

ICTR-01-67-I
13-11-2007
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

OFFICE OF THE PRESIDENT

Before: Judge Dennis C. M. Byton, President of the Tribunal
Registrar: Adama Dieng
Date: 13 November 2007

THE PROSECUTOR

v.

Fulgence KAYISHEMA

Case No. ICTR-2001-67-I

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REFERRAL OF THE APPLICATION TO APPOINT DEFENCE COUNSEL

Rule 19(A) of the Rules of Procedure and Evidence

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1. On 11 June 2007 the Prosecutor filed a motion seeking the referral of the case of *Fulgence Kayishema* to the Rwandan authorities (the "Referral Request"), under Rule 11*bis* of the Rules of Procedure and Evidence ("Rules").¹ On 11 July 2007 the President designated a Trial Chamber for referral pursuant to Rule 11*bis* (A).² On 14 September 2007 the said Trial Chamber granted the application of the Republic of Rwanda to appear as *amicus curiae* in order to fully assess the prosecution Referral Request, and invited the Republic of Rwanda to file its *amicus curiae* brief addressing specified issues within 15 days.³ In a separate decision issued on the same day, the Trial Chamber dismissed an application by the Defence for Gaspard Kanyarukiga to participate as *amicus curiae* in the proceedings.⁴ On 8 November 2007 the Trial Chamber granted leave to Human Rights Watch to appear as *amicus curiae* in the proceedings, and to submit an *amicus curiae* brief on several issues concerning the ability of the Rwandan judiciary to guarantee a fair trial to Mr Kayishema, were the case referred.⁵

2. On 27 October 2007, Mr David Hooper applied, by way of letter, to the Office of the President of the ICTR, requesting the appointment of counsel to represent the interests of Mr. Kayishema in the 11*bis* referral proceedings.⁶ Mr Hooper indicated that he had previously written to the Defence Counsel and Detention Management Section on this issue and was informed by the said section that it was unable to assign defence counsel to represent the accused in his absence, unless an order to this effect was issued. Although the letter from Mr Hooper cannot be regarded as a formal motion, the President considers that the need to ensure the transparency of the proceedings, and the seriousness of the issue, warrant a formal procedure.

¹ Prosecutor's Request for the Referral of the Case of *Fulgence Kayishema* to Rwanda Pursuant to Rule 11*bis* of the Tribunal's Rules of Procedure and Evidence, filed on 11 June 2007.

² Designation of the Trial Chamber for Referral of the Case to a State Pursuant to Rule 11*bis* of the Tribunal's Rules of Procedure and Evidence, 11 July 2007.

³ 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; see also Decision on the Request of the Republic of Rwanda for Leave to Appear as *Amicus Curiae*, 14 September 2007.

⁴ Decision on *Amicus Curiae* Application of Gaspard Kanyarukiga, 14 September 2007.

⁵ Decision on *Amicus Curiae* Application of Human Rights Watch, 08 November 2007. See also Human Rights Watch Request for Leave to Appear as *Amicus Curiae* Pursuant to Rule 74 of the ICTR Rules of Procedure and Evidence, filed 25 October 2007.

⁶ Correspondence from David Hooper addressed to President Dennis Byron, Office of the President of the ICTR dated 27 October 2007.

3. The President notes that Article 19(1) of the Statute requires that the Trial Chamber shall ensure that a trial is fair and expeditious...with full respect for the rights of the accused". Moreover, the President observes that Article 20(4)(d) of the Statute provides that the rights of the accused include the right "...to have legal assistance assigned...in any case where the interests of justice so require." The President further notes this Tribunal has recognized that the right to counsel is one of the most important fair trial rights of the accused, and attaches as early as the investigative and pre-trial phases.⁷ The President considers this issue should also be considered in circumstances such as the present case, where the accused remains at large but is the subject of proceedings before the Tribunal.

4. The President is mindful that Rule 19(A) of the Rules provides that the President may coordinate the activities of the chambers and exercise functions conferred on him by the Statute and the Rules. The President further observes that Rule 45^{quater} of the Rules gives the Trial Chamber jurisdiction to instruct the Registrar to assign defence counsel, if it decides it is in the interests of justice to do so. The Chamber would also have other inherent and implied powers to give effect to the fair trial provisions of the Statute. Accordingly, the President considers that the Trial Chamber currently seized of the referral in this case is the appropriate forum to determine this matter, and therefore refers this matter to the said Trial Chamber, for its consideration and determination.

FOR THE ABOVE REASONS, THE PRESIDENT

I. REFERS the application to the Trial Chamber currently seized of the *11bis* referral in this case to determine the matter.

Arusha, 13 November 2007, done in English.


Dennis C. M. Byron

President


[Seal of the Tribunal]

⁷ *Prosecutor v. André Rwamakuba*, Case No. ICTR-98-41-R, Decision on Appropriate Remedy, Case No. 31 January 2007

The Prosecutor v. Fulgence Kayishema, Case No. ICTR-2001-67-I