

ICTR-2001-63-DP
21-5-2001
(8-6)

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Hm



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

Before: Judge Mehmet Güney
Registry: Adama Dieng
Date: 21 May 2001

JUDICIAL RECORDS/ARCHIVES
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THE PROSECUTOR

v.

Siméon NSHAMIHIGO
Case No. ICTR-2001-63-DP

**ORDER FOR TRANSFER AND PROVISIONAL DETENTION
UNDER RULE 40 bis OF THE RULES OF PROCEDURE AND EVIDENCE**

The Office of the Prosecutor:
Carla Del Ponte
Kenneth C. Fleming

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (The “Tribunal”),

SITTING as Judge Mehmet Güney designated by the President of the Tribunal pursuant to Rule 28 of the Rules of Procedure and Evidence of the Tribunal (“the Rules”);

CONSIDERING the Prosecutor’s Request of 20 May 2001 under Rule 40*bis* of the Rules for an Order for the immediate transfer to the premises of the Detention Facilities of the Tribunal in Arusha (Tanzania), and for an Order for the provisional detention of SIMÉON NSHAMIHIGO, formerly *Substitut du Procureur* (Deputy Prosecutor) in the Cyangugu *Préfecture*, currently detained by the Authorities of the United Republic of Tanzania pursuant to a request by the Prosecutor in accordance with Rule 40 of the Rules;

CONSIDERING the Affidavit signed by Mr. Laurent Walpen, Chief of Investigations in the Office of the Prosecutor of the Tribunal, dated 19 May 2001, attached to the Prosecutor’s Request, indicating *inter alia* that several persons have independently identified the person known as SAMMY BAHATI WEZA, currently employed as a Defence investigator by the Tribunal, as being SIMÉON NSHAMIHIGO;

HAVING HEARD the Prosecutor in an *ex-parte* hearing held at the Seat of the Tribunal in Arusha on 21 May 2001;

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

CONSIDERING Article 19(2) and 20 of the Statute of the Tribunal (“the Statute”), and Rules 40 and 40 *bis* of the Rules;

AFTER HAVING DELIBERATED,

WHEREAS Rule 40 *bis* (B). provides that a Judge shall order the transfer and provisional detention of the suspect if:

- “(i) The Prosecutor has requested a State to arrest the suspect and to place him in custody, 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, physical or mental 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 reports that she is currently conducting investigations concerning SIMÉON NSHAMIHIGO;

WHEREAS the Prosecutor submits that there is a reliable and consistent body of material and witness statements to show that SIMÉON NSHAMIHIGO may have committed crimes over which the Tribunal has jurisdiction, namely genocide, crimes against humanity and violations of article 3 Common to the Geneva Conventions;

WHEREAS, on the basis of the information provided in the Affidavit and by the Prosecutor during the *ex-parte* hearing, the Tribunal considers that there is indeed a reliable and consistent body of material which tends to show that the suspect may have committed crimes over which the Tribunal has jurisdiction;

WHEREAS, furthermore, the Tribunal is convinced that there are risks that SIMÉON NSHAMIHIGO may escape, or evade justice, or may attempt to intimidate victims or witnesses, and that he may try to destroy evidence;

WHEREAS the Prosecutor has indicated that the Government of United Republic of Tanzania would co-operate and receive this request favourably;

FOR ALL THE ABOVE REASONS,

THE TRIBUNAL,

Pursuant to Rule 40 *bis* of the Rules, hereby,

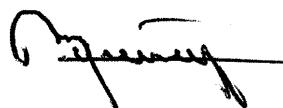
GRANTS the Request submitted by the Prosecutor;

ORDERS that the suspect SIMÉON NSHAMIHIGO be immediately transferred to the United Nations Detention Facilities of the Tribunal in Arusha and be kept in provisional detention for a maximum period of thirty days with effect from the day after his transfer to the said Detention Facilities;

INSTRUCTS the Registrar to notify the Government of the United Republic of Tanzania of this Order and to inform the Government of the Republic of Rwanda thereof;

RESPECTFULLY REQUESTS the Government of the United Republic of Tanzania to comply with this Order for transfer and provisional detention, pursuant to the Resolution 955 of 8 November adopted by the United Nations Security Council and the Statute annexed thereto, and to keep SIMÉON NSHAMIHIGO in custody until he is handed over to the Tribunal for transfer and detention at the Detention Facilities of the Tribunal.

Arusha, 21 May 2001,



Judge Mehmet Güney

(Seal of the Tribunal)

