



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

UNITED NATIONS  
NATIONS UNIES

OR:  
ENG

**TRIAL CHAMBER III**

**Before Judges:** Judge Khalida Rachid Khan, presiding  
Judge Lee Gacuiga Muthoga  
Judge Emile Francis Short

**Registrar:** Mr Adama Dieng

**Date:** 5 November 2007

JUDICIAL RECORDS ARCHIVES  
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**THE PROSECUTOR**

v.

**ILDEPHONSE HATEGEKIMANA**

Case No. ICTR-00-55-I

**DECISION ON DEFENCE MOTION FOR THE CONTINUATION OF  
PROCEEDINGS BEFORE THE TRIBUNAL**

**Office of the Prosecutor:**  
Mr Hassan Bubacar Jallow  
Mr Jonathan Moses  
Ms Katya Melluish  
Mr Shamus Mangan  
Ms Ineke Onsea

**Defence Counsel:**  
Mr Ahlonko Robert Dovi

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## INTRODUCTION

1. The original Indictment against Tharcisse Muvunyi, Idelphonse Nizeyimana, and Idelphonse Hategekimana was confirmed by Judge Yakov Ostrovsky on 2 February 2000 and filed on 7 November 2000.<sup>1</sup> Tharcisse Muvunyi was arrested on 7 February 2000, Idelphonse Hategekimana was arrested on 16 February 2003, and Idelphonse Nizeyimana remains at large.

2. On 11 December 2003, the Prosecution was granted leave to sever Mr Muvunyi from the original Indictment and ordered to file a separate indictment against him.<sup>2</sup> Mr Muvunyi was subsequently tried and convicted, and his appeal is pending before the Appeals Chamber.<sup>3</sup> Mr Nizeyimana and Mr Hategekimana remained indicted jointly.

3. On 9 October 2006, the Prosecution filed an application to sever Mr Hategekimana from the original Indictment and for leave to file an amended indictment against him. On 26 April 2007, a Chamber comprising Judges Khalida Rachid Khan, presiding, Lee Cacciga Muthoga, and Emile Francis Short was designated to handle pre-trial matters. On 25 September 2007, the Prosecution was granted leave to sever Mr Hategekimana from the original Indictment and to amend its Indictment against him.<sup>4</sup> The Prosecution filed the Amended Indictment on 1 October 2007.<sup>5</sup>

4. The Prosecution has requested that Mr Hategekimana's case be referred to the authorities of Rwanda for prosecution before an appropriate Rwandan court.<sup>6</sup> The Defence for Mr Hategekimana now requests that the pre-trial bench set a date for a status conference as well as for the commencement of his trial before the Tribunal.<sup>7</sup> The Prosecution filed a response to the Motion.<sup>8</sup>

## DISCUSSION

5. Rule 65 *bis* states, "[a] status conference may be convened by a Trial Chamber or a Judge thereof" in order to "organise exchanges between the parties so as to ensure expeditious trial proceedings."

<sup>1</sup> *Prosecutor v. Muvunyi et al.*, Case No. ICTR-00-55-I, Decision to Confirm the Indictment (TC), 2 February 2000.

<sup>2</sup> *Muvunyi et al.*, Case No. ICTR-00-55-I, Decision Regarding the Prosecutor's Motion for Leave to Sever an Indictment and for Directions on the Trial of Tharcisse Muvunyi (TC), 11 December 2003.

<sup>3</sup> *Prosecutor v. Muvunyi*, Case No. ICTR-00-55A-T, Judgement and Sentence (TC), 12 September 2006.

<sup>4</sup> *Prosecutor v. Nizeyimana & Hategekimana*, Case No. ICTR-55-00-I, Decision on the Prosecutor's Application for Severance and Leave to Amend the Indictment of Idelphonse Hategekimana (TC), 25 September 2007 ("Severance and Amendment Decision").

<sup>5</sup> Amended Indictment, 1 October 2007.

<sup>6</sup> Prosecutor's Request for the Referral of the Case of Idelphonse Hategekimana to Rwanda Pursuant to Rule 11 *bis* of the Tribunal's Rules of Procedure and Evidence, 7 September 2007 ("Referral Request").

<sup>7</sup> Requête aux fins de poursuite de la procédure en cours et pendante devant le TPIR, 21 September 2007 ("Motion").

<sup>8</sup> Prosecutor's Response to 'Requête aux fins de poursuite de la procédure en cours et pendante devant le TPIR', 26 September 2007 ("Response").

6. The determination of a date for the commencement of trial is a matter for the general administration of the Tribunal and its judicial calendar. In setting the judicial calendar, the Tribunal evaluates priorities taking into account, *inter alia*, the rights of all accused to have a fair trial within a reasonable time, and the availability of Tribunal facilities.<sup>9</sup>

7. The Defence submits that this trial had been scheduled to commence in September or October 2007, and in support of this submission the Defence refers the Chamber to a series of e-mails exchanged between the Defence and the Office of the President of the Tribunal as well as exchanges between the Defence and the Prosecution. According to the Defence, the "decision" to commence the trial must be followed, irrespective of the Prosecution's Referral Request. Thus, in the spirit of moving the proceedings before this Tribunal forward, the Defence asks that a status conference be scheduled.

8. The Prosecution notes that the Chamber ordered a further appearance pursuant to Rule 50 (D) in order for Mr Hategekimana to enter a plea on the new charges in the Amended Indictment, and suggests that the Defence could raise any necessary issues at that time.<sup>10</sup> The Prosecution therefore suggests that a separate status conference may not be necessary. The Prosecution further submits that the Defence request to fix a date for trial is premature given the pending Referral Request.

9. The Chamber finds that no trial date has been set in these proceedings. The e-mail exchanges enclosed by the Defence reveal nothing more than efforts to arrange a status conference with a view towards setting a possible trial date. While one e-mail from the Office of the President refers to an expected start date of September 2007, the efforts to schedule a status conference were unsuccessful and, therefore, no trial date has been set. Furthermore, a Trial Chamber has not been designated to hear the trial,<sup>11</sup> there has been no pre-trial conference pursuant to Rule 73 *bis*, and the Defence has yet to bring Rule 72 preliminary motions in response to the filing of the Amended Indictment on 1 October 2007.

10. The Chamber considers that the pending Referral Request under Rule 11 *bis* is also a relevant consideration when determining the date for commencement of trial. Moving forward with these proceedings while the Referral Request is pending may result in the needless expenditure of judicial resources. If necessary, the Chamber will re-visit the issue raised by this Motion after the Referral Request has been determined by the Chamber designated pursuant to Rule 11 *bis* (A).

<sup>9</sup> *Prosecutor v Nsengimana*, Case No. ICTR-01-69-1, Decision on Nsengimana's Motion for the Setting of a Date for a Pre-Trial Conference, a Date for the Commencement of Trial, and for Provisional Release (TC), 11 July 2005, para. 14 (citation omitted).

<sup>10</sup> See, *Severance and Amendment Decision*, para. 36.


<sup>11</sup> The present bench has been composed to handle pre-trial matters only.



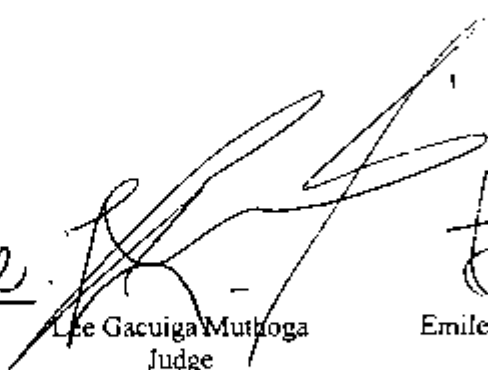
**FOR THE ABOVE REASONS, THE CHAMBER**

**DENIES** the Motion.

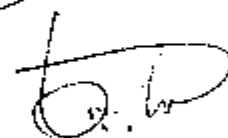
Arusha, 5 November 2007



Khalida Rachid Khan  
Presiding Judge



Lee Gacuiya Muthoga  
Judge



Emile Francis Short  
Judge

[Seal of the Tribunal]

