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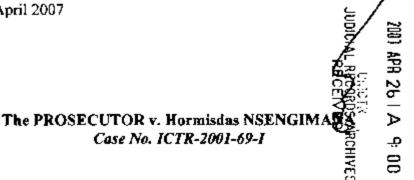
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### TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding Judge Arlette Ramaroson Judge Solomy Balungi Bossa

Registrar: Mr Adama Dieng

Date: 26 April 2007



# DECISION ON HORMISDAS NSENGIMANA' S MOTION FOR CERTIFICATION TO APPEAL THE DECISION OF 29 MARCH 2007

Office of the Prosecutor

Mr Hassan Bubacar Jallow Mr James Stewart Mr Wallace Kapaya <u>Defence Counsel</u> Mr Emmanuel Altit Mr Rémí Mazas



### THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),

SITTING as Trial Chamber II composed of Judges William H. Sekule, Presiding, Arlette Ramaroson and Solomy Balungi Bossa (the "Chamber");

**BEING SEIZED** of the "Requête aux fins de certification d'appel contre la décision de la *Chambre de première instance II relative à la 'requête du Procureur demandant à pouvoir déposer un acte d'accusation modifié' du 29 mars 2007,*" signed on 5 April 2007 and filed on 10 April 2007 (the "Motion");

**CONSIDERING** the "Prosecutor's Response to the Defence Motion 'Requête aux fins de certification d'appel contre la décision de la Chambre de première instance II relative à la 'requête du Procureur demandant à pouvoir déposer un acte d'accusation modifié", filed on 16 April 2007 (the "Prosecution's Response");

**CONSIDERING** the "*Réponse à la* Prosecutor's Response to the Defence Motion 'Requête aux fins de certification d'appel contre la décision de la Chambre de première instance II relative à la 'requête du Procureur demandant à pouvoir déposer un acte d'accusation modifié", filed on 23 April 2007 ( the " Defence Reply");

**NOTING** the Chamber's "Decision on Prosecution Motion for Leave to File an Amended Indictment" of 29 March 2007 (the "Impugned Decision");

**CONSIDERING** the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules") in particular Rule 73 (B) of the Rules;

**NOW DECIDES** the Motion pursuant to Rule 73 (A) of the Rules, on the basis of the written briefs only, as filed by the Parties.

#### INTRODUCTION

- 1. On 5 April 2007, the Defence sent an e-mail to the Registry (CMS Coordinator) informing him of its intention to file a motion for certification to appeal the Decision of 29 March 2007. On the same day, the Defence sent two other e-mails with two attachments that the Defence said to be the aforementioned motion.
- 2. On 10 April 2007, the Registry sent an e-mail to the Defence requesting it to send the appropriate motion as the documents received on 5 April 2007 were not the motion. On the same day, the Defence replied and sent its motion electronically.
- 3. On 12 April 2007, the Defence sent an e-mail to the Registry stating that what it filed was a provisional motion as it was still waiting for the French translation of the Impugned Decision.

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### HAVING DELIBERATED

- 4. The Chamber remainds the Parties that the relevant Rule which is applicable to the instant case is Rule 73 (B), taking into account that the Impugned Dec sion was rendered under Rules 50 and 73 (A) of the Rules.
- 5. The Chamber notes that the provision of Rule 73 (B) is not ambiguous: it prescribes the time limit of seven days from the filing of the Impugned Decision for the moving party to file its request for certification to appeal. The Chamber recall that the Impugned Decision was filed on 29 March 2007 whereas the certification r ption was filed on 10 April 2007 without good cause being demonstrated for the late fi ing.
- 6. Even if the motion had been filed on 5 April 2007 as claimed by the De ence, the Chamber finds such filing to be outside the time limit, which expired on 4 A oril 2007, as the deadline starts from the day of the filing of the Decision.
- 7. In light of the above, the Chamber considers that the Motion is inadmissible.

### FOR THE ABOVE REASONS, THE TRIBUNAL,

**DECLARES** the Motion inadmissible.

Arusha, 26 April 2007

William H. Sekule

Presiding Judge



[Seal of the Tribunal]

Solomy Balungi Bossa Judge



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	Chief, CMS JP. Fornélé	Deputy Chief, CMS M. Diop	Chief, JPU, CM M. Diop	<ul> <li>Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afande</li> </ul>	
From:	Chamber Mihary Andrianaivo (names)	Defence (names)	Prosecutor's Off		
Case Name:	The Prosecutor vs. I	The Prosecutor vs. Hormisdas Nsengimana Ca			
Dates:	Transmitted: 26/04/07		Document's date: 26/04/07		
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