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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER DESIGNATED PURSUANT TO RULE 11 *BIS*

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

Registrar: Mr. Adama Dieng

Date: 30 April 2008

JUDICIAL RECORDS/ARCHIVES
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THE PROSECUTOR
v.

ILDEPHONSE HATEGEKIMANA

Case No. ICTR-00-55B-R11bis

**DECISION ON DEFENCE REQUEST FOR RECONSIDERATION AND
PROSECUTION REQUEST FOR EXTENSION OF TIME AND ORDER
REGARDING THE *AMICUS CURIAE* SUBMISSIONS OF THE ICDA AND
THE KIGALI BAR ASSOCIATION**

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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 adjudication before the 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. On 20 March 2008, the Chamber issued a Decision granting, *inter alia*, the requests of the International Criminal Defence Attorneys Association ("ICDAA") and the Kigali Bar Association to file submissions as *amici curiae* pursuant to Rule 74. The Chamber further ordered that all Rule 74 submissions be no more than 15 pages and be filed within 14 days. It also authorised "the Prosecution and the Defence to respond to the *amicus* submissions, if they so wish, but order[ed] that both parties shall limit their responses to a single document, divided into separate sections addressing each of the *amicus* filings that they wish to respond to." Any such response was to be no more than 30 pages, and was to be filed within seven (7) days of the filing of the Rule 74 submissions, or, in the case of the Defence, within seven (7) days of the translation of the Rule 74 submissions into French, as necessary. The Chamber also ordered the Defence to file its response to the submissions of the Republic of Rwanda within 14 days.⁵

3. On 2 April 2008, Mr. Hategekimana filed a response to the *amicus* submissions of the Republic of Rwanda.⁶

4. On 3 April 2008, the Chamber issued a Decision granting ADAD and Human Rights Watch ("HRW") additional time to file their Rule 74 submissions and reminding the Defence of its order that any response to the various Rule 74 submissions should be consolidated into one filing.⁷ HRW and ADAD filed their submissions on 10 April 2008.⁸

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, filed 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 Decision on *Amicus* Requests and Pending Defence Motions and Order for Further Submissions (TC), 20 March 2008 ("20 March 2008 Decision"), paras. 19, 21, 31.

⁶ Reponse de la Defense au Mémoire Amicus Curiae du Rwanda Produit le 10/01/2008 en Soutien a la Requete de Monsieur le Procureur en Date du 07/09/2007 Relative au Renvoi de l'acte d'accusation de l'Accuse Idelphonse Hategekimana au Rwanda, filed 2 April 2008 ("Defence Response to Rwanda's Submissions").

⁷ Decision on Requests for Extension of Time and Order Concerning the Defence's Response to the Republic of Rwanda, 3 April 2008 ("3 April 2008 Decision").

5. The ICDA filed its Rule 74 submissions on 4 April 2008.⁹

6. The Chamber is presently seized of two motions arising from the 20 March 2008 Decision and the 3 April 2008 Decision. The Defence requests that the Chamber reconsider that part of its 3 April 2008 Decision that pertained to the Defence Response to Rwanda's Submissions.¹⁰ The Prosecution seeks clarification of the 20 March 2008 Decision, as well as an extension of time within which to file its consolidated response to the various Rule 74 submissions, if necessary.¹¹ On 16 April 2008, the ICDA responded to the Prosecution Request for Clarification and Extension of Time.¹²

DISCUSSION

Status of Proposed Rule 74 Submissions from the Kigali Bar Association

7. As noted by the Prosecution, the Kigali Bar Association neither filed its submissions pursuant to Rule 74, nor requested an extension of time within which to do so within the time allotted by the Chamber in its 20 March 2008 Decision. The Chamber's inquiries with the Court Management Section ("CMS") of the Registry reveal that the 20 March 2008 Decision was circulated via e-mail to a designated representative of the Kigali Bar Association, and the Republic of Rwanda was also asked to notify the Kigali Bar Association of the 20 March 2008 Decision via Note Verbale distributed on 2 April 2008. The Chamber therefore rules that the proposed submissions of the Kigali Bar Association are time-barred.

Length of Submissions of the ICDA

8. In the 20 March 2008 Decision, the Chamber ordered all amici curiae to limit their submissions to 15 pages, excluding any supporting materials.¹³ The ICDA Submissions consist of a 32 page brief, with an appendix. The ICDA now realises that the length of its brief does not conform to the Chamber's orders, and has expressed its willingness "to shorten its brief if [the Chamber] deems it appropriate."¹⁴ For the reasons expressed in the 20 March 2008 Decision, the Chamber reiterates that all Rule 74

⁸ Further Submissions as Amicus Curiae in Response to Queries from the Chamber, filed 10 April 2008; ICTR-ADAD Submissions as Amicus Curiae, circulated 11 April 2008.

⁹ Brief of Amicus Curiae, International Criminal Defence Attorneys Association (ICDA) Concerning the Request for Referral of Idelphonse Hategekimana to Rwanda Pursuant to Rule 11 bis of the Rules of Procedure and Evidence, filed 4 April 2008 ("ICDA Submissions").

¹⁰ Requete Respectueuse de la Defense en Reconsideration de la Decision de la Chambre III Rendue le 3 Avril 08 Relativement a ses Mentions Lites au Memoire Depose le 2 Avril 2008, filed 8 April 2008 ("Defence Reconsideration Request").

¹¹ Prosecutor's Urgent Request for Clarification and/or Extension of Time within which to file a Consolidated Response to Various Amici Briefs, filed 15 April 2008 ("Prosecution Request for Clarification and Extension of Time").

¹² Response from the International Criminal Defence Attorneys Association (ICDA) to the Prosecutor's Request for Clarification and/or Extension of Time, filed 16 April 2008 ("ICDA Response to Prosecution Request").

¹³ 20 March 2008 Decision, para. 31.

¹⁴ ICDA Response to Prosecution Request, para. 6.

submissions should be limited to 15 pages, excluding supporting materials. The Chamber orders the ICDA to file its shortened brief within seven (7) days of this Decision.

Prosecution's Request for Clarification and Extension of Time

9. The Prosecution seeks clarification of the status of the Kigali Bar Association's proposed submissions, and an extension of time to address the Rule 74 submissions of HRW, the ICDA, and ADAD. The Prosecution bases its request for an extension of time on the length of these filings and the supporting materials annexed thereto, as well as the novelty and complexity of the issues raised in the filings.

10. The Chamber reiterates that the Kigali Bar Association is time-barred from filing Rule 74 submissions. With respect to the length and complexity of the filings of HRW, the ICDA, and ADAD, the Chamber notes its order that the ICDA file a shortened brief within seven (7) days of this Decision. As for the annexes filed by ADAD, the Chamber recalls that, in its 20 March 2008 Decision, it stated the following:

The Chamber does not, however, consider that allegations of international crimes committed by the Rwandan government or the alleged malfeasance or nonfeasance of the Tribunal's Office of the Prosecutor would be of assistance in determining these issues.¹⁵

To the extent ADAD's brief and supporting materials raise such allegations, the Chamber will not consider them in determining the Referral Request. The Prosecution, therefore, need not respond to such allegations.

11. The Chamber has granted the ICDA seven (7) days to re-file its Rule 74 submissions in compliance with the 20 March 2008 Decision. The Chamber considers that this additional time should be sufficient for the Prosecution to consider the submissions of HRW and ADAD. The Chamber therefore orders the Prosecution to file its consolidated response to HRW, the ICDA, and ADAD within seven (7) days of receipt of the ICDA's shortened submissions.

The Defence Request for Reconsideration of the 3 April 2008 Decision

12. The Defence requests that the Chamber reconsider its 3 April 2008 Decision, in which the Chamber noted the filing of the Defence Response to Rwanda's Submissions, and reminded the Defence of the Chamber's 20 March 2008 Decision in which it ordered the Defence to file a single consolidated response to all Rule 74 submissions. The Chamber notes that the ruling that the Kigali Bar Association's submissions are time-barred effectively renders the Defence Reconsideration Request moot, as the remaining Rule 74 submissions by HRW, ADAD, and the ICDA have all been filed in opposition to the Referral Request. The Chamber considers any Defence response to these briefs to be unnecessary. The Chamber therefore accepts the Defence Response to Rwanda's Submissions.

¹⁵ 20 March 2008 Decision, para. 25.



FOR THESE REASONS, the Chamber:

ORDERS that the proposed Rule 74 submissions of the Kigali Bar Association are time-barred;

ORDERS the ICDA to re-file its submissions in conformity with the 20 March 2008 Decision and with paragraph 10 of this Decision, within seven (7) days of this Decision;

GRANTS the Prosecution Motion in Part;

ORDERS the Prosecution to file its consolidated Response to all Rule 74 submissions within seven (7) days of receipt of the ICDA's shortened submissions;

DISMISSES the Defence Reconsideration Request as moot;

ACCEPTS the Defence Response to Rwanda's Submissions; and

REQUESTS the Registrar to notify the Republic of Rwanda, the Kigali Bar Association, the ICDA, ADAD, and HRW of the present order.

Arusha, 30 April 2008



Khanda Rachid Khac

Presiding Judge



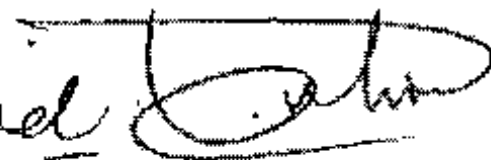
With the consent and on behalf of

Asoka de Silva

Judge

(Absent during signature)
[Seal of the Tribunal]





Emile Francois Short

Judge