



THE SECRETARY-GENERAL

ICTR

4 October 2010

Dear Mr. President,

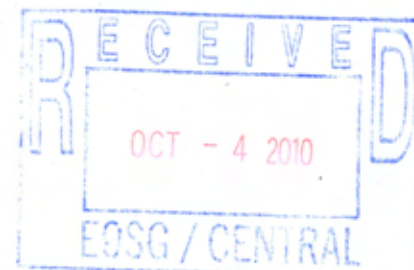
I have the honour to transmit to you the attached letters dated 20 and 23 September 2010 that I have received from Judge Dennis Byron, President of the International Criminal Tribunal for Rwanda (ICTR).

In his letter of 20 September 2010, President Byron requests that Judge Joseph Asoka de Silva and Judge Taghrid Hikmet be authorized to complete the *Ndindiliyimana et al.* case notwithstanding that their term of office will expire on 31 December 2010. The case was expected to finish by December 2010. However, due to staffing problems, it is now projected that the judgment will be delivered in early 2011.

The letter dated 23 September 2010 contains two requests. First, President Byron requests that the ICTR should be allowed to exceed temporarily the maximum number of nine ad litem judges allowed by article 11, paragraph 1, of the Statute of the ICTR. By resolution 1901 (2009), the Security Council authorized the ICTR to have up to a maximum of twelve ad litem judges at any one time, returning to a maximum of nine by 31 December 2010. The ICTR currently has eleven ad litem judges, and the cases in which they are involved will not be completed by the end of 2010. An extension of the authorization granted in resolution 1901 (2009) is therefore necessary.

Second, President Byron requests that either (a) three ad litem judges should be converted to be permanent judges, or (b) the Statute should be amended to permit ad litem judges to have the same powers as permanent judges, including taking part in elections of and being elected as President and Presiding Judge. The ICTR will be left with one permanent judge in the Trial Chambers after the redeployment of four permanent judges to the Appeals Chamber in 2011. The ICTR will therefore not have enough judges to fill the positions of President and Presiding Judge since, according to the Statute, ad litem judges are not eligible for election to these positions. The purpose

His Excellency
Mr. Joseph Deiss
President of the General Assembly
New York

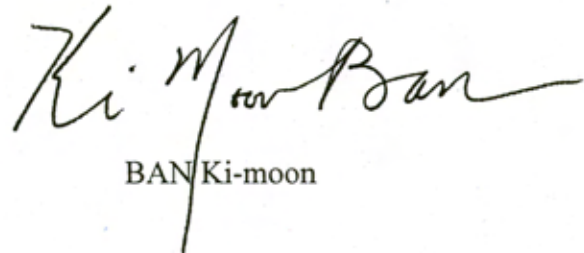


10 - 09347

of the proposal of President Byron is to enable the ICTR to fill these essential positions without having to appoint new permanent judges. President Byron states that option (a) above would have minor financial implications and that option (b) would not have any financial implications. This request was first submitted to the Security Council and the General Assembly on 25 May 2010, but was not addressed.

It falls to the General Assembly and the Security Council to consider and decide on these requests. Accordingly, I would be grateful if you would have the present letter and the attachments circulated as a document of the General Assembly.

Please accept, Mr. President, the assurances of my highest consideration.

A handwritten signature in black ink, reading "Ban Ki-moon". The signature is fluid and cursive, with the first name "Ban" and last name "Ki-moon" clearly distinguishable.

BAN Ki-moon



THE SECRETARY-GENERAL

4 October 2010

Dear Mr. President,

I have the honour to transmit to you the attached letters dated 20 and 23 September 2010 that I have received from Judge Dennis Byron, President of the International Criminal Tribunal for Rwanda (ICTR).

In his letter of 20 September 2010, President Byron requests that Judge Joseph Asoka de Silva and Judge Taghrid Hikmet be authorized to complete the *Ndindiliyimana et al.* case notwithstanding that their term of office will expire on 31 December 2010. The case was expected to finish by December 2010. However, due to staffing problems, it is now projected that the judgment will be delivered in early 2011.

The letter dated 23 September 2010 contains two requests. First, President Byron requests that the ICTR should be allowed to exceed temporarily the maximum number of nine ad litem judges allowed by article 11, paragraph 1, of the Statute of the ICTR. By resolution 1901 (2009), the Security Council authorized the ICTR to have up to a maximum of twelve ad litem judges at any one time, returning to a maximum of nine by 31 December 2010. The ICTR currently has eleven ad litem judges, and the cases to which they are assigned will not be completed before the end of 2010. An extension of the authorization granted in resolution 1901 (2009) is therefore necessary.

Second, President Byron requests that either (a) three ad litem judges should be converted to be permanent judges, or (b) the Statute should be amended to permit ad litem judges to have the same powers as permanent judges, including taking part in elections of and being elected as President and Presiding Judge. The ICTR will be left with one permanent judge in the Trial Chambers after the redeployment of four permanent judges to the Appeals Chamber in 2011. The ICTR will therefore not have enough judges to fill the positions of President and Presiding Judge since, according to the Statute, ad litem judges are not eligible for election to these positions. The purpose

His Excellency
Mr. Ruhakana Rugunda
President of the Security Council
New York

of the proposal of President Byron is to enable the ICTR to fill these essential positions without having to appoint new permanent judges. President Byron states that option (a) above would have minor financial implications and that option (b) would not have any financial implications. This request was first submitted to the Security Council and the General Assembly on 25 May 2010, but was not addressed.

It falls to the Security Council and the General Assembly to consider and decide on these requests. Accordingly, I would be grateful if you would bring the letter from President Byron to the attention of the members of the Security Council.

Please accept, Mr. President, the assurances of my highest consideration.

A handwritten signature in black ink, reading "Ban Ki-moon". The signature is fluid and cursive, with the first name "Ban" and last name "Ki-moon" clearly distinguishable. The signature is positioned above the printed name "BAN Ki-moon".

BAN Ki-moon

Inter-Office Pickup Request

Requested October 04, 2010 by 289391
Printed on October 04, 2010



700658

From: Ms. Sandar HLA
(212)963-3120
NL-03
NL-03015N
S-0294

To: Ms. Patricia O'BRIEN
(212)963-5338
M-13031
M-13
M-09001

Service Type: Oneway
Charge code:
0473

Special
Priority: 0
Package Type: A
Special
of pieces: 1
Weight: 0.0 lbs

INSTRUCTIONS

1. Please print a copy of this internal shipping label. If you are sending multiple pieces as one shipment, print one copy for each piece. You may also print an extra copy for your own records if you wish.
2. Fold this label in half along the dotted line (above).
3. Attach this label to the envelope or box to be shipped (top half facing up).
4. Take the shipment to your local mail drop for pickup on the next mail run.
5. Your pickup request will be transmitted to the mail center electronically - you do not need to call for pickup. However, if you have missed the last pickup of the day, or if it is late in the day and you don't know the time of the last pickup for your area, please call your local mail center to inquire about a late pickup.
6. You may track the progress of this shipment by referring to the "Outbound" portion of the Package List screen



United Nations



Nations Unies

Executive Office of the Secretary-General
Cabinet du Secrétaire général

To: Mr. Nambiar,

Please find attached for your approval and SG's signature 2 letters addressed to the Presidents of the SC and GA from Judge Dennis Byron, President of the International Criminal Tribunal for Rwanda (ICTR), requesting permission from Member States to authorize the extension of two judges beyond the expiry of their term of Office on 31 December 2010 in order to complete their case. The Judge also requests for several other amendments to the Statute of the ICTR.

OLA is of the view that the decisions should be made by the Security Council and the General Assembly as those bodies stand as the parent organ of the ICTR and the body which elects the judges, respectively.

A handwritten signature in purple ink, consisting of a stylized 'N' and 'H' followed by a horizontal line.

Nicholas Haysom
1 October 2010

Cc: KWS

10-09347

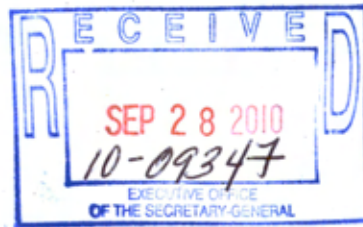
17:15
e-mail

ACTION COPY

W+
VN

KWS

{w/enclos}

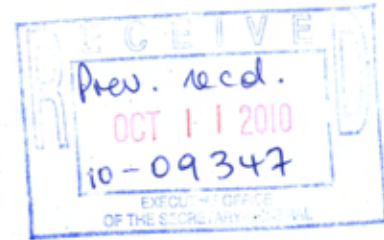


Note to the Secretary-General

Through Mr. Nambiar

ICTR requests to the Security Council

1. Judge Dennis Byron, President of the International Criminal Tribunal for Rwanda (ICTR), requests that the Secretary-General bring the attached letters dated 20 and 23 September 2010 to the attention of the Security Council and the General Assembly for appropriate action. || #
2. In the letter of 20 September 2010, President Byron requests that the Security Council authorize permanent Judge Joseph Asoka de Silva and *ad litem* Judge Taghrid Hikmet to continue to work at the ICTR beyond the expiry of their term of office on 31 December 2010 in order to complete the *Ndindiliyimana et al.* case. The completion of the case has been delayed from December 2010 to early 2011 due to staffing problems. The Security Council has granted similar authorizations before, most recently in resolution 1901 (2009) adopted on 16 December 2009.
3. President Byron submits two additional requests in his letter of 23 September 2010. The first request is that the ICTR should be allowed to exceed temporarily the maximum number of nine *ad litem* judges allowed by article 11, paragraph 1, of the Statute of the ICTR. By resolution 1901 (2009), the Security Council authorized the ICTR to have up to a maximum of twelve *ad litem* judges at any one time, returning to a maximum of nine by 31 December 2010. The ICTR currently has 11 *ad litem* judges, and the cases to which they are assigned will not be completed before the end of 2010. An extension of the authorization granted in resolution 1901 (2009) is therefore necessary.
4. Second, President Byron requests that either (a) three *ad litem* judges should be converted to be permanent judges, or (b) the Statute should be amended to permit *ad litem* judges to have the same powers as permanent judges, including taking part in elections of and being elected as President and Presiding Judge. The ICTR will be left with one permanent judge in the Trial Chambers after the redeployment of four permanent judges to the Appeals Chamber in 2011. Under the Statute of the ICTR, *ad litem* judges cannot participate in the elections of and are not eligible for election as President or Presiding Judge. Hence the purpose of the request is to enable the ICTR to fill these essential positions without having to appoint new permanent judges. President Byron states that option (a) above would have minor financial implications and that option (b) would not have any.



Note to the Secretary-General

Through Mr. Nambiar

ICTR requests to the Security Council

1. Judge Dennis Byron, President of the International Criminal Tribunal for Rwanda (ICTR), requests that the Secretary-General bring the attached letters dated 20 and 23 September 2010 to the attention of the Security Council and the General Assembly for appropriate action.
2. In the letter of 20 September 2010, President Byron requests that the Security Council authorize permanent Judge Joseph Asoka de Silva and *ad litem* Judge Taghrid Hikmet to continue to work at the ICTR beyond the expiry of their term of office on 31 December 2010 in order to complete the *Ndindiliyimana et al.* case. The completion of the case has been delayed from December 2010 to early 2011 due to staffing problems. The Security Council has granted similar authorizations before, most recently in resolution 1901 (2009) adopted on 16 December 2009.
3. President Byron submits two additional requests in his letter of 23 September 2010. The first request is that the ICTR should be allowed to exceed temporarily the maximum number of nine *ad litem* judges allowed by article 11, paragraph 1, of the Statute of the ICTR. By resolution 1901 (2009), the Security Council authorized the ICTR to have up to a maximum of twelve *ad litem* judges at any one time, returning to a maximum of nine by 31 December 2010. The ICTR currently has 11 *ad litem* judges, and the cases to which they are assigned will not be completed before the end of 2010. An extension of the authorization granted in resolution 1901 (2009) is therefore necessary.
4. Second, President Byron requests that either (a) three *ad litem* judges should be converted to be permanent judges, or (b) the Statute should be amended to permit *ad litem* judges to have the same powers as permanent judges, including taking part in elections of and being elected as President and Presiding Judge. The ICTR will be left with one permanent judge in the Trial Chambers after the redeployment of four permanent judges to the Appeals Chamber in 2011. Under the Statute of the ICTR, *ad litem* judges cannot participate in the elections of and are not eligible for election as President or Presiding Judge. Hence the purpose of the request is to enable the ICTR to fill these essential positions without having to appoint new permanent judges. President Byron states that option (a) above would have minor financial implications and that option (b) would not have any.

ICTR

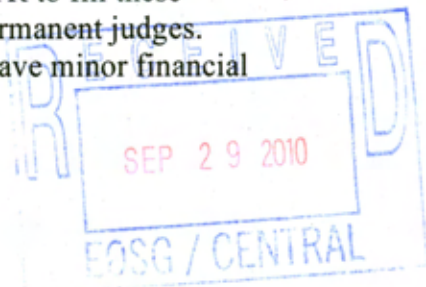
Note to the Secretary-General

Through Mr. Nambiar

ICTR requests to the Security Council



- 27/09/10
1. Judge Dennis Byron, President of the International Criminal Tribunal for Rwanda (ICTR), requests that the Secretary-General bring the attached letters dated 20 and 23 September 2010 to the attention of the Security Council and the General Assembly for appropriate action.
 2. In the letter of 20 September 2010, President Byron requests that the Security Council authorize permanent Judge Joseph Asoka de Silva and *ad litem* Judge Taghrid Hikmet to continue to work at the ICTR beyond the expiry of their term of office on 31 December 2010 in order to complete the *Ndindiliyimana et al.* case. The completion of the case has been delayed from December 2010 to early 2011 due to staffing problems. The Security Council has granted similar authorizations before, most recently in resolution 1901 (2009) adopted on 16 December 2009.
 3. President Byron submits two additional requests in his letter of 23 September 2010. The first request is that the ICTR should be allowed to exceed temporarily the maximum number of nine *ad litem* judges allowed by article 11, paragraph 1, of the Statute of the ICTR. By resolution 1901 (2009), the Security Council authorized the ICTR to have up to a maximum of twelve *ad litem* judges at any one time, returning to a maximum of nine by 31 December 2010. The ICTR currently has 11 *ad litem* judges, and the cases to which they are assigned will not be completed before the end of 2010. An extension of the authorization granted in resolution 1901 (2009) is therefore necessary.
 4. Second, President Byron requests that either (a) three *ad litem* judges should be converted to be permanent judges, or (b) the Statute should be amended to permit *ad litem* judges to have the same powers as permanent judges, including taking part in elections of and being elected as President and Presiding Judge. The ICTR will be left with one permanent judge in the Trial Chambers after the redeployment of four permanent judges to the Appeals Chamber in 2011. Under the Statute of the ICTR, *ad litem* judges cannot participate in the elections of and are not eligible for election as President or Presiding Judge. Hence the purpose of the request is to enable the ICTR to fill these essential positions without having to appoint new permanent judges. President Byron states that option (a) above would have minor financial implications and that option (b) would not have any.



This request was first submitted to the Security Council and the General Assembly in May 2010, but was not addressed then because it was deemed premature.

5. It falls to the Security Council, as the parent organ of the ICTR, and the General Assembly, as the body that elects the judges of the ICTR, to consider and decide on these requests. Accordingly, I have attached draft letters to the Presidents of the Security Council and the General Assembly for the approval and signature of the Secretary-General.



Patricia O'Brien
27 September 2010



Mr. Cleaveland
Mr. Mphahlele

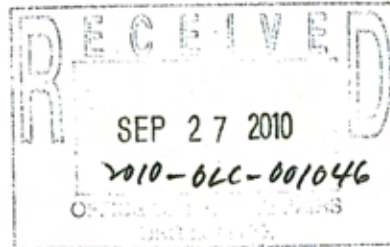
International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

Arusha International Conference Centre
P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzania
Tel: 255 27 2504207-11 2504367-72 or 1 212 963 2850 Fax: 1 212 963 7365
E-mail: ict_r_president@un.org

Y. Hachimo
→ DS (06/06)
D.R.

Office of the President
Cabinet du Président

23 September 2010
ICTR/PRES/041/10



Dear Mr. Secretary-General,

This letter supplements my request sent on 20 September 2010 concerning an authorization for Judges De Silva and Hikmet to complete their current assignments beyond the expiry date of their terms of office on 31 December 2010.

With this letter, I wish to draw to your attention to two additional requests. For our purposes, it would be sufficient if all three requests were dealt with in one Security Council Resolution.

The first additional request is related to my request mentioned above. Recently, Judge Fremr joined the Tribunal to serve again as *ad litem* judge on the *Nizeyimana* trial. If Judges De Silva and Hikmet are authorized to work until completion of the *Ndindiliyimana et al* case, where judgement delivery is now expected in March 2011, the total number of *ad litem* judges serving at the Tribunal until the *Ndindiliyimana et al.* judgement delivery would be eleven. After this judgement, under the current projections, the number would go down to nine.

Therefore, I request that the Security Council extend further the current exception from Article 11, paragraph 1 of the ICTR Statute, as granted until 31 December 2010 in Resolution 1902 (2009), concerning the maximum permissible number of *ad litem* judges serving at the Tribunal.

Concerning the second additional request, I would like to refer to my letter of 25 May 2010. In this letter, I submitted several requests concerning the judges of the Tribunal, which in their majority have been addressed in Resolution 1932 (2010). However, one of these requests has not been considered yet by the Security Council, and I would like to draw your

H.E. Mr. Bank Ki Moon
Secretary-General
United Nations
New York

attention once more to this issue which is of major importance to ensure that the Tribunal will be able to function in 2011. While I will point out the essential elements of my request, I would ask you to refer also to my previous letter for more details.

My second and final term as President, as well as Judge Khan's second term as Vice-President, will expire by the end of May 2011.

We will soon need to start preparations to ensure that these two positions as well as the positions as Presiding Judges of Trial Chamber II and III can be filled with resident judges after the end of the current Presidency and Vice-Presidency and after the redeployment of Judge Sekule, the Presiding Judge of Trial Chamber II, and Vice-President Khan, the Presiding Judge of Trial Chamber III, to the Appeals Chamber. However, we will not be in a position to do so without some action being taken from the responsible UN organs.

Art. 13 (1) and (7) of the Statute provides that the President and the Presiding Judges are members of a Trial Chamber. According to Article 12 *quater* (2)(a), *ad litem* judges are not eligible as President or Presiding Judge of a Trial Chamber. It is the practice of the Tribunal to apply the same requirement to the Vice-President.

As I pointed out in my earlier letter, currently only five resident permanent judges serve at the Tribunal, four of whom will be redeployed to the Appeals Chamber: Judge Byron (the President of the Tribunal), Judge Khan (Vice-President and Presiding Judge of Trial Chamber III), Judge Sekule (Presiding Judge of TCII) and Judge Ramaroson. The redeployment of four judges will leave only one permanent judge (Judge Tuzmukhamedov) at the Trial Chambers in Arusha, who joined the Tribunal only recently, in September 2009.

Therefore, I have proposed in my previous letter two cost-effective possibilities as to how to address our need to fill the key functions of the Tribunal without adding new judges. Both options involve relying on the currently serving *ad litem* judges who have the necessary experience and institutional memory to perform the functions efficiently.

The first possibility would be the conversion of at least three *ad litem* judges to permanent judges. I pointed out in my letter that five of the nine resident *ad litem* judges whose terms of office has been extended beyond 31 December 2010, do not have the same nationality as any current permanent ICTR judge or any ICTY judge who is or will be serving at the Appeals Chamber, cf. Article 12 *bis* (1) (b) of the Statute. Judge Fremr (the Czech Republic) who recently was reappointed as an *ad litem* judge also fulfils the requirements. The proposed conversion would require that the Security Council authorize the Secretary General to appoint, pursuant to Article 12 *bis* (2) of the Statute, the three judges *in lieu* of the three permanent judges who have left the Tribunal, notwithstanding that the terms of the three permanent judges have expired.


A second option to address the lack of sufficient permanent judges would be to amend the ICTR Statute and to enable *ad litem* judges to fill the key functions of the Tribunal. This would require an amendment of the Statute of the Tribunal by deleting Article 12 *quater* (2) and amending Article 13 so that *ad litem* judges would have the same powers as permanent judges, including eligibility as President, Presiding Judge of a Trial Chamber and, consequently, as Vice-President.

Both options would have no or only minor financial implications. In the first option, an *ad litem* judge converted to a permanent judge would only become entitled to education grant and education grant travel for his or her eligible children. The judges will not be entitled to pension rights, unless their term as permanent judges is extended beyond three years, which is unlikely under the timeframe of the current Completion Strategy. In the second option, there would be no financial implications at all.

As we are approaching 2011 and need to make preparations to ensure the functioning of the Tribunal throughout the next year, I would be grateful if you could bring both my additional requests to the attention of the Security Council and the General Assembly for appropriate action.

Please be assured, Mr. Secretary-General, of my highest consideration.

Yours sincerely,



Judge Dennis Byron
President

cc: Ms Patricia O'Brien, Under-Secretary-General, The Legal Counsel



UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

Arusha International Conference Centre
P.O.Box 6016, Arusha, Tanzania - B.P. 6018, Arusha, Tanzanie
Tel: 255 27 2564207-11 2564367-72 or 1 212 963 2850 Fax: 255 27 2564000/2564373 or 1 212 963 2848/49

Y. Kashira
→ TRIBUNALS TEAM

Office of the President
Cabinet du Président

20 September 2010
ICTR/PRES/040/10

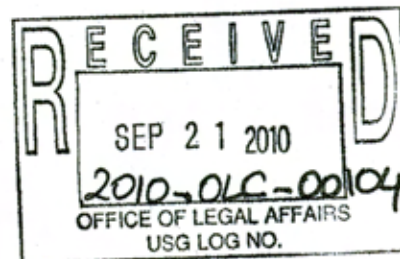
Dear Mr. Secretary-General,

I am writing to you concerning the need for an exceptional authorization by the Security Council to allow permanent Judge Joseph Asoka De Silva, and *ad litem* Judge Tagrid Hikmet to complete their last assignment after the end of their terms of office.

This request is linked to a delay in the judgement delivery in the multi-accused *Ndindiliyimana et al.* trial to which both judges are assigned. I informed the Security Council already during my address in June 2010 that this case is facing particular staffing difficulties with the departure of the Judgement Coordinator in June 2010 who could not be replaced until today. Four other members of the judgement drafting team also left during the last year. The judgement was expected to be delivered in December 2010. However, the lack of sufficient drafting support and the loss of institutional memory has led to a delay of some months. The judgement delivery is now expected no later than March 2011.

Judge De Silva, a permanent judge who is working part-time with the authorization of the Security Council, is not assigned to any other case and wishes to complete his work at the Tribunal. *Ad litem* Judge Hikmet is assigned also to the *Hategekimana* and *Kanyarukiga* trials, but in both cases judgements will be delivered in the course of 2010. Therefore, the extension of the terms of office of both judges beyond 31 December 2010 had not been requested in the context of Security Council Resolution 1932 (2010).

H.E. Mr. Ban Ki Moon
Secretary-General
United Nations
New York



For the reasons set out above, I ask the Security Council that Judge De Silva, on a part-time basis, and Judge Hikmet, notwithstanding the expiry of their term of office of 31 December 2010, be authorized to finish the *Ndindiliyimana et al* case which they have begun before expiry of their term of office. Similar situations have been addressed by the Security Council in Resolutions 1241 (1999), 1482 (2003) and, most recently, 1901 (2009).

I would be grateful if you could bring this matter to the attention of the Security Council.

Please be assured, Mr. Secretary-General, of my highest consideration.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Dennis Byron', with a horizontal line drawn underneath it.

Judge Dennis Byron
President

cc: Ms Patricia O'Brien, Under-Secretary-General for Legal Affairs, The Legal Counsel