



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

Original: English

Before: Judge Navanethem Pillay, President

Registrar: Adama Dieng

Order of: 3 April 2001

**THE PROSECUTOR
VERSUS
OMAR SERUSHAGO**

ICTR-98-39-A

**ORDER FOR THE CONTINUED DETENTION OF OMAR SERUSHAGO IN
THE ICTR DETENTION FACILITY IN ARUSHA**

Prosecutor:
Carla Del Ponte

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the
"Tribunal")**

SITTING in the person of Judge Navanethem Pillay, President;

CONSIDERING an Application by the Prosecutor, dated 19 March 2001, for the continued detention of Omar Serushago ("Serushago") at the Tribunal's Detention Facility (the "UNDF"), in Arusha, Tanzania;

CONSIDERING the documents tendered by the Prosecutor in support of her Application, namely:

- An Affidavit dated 19 March 2001 and deposed to by Rashid Rashid, a Case Manager in the Prosecutor's Office;
- Two written statements made by Serushago, dated 3 February 1998 and 20 March 2001 respectively; and;

- the Plea Agreement of 4 December 1998, between Serushago and the Office of the Prosecutor;

CONSIDERING that Serushago is currently incarcerated under conditions of detention ordered by the former president, Judge L. Kama on 17 July 1998 and 9 October 1998, respectively, which resulted in him being detained at an Annex to the UNDF, pending the determination of the case against him;

CONSIDERING that on 14 December 1998, Serushago was convicted of one count of Genocide and three counts of Crimes against Humanity and on 5 February 1999, was sentenced to 15 years imprisonment. Serushago's subsequent appeal against his sentence, was dismissed on 14 February 2000;

CONSIDERING that the judgment of 5 February 1999 ordered that Serushago's sentence

"...shall be served in a State designated by the President of the Tribunal, in consultation with the Trial Chamber, and the said designation shall be conveyed to the Government of Rwanda and the designated State by the Registry..."

CONSIDERING the Prosecutor's submission that:

(i) Serushago is a key witness in the joint trial of Theoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuza and Anatole Nsengiyumva (ICTR-98-40-T) and he is expected to testify to the connection between the leadership of the *Interahamwe* and these accused, whose trial is expected to commence at the end of June 2001;

(ii) Serushago has agreed to co-operate with the Prosecutor and there is a need to have Serushago incarcerated in Arusha in order to facilitate access to him, for purposes of this co-operation and the preparation and conduct of the trial of the aforementioned accused;

(iii) Serushago suffers no prejudice if he continues to be incarcerated at the UNDF, since the UNDF will afford him as reasonable a place of imprisonment as any state prison to which he might be transferred;

CONSIDERING the written statement signed by Serushago on 20 March 2001, wherein he confirmed his intention to:

"...cooperate with the Office of the Prosecutor and to testify when called upon in the upcoming Military Trial concerning Theoneste BAGOSORA, Anatole NSENGIYUMVA, Gratien KABILIGI and Aloys NTABAKUZE."

CONSIDERING the Registrar's memorandum of 2 April 2001, in which he states that:

(i) It is desirable for reasons of logistics and economy that Serushago remain in Arusha, until he has completed his co-operation with the Prosecutor;

(ii) He does not foresee any logistical or other difficulties, if the transfer of Serushago to a designated State is stayed, until he has testified as a prosecution witness before the Tribunal;

CONSIDERING that the provisions of Rule 54 of the Rules of Procedure and Evidence permit the Prosecutor to request any order that is necessary to facilitate investigations, trial preparations, and the conduct of trials. Serushago is a potential witness in a case before the Tribunal and his continued incarceration at the UNDF is required for this purpose;

HAVING CONSULTED with Judge L. Kama, presiding judge of the old Trial Chamber I, on this Application;

AFTER HAVING DELIBERATED,

The Tribunal is satisfied that Serushago has agreed to co-operate with the Office of the Prosecutor and that he has consented to testify as a witness in the trial of Theoneste Bagosora, Anatole Nsengiyumva, Gratien Kabiligi and Aloys Ntabakuze;

THE TRIBUNAL,

FINDS that:

- (i) Serushago's co-operation with the Prosecutor will be facilitated if he is temporarily incarcerated in close proximity to the Prosecutor's office and the courts in Arusha, Tanzania;
- (ii) in the interests of his safety and his co-operation with the Prosecutor, Serushago should continue to be incarcerated in an Annex of the UNDF;

GRANTS the Prosecutor's Application;

ORDERS:

- (i) that a decision on the designation of a State in which Omar Serushago will serve his sentence be held over, pending his co-operation with the Prosecutor and the completion of his testimony as a prosecution witness in a pending case;
- (ii) Omar Serushago shall continue to be detained under the conditions ordered on 17 July 1998 and 9 October 1998, and that this matter shall be reviewed six months from the date of this decision.

Arusha, 3 April 2001

Navanethem Pillay
President

(Seal of the Tribunal)