

ICTR-2001-64-DP

383

19-6-2001

(383-381)



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

Before: Judge Lloyd Williams

Registry: Adama Dieng

Date: 19<sup>th</sup> June 2001

CONFIDENTIAL

THE PROSECUTOR

v.

Sylvestre GACUMBITSI  
Case No. ICTR-2001-64-I

JUDICIAL RECORDS ARCHIVES  
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ICTR  
2001 JUN 19 P 3:01  
*[Signature]*

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

*Office of the Prosecutor:*  
Richard KAREGYESA  
Andra MOBBERLEY

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (The "Tribunal"),

**SITTING** as Judge Lloyd Williams 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 19 June 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 SYLVESTRE GACUMBITSI, formerly *Bourgmestre of Rusumo Commune, Kibungo Préfecture*, currently being sought 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 14 June 2001, attached to the Prosecutor's Request, indicating *inter alia* that there exists a reliable and consistent body of evidence against Sylvestre GACUMBITSI

**HAVING HEARD** the Prosecutor in an *ex-parte* hearing held at the Seat of the Tribunal in Arusha on 19 June 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 Sylvestre GACUMBITSI and has indeed filed an indictment on the 13<sup>th</sup> June 2001 that is yet to be confirmed;

**WHEREAS** the Prosecutor submits that there is a reliable and consistent body of material and witness statements to show that Sylvestre GACUMBITSI may have committed crimes over which the Tribunal has jurisdiction, namely genocide and crimes against humanity.

**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 Sylvestre GACUMBITSI 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 upon arrest the suspect Sylvestre GACUMBITSI 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 Sylvestre GACUMBITSI in custody until he is handed over to the Tribunal for transfer and detention at the Detention Facilities of the Tribunal.

Arusha, 19 June 2001,



Judge Lloyd G. Williams

(Seal of the Tribunal)

