

ICR-01-70-T  
10-05-2007  
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UNITED NATIONS  
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**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**

Arusha International Conference Centre  
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*The Registrar  
Le Greffier*

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2007 MAY 10 11:11

**DECISION DENYING THE APPLICATION FOR THE  
WITHDRAWAL OF MS. ANNIE OLIVIER, CO-COUNSEL FOR  
THE ACCUSED, MR EMMANUEL RUKUNDO**

1. Under Article 19(A)(ii) of the Directive on the Assignment of Defence Counsel of the International Criminal Tribunal for Rwanda<sup>1</sup> ("Tribunal" and "Directive"), the Registrar of the Tribunal ("Registrar") may withdraw the assignment of a Co-Counsel.
2. However, according to the same provision, the Registrar may only do so "in exceptional circumstances" and "at the request of Lead Counsel".
3. I am receipt of a letter dated 10 March 2007, by which Ms. Annie Olivier communicated her wish to resign from her assignment as Co-Counsel for Mr Emmanuel Rukundo ("the Accused"), citing Lead Counsel's distrust in her regard.
4. Additionally, in a letter dated 13 March 2007, Lead Counsel for the Accused Ms Aïcha Condé requested me to accept Co-Counsel's resignation and withdraw her assignment. Lead Counsel indicated that Ms Olivier had made accusations against her, in regard to which she declined to comment, and that Ms Olivier showed a lack of professionalism by failing to attend a hearing. No specification as to the date or subject-matter of the hearing at issue was offered. Based on subsequent enquiry by the Registry with Lead Counsel, it appears that Lead Counsel was referring to a status conference held on 12 March 2007 following the close of the Prosecution case.
5. Attached to Ms Condé's letter, is a letter from Ms Olivier to Ms Condé dated 10 March 2007, which casts somewhat more light on the first ground on which Lead Counsel relies as warranting the withdrawal of her Co-Counsel's assignment. In this letter, Co-Counsel advises Lead Counsel of her intention to resign due to certain personal aspects of Lead Counsel's behaviour.
6. Recalling the jurisprudence of the Appeals Chamber of the Tribunal, I note that the burden of proof of the existence of exceptional circumstances justifying a withdrawal of the assignment of Co-Counsel under Article 19(A)(ii) of the Directive "squarely lies on lead counsel", and that "each case must be considered on its own and (...) what constitutes exceptional circumstances justifying a request for withdrawal may vary from one case to another".<sup>2</sup> Further, in the words of the Appeals Chamber, "exceptional circumstances justifying withdrawal of a co-counsel might be substantially different from those applicable to withdrawal of a lead counsel".<sup>3</sup>
7. In the present case, I note that there have been difficulties in the communication between Lead Counsel and Co-Counsel and in their professional relationship. However, I am not persuaded that these difficulties amount to exceptional circumstances within the meaning of Article 19(A)(ii) of the Directive, warranting the acceptance of Co-Counsel's resignation. I expect Counsel, as professionals, to manage their disagreements in a responsible fashion that does not affect representation.

<sup>1</sup> Directive adopted on 9 January 1996 and amended, *inter alia*, on 15 May 2004.

<sup>2</sup> *Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-A, "Decision on Appellant Jean-Bosco Barayagwiza's Motion Contesting the Decision of the President Refusing to Review and Reverse the Decision of the Registrar Relating to the Withdrawal of Co-Counsel" (App. Ch.), 23 November 2006, para. 11.

<sup>3</sup> *Ibid.*

8. Furthermore, the purported resignation by Co-Counsel, and Lead Counsel's request for the acceptance of her resignation, must be considered in the light of the overall circumstances of the case; the deciding criteria being the interests of the Accused.

9. In this regard, I note that Lead Counsel advises me of the Accused's agreement to the contents of her letter dated 13 March 2007.<sup>4</sup>

10. It is noted that this is the second time since the beginning of the Accused's trial that I am seized of a request for the withdrawal of a Co-Counsel by Lead Counsel in the present case. I recall, in this regard, that I withdrew the assignment of the Accused's previous Co-Counsel, Ms Olivia Bouët, on 14 December 2006, based on the latter's unavailability.<sup>5</sup>

11. At the time, delays to the Accused's trial were avoided by the exceptional temporary designation by the Registry of an additional legal assistant pending assignment of Ms Annie Olivier as the new Co-Counsel. Lead Counsel suggests that the same be done for the interim period between the withdrawal of Ms Annie Olivier's assignment and the taking up of his or her duties by new Co-Counsel.

12. I note, however, that Mr Rukundo's trial is now at a crucial stage: the Prosecution has presented its evidence; the Defence is scheduled to file its pre-Defence submissions pursuant to Rule 73 *ter* of the Rules of Procedure and Evidence of the Tribunal ("the Rules") by 31 May 2007. Also, the Trial Chamber scheduled the commencement of the presentation of the Defence case on 2 July 2007.<sup>6</sup>

13. In the circumstances, I am not satisfied that the renewed temporary appointment of an additional legal assistant is in the interests of the Accused.

14. Besides, I note that the Registry recently contacted Ms Olivier, who indicated that she would be willing to continue representing the Accused as Co-Counsel.

**FOR ALL THE ABOVE REASONS,**

**ACTING PURSUANT TO** Articles 16 and 20 of the Statute of the Tribunal, Rule 45 of the Rules and the Directive,

<sup>4</sup> Counsel's letter dated 13 March 2007, para. 6.

<sup>5</sup> *The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-T, « Décision de retrait de la commission d'office de Maître Oliva Bouët à titre de co-Conseil de M. Emmanuel Rukundo » (Reg.), 14 December 2006.

<sup>6</sup> *Id.*, Scheduling Order Following the Pre-Defence Conference (TC), 7 May 2007. See also, *Id.*, Tr., 4 May 2007, Status Conference (closed session).

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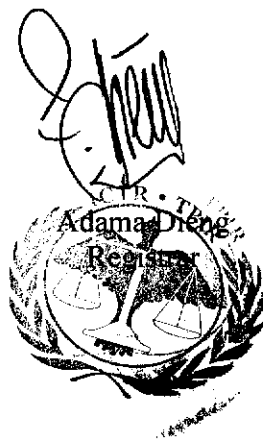
**THE REGISTRAR:**

**I. FINDS** that there are no exceptional circumstances within the meaning of Article 19(A)(ii) of the Directive to justify the withdrawal of Co-Counsel's assignment;

**II. REJECTS** Ms. Annie Olivier's offer of resignation from her assignment as Co-Counsel for Mr Emmanuel Rukundo;

**III. URGES** Lead Counsel and co-Counsel, pursuant to Article 17 of the Directive, to overcome any differences and to continue acting fairly and courteously towards each other as professional colleagues, in the interest of the defence of the Accused.

Done at Arusha, this 9<sup>th</sup> May 2007,



## TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

**COURT MANAGEMENT SECTION**  
(Art. 27 of the Directive for the Registry)

### I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

<b>To:</b>	<input checked="" type="checkbox"/> Deputy Chief CMS, Mr Matar Diop	
<b>From:</b>	<input checked="" type="checkbox"/> Other: Office of the Registrar	WS. (4095)
<b>Case Name:</b>	The Prosecutor vs. Emmanuel Rukundo	<b>Case Number:</b> ICTR-2001-70-I
<b>Dates:</b>	Transmitted: 09 May 2007	Document's date: 09 May 2007
<b>No. of Pages:</b>	4	<b>Original Language:</b> <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
<b>Title of Document:</b>	DECISION DENYING THE APPLICATION FOR THE WITHDRAWAL OF MS. ANNIE OLIVIER, CO-COUNSEL FOR THE ACCUSED MR EMMANUEL RUKUNDO	
<b>Classification Level:</b> <input type="checkbox"/> Ex-Parte <input type="checkbox"/> Strictly Confidential / Under Seal <input type="checkbox"/> Confidential <input checked="" type="checkbox"/> Public		
<b>TRIM Document Type:</b> <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Indictment  <input type="checkbox"/> Decision  <input type="checkbox"/> Disclosure  <input type="checkbox"/> Judgement         </div> <div> <input type="checkbox"/> Warrant  <input type="checkbox"/> Affidavit  <input type="checkbox"/> Order  <input type="checkbox"/> Motion         </div> <div> <input type="checkbox"/> Correspondence  <input type="checkbox"/> Notice of Appeal  <input type="checkbox"/> Appeal Book  <input type="checkbox"/> Book of Authorities         </div> <div> <input checked="" type="checkbox"/> Submission from non-parties  <input type="checkbox"/> Submission from parties  <input type="checkbox"/> Accused particulars         </div> </div>		

### II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

**CMS SHALL** take necessary action regarding translation.

☒ Filing Party hereby submits only the original, and **will not submit** any translated version.

☐ Reference material is provided in annex to facilitate translation.

**Target Language(s):**

☐ English ☒ French ☐ Kinyarwanda

**CMS SHALL NOT** take any action regarding translation.

☐ Filing Party hereby submits **BOTH** the original and the translated version for filing, as follows:

Original	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

**CMS SHALL NOT** take any action regarding translation.

☐ Filing Party **will be submitting the translated version(s)** in due course in the following language(s):

☐ English ☐ French ☐ Kinyarwanda

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### III - TRANSLATION PRIORITISATION (For Official use ONLY)

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<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: