

ICTR-05-67-I  
14-9-2007  
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UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Inés M. Weinberg de Roca, Presiding  
Lee Gacuiga Muthoga  
Robert Fromm

**Registrar:** Adama Dieng

**Date:** 14 September 2007

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[Signature]

**THE PROSECUTOR**

v.

**Fulgence KAYISHEMA**

*Case No. ICTR-2005-87-I*

**DECISION ON THE REQUEST OF THE REPUBLIC OF RWANDA FOR LEAVE  
TO APPEAR AS AMICUS CURIAE**

*Rule 74 of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**

Hassan Bubacar Jallow  
Bongani Majola  
James Stewart  
Alex Obote  
George Mugwanya  
Inncke Onsea  
François Nsanzuwera  
Florida Kabasinga

**Defence Counsel:**

[Signature]

1. On 11 June 2007, the Prosecutor submitted a request for Referral of the Indictment in the case against the Accused, *Fulgence Kayishema*, to the Republic of Rwanda (the "Referral Request").<sup>1</sup> Pursuant to Rule 11 *bis* (A) of the Rules of Procedure and Evidence (the "Rules"), the President of the Tribunal<sup>2</sup> designated this Trial Chamber to decide the Motion.<sup>3</sup> On 19 July 2007, the Republic of Rwanda filed a request for leave to appear as *amicus curiae* in the present case (the "Motion").<sup>4</sup> The Chamber notes that the two motions are connected. The Chamber is therefore of the view that it will serve the interests of justice to address them in one single decision. The Chamber further notes that the Accused *Fulgence Kayishema* is at large and not represented in the present proceedings.

2. The Chamber recalls that pursuant to Rule 74 of the Rules, it may invite any State to make submissions on any specified issue if it considers it desirable for the proper determination of the case. In the present case, the Chamber is of the view that any submission of the Republic of Rwanda, as the Referral State, as its readiness to proceed against the Accused upon referral will assist the Chamber for the proper determination of the case.

3. The Chamber further recalls Rule 11 (C) of the Rules which reads as follows:

In determining whether to refer the case in accordance with paragraph (A), the Trial Chamber shall satisfy itself that the accused will receive a fair trial in the courts of the State concerned and that the death penalty will not be imposed or carried out.

4. In order to fully assess the Referral Request, the Chamber is of the view that the application of the Republic of Rwanda to appear as *amicus curiae* should be granted.

**FOR THE FOREGOING REASONS, THE CHAMBER:**

**I. GRANTS** the Motion.

**II. INVITES** the Republic of Rwanda to file, within 15 days from the date of the present Decision its *amicus* brief. In addition, the Chamber requests the Republic of Rwanda to make submissions on the followings issues:

- (i) Whether the Republic of Rwanda intends to exercise its concurrent jurisdiction to prosecute *Fulgence Kayishema*;
- (ii) In the event of any Referral, would the Republic of Rwanda proceed against the Accused *in absentia*, should he not be apprehended?
- (iii) Copy and details of the Law abolishing the Death Penalty in the Republic of Rwanda;

<sup>1</sup> Prosecutor's Request for Referral of the Case of Fulgence Kayishema to Rwanda pursuant to Rule 11 *bis* of the Tribunal's Rules of Procedure and Evidence (the "Motion"), 11 June 2007.

<sup>2</sup> The term "Tribunal" refers to the International Criminal Tribunal for Rwanda or ICTR.

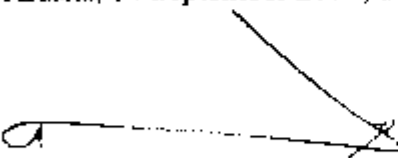
<sup>3</sup> Designation of Trial Chamber under Rule 11 *bis*, (President), 25 June 2007.

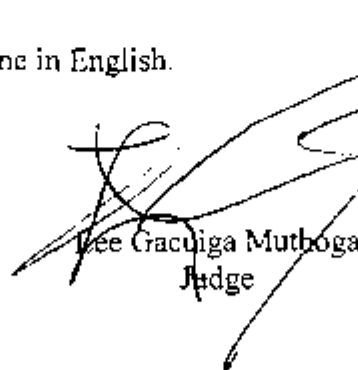
<sup>4</sup> Request by the Republic of Rwanda for leave to appear and make submissions as *amicus* (pursuant to Rule 74 of the Tribunal's Rules of Procedure and Evidence) in support of the Prosecutor's Rule 11 *bis* Request for the Referral of the case of *Fulgence Kayishema* to Rwanda.

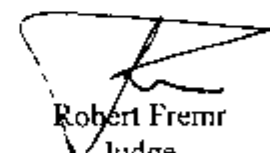
- (iv) Details of the practical arrangements to be made to implement the Accused's Right to Legal Assistance before Rwandan courts upon the Referral of the case;
- (v) Whether the fairness of the trial of an Accused person referred to Rwanda will be ensured to the same standard as that applied at the Tribunal. The Chamber notes that according to Article 2 of the *Organic Law No. 11/2007 of 16/03/2007 concerning transfer of cases to the Republic of Rwanda from the ICTR and from other States* (hereinafter *Organic Law*), only one Judge sits at the High Court of Rwanda, First Instance Referral Jurisdiction;
- (vi) Whether the Regulations governing the arrest and detention of an Accused, according to the Code of Criminal Procedure of the Republic of Rwanda, as required by Article 5 of the *Organic Law*, will afford the Accused the same protection as applied by the Tribunal;
- (vii) Whether sending the observers to monitor the proceedings before the courts in the Republic of Rwanda in accordance with Rule 11 *bis* (D) (iv) would not face any legal or practical obstacles;
- (viii) Details on specifically how a referred Indictment from the Tribunal may be adapted to make it compliant with the provisions of the Code of Criminal Procedure of Rwanda, as provided by Article 4 of the *Organic Law*;
- (ix) Any other relevant issue.

II. **REQUESTS** the Registrar to notify the Republic of Rwanda of the present Order in due course.

Arusha, 14 September 2007, done in English.

  
Inés M. Weinberg de Roca  
Presiding Judge

  
Lee Graciga Muthoga  
Judge

  
Robert Fremr  
Judge

[Seal of the Tribunal]

