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04-12-2007
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
NATIONS UNIES

OR:
ENG

TRIAL CHAMBER DESIGNATED PURSUANT TO RULE 11 *BIS*

Before Judges: Khalida Rachid Khan, presiding
Asoka de Silva
Emile Francis Short

Registrar: Adama Dieng

Date: 4 December 2007

THE PROSECUTOR

v.

ILDEPHONSE HATEGEKIMANA

Case No. ICTR-00-55B-I

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**DECISION ON REQUESTS BY THE REPUBLIC OF RWANDA, THE KIGALI
BAR ASSOCIATION, THE ICDA, AND ADAD FOR LEAVE TO APPEAR AND
MAKE SUBMISSIONS AS AMICI CURIAE**

Office of the Prosecutor:

Hassan Bubacar Jallow
Bongani Majola
Silvania Arbia
Alex Obote-Adora
Richard Karogyesa
George Munwangya
Ineke Onsea
Francois Nsanzuwera
Florida Kabasinga

Defence Counsel:

Dovi Ahlonko Robert
Dovi-Avouyi Atu-Quam

[Signature]

INTRODUCTION

1. The Prosecution has requested that Mr Hategekimana's case, currently in the pre-Trial phase before the Tribunal,¹ be referred to the authorities of Rwanda for prosecution before an appropriate Rwandan court pursuant to Rule 11 bis of the Rules of Procedure and Evidence.² In accordance with Rule 11 bis (A),³ the President designated a Trial Chamber to decide the Referral Request, comprising Judges Khalida Rachid Khan, presiding, Asoka de Silva, and Emile Francis Short.⁴

2. Several third parties have requested permission, pursuant to Rule 74, to be allowed to make submissions regarding the Referral Request. These third parties are:

- (i) the referral State, the Republic of Rwanda;⁵
- (ii) the Kigali Bar Association;⁶
- (iii) the International Criminal Defence Attorney's Association ("ICDAA");⁷ and
- (iv) ADAD (the Organization of ICTR Defence Counsel).⁸

¹ On 9 November 2007, Mr Hategekimana made a further appearance following the filing of an Amended Indictment on 1 October 2007.

² 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").

³ Unless specified otherwise, all Rules referred to in this Decision are from the Rules of Procedure and Evidence.

⁴ Designation of a Trial Chamber for the Referral of the Case of Idelphonse Hategekimana to Rwanda (President), 2 October 2007.

⁵ 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 Yussuf Munyakazi (sic) to Rwanda, filed 23 October 2007 ("Request of the Republic of Rwanda").

⁶ Application by the Kigali Bar Association for Leave to Appear as Amicus Curiae in the Matter of the Prosecutor's Request for the Referral of the Case of Hategekimana Idelphonse to Rwanda; filed 14 November 2007 ("Kigali Bar Association Request"). The Prosecution responded to this application Prosecutor's Response to 'Application by the Kigali Bar Association for Leave to Appear as Amicus Curiae in the Matter of the Prosecutor's Request for the Referral of the Case of Hategekimana Idelphonse to Rwanda' filed on 14 November 2007, filed 16 November 2007 ("Prosecution Response to Kigali Bar Association Request").

⁷ Request for Permission to File an Amicus Curiae Brief, International Criminal Defence Attorney's Association (ICDAA) Concerning the Prosecutor's Request for Referral of the Case of Idelphonse Hategekimana to Rwanda Pursuant to Rule 11 Bis of the Rules, filed 20 November 2007 ("ICDAA Request").

⁸ Motion by ADAD (the Organization of ICTR Defence Counsel) for Leave to Appear and Make Submissions as Amicus Curia (sic) In Opposition to the Prosecutor's Rule 11bis Request to Refer the Case of Idelphonse Hategekimana to Rwanda Pursuant to Rule 74, filed 26 November 2007 ("ADAD Request").

DISCUSSION

3. Rule 74 authorizes the Chamber, if it considers it desirable for determining the case, to invite or grant leave to any State, organization or person to make submissions on any specified issue.

4. The Chamber notes that before referring a case to a State, it must satisfy itself, *inter alia*, that the accused will receive a fair trial in the courts of the Referral State and that the death penalty will not be imposed or carried out.⁹

Request by the Republic of Rwanda

5. The Republic of Rwanda submits that, as the potential Referral State, it is well-placed to assist the Chamber in determining the Referral Request, and is prepared to make submissions on several relevant issues.¹⁰

6. The Chamber agrees that submissions by the Republic of Rwanda on any issues relevant to its ability to satisfy the requirements of Rule 11 *bis* would assist the Chamber in determining the Referral Request.¹¹

The Remaining Requests

7. The Chamber notes that the remaining applicants—the Kigali Bar Association, the ICDA, and ADAD— may also be able to assist it in deciding the Referral Request. The Chamber considers, however, that it will be better able to determine whether and precisely how the remaining applicants may assist it after receiving the submissions of the Defence¹² and the Republic of Rwanda. Therefore, the Chamber will not decide these requests at this time.

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Request of the Republic of Rwanda;

⁹ See Rule 11 *bis* (C). The Chamber must also determine that the Referral State is willing and adequately prepared to accept the case. See Rule 11 *bis* (A). The Appeals Chamber has found that even if a strict textual reading does not require that the State be willing and adequately prepared to accept a case if it was the territory in which the crime was committed or in which the accused was arrested, a State's willingness and capacity to adjudicate a referred case is a pre-requisite to referral. *Prosecutor v. Stankovic*, Case No. IT-96-23/2-AR11bis.I, Decision on Rule 11*Bis* Referral (AC), 1 September 2005, para. 40.

¹⁰ Request of the Republic of Rwanda, para. 9.


¹¹ See also, *Prosecutor v. Kayishema*, Case No. ICTR-2005-87-I, Decision on the Request of the Republic of Rwanda for Leave to Appear as *Amicus Curiae* (TC), 14 September 2007, para. 2; *Prosecutor v. Kanyurukiga*, Case No. ICTR-2002-78-I, Decision on the Request of the Republic of Rwanda for Leave to Appear as *Amicus Curiae* (TC), 9 November 2007, para. 5.

¹² See Scheduling Order for Filing of Submissions by the Parties, 4 December 2007.

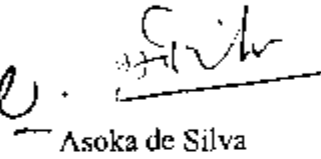
RESERVES its final determination of the Kigali Bar Association Request, the ICDDA Request, and the ADAD Request;

INVITES written submissions by the Republic of Rwanda on any issues relevant to its ability to satisfy the requirements of Rule 11 *bis*, to be filed within fourteen (14) days from the date of this Decision.

Arusha, 4 December 2007


Khalida Rachid Khan

Presiding Judge


Asoka de Silva

Judge

[Seal of the Tribunal]



With the consent and on behalf of
Emile Francis Short
Judge
(Absent during signature)