



1012-98-41-T  
7-11-2002  
(12375-12373)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

12375  
2m

**TRIAL CHAMBER III**

**Before:** Judge Pavel Dolenc  
**Registrar:** Adama Dieng  
**Date:** 7 November 2002

JUDICIAL RECORDS  
1012-98-41-T  
2002 NOV -7 A 10:50  
Pavel Dolenc

**THE PROSECUTOR**

v.

**Théoneste BAGOSORA, Gratien KABILIGI,  
Aloys NTABAKUZE & Anatole NSENGIYUMVA**

*Case No. : ICTR-98-41-T*

**FURTHER ORDER IN RESPECT OF THE TRANSFER OF DETAINED  
PROSECUTION WITNESS OMAR SERUSHAGO**

*Rules 73 and 90 bis of the Rules of Procedure and Evidence*

**To:** The Kingdom of the Netherlands

The Authorities of the United Nations International Criminal Tribunal for the former Yugoslavia at The Hague, the Netherlands

**The Office of the Prosecutor**

Barbara Mulvaney  
Chile Eboe-Osuji  
Drew White  
Segun Jegede  
Christine Graham  
Rashid Rashid

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

**SITTING** as Judge Pavel Dolenc, designated pursuant to Rule 73 (A) of the Rules of Procedure and Evidence (the “Rules”);

**CONSIDERING** the “Order for the Transfer of Detained Prosecution Witness Omar Serushago” (“the Witness”) of 2 October 2002 (“the Order of 2 October 2002”), in which the Chamber, pursuant to Rule 90 *bis* of the Rules, *inter alia*:

(i) Ordered that the Witness be transferred to the United Nations Detention Facilities in Arusha at the earliest on 4 November 2002 for a period not exceeding three months from the date of transfer;

(ii) Requested the Government of Mali to comply with the Order and to arrange for the transfer in cooperation with the Registrar of the Tribunal and the Tanzanian Government;

**RECALLING** that the Defence agreed to the transfer of the Witness for the purposes of his testimony for the Prosecution during the trial session starting on Monday 18 November 2002<sup>1</sup>;

**BEING NOW SEIZED** of the “Prosecutor’s Urgent Motion for a Variation of [the Order of 2 November 2002]”, filed on 6 November 2002;

**CONSIDERING** that the Defence has no interest in the modalities of the transfer of the Witness;

**REVIEWS** the Motion on the basis of the Prosecutor’s written brief only, in accordance with Rule 73(A) of the Rules.

**DELIBERATIONS**

1. The Prosecutor contends that, due to limited flight connections and routes between Mali and Arusha, the Witness will have to spend 24 hours in transit at Schiphol International Airport, Amsterdam, the Netherlands. Because of security concerns related to his status as a witness for the prosecution and as a convicted ‘*génocidaire*’, the Prosecutor submits that he should be held at the United Nations Detention Facility of the International Criminal Tribunal for the former Yugoslavia (UNDF-ICTY) in The Hague, The Netherlands, for that transit period.

2. We consider that these grounds warrant a further Order, as opposed to a variation of the Order of 2 October 2002.

3. The Prosecutor further relies on general security considerations in respect of the transfer of detained witnesses to justify that the Motion should be dealt with *ex parte* and that the measures should be kept confidential.

4. We are satisfied that, for security reasons and pursuant to Rule 75 of the Rules, the Motion should be dealt with *ex parte* and the measures should be kept confidential. We however consider that the non-divulgence of the Motion and of the present Order to the public and to the Defence is only warranted until the Witness has returned to Mali.

<sup>1</sup> See, Third Opening Paragraph and Footnote 1, page 2 of the Order of 2 October 2002.



**FOR THE ABOVE REASONS,**

**THE TRIBUNAL,**

**I. REQUESTS** the assistance of the Authorities of the Kingdom of the Netherlands and of all concerned Authorities at the ICTY to arrange for the Witness' transfer to the Tribunal through the Netherlands and notably, for:

(A) The transfer of the Witness from Amsterdam Schiphol International Airport to the UNDF-ICTY;

(B) The detention of the Witness during the transit period at the UNDF-ICTY;

(C) The transfer of the Witness from the UNDF-ICTY to Amsterdam Schiphol International Airport where he shall board his flight to Arusha;

**II. INSTRUCTS** the Registrar to:

(A) Transmit this Order and the Order of 2 October 2002 to the Government of the Kingdom of the Netherlands and to the concerned Authorities at the ICTY;

(B) Keep under seal the present Order and the Prosecutor's Motion until the Witness' return to Mali.

Arusha, 7 November 2002

  
Pavel Dolenc  
Judge

[Seal of the Tribunal]