

ICTR-97-36-DP
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Case No.: ICTR-97-36-DP

UNITED NATIONS



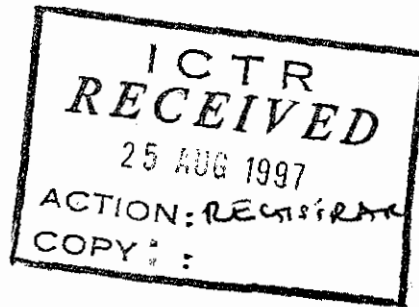
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR:FR

Before: Judge Laïty Kama

Decision of: 22 July 1997



THE PROSECUTOR
VERSUS
SAMUEL MANISHIMWE

Case No.: ICTR-97-36-DP

**ORDER FOR TRANSFER AND PROVISIONAL DETENTION
(IN ACCORDANCE WITH RULE 40 BIS OF THE RULES)**

Office of the Prosecutor: Mr. Bernard A. Muna

Registry: Mr. Antoine Kesia-Mbe Mindua

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THE TRIBUNAL,

SITTING in the person of Judge Laity Kama,

HAVING RECEIVED on 21 July 1997 from the Prosecutor a request dated 15 July 1997 for the transfer and provisional detention of suspect Samuel Manishimwe, in accordance with Rule 40 *bis* of the Rules of Procedure and Evidence of the Tribunal ('the Rules');

CONSIDERING the affidavit dated 15 July 1997, attached to the said request from the Prosecutor;

HAVING HEARD the Prosecutor during a hearing held to that end on 22 July 1997;

CONSIDERING the formal request, dated 15 July 1997, addressed by the Prosecutor to the authorities of the Republic of Kenya to arrest and place in custody the suspect Samuel Manishimwe, in accordance with Rule 40 of the Rules;

CONSIDERING Resolution 955 of 8 November 1994 adopted by the United Nations Security Council, the Statute of the Tribunal, annexed to the said Resolution, particularly Article 28 of the said Statute and the pertinent provisions of the Rules, notably Rules 40 and 40 *bis*;

TAKING NOTE of the information on the identity of Samuel Manishimwe provided by the Prosecutor in the above-mentioned affidavit, according to which;

Lieutenant Samuel Manishimwe was born in Nyamitaba, Masisi region. His parents originate from Nkuli commune, Ruhengeri prefecture. He was present in the territory of the Republic of Rwanda from April to July 1994 and occupied within the Rwandan Army the post of Military Commander of Cyangugu prefecture. He is believed to be 37 years old and is currently in the territory of the Republic of Kenya.

AFTER HAVING DELIBERATED,

WHEREAS Rule 40 *bis* of the Rules provides that :

“ (...)

(B) The Judge shall order the transfer and provisional detention of the suspect if the following conditions are met:

- (I) the Prosecutor has requested a State to arrest the suspect provisionally, in accordance with Rule 40, or the suspect is otherwise detained by a State;
- (ii) after hearing the Prosecutor, the Judge considers that there is a reliable and consistent body of material which tends to show that the suspect may have committed a crime over which the Tribunal has jurisdiction; and
- (iii) the Judge considers provisional detention to be a necessary measure to prevent the escape of the suspect, injury to or intimidation of a victim or witness or the destruction of evidence, or to be otherwise necessary for the conduct of the investigation. (...)



WHEREAS the Prosecutor formally requested the authorities of the Republic of Kenya on 15 July 1997 to arrest and place the suspect Samuel Manishimwe in custody, pursuant to Rule 40 of the Rules;

WHEREAS the Prosecutor reports that she is currently investigating crimes allegedly committed by Samuel Manishimwe in the territory of the Republic of Rwanda between January and July 1994, which fall within the jurisdiction of the Tribunal;

Whereas she points out that during the period of April to July 1994, Lieutenant Samuel Manishimwe occupied within the Rwandan Army the post of Military Commander of Cyangugu prefecture;

Whereas in this capacity, Samuel Manishimwe, during this period, exercised de facto and de jure authority over his subordinates, namely the officers, non-commissioned officers and soldiers of the Rwandan Army stationed in Cyangugu;

Whereas, according to the Prosecutor, during this same period, some soldiers of the Rwandan Army stationed in Cyangugu participated in massacres of the Tutsi civilian population and they allegedly pursued, apprehended and killed several Hutu and Tutsi political opponents;

Whereas, also according the Prosecutor, Samuel Manishimwe knew or should have known that his subordinates were committing serious violations of humanitarian law and allegedly did nothing to prevent the commission of those crimes or to punish the perpetrators;

Whereas, moreover, he himself, allegedly gave orders to the soldiers of the Rwandan Armed Forces to engage in acts of genocide and crimes against humanity in the prefecture of Cyangugu;

WHEREAS the Prosecutor adds that Samuel Manishimwe allegedly personally killed certain Tutsi and moderate Hutu figures in Cyangugu prefecture as part of a systematic and widespread attack on political or ethnic grounds;

WHEREAS the Tribunal considers, based on the request submitted by the Prosecutor, on the evidence brought to its attention in the affidavit attached to the request and on the information disclosed during the hearing, that there exists a reliable and consistent body of material which tends to show that Samuel Manishimwe may have committed the crimes of genocide, crimes against humanity and violations of Article 3 of the Geneva Conventions and of Additional Protocol II, offences which fall within the jurisdiction of the Tribunal;



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WHEREAS, furthermore, the Prosecutor explained to the Tribunal that the provisional detention of Samuel Manishimwe is a necessary measure particularly to prevent the said suspect from seeking to intimidate or to cause bodily harm to victims or witnesses or to destroy evidence, inasmuch as, given the post he occupied, he is in a position to do so;

Whereas the Tribunal is thereby convinced that the provisional detention of Samuel Manishimwe is, in this case and all things considered, necessary;

FOR ALL THESE REASONS, the Tribunal considers that the request submitted by the Prosecutor for the transfer and provisional detention of Samuel Manishimwe meets the conditions required under Rule 40 *bis* (B) of the Rules and that consequently the request should be granted;

ON THESE GROUNDS,

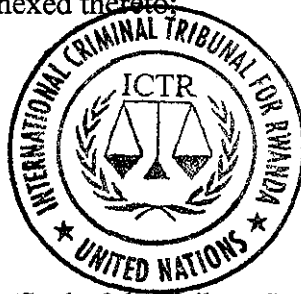
THE TRIBUNAL,

GRANTS the request submitted by the Prosecutor and, consequently, orders that, as soon as possible after his arrest, Samuel Manishimwe be transferred to the Detention Facility of the Tribunal, and placed in provisional detention for a maximum period of thirty days from the day after his transfer;

INSTRUCTS the Registrar to serve the present decision upon the Kenyan Government and to inform the Rwandan Government about it;

REQUESTS the Kenyan Government, to kindly comply with the present order of the Tribunal, pursuant to Resolution 955 of 8 November 1994, adopted by the United Nations Security Council and the Statute of the Tribunal annexed thereto;

Arusha, 22 July 1997,



(Seal of the Tribunal)


Laity Kama
Judge