

ICTR-00-55B-R11bis
19-6-2008
(571-548)

571
HM



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: 19 June 2008

THE PROSECUTOR

v.

ILDEPHONSE HATEGEKIMANA

Case No. ICTR-00-55B-R11bis

DIGITAL RECORDS ARCHIVES
RECEIVED

2008 JUN 19 10 5: 35

**DECISION ON PROSECUTOR'S REQUEST FOR THE REFERRAL OF THE
CASE OF ILDEPHONSE HATEGEKIMANA TO RWANDA**

Rule 11 bis of the Rules of Procedure and Evidence

Office of the Prosecutor:

Hassan Bubacar Jallow
Bongani Majola
Alex Obote-Odora
Richard Karegyesa
George Mugwangya
Inneke Onsea
François Nsanzuwera
Florida Kabasinga

Defence Counsel:

Roberto Ahlonko Dovi
Atu-Quam Claude Dovi-Avouyi

INTRODUCTION

1. The original Indictment against Ildephonse Hategekimana, Tharcisse Muvunyi, and Idelphonse Nizeyimana was confirmed by Judge Yakov Ostrovsky on 2 February 2000.¹ Tharcisse Muvunyi was arrested on 7 February 2000, Ildephonse Hategekimana was arrested on 16 February 2003, while Idelphonse Nizeyimana remains at large.

2. On 11 December 2003, the Prosecutor was granted leave to sever Mr. Muvunyi from the original Indictment and ordered to file a separate indictment against him.² Mr. Muvunyi was subsequently tried and convicted, and his appeal is pending before the Appeals Chamber.³

3. A pre-trial Chamber subsequently granted the Prosecutor leave to sever Ildephonse Hategekimana from the original Indictment and amend the Indictment against him.⁴ On 9 November 2007, Mr. Hategekimana made a further appearance following the filing of the Amended Indictment on 1 October 2007. He pleaded not guilty to all charges.

4. According to the Amended Indictment, Mr. Hategekimana was a Lieutenant in the *Forces Armées Rwandaises* ("FAR") and the Commander of Ngoma Military Camp in Butare *Préfecture*. The Amended Indictment charges Mr. Hategekimana with genocide, or alternatively, complicity in genocide, as well as murder and rape as crimes against humanity. He is charged with individual responsibility for the crimes pursuant to Article 6(1) of the ICTR Statute, as well as for having failed to prevent or punish his the crimes of his subordinates of which he knew or should have known, pursuant to Article 6(3) of the Statute.

5. Specifically, Mr. Hategekimana is alleged to have ordered, instigated, or otherwise aided and abetted his subordinate soldiers at Ngoma Camp to attack civilian Tutsi at various locations in Butare Town, and to have failed to prevent them from, or punish them for, committing such acts. He is also alleged to have planned such attacks, to have distributed weapons to facilitate them, and to have personally led a number of the attacks, which resulted in the killing of specified individuals. In addition, he is alleged to have raped, and to have ordered his subordinates to rape, Tutsi women.

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

² *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.

³ *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-T, Judgement and Sentence (TC), dated 12 September 2006.

⁴ Decision on the Prosecutor's Application for Severance and Leave to Amend the Indictment of Idelphonse Hategekimana, 25 September 2007 ("Severance and Amendment Decision"). In that Decision, the Chamber noted that the Prosecution now believed **Ildephonse** to be the proper spelling of Mr. Hategekimana's first name, and authorized the Indictment to be so amended.



*Prosecutor's Request for Referral to Rwanda Pursuant to Rule 11 bis of the Rules of Procedure and Evidence*⁵

6. The Prosecutor has requested that Mr. Hategekimana's case be referred to the authorities of Rwanda for adjudication before a Rwandan court pursuant to Rule 11 *bis*.⁶ In accordance with Rule 11 *bis* (A), the President designated a Trial Chamber to decide the Referral Request, comprising Judges Khalida Rachid Khan, presiding, Asoka de Silva, and Emile Francis Short.⁷

7. The Chamber rendered several interim decisions authorizing the Republic of Rwanda, the International Criminal Defence Attorneys Association ("ICDAA"), the *Association des Avocats de la Defence* ("ADAD"), and Human Rights Watch ("HRW") to file submissions in relation to the Referral Request as *amicus curiae* pursuant to Rule 74, and authorizing the Parties to file additional submissions in response.⁸ As a result, there are several submissions to consider in addition to the Referral Request itself.⁹ Several of the submissions include lengthy annexes.

⁵ Unless specified otherwise, all Rules referred to in this Decision are from the Rules of Procedure and Evidence.

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

⁷ Designation of a Trial Chamber for the Referral of the Case of Ildephonse (sic) Hategekimana to Rwanda (President), 2 October 2007.

⁸ Decision on Requests by the Republic of Rwanda, the Kigali Bar Association, the ICDAA, and ADAD for Leave to Appear and Make Submissions as *Amici Curiae*, 4 December 2007 ("First *Amicus Curiae* Decision"); Decision on *Amicus* Requests and Pending Defence Motions and Order for Further Submissions (TC), 20 March 2008 (the "20 March 2008 Decision"); Decision on Defence Request for Reconsideration and Prosecution Request for Extension of Time and Order Regarding the *Amicus Curiae* Submissions of the ICDAA and the Kigali Bar Association (TC), 30 April 2008.

⁹ Réponse de La Défense a: Prosecutor's Request for the Referral of the Case of Ildephonse Hategekimana to Rwanda Pursuant to Rule 11 *bis* of the Tribunal's Rules of Procedure and Evidence, filed 19 December 2007 ("Defence Response"); Prosecutor's Reply to the Defence's Response to the Prosecutor's Request for the Referral of the Case of Hategekimana to Rwanda, filed 11 January 2008 ("Prosecution Reply"); *Amicus Curiae* Brief of the Republic of Rwanda in the Matter of an Application for the Referral of the above case to Rwanda pursuant to Rule 11 *bis*, circulated 10 January 2008 ("Rwanda's Submissions"); Réponse de la Défense au Mémoire *Amicus Curiae* du Rwanda Produit le 10/01/2008 en Soutien a la Requête de Monsieur le Procureur en Date du 07/09/2007 Relative au Renvoi de l'acte d'accusation de l'Accusé Ildephonse Hategekimana au Rwanda, filed 2 April 2008 ("Defence Response to Rwanda's Submissions"); Request for Leave to Appear as *Amicus Curiae* Pursuant to Rule 74 of the ICTR Rules of Procedure and Evidence, filed 27 February 2008. HRW's proposed *amicus* brief was annexed to its request ("HRW's Original Submissions"); Further Submissions as *Amicus Curiae* in Response to Queries from the Chamber, filed 10 April 2008 ("HRW's Further Submissions"); Brief of *Amicus Curiae*, International Criminal Defence Attorneys Association (ICDAA), Concerning the Request for Referral of Ildephonse Hategekimana to Rwanda Pursuant to Rule 11 *bis* of the Rules of Procedure and Evidence, filed 7 May 2008 ("ICDAA's Submissions"); ICTR-ADAD Submissions as *Amicus Curiae*, circulated 11 April 2008 ("ADAD's Submissions"); Prosecutor's Consolidated Response to "Brief of Human Rights Watch as *Amicus Curiae*" and "Further Submissions as *Amicus Curiae* in Response to Queries from the Chamber", "Brief of *Amicus Curiae*, International Criminal Defence Lawyers (sic) Association, Concerning the

DISCUSSION

Preliminary Matter: Referral of the Original or Amended Indictment?

8. The Prosecutor filed the Referral Request on 7 September 2007, shortly before the pre-trial Chamber delivered the Severance and Amendment Decision. The Defence submits that, as a result, the pending Referral Request cannot be granted because it seeks referral of an Indictment that no longer forms the basis of the Prosecutor's case against Mr. Hategekimana.

9. The Chamber is not convinced by the Defence's argument. A Trial Chamber considering referral should rely on the most recently confirmed, or operative, indictment.¹⁰ Confirmation is part of the amendment process pursuant to Rule 50 (A)(ii). The Chamber therefore considers that the Amended Indictment is the most recently confirmed, or operative, indictment in this case and it is therefore relied upon as the basis of the Referral Request.

Rule 11 bis

10. Pursuant to Rule 11 *bis* and the jurisprudence of the Appeals Chamber, a Chamber may order referral to a State that has jurisdiction over the crimes of the accused, and is willing and adequately prepared to accept the case.¹¹ Prior to ordering referral, a Chamber must be satisfied that the accused will receive a fair trial in the courts of the referral State, and the death penalty will not be imposed or carried out.¹²

11. The ultimate decision on whether to refer is left to the discretion of the Chamber.¹³ The Chamber may consider whatever information it reasonably feels it needs

Request for Referral of Ildephonse Hategekimana to Rwanda" and "ICTR-ADAD Submissions as *Amicus Curiae*", filed 14 May 2008 ("Prosecutor's Consolidated Response to *Amici*").

¹⁰ See *The Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32-1-AR11bis.1, Decision on Milan Lukic Appeal Regarding Referral (AC), 11 July 2007, para. 12 (citing *The Prosecutor v. Savo Todović*, Case No. IT-97-25/1-AR11bis.1, Decision on Rule 11 bis Referral (AC), 23 February 2006, para. 14).

¹¹ Rule 11 *bis* (A); *The Prosecutor v. Michel Bagaragaza*, Case No. ICTR-2005-86-AR11bis, Decision on Rule 11 *bis* Appeal (AC), 30 August 2006, para. 8 ("Bagaragaza Appeal Decision"). The Appeals Chamber of the ICTY has ruled that, despite the possibility of a strict textual reading of Rule 11 *bis* (A) to the contrary, those States in whose territory the crimes were committed and/or in which the accused was arrested must also be willing and adequately prepared to accept the case. See *The Prosecutor v. Radovan Stanković*, Case No. IT-96-23/2-AR11bis.1, Decision on Rule 11 bis Referral (AC), 1 September 2005, para. 40 ("Stanković Appeal Decision"). ICTR Rule 11 *bis* (A) is, in relevant part, identical to ICTY Rule 11 *bis* (A).

¹² Rule 11 *bis* (C); In contrast to its ICTY counterpart, ICTR Rule 11 *bis* does not require the Chamber to consider the "gravity of the crimes charged and the level of responsibility of the accused." See ICTY Rule 11 *bis* (C).

¹³ See e.g., Bagaragaza Appeal Decision, para. 9.

so long as the information assists it in determining whether the proceedings following the transfer will be fair.¹⁴

Jurisdiction, Willingness, and Adequacy of Preparation

12. To determine whether a State is adequately prepared to accept a case, a Trial Chamber designated pursuant to Rule 11 *bis* must consider whether the referral State has a legal framework which criminalizes the alleged conduct of the accused and provides an adequate penalty structure.¹⁵

13. Rwanda expressed that it is willing to accept transfer of the case of Mr. Hategekimana by letter of the Prosecutor General of Rwanda addressed to the Prosecutor of the Tribunal.¹⁶

Jurisdiction

14. It is not contested that Rwandan courts have personal jurisdiction over Mr. Hategekimana, because, according to the Amended Indictment, he was a Rwandan national whose alleged crimes were committed in Rwanda.¹⁷

15. The Prosecutor and the Rwandan authorities submit that Rwanda has subject matter jurisdiction over the alleged crimes of Mr. Hategekimana. HRW submits that this is not certain, noting that Article 105 of Rwanda's Organic Law 16/2004 of 19 June 2004 *Establishing the Organization, Competence, and Functioning of Gacaca Courts* ("2004 Gacaca Law") expressly abrogated the Organic Law of 30 August 1996 on the *Organization of the Prosecution of Offences Constituting Genocide or Crimes Against Humanity Committed Since 1 October 1990* ("1996 Genocide Law"). HRW submits that, since the abrogation of the 1996 Genocide Law, there is no law in effect in Rwanda defining the crimes with which Mr. Hategekimana is charged.

16. Mr. Hategekimana is charged with genocide and crimes against humanity. The Prosecutor and the Rwandan authorities suggest several bases for subject matter jurisdiction over these crimes, of which the 1996 Genocide Law is only one. Primary amongst these are the Genocide Convention of 1948 and the four Geneva Conventions of 1949, as well as the additional protocols of 1977, all of which were binding on Rwanda prior to 1994.¹⁸ The Rwandan Constitution of 2003 ("Constitution") states that ratified

¹⁴ Stanković Appeal Decision, para. 50.

¹⁵ See e.g., Bagaragaza Appeal Decision, para. 9 (citations omitted).

¹⁶ Referral Request, Annex A: Letter from Martin Ngoga, Prosecutor General of Rwanda, to Hassan B. Jallow, Prosecutor of the ICTR. In this letter, Mr. Ngoga expressed the willingness of the Rwandan Government to accept the case of Ildephonse Hategekimana, if referred.

¹⁷ Rwandan Penal Code of 18 August 1977, as subsequently amended, Article 6 (Annex D to the Referral Request).

¹⁸ The Republic of Rwanda ratified or acceded to the Convention of 9 December 1948 on the Prevention and Punishment of the Crime of Genocide on 16 April 1975; the Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War on 5 May 1964; the Additional Protocols to the Geneva Conventions on 19 November 1984. In addition, Rwanda ratified the Convention of 26

treaties are "more binding than organic and ordinary laws."¹⁹ These treaties and conventions define genocide and crimes against humanity. The Chamber notes that the 1996 Genocide Law did not provide separate definitions of genocide and crimes against humanity, but referred to the definitions of these crimes in the conventions as the bases for their definitions in Rwandan law.²⁰

17. Organic Law N° 11/2007 of 16/03/2007 *Concerning Transfer of Cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and from Other States* ("Transfer Law") will govern Mr. Hategekimana's case if it is referred to Rwanda by the Tribunal.²¹ The Transfer Law states that persons transferred by the Tribunal to Rwanda shall be liable to prosecution only for crimes falling within the Tribunal's jurisdiction.²² This provision suggests that accused persons referred by the Tribunal to Rwanda may be tried for crimes as they are defined in the relevant Articles of the Statute of the Tribunal. Moreover, the Chamber notes that the purpose of the 2004 Gacaca Law was to establish the *gacaca* system as the primary venue for prosecution of such crimes, other than for those persons who rank in the "first category", who were to continue to be tried before Rwandan ordinary courts.²³ The Chamber understands that there have been genocide trials in Rwandan ordinary courts since 2004.²⁴ Given the status of ratified treaties in Rwandan law, the purposes of the 2004 Gacaca Law, and the language of the Transfer Law, the Chamber is satisfied that Rwandan courts have subject matter jurisdiction over genocide and crimes against humanity.

Modes of Liability

18. As for relevant modes of criminal responsibility, the Chamber notes that the Amended Indictment seeks to hold Mr. Hategekimana responsible for individual participation pursuant to Article 6(1) of the ICTR Statute, as well as for command responsibility pursuant to Article 6(3) of the Statute. Rwanda's Penal Code provides for the prosecution of principal perpetrators and accomplices for instigation, preparation and planning, commission, direct and public incitement, provision of instruments or other assistance to principle perpetrators, and for harbouring or aiding perpetrators.²⁵ The Chamber considers that the modes of criminal responsibility covered in the Rwandan Penal Code are adequate to cover the crimes of the accused as alleged in the Amended Indictment pursuant Article 6(1) of the ICTR Statute.

November 1968 on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity on 16 April 1975.

¹⁹ Constitution, Article 190.

²⁰ 1996 Genocide Law, Art. 1.

²¹ Transfer Law, Art. 1.

²² *Ibid.*, Art. 3.

²³ 2004 Gacaca Law, Articles 1-3.

²⁴ According to a report commissioned by the Prosecutor based on a mission conducted to Rwanda by the International Legal Assistance Consortium, the Rwandan ordinary courts have prosecuted 207 genocide cases between 2005 and September 2007. These numbers were culled from HGO reports. See *Justice in Rwanda: An Assessment*, (ILAC), November 2007, footnote 6.

²⁵ See generally, Articles 89, 90 and 91 of the Rwandan Penal Code.

19. The Prosecutor's and Rwanda's submissions are silent regarding command responsibility, and the Chamber is not aware of any provisions under Rwandan law that would authorize the High Court, or any Rwandan court, to hold Mr. Hategekimana criminally responsible for the failure to prevent or punish crimes he knew of or reasonably should have known of committed by his proven subordinates. The Chamber will therefore proceed on the assumption that Rwandan law does not recognise command responsibility or did not do so at the time relevant to the Amended Indictment. The Chamber notes that Amended Indictment seeks to hold Mr. Hategekimana responsible under Article 6(3) on all four counts, and cannot ignore the possibility of an acquittal on this basis should it decide to refer the case to Rwanda. The Amended Indictment is structured such that Mr. Hategekimana is to be held individually responsible under Article 6(1) and responsible as a commander under Article 6(3) for the same material facts. Under such circumstances, Mr. Hategekimana will go free in Rwanda if the evidence does not show that he planned, ordered, instigated, committed, or aided and abetted the alleged crimes, even if it does show such involvement on the part of his proven subordinates and that Mr. Hategekimana knew or had reason to know of their actions. Given the importance of command responsibility to the Amended Indictment, the Chamber is not satisfied that there is an adequate legal framework under Rwandan law which criminalizes Mr. Hategekimana's alleged conduct.²⁶

Adaptation of the Amended Indictment

20. The Transfer Law also requires the Rwandan Prosecutor General's Office to adapt any transferred indictment to make it compliant with the formal requirements of the Code of Criminal Procedure of Rwanda ("Rwandan CCP").²⁷ The Defence suggests that this would result in a violation of Mr. Hategekimana's rights because the adapted indictment will comply with laws that are less favourable to accused persons. The Defence provides examples of penalty provisions allowed by the Rwandan CCP in support of this argument. The Chamber rejects the Defence argument. The Chamber recognizes that adaptation of the indictment to comply with the laws of a referral State may be necessary

²⁶ In the case of *The Prosecutor v. Rahim Ademi and Mirko Norac*, Case No. IT-04-78-PT, Decision for Referral to the Authorities of the Republic of Croatia Pursuant to Rule 11 bis (TC), 14 September 2005, the ICTY Referral Bench reached a different conclusion. The Referral Bench noted that the 1997/2004 "Criminal Act of Croatia" ("CAC"), which provided for liability for command responsibility, may not be given retroactive effect, and thus the 1993 "Fundamental Crime Statute of Croatia" ("FCSC"), which did not explicitly provide for command responsibility, may be applied to the alleged crimes of the accused persons. In that case, the Referral Bench determined that this was not a bar to referral because (i) other provisions of the FCSC provided for liability for most of the conduct covered under Article 7(3) of the ICTY Statute, and (ii) that "if the acts that in the end can be proven would all fall outside the scope of the provisions of the law to be applied, the case against the Accused would have lost most of its significance and weight." *Ademi and Norac*, Decision for Referral to the Authorities of the Republic of Croatia Pursuant to Rule 11 bis (TC), 14 September 2005, paras. 38-46. The Chamber does not consider either of these rationales persuasive in the instant case.

²⁷ Transfer Law, Art. 4.

 7/24

to effectuate transfer, and notes that adaptation is acceptable pursuant to the jurisprudence and practice of the ICTR and ICTY regarding Rule 11 bis referrals.²⁸

21. The Defence also submits that the adaptation process may result in an indictment that will include charges outside the Tribunal's jurisdiction. Article 3 of the Transfer Law states, "[n]otwithstanding the provisions of other laws applicable in Rwanda, a person whose case transferred by the ICTR to Rwanda shall be liable to be prosecuted only for crimes falling within the jurisdiction of the ICTR." On its face, the Chamber considers that there may be some ambiguity as to whether the reference in the Transfer Law to "crimes falling within the jurisdiction of the ICTR" refers to both temporal and subject matter jurisdiction. It is not, however, for the Chamber to determine how this provision will be interpreted by Rwandan courts. Regardless, the Chamber does not consider the possibility that Mr. Hategkimana might be charged with criminal acts falling outside the temporal jurisdiction of the ICTR to be fatal to the Referral Request. This possibility does not, of itself, interfere with any of Mr. Hategkimana's rights.²⁹

Adequacy of the Penalty Structure under Rwandan Law

22. The Chamber must also consider whether there is an adequate penalty structure to punish the alleged crimes of Mr. Hategkimana under Rwandan law. The Prosecution and Rwanda suggest that the Transfer Law is controlling, and that life imprisonment is the maximum penalty available according to this law. The Chamber notes that this penalty structure is consistent with ICTR Rule 101, which allows for a maximum sentence of life imprisonment. In addition, the Chamber notes that Article 82 of the Rwandan Penal Code provides for consideration of the individual circumstances of a convicted person in determining sentence, and Article 22 of the Transfer Law states that convicted persons will be given credit for time spent in custody or pending appeal. These provisions are also consistent with ICTR Rules on sentencing.³⁰

²⁸ See Bagaragaza Appeal Decision, para. 17 (noting that the "concept of a 'case' is broader than any given charge in an indictment", and holding that the authorities in the referral State do not have to proceed under their laws with regard to each act or crime in an indictment in the same manner as the Prosecutor of the Tribunal). In addition, the Chamber notes that the ICTY has referred several cases to Bosnia and Herzegovina ("BiH"), which has a law requiring adaptation of referred indictments to render them compliant with BiH law. See e.g., *The Prosecutor v. Radovan Stanković*, Case No. IT-96-23-2-PT, Decision on Referral of Case under Rule 11 bis (Referral Bench), 17 May 2005, para. 74.

²⁹ Compare, *The Prosecutor v. Milan Lukić & Sredoje Lukić*, Case No. IT-98-32/1-PT, Decision on Referral of Case Pursuant to Rule 11 bis (Referral Bench), 5 April 2007, para. 117 (noting that the referral scheme of Rule 11 bis implies that the State should exercise its national jurisdiction to try a referred case). In *Lukić & Lukić*, the ICTY Referral Bench engaged in a long discussion of whether referral States could prosecute a referred person for additional national crimes. While the Referral Bench did not consider there to be a simple answer to this question, it did note that, where the accused was a citizen of the referral State prosecution of the accused for national crimes by the referral State was generally not problematic unless such prosecution violated the international obligations of the referral State. The Chamber approves of this reasoning, and finds no problem with the possibility that, if transferred, Rwanda may prosecute Mr. Hategkimana for international crimes that fall within the subject matter jurisdiction of the Tribunal but outside the Tribunal's temporal jurisdiction.

³⁰ See ICTR Rule 101 (B) & (C).

23. The Defence submits, however, that pursuant to Article 3 of Organic Law N° 31/2007 of 25/07/2007 *Relating to the Abolition of the Death Penalty* ("Death Penalty Abolition Law"), Mr. Hategemana may be subjected to either life imprisonment or life imprisonment with special provisions. The Chamber is not aware of any Rwandan jurisprudence interpreting the relationship between the Death Penalty Abolition Law and the Transfer Law. And it is not for the Chamber to determine how these laws will be interpreted or which law will be applied by Rwandan courts. The Chamber notes that both laws purport to repeal contrary provisions in other laws.³¹ The Death Penalty Abolition Law post dates the Transfer Law, which may lead to application of the former over the latter under the principle that a later statute removes the effect of a prior one where they are irretrievably inconsistent (*lex posterior derogat priori*). In addition, it is possible that the laws may be interpreted as being consistent, with the Death Penalty Abolition Law providing additional details on the possible legal meaning of "life imprisonment" as that phrase is used in the Transfer Law. In any case, the Chamber cannot rule out the possibility that a Rwandan court will rule that the Death Penalty Abolition Law, and particularly Articles 3 and 4 concerning life imprisonment with special provisions, to be the applicable law regarding penalties for persons transferred by the Tribunal to Rwanda.

24. Pursuant to Article 4 of the Death Penalty Abolition Law, life imprisonment with special provisions means (i) the "convicted person is not entitled to any kind of mercy, conditional release, or rehabilitation" until that person has served at least 20 years in prison, and (ii) the "convicted person is kept in isolation." The Defence argues that the provision removing the possibility of "mercy, conditional release, or rehabilitation" is in conflict with Article 27 of the ICTR Statute and ICTR Rule 124, which allow for the possibility of pardon or commutation of sentence. The Chamber rejects this argument. Article 27 and Rule 124, concerning pardon or commutation of sentence, are limited to circumstances where the legislation of the State in which a person convicted by the Tribunal is serving his sentence expressly allows for such measures. Even then, the President of the Tribunal must authorize such measures before they can take effect.³² These provisions do not operate to vest convicted persons with additional rights or to impose obligations on States which agree to imprison persons convicted by the Tribunal. By their plain language, they do not apply to persons referred by the Tribunal to the authorities of another State pursuant to Rule 11 *bis*.

25. With regard to the possibility of life imprisonment served in isolation, the Chamber notes that various human rights bodies have adopted the position that imprisonment in isolation may amount to a violation of the rights of the prisoner and should only be used in exceptional circumstances and for limited periods. For example, paragraph 6 of General Comment 20 (Forty-fourth session, 1992) by the Human Rights Committee concerning Article 7 of the International Covenant on Civil and Political Rights ("ICCPR") states that "prolonged solitary confinement of the detained or

³¹ See Death Penalty Abolition Law, Article 9; Transfer Law, Article 25.

³² ICTR Rule 125.