

ICTR 98-39-DP

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UNITED NATIONS



NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR : FR

Before : Judge Laity Kama

Decision of : 30 June 1998

THE PROSECUTOR

VERSUS

OMAR SERUSHAGO

Case No : ICTR - 97 - 39 -DP

ORDER FOR TRANSFER AND PROVISIONAL DETENTION  
(UNDER RULE 40 BIS OF THE RULES )

Office of the Prosecutor : Mr. Matar Diop

Registry : Ms Prisca M. Nyambe

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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NAME / NOM: PRISCA M. NYAMBE

SIGNATURE: *Prisca M. Nyambe* DATE: 15-7-98

L1257

CASE No.: ICTR -97- 39-DP

**THE TRIBUNAL,**

SITTING in the person of Judge Laity Kama ;

HAVING RECEIVED on 16 June 1998, from the Prosecutor, a request for the transfer and provisional detention of the suspect Omar Serushago, born in 1961, in Rubavu *Commune*, Gisenyi *Prefecture*, Republic of Rwanda, in accordance with Rule 40 *bis* of the Rules of Procedure and Evidence of the Tribunal (“the Rules”);

CONSIDERING the affidavit dated 15 June 1998, attached to the said request from the Prosecutor and signed by Maxwell Nkole, Commander of Investigations at the Office of the Prosecutor ;

HAVING HEARD the Prosecutor during a hearing held to that end on 29 June 1998 ;

CONSIDERING the formal request dated 6 June 1998, addressed by the Prosecutor to the authorities of the Republic of Cote d’Ivoire to arrest and hold in custody the suspect Omar Serushago, pursuant to Rule 40 of the Rules of Procedure and Evidence ;

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

**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. (...).”

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WHEREAS the Prosecutor formally requested the authorities of the Republic of Cote d'Ivoire on 27 May 1998, to arrest and hold in custody the suspect Omar Serushago, pursuant to Rule 40 of the Rules;

WHEREAS the authorities of the Republic of Cote d'Ivoire granted the said request from the Prosecutor and arrested Omar Serushago on 9 June 1998 and that he has since then been held in custody;

WHEREAS the Prosecutor reports that she is currently investigating crimes allegedly committed by Omar Serushago in the territory of the Republic of Rwanda in 1994, crimes which fall within the jurisdiction of the Tribunal;

WHEREAS she points out that at the time of the events, from April to July 1994, Omar Serushago was present in Rwanda, where he was a businessman and one of the leaders of the militia in the Gisenyi Prefecture and that, in this capacity, Omar Serushago exercised an authority over his subordinates, that is to say, the militiamen;

WHEREAS the Prosecutor submits that during the said period, groups of armed militiamen, assisted by some members of the Rwandan Armed Forces, engaged in massacres of Tutsi civilians in Gisenyi;

WHEREAS, furthermore, according to the Prosecutor, during the same period, Omar Serushago and his group of militiamen harassed, detained and assassinated many Tutsis;

WHEREAS the Prosecutor submits also that Omar Serushago knew that his subordinates were committing serious violations of humanitarian law and that he participated in the distribution of arms to the militiamen, which were later used to kill the Tutsi civilian population of Gisenyi;

WHEREAS the Prosecutor had, moreover, made known that, during the period from April to July 1994, several "roadblocks" had been mounted and manned by militiamen in order to prevent Tutsi civilians from fleeing and in order to be able to exterminate them;

WHEREAS from April to July 1994, Omar Serushago manned a "roadblock" known by the name of "La Corniche"; that at this roadblock civilians trying to cross were sorted out according to the ethnic group they belonged to; and that those who were identified as Tutsis were either killed on the spot or taken to a place called "Commune rouge" to be killed there;

WHEREAS the Tribunal considers, on the basis of the request submitted by the Prosecutor, the evidence brought to its attention in the affidavit attached to the request and the information disclosed during the hearing, that there exists a reliable and consistent body of material which tends to show that Omar Serushago may have committed the crimes of genocide, crimes against humanity and



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violations of Article 3 common to the Geneva Conventions, offences which fall within the jurisdiction of the Tribunal;

WHEREAS, furthermore, the Prosecutor explained to the Tribunal that the provisional detention of Omar Serushago is a necessary measure to prevent his escape and to prevent the said suspect from seeking to intimidate or to cause bodily harm to victims or witnesses or to destroy evidence;

WHEREAS the Tribunal is thereby convinced that the provisional detention of Omar Serushago, in this case and in all things considered, is necessary ;

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

**ON THESE GROUNDS,**

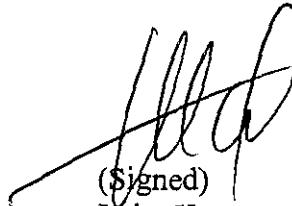
**THE TRIBUNAL,**

**GRANTS** the request submitted by the Prosecutor and, consequently, orders that Omar Serushago be transferred as soon as possible to the Detention Facility of the Tribunal, and be kept in provisional detention for a maximum period of thirty days, with effect from the day after his transfer;

**INSTRUCTS** the Registrar to serve the present decision on the Government of the Republic of Cote d'Ivoire and inform the Rwandan Government there of;

**REQUESTS** the Government of the Republic of Cote d'Ivoire 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, 30 June 1998

  
(Signed)  
Laity Kama  
Judge

(Seal of the Tribunal)

