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IN TRIAL CHAMBER I OF THE
INTERNATIONAL CRIMINAL TRIBUNAL
FOR RWANDA

Case Number: ICTR-96-6-D

IN THE MATTER OF:
AN APPLICATION
BY THE PROSECUTOR
FOR A FORMAL REQUEST FOR
DEFERRAL BY THE KINGDOM OF
BELGIUM

And

IN THE MATTER OF:
RADIO TELEVISION LIBRE DES MILLE

DECISION OF THE TRIAL CHAMBER ON THE APPLICATION BY THE PROSECUTOR
FOR A FORMAL REQUEST FOR DEFERRAL TO THE COMPETENCE OF THE
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA IN THE MATTER OF RADIO
TELEVISION LIBRE DES MILLE COLLINES SARL
(PURSUANT TO RULES 9 AND 10
OF THE RULES OF PROCEDURE AND EVIDENCE)

Considering the Application dated 10 March 1996 (Athe Application[≡]),
filed by the Prosecutor of the International Criminal Tribunal for Rwanda
(Athe International Tribunal[≡]),

Noting that Trial Chamber 1 has been designated by the President of the
International Tribunal pursuant to Rule 9 of the Rules of Procedure and
Evidence (Athe Rules[≡]) of the International Tribunal to answer the
Application,

Having heard the Prosecutor at a public hearing held in Arusha on 11
March 1996,

I- The Application

1. The application by the Prosecutor of the International Criminal
Tribunal for Rwanda, made pursuant to article 8 (2) of the Statute
of the International Criminal Tribunal for the Prosecution of
Persons Responsible for Genocide and other Serious Violations of

International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for Genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, and in accordance with Rule 9 (iii) of the Rules of Procedure and Evidence, seeking an order from the Trial Chamber in relation to investigations and criminal proceedings being conducted by the Kingdom of Belgium regarding serious violations of International Humanitarian Law committed in the territory of the Republic of Rwanda between 1 January and 31 December 1994 by persons associated with the private radio station Radio Television Libre des Mille Collines sarl (ARTLM≡), for a formal request to be made to the Kingdom of Belgium for its courts to defer to the competence of the Tribunal.

2. Pursuant to Rule 10 of the Rules, the Prosecutor has requested the Trial Chamber to issue a formal request to the Kingdom of Belgium in the following terms:

a) The courts of Belgium defer to the competence of the Tribunal in regard to all investigations and all criminal proceedings concerning the activities of Radio Television Libre des Mille Collines sarl as well as all persons associated with RTLM.

b) In addition, in regards to all such investigations and criminal proceedings, the Tribunal requests that the Kingdom of Belgium forward to the Tribunal the results of said investigations, criminal proceedings, copies of the courts' records and judgements concerning the activities of Radio Television Libre des Mille Collines sarl as well as persons associated with RTLM.

c) The Prosecutor advanced the following reason in support of his proposal:

1) Investigations have been instituted by the Kingdom of Belgium concerning the activities of Radio Television Libre des Mille Collines sarl as well as persons associated with RTLM for alleged serious violations of international humanitarian law in Rwanda.

2) The Prosecutor is currently conducting investigations on the activities of Radio Television Libre des Mille Collines sarl as well as on persons allegedly responsible for crimes committed through the utilisation of RTLM which fall within the jurisdiction of the Tribunal.

3) The investigations instituted by The Kingdom of Belgium involve factual and legal questions which may have implications for investigations or prosecutions before the Tribunal.

3. In support of his application, the Prosecutor has furnished following facts which, in brief are that in March 1995, the Kingdom of Belgium decided to commence investigations in relation to the activities of Radio Television Libre des Mille Collines sarl as

well as on persons associated with RTLM who allegedly committed crimes within the jurisdiction of the Tribunal through the use of RTLM. These investigations have enabled the Kingdom of Belgium to collect six or seven binders of materials concerning RTLM at the request of the Belgian examining magistrate in charge of the case.

4. The Prosecutor has further stated that he is currently investigating allegations of serious violations of international humanitarian law that allegedly occurred in the territory of the Republic of Rwanda including the broadcasts which allegedly incited genocide and violence in 1994. The Prosecutor is particularly investigating RTLM broadcasts, its management, its financing, its journalists and its broadcasters. The investigations are targeting the collection of materials including, but not limited to, recordings of RTLM broadcasts, the activities of RTLM officials, and the activities of RTLM journalists and broadcasters.
5. The Prosecutor has submitted that, in order to develop the ongoing investigations, he must collect additional essential evidence and obtain full access to the statements, documents and other findings of the investigations. He submits furthermore that if the Kingdom of Belgium continues investigations which are similar to his own, this situation might be cause for confusion and complications. There may also be repercussions for the investigations before the Tribunal particularly concerning the collection of witness statements. It is thus feared that some of the witnesses might be reluctant to appear before successive investigators, and would no longer be willing to cooperate fully and effectively during questioning. Some might even be exposed to threats and have their lives put in danger.

II ! Analysis

6. Article 7 of the Statute of the International Tribunal extends its jurisdiction to the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994. Article 8 of the Statute states that:
 - "1. The International Tribunal for Rwanda and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.
 2. The International Tribunal for Rwanda shall have primacy over the national courts of all States. At any stage of the procedure, the International Tribunal for Rwanda may formally

request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal for Rwanda."

Such primacy, however, can only be exercised if a formal request is addressed to the national court to defer to the competence of the International Tribunal. The Rules specify the modalities for exercising this right.

7. Rule 9 of the Rules states that:

"Where it appears to the Prosecutor that in any such investigations or criminal proceedings instituted in the courts of any State:

(i) (...)

(ii) (...)

(iii) what is in issue is closely related to, or otherwise involves, significant factual or legal questions which may have implications for investigations or prosecutions before the Tribunal, (...).

8. In order to meet the conditions for a deferral, the Prosecutor therefore must demonstrate:

a) that national investigations or criminal proceedings have been instituted by the Kingdom of Belgium concerning RTLM and persons associated with RTLM;

b) that an investigation is being conducted on serious violations of international humanitarian law allegedly committed in the territory of Rwanda or in the territory of neighbouring States between 1 January 1994 and 31 December 1994, in particular those regarding RTLM broadcasts and person associated with this radio station;

c) that these investigations or criminal proceedings are closely related to, or otherwise involve, factual or legal questions which may have implications for the Prosecutor's investigations or prosecutions.

9. The Prosecutor states that an investigation has been instituted by the Kingdom of Belgium concerning RTLM and the persons who allegedly committed crimes within the jurisdiction of the International Tribunal through the operation of RTLM.

10. The Prosecutor indicates that his Office is investigating the activities of RTLM and those persons allegedly responsible for crimes within the jurisdiction of the International Tribunal.

11. The Prosecutor rightly observes that Article 9.2 of the Statute of the Tribunal, concerning the principle of *non bis in idem*, sets limits to the subsequent prosecution by the Tribunal of persons who have been tried by a national court for acts constituting serious violations of international humanitarian law. As Belgian criminal legislation does not contain any provision concerning genocide or crimes against humanity, the persons prosecuted for such acts by the Belgian courts cannot be charged with acts relative to genocide or crimes against humanity. Therefore, Article 9 of the Statute would

preclude any prosecution for such charges if a decision has already been made by the Belgian national courts.

12. The Prosecutor considers that continuing parallel investigations by the Belgian courts and the International Tribunal might be detrimental to the investigations. Repeated hearings of witnesses should indeed be avoided, so as not to create mistrust and confusion in the testimonies, which would affect their credibility. This would also allow to avoid disturbing further witnesses who have already had a trauma, and submit them to possible threats.
13. The Prosecutor request indicates that the Kingdom of Belgium is not opposed to deferring its investigations on individuals involved in RTLM to the competence of the Tribunal.
14. In view of the above, the Judges of the Trial Chamber submit that the request for deferral by the Belgian authorities in the case of RTLM satisfies the conditions required by Article 9 of the Rules of Procedure and Evidence and thus reserve a favourable ruling on this matter.

III - The Decision

THE TRIAL CHAMBER,
BASED ON THE FOREGOING, DETERMINES AS FOLLOWS:

Considering all the matters before it and addressed in the public hearing,

Taking into account the provisions of Article 8 (2) of the Statute, and

Considering the requirements contained in Rule 9(iii) of the Rules,

the Trial Chamber consisting of Judge Laïty Kama, as Presiding Judge, Judge Lennart Aspergren and Judge Navanethem Pillay, being seized of the Application made by the Prosecutor,

HEREBY GRANTS the said Application,

FORMALLY REQUESTS the Government of the Kingdom of Belgium to defer to the International Tribunal all investigations and criminal proceedings currently being conducted concerning the activities of RTLM as well as persons involved in the case of RTLM.

INVITES the Government of the Kingdom of Belgium to take all necessary steps, both legislative and administrative, to comply with this formal request and to notify the Registrar of the International Tribunal of the steps taken to comply with this formal request,

REQUESTS that the Government of the Kingdom of Belgium forward to the International Tribunal the results of its investigations and criminal proceedings and a copy of the court's records and the judgement, if already delivered,

The Trial Chamber instructs the Registrar of the International Tribunal to notify the government of the Kingdom of Belgium of this Decision and Order.

Dated this 12th day of March 1996
Arusha

Laity Kama
President

Lennart Aspegren
Judge

Navanethem Pillay
Judge