complicity consisting of delivering Government or parastatal companies' vehicles into the hands of Interahamwe militia or other armed groups perpetrating the crime of genocide, and failed to take the necessary and reasonable steps to prevent the said acts from occurring or punishing the perpetrators, and is thereby responsible for COMPLICITY IN GENOCIDE, a crime recognized by Article 2(3)(e), attributed to him by virtue of Article 6(3), and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

For the Prosecutor
The Deputy Prosecutor

Honoré Rakotomanana

9 August 1996
Kigali, Rwanda

UNITED NATIONS



NATIONS UNIES

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA**

Case No: ICTR-96-10-I

The Judge

The Prosecutor
Against
André Ntagerura

DECISION:

CONFIRMATION OF THE INDICTMENT

10 August 1996

Case No: ICTR-96-10-I

Before: Judge Lennart Aspegren

On Behalf of the Registrar: Frederick Harhoff

Decision on the Confirmation of the Indictment Against André Ntagerura

The International Criminal Tribunal for Rwanda, sitting as Judge Lennart Aspegren designated by the President of the Tribunal,

Upon Receiving on 9 August 1996 from the Prosecutor Richard Goldstone, represented by Jonah Rahetlah, the attached indictment, pursuant to Articles 17 and 18 of the Statute of the Tribunal, and Rule 47 of the Rules of Procedure and Evidence of the Tribunal,

And Upon Hearing the Prosecutor in Arusha on 9 August 1996, pursuant to Rule 47 (D) of the Rules,

Considering the decision rendered by the Tribunal on 17 May 1996 for the detention on remand for a maximum period of thirty days and transfer to the Tribunal's Detention Unit of André Ntagerura,

Considering Further the decision rendered by the Tribunal on 18 June 1996 for the continued detention on remand of André Ntagerura for another maximum period of thirty days,

Considering Lastly the decision rendered by the Tribunal on 15 July 1996 for the continued detention on remand of André Ntagerura for a third and final maximum period of thirty days,

Noting that André Ntagerura is to date being held in Yaoundé by the Cameroonian authorities,

The Tribunal

Pursuant To Articles 17 and 18 of the Statute and Rules 28 and 47 (D) of the Rules,

Holds that from the materials tendered by the Prosecutor, the Tribunal is satisfied that a *prima facie* case has been established with respect to each and every count as set out in the indictment, and the acts charged fall within the jurisdiction of the Tribunal,

Confirms the indictment submitted by the Prosecutor, with respect to each and every count of the indictment,

Orders, after consultation with the Prosecutor, that there be no public disclosure of the Supporting Documentation submitted with the indictment, pursuant to Rule 53(B) of the Rules,

And Notes the prayer of the Prosecutor that an appropriate warrant of arrest for the accused be issued.

The Tribunal requests the Registrar to notify the Cameroonian Government, then to notify the accused, André Ntagerura and to inform the Rwandan Government of its Decision.

Arusha, 10 August 1996

For the Tribunal,

Lennart Aspegren,
Judge

UNITED NATIONS



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INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No: ICTR-96-10-I

The Prosecutor
Against
André Ntagerura

The Judge

WARRANT OF ARREST

10 August 1996

Before Judge Lennart Aspegren
On behalf of the Registrar: Frederick Harhoff

Warrant of Arrest Against André Ntagerura

The International Criminal Tribunal for Rwanda, sitting as Judge Lennart Aspegren, designated by the President of the Tribunal,

Considering the United Nations Security Council Resolution 978 of 27 February 1995, and Articles 19(2) and 28 of the Statute of the Tribunal, and Rules 54 and 61 of the Rules of Procedure and Evidence of the Tribunal,

Considering the indictment submitted by the Prosecutor Richard Goldstone, represented by Jonah Rahetlah, against André Ntagerura, and the decision of 10 August 1996, confirming said indictment,

Hereby Directs the Cameroonian authorities to arrest and to continue to remand in custody, on behalf of the Tribunal,

André Ntagerura, born on 2 June 1950, in Karengera Commune,
Cyangugu Prefecture, Rwanda,

Directs the Cameroonian authorities:

To advise the accused, André Ntagerura, in a language he understands:

- of the indictment, the publicly non-disclosed supporting documentation and the decision confirming such indictment, each of which is annexed in copy to this warrant of arrest.
- Of his rights as set forth in Article 20 of the Statute and *mutatis mutandis*, in Rules 42 and 43 of the Rules which are set out below,
- Of his right to remain silent;

And to caution him that any statement he makes shall be recorded and may be used in evidence.

Requests That the Cameroonian authorities report forthwith to the Registrar of the Tribunal if they are unable to execute the present warrant of arrest, indicating the reasons for the inability pursuant to Rule 59(A) of the Rules,

Further Requests That the Cameroonian authorities report forthwith to the Registrar if they are unable to continue to remand André Ntagerura in custody, indicating the reasons for their inability pursuant to Rule 57.

Arusha, 10 August, 1996

For the Tribunal,

Lennart Aspegren
Judge

UNITED NATIONS



NATIONS UNIES

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA**

Arusha International Conference Centre
PO Box 6016, Arusha, Tanzania
Fax: 255 57 4373/4000 or 1 212 963 23 43
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Case No: ICTR-96-10-I

The Judge

The Prosecutor
Against
André Ntagerura

WARRANT OF ARREST/Corr.

Due to a typographical error, a paragraph in the warrant of arrest of 10 August 1996 against André Ntagerura did not appear in the original version of the document signed by me. On the second page, thus, after the sixth paragraph but before the paragraph beginning with “Requests that the Cameroonian authorities report forthwith to the Registrar of the Tribunal . . . “ an additional paragraph is therefore to be inserted, which reads as follows:

“**Requests** that the Cameroonian authorities get in touch with the Registrar without delay in order to arrange for the transfer of the accused pursuant to Rule 57 of the Rules.”

30 August 1996

For Lennart Aspegren,
Judge



**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA**

Case No: ICTR-96-10-I

The Prosecutor of the Tribunal
Against André Ntagerura

**REQUEST FOR THE TRANSFER AND PROVISIONAL DETENTION UNDER
ARTICLE 40 BIS OF THE RULES OF PROCEDURE AND EVIDENCE OF THE
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

TO ONE OF THE HONORABLE JUDGES DECIDING PURSUANT TO RULE 28 OF
THE RULES OF PROCEDURE AND EVIDENCE OF THE INTERNATIONAL
CRIMINAL TRIBUNAL FOR RWANDA:

The undersigned, Richard J. Goldstone, Prosecutor, pursuant to his authority under Rule 28 of and 40 bit of the Rules of Procedure and Evidence, adopted according to Article 14 of the Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for Genocide and other such violations committed in the territory of neighboring States in 1994 (hereinafter, “the Statute” and the “Tribunal”), requests the issuance of an order for the transfer to the premises of the detention unit of the Tribunal and an order for the provisional detention of André Ntagerura, on the following grounds:

1. André Ntagerura is currently detained in Yaoundé, Cameroon, by the Cameroonian authorities.
2. The Office of the Prosecutor is currently pursuing investigations to determine the responsibility of André Ntagerura for crimes committed in Rwandan territory and within the Tribunal’s jurisdiction, namely:
 - A. **Genocide**, a violation of Article 2 of the Tribunal Statute;
 - B. **Crimes Against Humanity**, violations of Article 3 of the Tribunal Statute;

C. Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II, which contravene Article 4 of the Tribunal Statute.

3. It appears from these investigations, particularly the information contained in the affidavit annexed hereto, that there is a reliable and consistent body of material which tends to show that André Ntagerura may have committed crimes which give rise to the following *provisional charges*:

Count 1: To have committed on Rwandan territory, notably in the prefecture of Cyangugu between January and July 1994, by planning, conspiracy, direct and public incitement, order, commission, omission, complicity or by otherwise aiding or abetting in the planning, preparation or execution of genocidal acts against the Tutsi population of Rwanda, with the intent to destroy, in whole or in part, a national, ethnic or racial group, as such, thereby committing the crime of genocide embodied in Articles 2 and 6 of the Tribunal Statute;

Count 2: To have been involved, on Rwandan territory, notably in the prefecture of Cyangugu, between January and July 1994, by his acts or omissions, in widespread and systematic attacks against a civilian population on national, political, ethnic or racial grounds, namely against the Tutsi population of Rwanda, thereby committing crimes against humanity, embodied in Articles 3 and 6 of the Tribunal Statute.

Count 3: To have been involved, on Rwandan territory, notably in the prefecture of Cyangugu, between January and July 1994, by his acts or omissions, in violence to life, health and physical or mental well-being of the civilian population of Rwanda, in the course of an armed conflict of a non-international character, thereby committing serious violations of Article 3 common to the Geneva Conventions of August 12, 1949 and of Additional Protocol II of June 8, 1977, crimes embodied in Articles 4 and 6 of the Tribunal Statute.

4. the Prosecutor considers the provisional detention of André Ntagerura to be necessary measure in order to prevent the escape of the suspect, injury to or intimidation of victims or witnesses, or the destruction of evidence, and to be otherwise a necessary measure to conduct the investigation.

Accordingly, may it Please the Honorable Judge:

Grant all Aspects of the Present Request and Thereby:

A) Declare that there is a reliable and consistent body of material which tends to show that André Ntagerura may have committed crimes over which the Tribunal has jurisdiction

B) Acknowledge that provisional charges held by the Prosecutor against André Ntagerura, i.e. provisional charges of genocide, crimes against humanity and serious violations of Common Article 3 to the Geneva Conventions of August 8, 1949 and of

Additional Protocol II of June 8, 1977, crimes provided for in Articles 2, 3 and 4 of the Tribunal Statute;

C) Order the transfer of André Ntagerura to the premises of the detention unit of the Tribunal;

D) Order, based on the above-mentioned provisional charges, the provisional detention of the suspect André Ntagerura for an initial period of thirty days.

Place: Kigali

Date 16 May 1996

For the Prosecutor
Honoré Rakotomanana
Deputy Prosecutor



**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA
Office of the Prosecutor
Bureau du Procureur**

AFFIDAVIT

I, Luc Cote, as the leader of the team carrying out investigations at the national level for the Officer of Prosecution of the International Criminal Tribunal for Rwanda , attest that the investigation conducted to date has produced the following information concerning André Ntagerura:

1. André Ntagerura was born in the commune of Karengera, Prefecture of Cyangugu.
2. Witness testimony indicates that prior to April 7, 1994, André Ntagerura was involved in the distribution of weapons in the prefecture of Cyangugu.
3. Witness testimony indicates that from April 7, 1994 to July 1994 thousands of civilians were unlawfully killed in the Prefecture of Cyangugu.
4. During that time, as a Minister of the Government, André Ntagerura was the highest official in the Prefecture, and was present at various times in the Prefecture.
5. Investigators interviewed three witnesses in Cyangugu Prefecture that attest their belief that André Ntagerura was a key player in the unlawful killing of civilians, and that André Ntagerura directed the killing of civilians and instigated the population to mass killings on political or ethnic grounds.
6. Witnesses attest to their belief that André Ntagerura was linked with the Interahamwe in the Cyangugu prefecture and was active in the training of the Interahamwe.
7. One witness testimony states that when he informed André Ntagerura that Interahamwe were pursuing him, André Ntagerura responded that he would tell “his children” not to kill Hutus. The witness attests to the belief that the term “his children” was meant by André Ntagerura to mean the Interahamwe.

8. All the facts contained in the present affidavit have resulted from the investigation conducted by the Office of the Prosecutor and are true to the best of my knowledge

9.

10.

In witness thereof:

Place: Arusha

16 May 1996

Luc Côté
Team Leader
Office of Investigation

UNITED NATIONS



NATIONS UNIES

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA**

Case No: ICTR-96-10-DP

The Judge

The Prosecutor
versus
André Ntagerura

**DECISION:
ORDER OF PROVISIONAL DETENTION
AND OF TRANSFER**

UNITED NATIONS



NATIONS UNIES

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA**

Case No: ICTR-96-10-DP

Decision on the Application By the Prosecutor for Transfer and Provisional Detention In the Matter of André Ntagerura (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 representative 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 order as follows:

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 André Ntagerura.

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 Rules, or the suspect is otherwise detained by the State authorities:
- (ii) After hearing the Prosecutor, the Judge, considering 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 be otherwise necessary for the conduct of the investigation (...)

3. The Suspect, André Ntagerura, was arrested by the Cameroonian authorities in the evening of 27 March 1996 pursuant to an international warrant of arrest issued by the Rwandan authorities. To date, he is being held by the Cameroonian prison authorities and is the object of a procedure of extradition at the request of the Rwandan authorities.

4. The Office of the Prosecutor is presently conducting investigations on crime allegedly committed by André Ntagerura.

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 developed during the hearing indicate that there exist good reasons to believe that André Ntagerura 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.

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 André Ntagerura may indeed have committed crimes over which the Tribunal has jurisdiction.

5. The Tribunal is convinced that there are risks that André Ntagerura 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 André Ntagerura 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 the André Ntagerura 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 set forth in Rule 40 bis (B) of the Rules,

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

Noting that the Prosecutor provisionally charges André Ntagerura, 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 by before it made by the Prosecutor,

Hereby Grants the said request,

Orders the provisional detention of suspect André Ntagerura for a maximum period of thirty days,

Formally Requests that the Government of Cameroon to comply with this request from the Tribunal.

he Tribunal requests the Registrar of the International Tribunal to notify the Government of Cameroon and to inform the Government of Rwanda of this Decision.

Arusha, 17 May 1996

Rwanda,

For the International Criminal Tribunal for

Lennart Aspegren,
Judge.

UNITED NATIONS



NATIONS UNIES

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA**

Case No: ICTR-96-10-DP

The Prosecutor of the Tribunal

Against

André Ntagerura

**REQUEST FOR AN ORDER FOR AN EXTENSION OF A PROVISIONAL
DETENTION ORDER AND FOR A TRANSFER ORDER BOTH UNDER ARTICLE
40 BIS OF THE RULES OF PROCEDURE AND EVIDENCE OF THE
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

TO ONE OF THE HONORABLE JUDGES DECIDING PURSUANT TO RULE 28 OF
THE RULES OF PROCEDURE AND EVIDENCE OF THE INTERNATIONAL
CRIMINAL TRIBUNAL FOR RWANDA:

The undersigned, *Richard J. Goldstone*, Prosecutor, pursuant to his authority under Rules 28 and 40 bis of the Rules of Procedure and Evidence, adopted according to Article 14 of the Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for Genocide and other such violations committed in the Territory of neighboring States in 1994 (hereinafter, "The Statute" and "the Tribunal"), requests the issuance of an order for the transfer to the premises of the detention unit of the Tribunal and an order for the provisional detention of André Ntagerura, on the following grounds:

1. On the 17 May, 1996, Justice Aspegren, deciding for the Tribunal, issued an order for the provisional detention and the transfer of André Ntagerura, pursuant to rule 40 bis of the Rules.

2. To this day, André Ntagerura has not been transferred to the premises of the detention unit of the Tribunal and is still detained in Yaoundé, Cameroon, by the Cameroonian authorities.
3. The Office of the Prosecutor is still pursuing investigations to determine the responsibility of André Ntagerura for crimes committed on Rwandan territory and within the Tribunal's jurisdiction, namely:
 - A. GENOCIDE, a violation of Article 2 of the Tribunal Statute;
 - B. CRIMES AGAINST HUMANITY, violations of Article 3 of the Tribunal Statute;
 - C. VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOLS I AND II, which contravene Article 4 of the Tribunal Statute.
4. The Prosecutor is not yet ready to file an indictment against André Ntagerura, since the sudden breakdown in the safety conditions in the territory of Rwanda, particularly in Cyangugu Prefecture where the suspect operated mostly, has slowed down the progress of the investigations.
5. The Prosecutor still considers the provisional detention of André Ntagerura to be a necessary measure in order to prevent escape of the suspect, injury to or intimidation of victims or witnesses, or the destruction of evidence, and to be otherwise a necessary measure to conduct of the investigation.

Accordingly, May it Please The Honorable Judge:

Grant All Aspects Of The Present Request And Thereby:

- a) Decide that the special circumstances of the present investigation warrant the extension of the detention of André Ntagerura and his transfer to the premises of the detention unit of the Tribunal;
- b) Order the extension of the provisional detention of André Ntagerura for a further period not exceeding 30 days.
- c) Confirm the transfer order of André Ntagerura to the premises of the detention unit of the Tribunal.

Place: Kigali

Date: 13 June 1996

For the Prosecutor,

Honoré Rakotomanana,
Deputy Prosecutor

UNITED NATIONS



NATIONS UNIES

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA**

AFFIDAVIT

I, Luc Cote, leader of the team conducting the investigations at the national level for the Office of the Prosecutor of the International Criminal Tribunal for Rwanda, solemnly declare the following regarding the request for extension of provisional detention of André Ntagerura.

1. Since May 17, 1996, the safety conditions in the Rwandese territory have deteriorated considerably, specially in Cyangugu, area where André Ntagerura is presumed to have participated in massacres. This has perturbed the normal progress of the investigations by making the majority of the witnesses unreachable.
2. In spite of this, the investigations have continued on in Kigali as well as outside the country. A few persons have been heard concerning the facts stated in the affidavit concerning the initial request presented on 16 May 1996.
3. All the facts mentioned in this affidavit are true to the best of my knowledge.

In witness thereof: Kigali 13 June 1996

Luc Côté
Chef d'équipe
Bureau des enquêtes

UNITED NATIONS



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**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA**

Office of the Prosecutor
Bureau du Procureur

AFFIDAVIT

Investigation Re: André Ntagerura

I, Alphonse Breau, Director of the Investigation for the International Criminal Tribunal for Rwanda, declare under my oath of office that because of the security situation in Cyangugu and the region, as well as on the road leading to Cyangugu from Butare and Gikongoro, I judged it necessary to restrict our investigators from going to that area. This decision was taken in light of verbal and written security reports detailing insurgency operations in the area, as well as armed attacks on vehicles traveling through the Natural Forest of Nyangwe. People were killed during these attacks. The decision was also justified because of difficulties experienced with our radio communications.

Over the last week, our radio technicians have improved the quality of communications by boosting the relay station. We are now studying the different ways of ensuring a safer operation method for teams of Investigators going into the field. The security of investigators in the field did not present a problem in the past as it does at this time and all precautions have to be taken to provide our personnel with a protection against violent acts. Had we been able to proceed to the Cyangugu region, I feel confident that our investigations would have progressed and positive results would have been obtained.

Alphonse Breau,
June 8, 1996

UNITED NATIONS



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INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Arusha International Conference Centre
PO Box 6016, Arusha, Tanzania
Fax: 255 57 4373/4000 or 1 212 963 23 43
Tel.: 255 57 4207-11/4365-72 or 1 212 963 2849/2850

Case No: ICTR-96-10-DP

Decision on the Continued Detention on Remand of

André Ntagerura (born 2 January 1950)

(Pursuant to Rule 40 bis (D) 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 Judge of the Tribunal pursuant to Article 14 of the Statute,

Considering the request (the “request”) made by the Prosecutor of the Tribunal on 13 June 1996 and the affidavit attached to it,

Having Heard today, in a hearing held in Yaoundé, the representatives of the Prosecutor, acting under Rule 37 and 38 of the Rules, and the detainee and his counsel,

Keeping In Mind the rights of the suspect as provided for, *inter alia*, in Article 20 of the Statute,

Decides and orders as follows:

I-Request

1. The request is made by the Prosecutor of the Tribunal, pursuant to Rule 40 bis of the Rules, seeking an order for the continued detention on remand and the transfer to the Tribunal's Detention Unit of André Ntagerura.

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 Rules, or the suspect is otherwise detained by the State authorities:
- (ii) After hearing the Prosecutor, the Judge, considering 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 be otherwise necessary for the conduct of the investigation (…)

(D) The provisional detention of a suspect shall be ordered for a period of not exceeding 30 days from the signing of the provisional detention order. At the end of that period, at the Prosecutor's request, the Judge who made the order, or another Judge of the same Trial Chamber, may decide, subsequent to an inter parties hearing of the Prosecutor and the suspect assisted by his counsel, to extend the detention for a period not exceeding 30 days, if warranted by the needs of the investigation (…)”

3. The suspect, André Ntagerura, was arrested by the Cameroonian authorities in the evening of 27 March 1996 pursuant to an international warrant of arrest issued by the Rwandan authorities. On 17 May 1996, at a hearing held in Arusha, the Tribunal ordered the detention on remand and transfer to the Tribunal's Detention Unit of André Ntagerura. To date, he is being held by the Cameroonian prison authorities.

4. The request made by the Prosecutor, the elements made known to the Tribunal by the affidavits attached to the request, and the indications and information developed during the hearing indicate that there still exist good reasons to believe

that André Ntagerura 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. The request, however, has above all set forth reasons which seem to justify the continued detention on remand of André Ntagerura. These reasons relate, *inter alia*, to the material security conditions in Rwanda, particularly in the Prefecture of Cyangugu, where the suspect conducted his activities.

5. The Tribunal is convinced that there still are risks that André Ntagerura may escape, that he may evade Justice, that he may try, directly or indirectly to harm victims and witnesses, and that he may try to destroy evidence, and that there also exist reasons related to the sources and conditions of the investigations conducted by the Prosecutor, which justify and require the continued detention on remand of André Ntagerura.

The Tribunal based its judgement in particular on the information set forth in the affidavits attached to the request, which show that the security situation in the Prefecture of Cyangugu has suddenly deteriorated, adversely affecting the normal conduct of the investigation and causing some witnesses to be inaccessible.

6. The Government of Cameroon, according to the statements made the Representatives of the Prosecutor and of the Tribunal, would be cooperative and would receive favorably a positive decision on the request for the continued detention on remand of André Ntagerura.
7. In the light of the foregoing, the Tribunal is of the opinion that the request for the continued detention on remand and transfer of André Ntagerura made by the Prosecutor meets with the conditions set forth in Rule 40 bis (D) of Rules and that it should be favorably received.
8. The request for the continued detention, dated 13 June 1996, was submitted to the Registrar on 16 June 1996, that is before the expiry of the duration of detention on remand.

For a number of reasons, the Tribunal has not been able to consider the question of the continued detention on remand of André Ntagerura before the expiry date on 16 June 1996 of the period in accordance with the Tribunal's decision of 17 May 1996. Since 17 June 1996, he has however been detained again under Cameroonian Law. At this stage, instead of considering an order for a new thirty day period of detention in accordance with paragraph (A) of Rule 40 bis of the Rules, the Tribunal, intending to comply with the aims and functions of article 40 bis in general, and of its paragraph (D) in particular, favors instead the continued detention on remand of André Ntagerura for a maximum period of 30 days yet from the expiry date of the first period of detention, so as to continue the detention on remand under Rule 40 bis (D) of the Rules.

9. In his request, not only did the Prosecutor request the continued detention on remand of André Ntagerura, but also the confirmation of the order for the transfer

of André Ntagerura to the Tribunal's Detention Unit. Since the Tribunal's decision on the transfer of André Ntagerura to the Tribunal's Detention Unit under Rule 40 bis (B) of the Rules has not yet been effected by the Cameroonian authorities, the Tribunal is of the opinion that its order of transfer is still in effect. Consequently, the Tribunal does not need to confirm the validity of that order, but only to remind the Government of Cameroon to effect such transfer as soon as possible.

III-Decision

The Tribunal Based On the Foregoing Determines As Follows:

Considering all the matters raised by the Prosecutor's request and by André Ntagerura's counsel and addressed at the hearing,

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

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

Considering that the Prosecutor has submitted sufficient reasons to show and justify the need for the continued detention on remand in order to complete his investigations and criminal proceedings against André Ntagerura;

Noting that André Ntagerura is still detained by the Cameroonian authorities and that his transfer to the Tribunal's Detention unit has however not yet been implemented despite the Tribunal's decision of 17 May 1996,

Given the request before it made by the Prosecutor,

Hereby Grants the said request

Orders the continued detention on remand of André Ntagerura for a maximum period of thirty days, namely from 17 June 1996 to 16 July 1996 inclusive,

Requests the Government of Cameroon to effect as soon as possible the Tribunal's order of 17 May 1996 for the transfer of André Ntagerura to the Tribunal's Detention Unit;

Lastly, the Tribunal requests the Registrar to notify the Government of Cameroon and to inform the Government of Rwanda of this Decision.
Yaoundé, 18 June 1996

For the Tribunal,

Lennart Aspegren
Judge

UNITED NATIONS



NATIONS UNIES

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA**

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Case No: ICTR-96-10-DP

The Judge

The Prosecutor
Against
André Ntagerura
(Assisted by Mr. Benjamin Ondigui)

DECISION: CONTINUED DETENTION ON REMAND/ CORR.

The Decision of 18 June 1996 ordering continued detention on remand of André Ntagerura pursuant to Rule 40 bis of the Rules of Procedure and Evidence, contains some typing errors.

The French version of the original document, as signed by me, contains two errors on the second and the fourth page. On the second page, paragraph 1 should read “*la prolongation*”, and paragraph 2 should read “*le Juge considère la détention provisoire comme une mesure nécessaire*”. On the fourth page, paragraph 9 should read as follows:

“Dans sa requête, le Procureur a demandé non seulement la prolongation de la détention provisoire d’André Ntagerura, mais aussi la confirmation de l’ordre de transfert d’André Ntagerura dans les locaux du quartier pénitentiaire du Tribunal. Etant donné que la décision du Tribunal concernant le transfert d’André Ntagerura dans les locaux du quartier pénitentiaire du Tribunal en vertu de l’Article 40 bis (B) du règlement n’est encore pas effectué par les autorités camerounaises, le Tribunal est de l’opinion que son ordre de transfert reste toujours en vigueur. Le Tribunal, par conséquent, n’a pas besoin de confirmer la validité de cet ordre, mais seulement de rappeler au Gouvernement camerounais d’effectuer le transfert le plus tôt possible.”

21 September 1996

Lennart Aspegren
Judge

**Gérard Ntakirutimana
ICTR -96-17-I**

Indictment:

Confirmation of Indictment:

Warrant of arrest, order of surrender
addressed to the United States of America:

Warrant of arrest, order of surrender
addressed to Cote d'Ivoire:

Motion for order of non-disclosure of
indictments and supporting materials:

Decision following the initial appearance:

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No: ICTR-96-17-I

The Prosecutor of the Tribunal
Against
Elizaphan Ntakirutimana
Gérard Ntakirutimana

Indictment

1. The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to his authority under Article 17 of the Statute of the International Criminal Tribunal for Rwanda (“the Statute of the Tribunal”) charges:

ELIZAPHAN NTAKIRUTIMANA
GÉRARD NTAKIRUTIMANA

With GENOCIDE, COMPLICITY IN GENOCIDE, CONSPIRACY TO COMMIT GENOCIDE, CRIMES AGAINST HUMANITY AND SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II as set forth below.

2. the present indictment charges persons responsible for serious violations of international humanitarian law committed in the Territory of Rwanda during the months of April through June 1994 in the area known as Bisesero in Gishyita and Gisovu communes, Kibuye Prefecture, where hundreds of men, women and children were killed and a large number of persons wounded.

3. The Accused

3.1 Elizaphan Ntakirutimana is believed to have been born in 1924 in Ngoma sector, Gishyita commune, Kibuye Prefecture. During the time of the events referred to in this indictment, he was the Pastor of the Seventh day Adventist Church in Mugonero, which is located in Kibuye Prefecture. He is currently believed to be in the United States.

3.2 Gérard Ntakirutimana is believed to have been borne in 1957 in Ngoma sector, Gishyita commune, Kibuye Prefecture. During the time of the events referred to in this indictment, he was a physician at Mugonero hospital. He is currently believed to be in the Ivory Coast.

4. Concise Statement of the Facts

4.1 During the events referred to in this indictment, Rwanda was divided into eleven Prefectures, one of which was Kibuye.

4.2 During the events referred to in the indictment, Tutsi were identified as members of an ethnic or racial group.

4.3 On April 6, 1994, the plane transporting President Juvénal Habyarimana of Rwanda crashed on its approach to Kigali airport, Rwanda. Attacks and killings of civilians began soon thereafter throughout Rwanda.

4.4 During the month of April 1994, a large number of men, women and children from various places within Kibuye Prefecture sought shelter from attacks which were taking place throughout the area. Many assembled in side Mugonero Complex, which consisted of several buildings, including a church, an infirmary and a hospital (hereinafter referred to as1 “Mugonero Complex”). The majority of these men, women and children were Tutsi and were unarmed.

4.5 Many of these men, women and children who sought refuge in the Mugonero Complex did so because Elizaphan Ntakirutimana instructed them to go there.

4.6 After the men, women and children gathered in Mugonero Complex, Gérard Ntakirutimana and others separated Tutsi individuals from the other. Those who were not Tutsi were allowed to leave Mugonero Complex.

4.7 On or about the morning of 16 April 1994, a convoy, consisting of several vehicles followed by a large number of individuals armed with weapons went to Mugonero Complex. Individuals in the convoy included among others Elizaphan Ntakirutimana, Gérard Ntakirutimana, members of the National Gendarmerie, communal police, militia, and civilians.

4.8 The individuals in the convoy, including Elizaphan Ntakirutimana, and Gérard Ntakirutimana, participated in an attack on the men, women and children in the Mugonero Complex which continued throughout the day and into the night.

4.9 The attack resulted in hundreds of deaths and a large number of wounded among the men, women and children who had sought refuge at the Mugonero Complex.

4.10 Many of those who survived the massacre at Mugonero Complex fled to the surrounding areas, one of which was the area known as Bisesero.

4.11 The area known as Bisesero spans the two communes of Gishyita and Gisovu in Kibuye Prefecture. From April through June 1994, hundreds of men, women and children sought refuge in various locations in Bisesero. These men, women and children were predominantly Tutsi and were seeking refuge from attacks on Tutsi which had occurred throughout the Prefecture of Kibuye. The majority of these men, women and children were unarmed.

4.12 From April through June 1994, convoys of a large number of individuals armed with various weapons went to the area of Bisesero. Individuals in the convoy included, among others, Elizaphan Ntakirutimana, and Gérard Ntakirutimana, members of the National Gendarmerie, communal police, militia and civilians.

4.13 The individuals in the convoys, including Elizaphan Ntakirutimana and Gérard Ntakirutimana, participated in attacks on men, women and children in the area of Bisesero which continued almost on a daily basis for several months.

4.14 The attacks resulted in hundreds of deaths and a large number of wounded among the men, women and children who had sought refuge in Bisesero.

4.15 During the months of these attacks, individuals, including Elizaphan Ntakirutimana and Gérard Ntakirutimana, searched for and attacked Tutsi survivors and others, killing or causing serious bodily or mental harm to them.

4.16 At one point during this time period, Elizaphan Ntakirutimana was in Murambi within the area of Bisesero. Elizaphan Ntakirutimana went to a church located in Murambi where many Tutsis were seeking refuge from the ongoing massacres. Elizaphan Ntakirutimana ordered the attackers to destroy the roof of the church so that it could no longer be used as a hiding place for the Tutsis.

5. Charges

By their acts in relation to the events referred to above, each of the accused are individually responsible for the crimes alleged below pursuant to Article 6(1) of the Tribunal Statute.

Count 1: Elizaphan Ntakirutimana and Gérard Ntakirutimana, during the months of April through June 1994, in the area known as Bisesero, in Gishyita and Gisovu communes, Kibuye Prefecture, in the Territory of Rwanda, are responsible for the killings or causing of serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic or racial group, as such, and have thereby committed GENOCIDE in violation of Article 2(3)(a) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal;

Count 2: Elizaphan Ntakirutimana and Gérard Ntakirutimana, during the months of April through June 1994, in the area known as Bisesero, Gishyita and Gisovu communes, Kibuye Prefecture, in the Territory of Rwanda, were complicit in the killing or causing of serious bodily or mental harm to members of the Tutsi population with the intent to destroy in whole or in part, an ethnic or racial group as such, and have thereby committed COMPLICITY IN GENOCIDE in violation of Article 2(3)(e) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal;

Count 3: Elizaphan Ntakirutimana and Gérard Ntakirutimana, during the months of April through June 1994, in the area known as Bisesero, in Gishyita and Gisovu communes, Kibuye Prefecture, in the Territory of Rwanda, did conspire, with each other and others, to kill or cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic or racial group as such, and have thereby committed CONSPIRACY To COMMIT GENOCIDE

in violation of Article 2(3)(b) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal;

Count 4: Elizaphan Ntakirutimana and Gérard Ntakirutimana, during the months of April through June 1994, in the area known as Bisesero, in Gishyita and Gisovu communes, Kibuye Prefecture, in the Territory of Rwanda, are responsible for the murder of civilians, as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, and have thereby committed a CRIME AGAINST HUMANITY in violation of Article 3(a) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

Count 5: Elizaphan Ntakirutimana and Gérard Ntakirutimana, during the months of April through June 1994, in the area known as Bisesero, in Gishyita and Gisovu communes, Kibuye Prefecture, in the Territory of Rwanda, are responsible for the extermination of civilians, as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, and have thereby committed a CRIME AGAINST HUMANITY in violation of Article 3(b) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

Count 6: Elizaphan Ntakirutimana and Gérard Ntakirutimana, during the months of April through June 1994, in the area known as Bisesero, in Gishyita and Gisovu communes, Kibuye Prefecture, in the Territory of Rwanda, did commit other inhumane acts as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, and have thereby committed a CRIME AGAINST HUMANITY in violation of Article 3(i) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

Count 7: Elizaphan Ntakirutimana and Gérard Ntakirutimana, during the months of April through June 1994, in the area known as Bisesero, in Gishyita and Gisovu communes, Kibuye Prefecture, in the Territory of Rwanda, did commit or order others to commit, serious violations of article 3 common to the Geneva Conventions and of Additional Protocol II thereof, as recognized by Article 4 and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

September 7, 1996
Kigali, Rwanda

For the Prosecutor
The Deputy Prosecutor

Judge Honore Rakotomanana

**THE INTERNATIONAL CRIMINAL
TRIBUNAL FOR RWANDA**

Before: Judge William H. Sekule

On behalf of the Registrar: Mr. Frederick Harhoff, Senior Legal Advisor

On behalf of the Prosecutor: Ms. Elizabeth Ann Farr, Assistant Trial Attorney

Decision of: 7 September 1996

DECISION ON REVIEW OF THE INDICTMENT

In the matter of

**Elizaphan Ntakirutimana
Gérard Ntakirutimana**

Case No: ICTR-96-17-I

I, William H Sekule, Judge of the International Criminal Tribunal for Rwanda (the “Tribunal”),

Upon Receiving an indictment from the Prosecutor pursuant to Article 17 and 18 of the Statute of the Tribunal, and to Rule 47 of the Rules of Procedure and Evidence, together with the additional supporting material made available at the reviewing of the indictment, and

Pursuant To Article 17 and 18 of the Statute of the Tribunal and Rules 28 and 47 of the Rules of Procedure and Evidence;

State that from the material tendered by the Prosecutor, in particular the additional information which the Prosecutor made available pursuant to Rule 47(D) of the Rules of Procedure and Evidence at the reviewing of the indictment, I am satisfied a *prima facie* case has been established with respect to each and every count as set out in the indictment, and the acts charged fall within the jurisdiction of the Tribunal,

Confirm the indictment submitted by the Prosecutor with respect to each and every count of the indictment, and

Further Order, after consultation with the Prosecutor, that there be no disclosure of the indictment and the supporting documentation submitted in support of the indictment pursuant to Rule 53(B) of the Rules of Procedure and Evidence,

And Note the prayer of the Prosecutor that a warrant of arrest and an order of the surrender of the accused be issued.

Arusha 7 September 1996

William H Sekule
Judge
International Criminal Tribunal for Rwanda

UNITED NATIONS



NATIONS UNIES

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA**

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**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA BEFORE A
JUDGE OF THE TRIAL CHAMBER**

Case No: ICTR-96-17-I

Before: Judge William H Sekule
Decision of: 7 September 1996

**In the Matter of the Case No. ICTR-96-17-I
The Prosecutor
v.
Elizaphan Ntakirutimana**

**WARRANT OF ARREST
ORDER OF SURRENDER**

To: The United States of America,

I, Judge William H. Sekule, Judge of the International Criminal Tribunal for Rwanda,

Considering the United Nations Security Council Resolution 955 of 8 November 1994 and Resolution 978 of 27 February 1995, and Articles 19(2) and 28 of the Statute of the International Criminal Tribunal for Rwanda, and Rules 54 and 61 of the Rules of Procedure and Evidence adopted by the International Criminal Tribunal for Rwanda,

Considering the indictment submitted by the Prosecutor against Elizaphan Ntakirutimana, and confirmed by me, Judge of the International Criminal Tribunal for Rwanda on 7 September 1996, a copy of which is annexed to this warrant of arrest,

Hereby Direct the Authorities of the United States of America to search for, arrest, and surrender to the International Criminal Tribunal for Rwanda:

Elizaphan Ntakirutimana, believed to have been born in 1924 in Ngoma Sector, Gishyita Commune, Prefecture of Kibuye, in Rwanda. During the time of the events referred to in the annexed indictment, he was the Pastor of the Seventh Day Adventist Church in Mugonero, which is located in the Prefecture of Kibuye. He is currently believed to be in the United States of America.

He is alleged to have committed during the months of April through June 1994 in Rwanda, the following crimes: Genocide, in violation of Article 2(3)(a), Complicity in Genocide in violation of Article 2(3)(e), Conspiracy to commit Genocide in violation of Article 2(3)(b), Crimes against Humanity in violation of Article 3(a), Crimes against Humanity in violation of Article 3(b), Crimes against Humanity in violation of Article 3(I), Serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II in violation of Article 4.

And to advise the said Elizaphan Ntakirutimana at the time of arrest and in a language he understands, of his rights as set forth in Article 20 of the Statute and *mutatis mutandis*, in Rules 42 and 43 of the Rules of Procedure and Evidence which are attached hereto and of his right to remain silent, and to caution him that any statement he makes shall be recorded and may be used in evidence. The indictment and review of the Indictment (and all other documents annexed to the present Warrant) must also be brought to the attention of the accused,

Request That the United States of America, upon the arrest of the Elizaphan Ntakirutimana, promptly notify the Registrar of the International Criminal Tribunal for Rwanda, for the purposes of arranging his transfer to the custody of the International Criminal Tribunal for Rwanda, pursuant to Rule 57 of the Rules of Procedure and Evidence,

Request That the United States of America report forthwith to the Registrar of the International Criminal Tribunal for Rwanda if it is unable to execute the present Warrant of Arrest, indicating the reasons for its inability, pursuant to Rule 59 (A) of the Rules of Procedure and Evidence.

William H. Sekule
Judge
International Criminal Tribunal for Rwanda

Dated this 7th day of September 1996,
At Arusha, Tanzania

UNITED NATIONS



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Case No: ICTR-96-17-I

Before: Judge William H Sekule
Decision of: 7 September 1996

In the Matter of the Case No. ICTR-96-17-I

The Prosecutor
V.
Gérard Ntakirutimana

**WARRANT OF ARREST
ORDER OF SURRENDER**

To: Côte d'Ivoire

I, Judge William H. Sekule, Judge of the International Criminal Tribunal for Rwanda,

Considering the United Nations Security Council Resolution 955 of 8 November 1994 and Resolution 978 of 27 February 1995, and Articles 19(2) and 28 of the Statute of the International Criminal Tribunal for Rwanda, and Rules 54 and 61 of the Rules of Procedure and Evidence adopted by the International Criminal Tribunal for Rwanda,

Considering the indictment submitted by the Prosecutor against Gérard Ntakirutimana, and confirmed by me, Judge of the International Criminal Tribunal for Rwanda on 7 September 1996, a copy of which is annexed to this warrant of arrest,

Hereby Direct the Authorities of Côte d'Ivoire to search for, arrest, and surrender to the International Criminal Tribunal for Rwanda:

Gérard Ntakirutimana, believed to have been born in 1957 in Ngoma Sector, Gishyita Commune, Prefecture of Kibuye, in Rwanda. During the time of the events referred to in the annexed indictment, he was a physician at Mugonero hospital, which was located in the Prefecture of Kibuye. He is currently believed to be in the Ivory Coast.

He is alleged to have committed during the months of April through June 1994 in Rwanda, the following crimes: Genocide, in violation of Article 2(3)(a), Complicity in Genocide in violation of Article 2(3)(e), Conspiracy to commit Genocide in violation of Article 2(3)(b), Crimes against Humanity in violation of Article 3(a), Crimes against Humanity in violation of Article 3(b), Crimes against Humanity in violation of Article 3(I), Serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II in violation of Article 4.

And to advise the said Gérard Ntakirutimana at the time of arrest and in a language he understands, of his rights as set forth in Article 20 of the Statute and *mutatis mutandis*, in Rules 42 and 43 of the Rules of Procedure and Evidence which are attached hereto and of his right to remain silent, and to caution him that any statement he makes shall be recorded and may be used in evidence. The indictment and review of the Indictment (and all other documents annexed to the present Warrant) must also be brought to the attention of the accused,

Request That the CÙte d'Ivoire, upon the arrest of the Gérard Ntakirutimana, promptly notify the Registrar of the International Criminal Tribunal for Rwanda, for the purposes of arranging his transfer to the custody of the International Criminal Tribunal for Rwanda, pursuant to Rule 57 of the Rules of Procedure and Evidence,

Request That the CÙte d'Ivoire report forthwith to the Registrar of the International Criminal Tribunal for Rwanda if it is unable to execute the present Warrant of Arrest, indicating the reasons for its inability, pursuant to Rule 59 (A) of the Rules of Procedure and Evidence.

William H. Sekule
Judge
International Criminal Tribunal for Rwanda

Dated this 7th day of September 1996,
At Arusha, Tanzania

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No: ICTR-96-19-I

Registrar: Dr. Andronico O. Adede

Date Filed 7 September 1996

THE PROSECUTOR

AGAINST

ELIZAPHAN NTAKIRUTIMANA

GÉRARD NTAKIRUTIMANA

**MOTION FOR ORDER OF NONDISCLOSURE OF INDICTMENT
AND
SUPPORTING MATERIALS**

**MOTION FOR ORDER OF NONDISCLOSURE OF INDICTMENT
AND SUPPORTING MATERIALS**

Pursuant to Rule 53(B) of the Rules of Procedure and Evidence, the Prosecutor respectfully requests an Order for nondisclosure of both the indictment and supporting materials on the above-captioned case. The Prosecutor makes this request because, at this time, the Prosecutor believes that it is in the interest of justice not to disclose any aspect of this indictment as it may hamper the apprehension of the above-named defendants.

For the Prosecutor,

Honoré Rakotomanana
Deputy Prosecutor

UNITED NATIONS



NATIONS UNIES

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
Chamber 2**

Case No: ICTR-96-17-I

Before: Judge Yakov A. Ostrovsky, Presiding Judge,
Judge Lennart Aspegren, J
Judge Navanethem Pillay

Registry: Mr. Frederick Harhoff,
Ms. Prisca Nyambe

Decision of: 2 December 1996

The Prosecutor
Versus
Gérard Ntakirutimana

Cases No. ICTR-96-10-I and No. ICTR-96-17-I

DECISION FOLLOWING THE INITIAL APPEARANCE

The Office of the Prosecutor:

Mr. Yacob Haile-Mariam,
Mr. Pierre-Richard Prosper

Counsel for the Accused:

Ms. Ghislaine Moise-Brazie

Case No. ICTR-96-10-I

Case No. ICTR-96-17-I

The Tribunal, sitting as Trial Chamber 2 composed of Judge Yakov A Ostrovsky, Presiding Judge, Judge Lennart Aspegren, and Judge Navanethem Pillay;

Considering the first indictment against Gérard Ntakirutimana submitted by the Prosecutor and confirmed on 21 June 1996 by Judge Tafazzal H. Khan who, on the same date, issued a warrant of arrest and an order of surrender of the accused; and the second indictment submitted by the Prosecutor and confirmed on 7 September 1996 by Judge William H. Sekule who, on that same date, issued a warrant of arrest and a second order for surrender of the accused;

Taking Note of the transfer of the accused from CÔte d'Ivoire to the Tribunal's Detention Unit on 30 November 1996;

Considering the initial appearance, the accused pleaded not-guilty to all of the six counts of the first indictment, and likewise not-guilty to all of the seven counts in the second indictment,

Pursuant to Rule 62 and the following rules in the Rules of Procedure and Evidence;

The Tribunal Decides

To Fix the date of the trial on the merits regarding the first indictment (Case ICTR-96-10-I) for Thursday 8 May 1997, at 9:30 hours, thereby joining the hearing in the this case with the trial against the co-accused Obed Ruzindana and others scheduled to begin at the same time;

To Fix the date of the trial on the merits regarding the second indictment (Case ICTR-96-17-I) for Tuesday, 12 August 1997, at 9:30 hours, while reserving the possibility for the Tribunal to decide at a later date to join the hearing in the case relating to the second indictment with the trial against the co-accused Elizaphan Ntakirutimana; and

To Maintain in detention on remand Gérard Ntakirutimana and to enjoying the Commanding Officer of the Tribunal's Detention Unit to continue to detain him until ordered otherwise.

Arusha 2 December 1996

Yakov A. Ostrovsky
Presiding Judge

Lennart Aspegren
Judge

Navanethem Pillay
Judge

XII

Alfred Musema ICTR-96-13-I

Indictment:

Confirmation of Indictment:

Application by the Prosecutor for a formal request for deferral by the Kingdom of Belgium in respect of Radio Television Libre des Mille Collines sarl:

Decision on the formal request for deferral presented by the Prosecutor:

**INTERNATIONAL CRIMINAL TRIBUNAL
FOR RWANDA**

Case No: ICTR-96-13-I

The Prosecutor of the Tribunal

Against

Alfred Musema

Indictment

1. the Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to his authority under Article 17 of the st of the International Criminal Tribunal for Rwanda (“the Statute of the Tribunal”) charges:

Alfred Musema

With **GENOCIDE, CONSPIRACY TO COMMIT GENOCIDE, CRIMES AGAINST HUMANITY, AND SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II** as set forth below.

2. The present indictment contains charges against an individual who committed serious violations of international humanitarian law in Kibuye Prefecture, Territory of Rwanda where thousands of men, women and children were killed and a large number of persons wounded in April, May and June 1994.

3. The Accused

3.1 Alfred Musema was born on 22 August 1949 in Rutare commune Byumba Prefecture, Territory of the Republic of Rwanda. At the time of the events referred to in this indictment, Alfred Musema was the Director of the Gisovu Tea Factory in Kibuye Prefecture. He is presently detained in Switzerland.

4. A Concise Statement of the Facts

4.1 During the events referred to in this indictment, Rwanda was divided into eleven prefectures, one of which was Kibuye.

4.2 During the events referred to in this indictment, Tutsi were identified as members of an ethnic or racial group.

4.3 On 6 April 1994, the plane transporting President Juvénal Habyarimana of Rwanda crashed on its approach to Kigali airport, Rwanda. Attacks and killings of civilians began soon thereafter throughout Rwanda.

4.4 The area of Bisesero spans two communes in Kibuye Prefecture. From about 9 April 1994 through 3 June 1994, thousands of men, women and children sought refuge in various locations in Bisesero. These men, women and children were predominantly Tutsi and were seeking refuge from attacks on Tutsis which had occurred throughout the Prefecture of Kibuye.

4.5 The individuals seeking refuge in the area of Bisesero were regularly attacked, throughout the period of about 9 April 1994 through about 30 June 1994. The attackers used guns, grenades, machetes, spears, pangas, cudgels, and other weapons to kill the Tutsis in Bisesero.

4.6 At various locations and times throughout April, May and June 1994, and often in concert with others, Alfred Musema brought to the area of Bisesero armed individuals and directed them to attack the people seeking refuge there. In addition, at various locations and times, and often in concert with other Alfred Musema personally attacked and killed persons seeking refuge in Bisesero.

4.7 The attacks described above resulted in thousands of deaths and numerous injuries to the men, women and children of within the area of Bisesero.

5. Charges

By his acts in relating to the events referred to above, Alfred Musema is individually responsible for the crimes alleged below pursuant to Article 6(1) of the Tribunal Statute:

Count 1: Alfred Musema, during the months of April, May and June 1994, in Gisovu and Gishyita communes, Kibuye Prefecture, in the Territory of Rwanda, is responsible for the killing or causing of serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic or racial group as such, and has thereby committed GENOCIDE in violation of Article 2(3)(a) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal;

Count 2: Alfred Musema, prior to his participation in the attacks and killings in Gisovu and Gishyita communes, Kibuye Prefecture, in the Territory of Rwanda, did conspire with others to kill or cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic or racial group as such, and has thereby committed CONSPIRACY To COMMIT GENOCIDE in violation of Article 2(3)(b) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal;

Count 3: Alfred Musema, during the months of April, May and June 1994, in Gisovu and Gishyita communes, Kibuye Prefecture, in the Territory of Rwanda, is

responsible for the murder of civilians, as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, and has thereby committed a CRIME AGAINST HUMANITY in violation of Article 3(a) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal;

Count 4: Alfred Musema, during the months of April, May and June 1994, in Gisovu and Gishyita communes, Kibuye Prefecture, in the Territory of Rwanda, is responsible for the extermination of civilians, as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, and has thereby committed a CRIME AGAINST HUMANITY in violation of Article 3(b) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal;

Count 5: Alfred Musema, during the months of April, May and June 1994, in Gisovu and Gishyita communes, Kibuye Prefecture, in the Territory of Rwanda, did commit other inhumane acts, against a civilian population on political, ethnic or racial grounds, and has thereby committed a CRIME AGAINST HUMANITY in violation of Article 3(i) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal;

Count 6: Alfred Musema during the months of April, May and June 1994, in Gisovu and Gishyita communes, Kibuye Prefecture, in the Territory of Rwanda, did commit or order others to commit, SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II thereof, in violation of Article 4 and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

12 July 1996
Kigali, Rwanda

For the Prosecutor
The Deputy Prosecutor

Judge Honore Rakotomanana

UNITED NATIONS



NATIONS UNIES

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA**

Arusha International Conference Centre
PO Box 6016, Arusha, Tanzania
Fax: 255 57 4373/4000 or 1 212 963 23 43
Tel.: 255 57 4207-11/4365-72 or 1 212 963 2849/2850

In Trial Chamber 1

Before: Judge Yakov A Ostrovsky

Deputy Registrar: Mr. Hugues Vérita

On behalf of the Prosecutor: Mr. Pierre-Richard Prosper

Decision of: 15 July 1996

DECISION ON THE REVIEW OF THE INDICTMENT

In the Matter of

Alfred Musema

ICTR-96-13-I

I, Yakov A. Ostrovsky, Judge of the International Criminal Tribunal for Rwanda,

Upon Receiving an indictment from the Prosecutor, pursuant to Article 17 and 18 of the Statute of the Tribunal, and Rule 47 of the Rules of Procedure and Evidence,

And Upon Hearing the Prosecutor, represented by Mr. Pierre-Richard Prosper, pursuant to Rule 47(D) of the Rules of Procedure and Evidence and taking into consideration the documents submitted during the hearing,

After Having Taken Cognizance of the decision rendered on 8 July 1996 by the *Tribunal Militaire d'Appel*,

Pursuant To Articles 17 and 18 of the Statute of the Tribunal and Rules 28 and 47 of the Rules of Procedure and Evidence,

Confirm the indictment submitted by the Prosecutor with respect to each and every count of the indictment, and

State that from the material tendered by the Prosecutor, I am satisfied a prima facie case has been established with respect to each and every count as set out in the indictment, and that the acts fall within the jurisdiction of the International Criminal Tribunal for Rwanda,

Further Order, after consultation with the Prosecutor, that there be no public disclosure of the Supporting Documentation submitted in support of the indictment, pursuant to Rule 53 (B) of the Rules of Procedure and Evidence,

And Note the prayer of the Prosecutor that an appropriate warrant of arrest for the accused who is under detention in Switzerland, pursuant to Rule 40 of the Rules of Procedure and Evidence, be issued and arrangements be made for his transfer to the custody of the Tribunal.

Judge Yakov A. Ostrovsky
Trial Chamber 1
International Criminal Tribunal for Rwanda

Dated this 15th day of July 1996,
At Arusha, Tanzania

Seat of the Tribunal
Case No. ICTR-96-13-I

UNITED NATIONS



NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No: ICTR-96-6-D

THE PROSECUTOR OF THE TRIBUNAL

APPLICATION FOR A FORMAL REQUEST FOR DEFERRAL

UNITED NATIONS



NATIONS UNIES

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA
Office of the Prosecutor
Bureau du Procureur**

In the Trial Chamber
of the International Criminal
Tribunal for Rwanda

**APPLICATION BY THE PROSECUTOR
FOR A FORMAL REQUEST FOR DEFERRAL
BY THE KINGDOM OF BELGIUM IN RESPECT OF**

RADIO TELEVISION LIBRE DES MILLE COLLINES SARI

I. I, Richard Goldstone, Prosecutor, pursuant to Article 8(2) of the Statute of the International Tribunal for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in Rwanda or committed in neighboring states by Rwandan Citizens during 1994 (referred to respectively as the “Statute” and the “Tribunal”), in accordance with Rule 9(iii) of the Rules of Procedure and Evidence (“the Rules”) proposed to the Chamber that a formal request be made to the Kingdom of Belgium that its courts defer to the competence of the Tribunal, in relation to investigations and criminal proceedings being conducted by the Kingdom of Belgium regarding serious violations of international humanitarian law committed on the territory of the Republic of Rwanda between 1 January 1994 and 31 December 1994, by people associated with the private radio station Radio Television Libre des Mille Collines (“RTL”), that a formal request be made to the Kingdom of Belgium that its courts defer to the competence of the Tribunal.

II. Pursuant to Rule 10 of the Rules, I propose that the Trial Chamber issue a formal request for deferral to the Kingdom of Belgium in the following terms:

- A) That the Courts of Belgium defer to the competence of the Tribunal in regard to all investigations and criminal proceedings of the activities of RTLM and of individuals involved with RTLM.
- B) That the Kingdom of Belgium forward to the Tribunal the result of said investigations and criminal proceedings on the activities of RTLM and of individuals involved with RTLM, request that Kingdom of Belgium forward to the Tribunal all results of said investigations and criminal proceedings, including but not limited to the results of all investigations, and copies of all courts record and judgements, if already.

III. I make this request for the following reasons:

- A) The Kingdom of Belgium has instituted investigations on the activities of RTLM and on individuals who allegedly committed serious violations of international humanitarian law in Rwanda.
- B) I am currently conducting investigations on the activities of the RTLM and on individuals allegedly responsible for crimes within the competence of the International Tribunal.
- C) The national investigations involve issues which closely relate to, or otherwise involve factual or legal questions which may have implications for the current investigations or prosecutions before the Tribunal.

IV. The basis of my proposal appears in the attached schedule.

Dated March, 1996
Arusha, Tanzania

For the Prosecutor Richard J. Goldstone,
The Deputy Prosecutor

Honoré Rakotomanana

SCHEDULE

1. Investigations Conducted by the Kingdom of Belgium

1.1 In March 1995 the Kingdom of Belgium decided to investigate the activities of RTLM and related individuals who, through their use of RTLM, allegedly committed crimes within the competence of the Tribunal.

1.2 These investigations resulted in the compiling of the following dossiers by the Kingdom of Belgium:

- 1 binders of materials collected by the Belgian authorities concerning RTLM by the examining magistrate, Mr. Vandermeersch.

2. Investigations by the Prosecutor

2.1 The Prosecutor is investigating allegations of serious violations of international humanitarian law that occurred in the Republic of Rwanda including the broadcasts which allegedly incited to genocide and violence during 1994.

2.2 The current investigations by the Prosecutor on the broadcasts of RTLM, its management and its financing, its journalists and its broadcasters.

2.3 The Prosecutor's investigations target (1) the collection of materials including but not limited to recorded broadcasts of RTLM, (2) the activities of the individuals responsible for RTLM, and (3) the activities of the journalists and broadcasters of RTLM.

2.4 In order to develop the ongoing investigation, the Prosecutor must collect further essential evidence and obtain full access to the statements, documents and other findings from investigations on RTLM.

3. Significant Factual and Legal Questions

3.1 If the Kingdom of Belgium continues investigations which are similar to those being conducted by the Prosecutor, significant risks are created which may have implications for investigations before the Tribunal, including but not limited to:

3.1.1 Confusion amongst witnesses and cooperating organizations or governments concerning the scope and authority of the different investigations and the different rules and confidentiality protections which govern the town investigations.

Repeated interviews of witnesses by different investigators (particularly those from different organizations) should be avoided. Otherwise, witnesses become confused and distrustful of giving multiple accounts of the same incidents.

3.1.2 Creation of undue burden on witnesses who are heard repeatedly. Some witnesses, especially those who have suffered trauma and those who are at physical risk as a result of their cooperation, may be unwilling or unable to cooperate fully and

effectively with multiple investigations. In certain situations, witnesses who are known to have had contacts with any investigators may have their lives placed in danger, or may become the subject of threats.

3.1.3 Unnecessarily compromising the credibility of witnesses due to the inadvertent creation of multiple statements where the statements were taken under different conditions, sometimes in different languages and for different purposes.

3.1.4 Potential evidentiary problems resulting from different procedures such as those concerning evidence collection and preservation, the taking of statements and the questioning of suspects.

3.2 In addition, if the Kingdom of Belgium proceeds to trial before the Prosecutor completes his investigation, the following significant factual and legal issues may have implications for investigations and prosecutions before the Tribunal:

3.2.1 By virtue of Article 9.2 of the Tribunal (*Non bis in idem*) there are limitations on the subsequent prosecution before the International Tribunal of persons who have already been tried by a national court for acts constituting serious violations of international humanitarian law. Belgian penal law does not have criminal provisions for the offenses of genocide and crimes against humanity. If these persons are prosecuted under Belgian law for their acts, but the Prosecutor of the International Tribunal determines that his acts amount to genocide or to crimes against humanity, Article 9 of the Statute may prevent the latter from bringing a prosecution characterizing their acts as genocide or crimes against humanity.

3.2.2 Critical witnesses who have testified in a public national trial and who are subject to be called as witnesses from a trial before the Tribunal will be exposed to greater risks as their identities and evidence have been made public.

3.2.3 Witnesses who have experienced stress or trauma by giving evidence to a national court may be unwilling to do so a second time before the Tribunal. This creates the potential danger of evidence becoming lost to the Tribunal.

3.2.4 There is a potential of inadvertently creating inconsistent sworn testimony.

3.2.5 International publicity which would result from a trial in a Belgian court of the three persons, may create a perception of prejudice in the minds of the accused or the public and may have implications for a fair trial before the Tribunal.

3.2.6 The legal precedents created and the findings of facts made by a national court and the Tribunal with regard to the individuals involved in RTLM and the crimes they have allegedly committed, if in conflict, will be undesirable and not in the interest of Justice.

4. Other Relevant Considerations

4.1 In a spirit of cooperation, the Kingdom of Belgium is not opposed to deferring its investigations on individuals involved in RTLM to the competence of the Tribunal.

4.2 A deferral of the investigations to the Tribunal is likely to encourage governments, non-governmental organizations and other sources to furnish additional information to the Tribunal.

4.3 The Kingdom of Belgium considers it more reasonable that the Prosecutor take over the investigations, because it is in a better position than the Kingdom of Belgium to investigate and prosecute crimes committed in the Territory of Rwanda. The Tribunal is not bound by national borders; therefore, it can more easily obtain witnesses assistance and collect evidence world-wide.

4.4 Given that many witnesses critical to the Prosecutor's investigations are in Rwanda and its neighboring States and may be reluctant to travel to Belgium to testify in a national trial, the Prosecutor is in a better position to collect evidence during investigation and present it in trials before the Tribunal in Arusha.

Dated this 4th day of March 1996, Arusha, Tanzania

For the Prosecutor
The Deputy Prosecutor

Honoré Rakotomanana

UNITED NATIONS



NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No: ICTR-96-5-D

The Trial Chamber 1

**DECISION ON THE FORMAL REQUEST FOR
DEFERRAL PRESENTED BY THE PROSECUTOR**

UNITED NATIONS



NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

In the Trial Chamber 1
of the International Criminal
Tribunal for Rwanda

Prosecutor

Case No: ICTR-96-5-D
And
In The Matter Of:
An Application By The

For A Formal Request
For Deferral By Switzerland
And
In The Matter Of:
Alfred Musema

**DECISION OF THE TRIAL CHAMBER ON THE APPLICATION BY THE
PROSECUTOR FOR A FORMAL REQUEST FOR DEFERRAL TO THE
COMPETENCE OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR
RWANDA IN THE MATTER OF ALFRED MUSEMA (PURSUANT TO RULES 9
AND 10 OF THE RULES OF PROCEDURE AND EVIDENCE)**

Considering the Request dated 4 March 1996 (“the Request”), filed by the Prosecutor of the International Criminal Tribunal for Rwanda (“The International Tribunal”),

Noting that Trial Chamber 1 has been designated by the President of the International Tribunal pursuant to Rule 9 of the Rules of Procedure and Evidence (“the Rules”) of the International Tribunal to answer the Application.

Having heard the Prosecutor at a public sitting held in Arusha on 11 March 1996,

Taking Into Account the documents submitted by the Representative of the pr at the public sitting on 11 March 1996, and in particular the correspondence from the Swiss Judicial authorities and addressed by the Prosecutor.

I-The Application

1. This is an application by the Prosecutor of the International Criminal Tribunal for Rwanda, made pursuant to article 8 (2) of the Statute of the International Criminal Tribunal for Prosecution of Persons Responsible for Genocide and other Serious Violations of international Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for such acts or violations committed in the territory of neighboring States, between 1 January 1994 and 31 December 1994, and in accordance with Rule 9(iii) of the Rules of Procedure and Evidence, seeking an order from the Trial Chamber in relation to investigations and criminal proceedings being conducted by Switzerland respecting serious violations of International Humanitarian Law committed in the Prefecture of Kibuye in the territory of Rwanda between April 1994 and July 1994, and allegedly involving Alfred Musema, for a formal request to be made to the Government of Switzerland for its courts to defer to the competence of the Tribunal.

2. Pursuant to Rule 10 of the Rules, the Prosecutor has requested the Trial Chamber to issue a formal request to the Kingdom of Belgium in the following terms:

- a) The courts of Switzerland defer to the competence of the Tribunal in regard to all investigations and all criminal proceedings in respect to Alfred Musema.
- b) In regards to all such investigations and criminal proceedings of Alfred Musema the Tribunal requests that Switzerland forward to the Tribunal the results of said investigations, criminal proceedings, copies of the courts' records and judgements concerning Alfred Musema, if any.
- c) The reasons advanced by the Prosecutor in support of his proposals are:
 1. National investigations have been instituted against Alfred Musema by Switzerland for crimes alleged to have taken place in the Prefecture of Kibuye and elsewhere in Rwanda.
 2. The Prosecutor has been conducting in the Prefecture of Kibuye investigations of crimes within the jurisdiction of the Tribunal and in which Alfred Musema is a suspect.
 3. That national investigations instituted by Switzerland closely relate to, or otherwise involve, significant factual and legal questions which have implications for investigations or prosecutions before the Tribunal.

3. In his application, the Prosecutor has furnished facts which, in brief, are that in February, 1995 Switzerland decided to commence investigations in relation to Alfred

Musema, which involve investigations into allegations of murder and incitement to murder Tutsis and moderate Hutus, Alfred Musema, who was the Director of the tea factory in Gisovu, prefecture of Kibuye, was arrested by the Swiss authorities on 11 February 1995, in the territory of Switzerland, following a warrant of arrest issued by the examining magistrate investigating the case. Alfred Musema is being detained in Switzerland. The *Tribunal de division suisse* ruled that he be kept in custody, a decision which has been confirmed monthly in accordance with the applicable provisions in Swiss law (Article 56 and ff. Of the Martial Criminal Procedure); the latest such decision extends the detention period to 25 March 1996. He is suspected of having committed crimes punishable under Swiss law (Article 2, Chapter 9 and 109, Martial Criminal Code), including crimes which amount to serious violations of the Geneva Conventions of 12 August 1949 and the Additional Protocols of 8 June 1977. The Swiss examining magistrate has conducted investigations in various countries, including the Republic of Rwanda.

4. The Prosecutor has further stated that he has been investigating allegations of serious violations of international humanitarian law that occurred in the territory of the Republic of Rwanda including massacres perpetrated between April 1994 and July 1994 in the same Prefecture of Kibuye, in which Alfred Musema was allegedly involved. The Prosecutor's investigations include interviews of witnesses and the collection of documents in order to determine the truth of the allegations that the massacres, in particular in the Prefecture of Kibuye, were planned and resulted in the serial murder of a large number of people protected under international law. To the extent that his investigations essentially target people in a position of authority, the Prosecutor is of the opinion that Alfred Musema's alleged criminal responsibility might be preponderant. Indeed, Alfred Musema was Director of the tea factory in Gisovu (Prefecture of Kibuye). He is alleged to have taken advantage of his position as a Director to aid and abet the execution of serious violations of international humanitarian law. More specifically, he is alleged to have been seen repeatedly on the massacre site known as Bisesero, Prefecture of Kibuye. He is alleged to have given instruction to the killers and to have directed the attacks. Several witnesses have stated that they saw him fire on the assembled civilians. Moreover, vehicles from his factory were allegedly used to transport the killers to the massacre site. His employees and drivers were also regularly present.

5. The Prosecutor submitted that in order to develop the ongoing investigations, he must collect further essential evidence and obtain full access to the statements, documents and other findings of the investigations conducted by Switzerland in relation to Alfred Musema. According to the Prosecutor, if Switzerland continues investigations which are similar to his, a number of confusions and complications might occur. It could turn out to be detrimental to investigations before the Tribunal, in particular in relation to testimonies. It is indeed to be feared that witnesses might become reluctant to appear before successive investigators and would no longer be willing to cooperate fully and effectively in the questioning. Testimonies might thus lose credibility as the number of questionings in different conditions increases,

whereas some other witnesses might even be exposed to threats and see their lives put in danger.

II- The Analysis

6. Article 7 of the Statute of the International Tribunal extends its justification to the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994. Article 8 of the Statute states that:

“1. The International Tribunal for Rwanda and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.

2. The International Tribunal for Rwanda shall have primacy over national courts of all States. At any stage of the procedure, the International Tribunal for Rwanda may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal for Rwanda.”

Such primacy, however, can only be exercised if a formal request is addressed to the national court to defer to the competence of the International Tribunal. The Rules specify the modalities for exercising this right.

7. Rule 9 of the Rules states that:

“Where it appears to the Prosecutor that in any such investigations of criminal proceedings instituted in the courts of any State:

(...)

(...)

i) What is in issue is closely related to, or otherwise involves, significant factual or legal questions which may have implications for investigations or prosecutions before the Tribunal,

(...)

8. In order to meet the conditions for a deferral, the Prosecutor therefore must demonstrate:

- a) that national investigations or criminal proceedings have been instituted against said Alfred Musema by the Government of Switzerland respecting crimes which come under the jurisdiction of the International Tribunal;
- b) that investigations are being conducted by the Prosecutor on serious violations of international humanitarian law allegedly committed in the territory of Rwanda or in the territory of neighboring States between 1 January 1994 and 31 December 1994, in particular in respect to the violations allegedly committed by Alfred Musema;
- c) that these investigations or criminal proceedings are closely related and otherwise involve significant factual or legal questions which may have implications for the Prosecutor's investigations or prosecutions.

9. The Prosecutor states, and this is confirmed by a letter dated 22 February 1996 addressed to the Prosecutor by Major Claude Nicati, the Swiss Examining Magistrate responsible for the case, that an investigation has been instituted against said Alfred Musema in Switzerland, and that said Alfred Musema has been arrested by the Swiss authorities in compliance of a warrant of arrest issued by the Examining Magistrate responsible for the case, and that he is still in custody.

10. The Prosecutor indicates that his Office is investigating allegations of serious violations on international humanitarian law committed in the territory of the Republic of Rwanda, including the massacres executed between April and June 1994 in the Prefecture of Kibuye, and allegedly involving Alfred Musema.

11. The Prosecutor is of the opinion that the International Tribunal is the appropriate jurisdiction to examine the case of Alfred Musema, taking into account the seriousness of the factual charges and of the legal questions which are bound to be raised in connection with the case before it.

12. The Prosecutor rightly observes that Article 9.2 of the Tribunal's Statute, concerning the principle of *non bis in idem*, sets limit to the subsequent prosecution by the Tribunal of persons who have been tried by a national court for acts constituting serious violations of international humanitarian law. As Swiss criminal legislation does not contain any provision concerning genocide or crimes against humanity, Alfred Musema has only been prosecuted by the Swiss courts for charges relating to serious violations of the Geneva Conventions and of Additional Protocols. Thus, should the Prosecutor subsequently wish to prosecute Alfred Musema for the same fact, characterizing them as genocide and crimes against humanity, he would not be able to do so, if Alfred Musema had already been tried by the Swiss national courts.

13. The Prosecutor considers, not without reason, that the continuation of parallel investigations by the Swiss courts and the International Tribunal might be detrimental to the investigations, including the testimonies. As they are repeated, testimonies can lose their credibility, not to mention the risk of causing the witnesses to be distrustful; moreover, the witnesses might be traumatized and even threatened of bodily harm.

14. The Swiss Government has already expressed its willingness to cooperate with the International Tribunal. Such willingness is demonstrated by the decision by the *Conseil fédéral suisse*, of 20 March 1995, to implement on their own Resolution 955 of the Security Council of the United Nations. Consequently, a federal decree was adopted on 21 December 1995, governing the cooperation with the International Tribunal and to order provisional measures to maintain the status quo on the order of the International Tribunal. At the hearing on 11 March 1996, the Prosecutor has submitted copies of these two documents from the Swiss Government to Trial Chamber 1.

15. In the light of the foregoing, the Judges of the Trial Chamber are of the opinion that the request for deferral by the Swiss authorities in the case of Alfred Musema complies the provisions of Rule 9 of the Rules of Procedure and Evidence, and that such request should be favorably received.

III-The Decision

The Trial Chamber Based on the Foregoing Determines as Follows:

Considering all the matters before it and addressed in the public hearing,

Taking into Account the provisions of Article 8 (2) of the Statute, and

Considering the requirements contained in Rule 9(iii) of the Rules,

The Trial Chamber consisting of Judge Laity Kama, as Presiding Judge, Judge Lennart Aspegren, and Judge Navanethem Pillay, being seized of the Request made by the Prosecutor,

Hereby Grants the said Request,

Formally Requests the Swiss Federal Government to defer to the International Tribunal all investigations and criminal proceedings being conducted against Alfred Musema,

Invites the Swiss Government to take all necessary steps, both legislative and administrative, to comply with this formal request and to notify the Registrar of the International Tribunal of the steps taken to comply with this formal request,

Requests that the Swiss Government forward to the International Tribunal the results of its investigations and criminal proceedings and a copy of the court's records and the judgement, if already delivered.

Requests that the Government of Switzerland continue to detain Alfred Musema until an indictment is established and confirmed and a warrant of arrest is issued against him by the International Tribunal,

The Trial Chamber requests the Registrar of the International Tribunal to notify the Government of Switzerland of this Decision and Order.

Dated this 12th day of May 1996
Arusha

Laity Kama,
President

Lennart Aspegren,
Judge

Navanethem Pillay,
Judge

XIII

Eliezer Niyitegeka

ICTR-96-14-I

Indictment:

Confirmation of Indictment:

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No: ICTR-

THE PROSECUTOR OF THE TRIBUNAL

AGAINST

ELIEZER NIYITEGEKA

1. The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to his authority under Article 17 of the Statute for Rwanda (hereinafter, “the Statute of the Tribunal”), charges:

Eliezer Niyitegeka

With Genocide, Conspiracy to Commit Genocide, Crimes Against Humanity, and Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II as set forth below

2. the Present indictment charges an individual who committed serious violations of international humanitarian law in the area known as Bisesero in Gishyita and Gisovu communes, Kibuye Prefecture, in the Territory of Rwanda where thousands of men, women and children were killed and a large number of persons wounded.

3. The Accused

3.1. Eliezer Niyitegeka is believed to have been born in Kibuye Prefecture. At the time of the events referred to in this indictment, Eliezer Niyitegeka was the Minister of Information of the interim government. He is believed to be presently in Bukavu, Zaire.

4. A Concise Statement of the Facts

4.1 During the events described in this indictment, Rwanda was divided into eleven Prefectures, one of which is Kibuye.

4.2 During the events referred to in this indictment, Tutsi were identified as members of an ethnic or racial group.

4.3 On 6 April 1994, the plane transporting President Juvénal Habyarimana of Rwanda crashed on its approach to Kigali airport, Rwanda. Attacks and killings of civilians began soon thereafter throughout Rwanda.

4.4 The area of Bisesero spans two communes in Kibuye Prefecture. From about 9 April 1994 through 30 June 1994, thousands of men, women and children sought

refuge in various locations in Bisesero. These men, women and children were predominantly Tutsi and were seeking refuge from attacks on Tutsis which occurred throughout the Prefecture of Kibuye.

4.5 The individuals seeking refuge in the area of Bisesero were regularly attacked, throughout the period of about 9 April 1994 through about 30 June 1994. The attackers used guns, grenades, machetes, spears, pangas, cudgels, and other weapons to kill the Tutsis in Bisesero.

4.6 At various locations and times throughout April, May and June 1994, and often in concert with others, Eliezer Niyitegeka brought to the area of Bisesero armed individuals and directed them to attack the people seeking refuge there. In addition, at various locations and times, and often in concert with others, Eliezer Niyitegeka personally attacked and killed persons seeking refuge in Bisesero.

4.7 The attacks described above resulted in thousands of deaths and numerous injuries to men, women and children within the area of Bisesero.

5. CHARGES

By his acts in relation to the events referred to above, Eliezer Niyitegeka, is individually responsible for the crimes alleged below pursuant to Article 6(1) of the Tribunal Statute:

Count 1: Eliezer Niyitegeka, during the months of April, May and June 1994, in Gisovu and Gishyita communes, Kibuye Prefecture, in the Territory of Rwanda, is responsible for the killing or causing of serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic or racial group as such, and has thereby committed GENOCIDE in violation of Article 2(3)(a) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal;

Count 2: Eliezer Niyitegeka, prior to his participation in the attacks and killings in Gisovu and Gishyita communes, Kibuye Prefecture, in the Territory of Rwanda, did conspire with others to kill or cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic or racial group as such, and has thereby committed CONSPIRACY To COMMIT GENOCIDE in violation of Article 2(3)(b) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal;

Count 3: Eliezer Niyitegeka, during the months of April, May and June 1994, in Gisovu and Gishyita communes, Kibuye Prefecture, in the Territory of Rwanda, is responsible for the murder of civilians, as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, and has thereby

committed a CRIME AGAINST HUMANITY in violation of Article 3(a) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal;
Count 4: Eliezer Niyitegeka, during the months of April, May and June 1994, in Gisovu and Gishyita communes, Kibuye Prefecture, in the Territory of Rwanda, is responsible for the extermination of civilians, as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, and has thereby committed a CRIME AGAINST HUMANITY in violation of Article 3(b) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal;

Count 5: Eliezer Niyitegeka, during the months of April, May and June 1994, in Gisovu and Gishyita communes, Kibuye Prefecture, in the Territory of Rwanda, did commit other inhumane acts, against a civilian population on political, ethnic or racial grounds, and has thereby committed a CRIME AGAINST HUMANITY in violation of Article 3(i) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal;

Count 6: Eliezer Niyitegeka during the months of April, May and June 1994, in Gisovu and Gishyita communes, Kibuye Prefecture, in the Territory of Rwanda, did commit or order others to commit, SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II thereof, in violation of Article 4 and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

July 11, 1996
Kigali, Rwanda

For the Prosecutor
The Deputy Prosecutor

Judge Honoré Rakotomanana

UNITED NATIONS



NATIONS UNIES

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA**

Arusha International Conference Centre
PO Box 6016, Arusha, Tanzania
Fax: 255 57 4373/4000 or 1 212 963 23 43
Tel.: 255 57 4207-11/4365-72 or 1 212 963 2849/2850

In Trial Chamber 1

Before: Judge Yakov A. Ostrovsky
Deputy Registrar: Mr. Hugues Vérita
On behalf of Prosecutor: Ms. Brenda Sue Thornton
Decision of: 15 July 1996

DECISION ON THE REVIEW OF THE INDICTMENT

In the Matter of

Eliezer Niyitegeka

Case No. ICTR-96-14-I

I, Yakov A. Ostrovsky, Judge of the International Criminal Tribunal for Rwanda,

Upon receiving an indictment from the Prosecutor, pursuant to Articles 17 and 18 of the Statute of the Tribunal, and Rule 47 of the Rules of procedure and Evidence,

And upon hearing the Prosecutor, represented by Ms. Brenda Sue Thornton, pursuant to Rule 47 (D) of the Rules of Procedure and Evidence and taking into consideration the documents submitted during the hearing,

Pursuant to Article 17 and 18 of the Statute of the Tribunal and Rules 28 and 47 of the Rules of Procedure and Evidence,

Confirm the indictment submitted by the Prosecutor with respect to each and every count of the indictment, and

State that from the material tendered by the Prosecutor, I am satisfied a *prima facie* case has been established with respect to each and every count as set out in the indictment, and that the acts fall within the jurisdiction of the International Criminal Tribunal for Rwanda,

Further order, after consultations with the Prosecutor, that there be no public disclosure of the Supporting Documentation submitted in support of the indictment, pursuant to Rule 53 (B) of the Rules of Procedures and Evidence.

And note the prayer of the Prosecutor that an appropriate warrant of arrest for the accused who is under detention in Belgium, pursuant to Rule 40 of the rules of Procedure and Evidence, be issued and arrangements be made for his transfer to the custody of the Tribunal.

Judge Yakov a. Ostrovsky
Trial Chamber 1
International Criminal Tribunal for Rwanda

Dated this 15th day of July, 1996,
At Arusha, Tanzania

Seat of the Tribunal
Case No ICTR-96-14-I

XIV

**Ladislav Ntaganzwa
ICTR-96-9-I**

Indictment:

Confirmation of Indictment:

Warrant of Arrest, order of surrender:

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case n°: ICTR-96-

The Prosecutor of the Tribunal
Against
Ladislav Ntaganzwa

Indictment

The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to his authority under Article 17 of the Statute of the Tribunal for Rwanda, (hereinafter “The Statute”) charges:

Ladislav Ntaganzwa

With Genocide, Direct And Public Incitement To Genocide, Crimes Against Humanity, And Violations Of Article 3 Common To The Geneva Conventions And Of Additional Protocol II, as set forth below:

The Accused

1. Ladislav Ntaganzwa (hereinafter referred to as “Ntaganzwa”), was born in the Sector of Muhambara, commune of Nyakizu and Prefecture of Butare. Ntaganzwa was the burgomaster of Nyakizu commune in Butare Prefecture during the events alleged in this indictment.

Concise Statement of Facts

2. Rwanda is divided into prefectures, each of which is governed by a prefect. The prefectures are divided into communes governed by burgomasters. Communes are further divided into sectors governed by councillors.
3. Nyakizu Commune is one of the twenty communes that comprise Butare prefecture which is located in the Southern part of Rwanda. Butare prefecture borders Burundi to the east and the south.
4. Ntaganzwa was the burgomaster of Nyakizu commune during the events alleged in this indictment. As burgomaster, Ntaganzwa was the representative of the executive power in the commune and was in charge of governmental functions within the commune. As burgomaster, Ntaganzwa also had authority over those members of the Gendarmerie Nationale stationed in the commune; Ntaganzwa also had authority over the communal police, who are normally engaged by the burgomaster of the commune.

5. Ntaganzwa was the president of the ruling party, *the Mouvement Republicain pour le Développement et la Democratie* (MRND) in the Nyakizu commune during the events alleged in this indictment.
6. In or about the month of March 1994, Ntaganzwa, the then Burgomaster of the Nyakizu commune participated in the procurement, receipt and distribution of weapons and ammunition which he reported were to be used to fight a war with the INKOTANYI. The same month and the months that followed, Ntaganzwa gave the weapons and ammunition to civilians who were undergoing military training.
7. On April 6, 1994, a plane carrying President Juvénal Habyarimana of Rwanda crashed on its approach to Kigali airport, Rwanda. Attacks and murder of civilians began soon thereafter throughout Rwanda.
8. After April 6, 1994, at the times relevant to this indictment, a state of armed conflict existed in Rwanda. The victims referred to during the events alleged in this indictment were not taking an active part in the hostilities.
9. During the events alleged in this indictment, Tutsis were identified as members of an ethnic or racial group.
10. In the week following the death of President Habyarimana, Ntaganzwa convened a meeting (hereinafter, “the meeting) in Gasasa for the residents of the sector. At the meeting, Ntaganzwa gave a speech encouraging civilians to eliminate all Tutsi from the sector.
11. On or about April 13, 1994, thousands of men, women and children (hereinafter the refugees) from various locations sought refuge in the Cyahinda parish complex, located in Cyahinda, Nyakizu commune. Most of the refugees were unarmed and were Tutsi. The refugees brought with them personal possessions including cattle, goats, and other domestic animals.
12. After the refugees had gathered in the parish complex, the refugees were surrounded by persons under Ntaganzwa’s direction, including members of the Gendarmerie Nationale. Ntaganzwa ordered the refugees to hand over to him and to the members of the Gendarmerie Nationale all items in their possession including any clubs, machetes, spears and small hoes.
13. On or about April 15, 1994, Ntaganzwa participated in the distribution of weapons to civilians and members of the Gendarmerie Nationale. On the same day, Ntaganzwa transported civilians, members of the Gendarmerie Nationale and members of the communal police to the Cyahinda parish complex where the refugees were gathered. Also on or about April 15, 1994, Ntaganzwa participated in the distribution of weapons to civilians who had surrounded the refugees.
14. On the same day, Ntaganzwa ordered members of the communal police and Gendarmerie Nationale to forcefully compel the refugees to leave the complex and return to their respective communes.
15. On or about April 15, 1994, at the complex Ntaganzwa ordered the killing of a person who tried to explain why the refugees could not return to their communes.

16. Ntaganzwa then ordered members of the Gendarmerie Nationale, communal police of Nyakizu commune, and armed civilians to attack the refugees. Ntaganzwa personally participated in the attack.
17. The attack resulted in numerous deaths and injuries to the refugees within the complex.
18. The attack also resulted in the deaths of many heads of cattle and destruction of property.
19. On or about April 20, 1994, in a neighboring sector of Gasasa, Ntaganzwa and others again participated in the separation of Tutsi from others. Tutsi were soon after killed.

Charges

Ntaganzwa is individually responsible for, under Article 6(1) of the Statute of the Tribunal, and additionally or alternatively is responsible for, as a superior for the criminal acts of his subordinates pursuant to Article 6(3) of the Tribunal Statute, the following crimes:

Count 1: GENOCIDE, violation of Article 2(3)(a) and (b), in or about the month of April 1994, in the commune of Nyakizu, territory of Rwanda, and elsewhere, by killing of members of a group with the intent to destroy, in whole or in part, an ethnic or racial group and causing serious bodily or mental harm to members of the group.

Count 2: DIRECT AND PUBLIC INCITMENT TO COMMIT GENOCIDE, in violation of Article 2(3)(c), in or about the month of April, 1994.

Count 3: CRIMES AGAINST HUMANITY, in violation of Article 3(b), in or about the month of April 1994, by exterminating members of the Tutsi population and others, as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds;

Count 4: CRIMES AGAINST HUMANITY, in violation of Article 3(a), in or about the month of April 1994, by murdering an unknown number of people, as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds;

Count 5: CRIMES AGAINST HUMANITY, in violation of Rwanda Statute Article 3(I), in or about the month of April, 1994, by committing inhumane acts, including but not limited to the deprivation of livelihood, destruction of property, and the causing of bodily harm or serious mental anguish to the members of the Tutsi population, as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds; and

Count 6: VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS,
AND OF ADDITIONAL PROTOCOL II in violation of Article 4(a) of the Statute of
the Tribunal the murder of an unknown individual and numerous others on or about
April 15, 1994.

For the Prosecutor
The Deputy Prosecutor

Judge Honoré Rakotomanana

June 17, 1996

**INTERNATIONAL CRIMINAL
TRIBUNAL FOR RWANDA**

IN THE TRIAL CHAMBER

Before: Justice TH Khan

Deputy Registrar: Mr. Hugues Vérita

On Behalf of the Prosecutor : Mr. Yacob Haile-Mariam

Decision of: 19th June 1996

DECISION ON THE REVIEW OF THE INDICTMENT

In the Matter of

Ladislav Ntaganzwa

Case No. ICTR-96-9-I

I, Justice TH Khan, Judge of the International Criminal Tribunal for Rwanda,

Upon Receiving an indictment from the Prosecutor pursuant to Articles 17 and 18 of the STATUTE of the Tribunal, and Rule 47 of the Rules of Procedure and Evidence,

And Upon Hearing the Prosecutor, represented by Mr. Yacob Haile-Mariam pursuant to Rule 47 (D) of the Rules of Procedure and Evidence, and having perused the documents placed before me at the time of hearing, and

Pursuant to Article 17 and 18 of the Statute of the Tribunal and Rules 28 and 47 of the Rules of Procedure and Evidence,

Confirm the Indictment submitted by the Prosecutor with respect to each and every count of the indictment, and

Hold that from the materials tendered by the Prosecutor, I am satisfied that a *prima facie* case has been established with respect to each and every count as set out in the indictment, and the acts charged fall within the jurisdiction of the International Criminal Tribunal for Rwanda,

Further Order, after consultation with the Prosecutor, that there be no public disclosure of the Supporting Documents submitted in support of the indictment pursuant to Rule 53(B) of the Rules of Procedure and Evidence,

And note the prayer of the Prosecutor that an appropriate warrant of arrest for the accused, who is believed to be in Zaire pursuant to Rule 40 of the Rules of Procedure and Evidence, be issued and the further prayer for the continued detention of the accused there until arrangements for his transfer to custody of the Tribunal are made.

Justice TH Khan
Judge, Trial Chamber
International Criminal Tribunal for Rwanda

Dated this 21st day of June 1996
At Arusha, Tanzania

Seat of the Tribunal,
Case No ICTR-96-9-I

UNITED NATIONS



NATIONS UNIES

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA**

Arusha International Conference Centre
PO Box 6016, Arusha, Tanzania
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**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
BEFORE A JUDGE OF THE TRIAL CHAMBER**

Before: Justice TH Khan
Deputy Registrar: Mr. Hughes Vérita
Decision of: 19th June 1996

In the matter of the Case No. ICTR-96-9-I

**THE PROSECUTOR
V.
LADISLAV NTAGANZWA**

**Warrant of Arrest
Order of Surrender**

To: The Republic of Zaire

I, Justice TH Khan, Judge of the International Criminal Tribunal for Rwanda,

Considering the United Nations Security Council Resolution 955 of 8 November 1994 and Resolution 978 of 27 February 1995, and Articles 19(2) and 28 of the Statute of the International Criminal Tribunal for Rwanda, and Rules 54 and 61 of the Rules of Procedure and Evidence adopted by the International Criminal Tribunal for Rwanda,

Considering the indictment submitted by the Prosecutor against Ladislav Ntaganzwa, and confirmed by me, Judge of the International Criminal Tribunal for Rwanda on 7 September 1996, a copy of which is annexed to this warrant of arrest,

Hereby Direct the Authorities of the Republic of Zaire to search for, arrest, and surrender to the International Criminal Tribunal for Rwanda:

Ladislav Ntaganzwa, born in the Sector of Muhambara, Commune of Nyakizu Prefecture of Butare in Rwanda. He is now believed to be in Zaire.

He is alleged to have committed on or about April 1994 in Rwanda, the following crimes: Genocide, in violation of Article 2(3)(a) and (b), Direct and Public Incitement to Commit Genocide in violation of Article 2(3)(c), Crimes against Humanity in violation of Article 3(b), Crimes against Humanity in violation of Article 3(a), Crimes against Humanity in violation of Article 3(I), Serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II in violation of Article 4 (a) of the Statute of the Tribunal, the Murder of unknown individual and numerous others.

And to advise the said Ladislav Ntaganzwa at the time of arrest and in a language he understands, of his rights as set forth in Article 20 of the Statute and *mutatis mutandis*, in Rules 42 and 43 of the Rules of Procedure and Evidence which are attached hereto and of his right to remain silent, and to caution him that any statement he makes shall be recorded and may be used in evidence. The indictment and review of the Indictment (and all other documents annexed to the present Warrant) must also be brought to the attention of the accused,

Request That the Republic of Zaire, upon the arrest of the Ladislav Ntaganzwa, promptly notify the Registrar of the International Criminal Tribunal for Rwanda, for the purposes of arranging his transfer to the custody of the International Criminal Tribunal for Rwanda, pursuant to Rule 57 of the Rules of Procedure and Evidence,

Request That the Republic of Zaire report forthwith to the Registrar of the International Criminal Tribunal for Rwanda if it is unable to execute the present Warrant of Arrest, indicating the reasons for its inability, pursuant to Rule 59 (A) of the Rules of Procedure and Evidence.

Justice TH Khan
Judge
International Criminal Tribunal for Rwanda

Dated this 21st day of June 1996,
At Arusha, Tanzania

Registrar
Arusha, Tanzania