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COURT OF JUSTICE  
JUDICIAL

**ACTION  
COPY**

TO: The Secretary-General  
A:

DATE: 8 January 2009

REFERENCE:

THROUGH: Mr. Vijay Nambiar  
S/C DE Chef de Cabinet

FROM: Patricia O'Brien  
DE: Under-Secretary-General for Legal Affairs,  
The Legal Counsel

SUBJECT: **Appointment of an *ad litem* judge to a trial before the ICTR** ✓  
OBJET:

1. In the attached letter dated 5 January 2009, President Dennis Byron of the International Criminal Tribunal for Rwanda ("ICTR") requests that the Secretary-General appoints Judge Mparany Rajohnson (Madagascar) to serve as an *ad litem* judge in the case of *The Prosecutor v Hategekimana*. The case is scheduled to commence on 26 January 2009.

2. Judge Rajohnson was elected as an *ad litem* judge in 2003 and has never been appointed to serve in the ICTR. In resolution 1824 (2008), the Security Council extended the term of office of Judge Rajohnson to 31 December 2009 or until the completion of the cases to which he is assigned, if sooner.

4. Under the Tribunal's Statute, it is for the President of the ICTR to assess whether it is necessary to appoint an *ad litem* judge to the ICTR in order to augment its capacity to conduct trials. If he considers that there is such a need, he then identifies an *ad litem* judge to hear a particular case.

5. In identifying the *ad litem* judge, the President is required by the Statute to bear in mind:

- the desirability of achieving, both among the judges as a whole and within the particular teams of judges sitting in specific cases, an appropriate balance of expertise in the fields of criminal law, general international law, international humanitarian law and human rights law;
- the desirability of achieving on the bench adequate representation of the principal legal systems of the world;
- the desirability of achieving equitable geographical distribution on the bench;
- the importance of achieving a fair representation of female and male judges;
- the votes the *ad litem* judges obtained during the elections in the General Assembly.

6. Upon receiving a request from the President for the appointment of an *ad litem* judge to a specific trial, the Secretary-General decides whether or not to accede to the President's request and to appoint the particular *ad litem* judge.

7. It is our view that the present request complies with Article 12 *ter*, paragraph 2, of the Statute of the ICTR. The Secretary-General may therefore appoint Judge Rajohnson to serve in the ICTR for the trial concerned.

8. A letter appointing Judge Rajohnson to the case of *The Prosecutor v Hategekimana* is attached for the Secretary-General's consideration and signature.

8 January 2009

Dear Judge Rajohnson,

I have the pleasure to inform you that, in accordance with Article 12 *ter*, paragraph 2, of the Statute of the International Criminal Tribunal for Rwanda (the "Tribunal"), I have decided, upon the request of the President of the Tribunal, to appoint you to serve in the Tribunal for the trial of *The Prosecutor v Hategekimana* (scheduled to commence on 26 January 2009). This appointment is with effect from 16 January 2009 and will be for the period of the term of your office or the completion of the trial, if sooner.

In accordance with Article 12 *quater*, paragraph 1 (a), of the Statute of the Tribunal, *ad litem* Judges shall, during any period in which they are appointed to serve in the Tribunal, benefit from the same terms and conditions of service, *mutatis mutandis*, as the permanent Judges of the Tribunal. Pursuant to Article 12 *bis*, paragraph 3, of the Statute, the terms and conditions of service of permanent Judges are those of the Judges of the International Tribunal for the former Yugoslavia (ICTY). Pursuant to Article 13 *bis*, paragraph 3, of the Statute of the ICTY, the terms and conditions of service of permanent Judges of the ICTY are those of the Judges of the International Court of Justice.

During such time as they may be appointed to serve in the Trial Chambers of the Tribunal for specific trials, *ad litem* Judges are required to serve on a full-time basis and may not, during that time, exercise any political or administrative function or engage in any other occupation of a professional nature.

Judge Mparany Rajohnson  
International Criminal Tribunal  
for Rwanda  
Arusha

I should also like to take this opportunity to note that, as an *ad litem* Judge of the Tribunal, you will be entitled only to the benefits stipulated in General Assembly resolution 55/249 of 12 April 2001 and in any subsequent relevant resolutions or decisions of the General Assembly. In accordance with General Assembly resolution 55/249, should the cumulative period of your service as an *ad litem* Judge of the Tribunal amount to three years or more, that will not result in any change in your entitlements and benefits and, in particular, will not give rise to any additional entitlements or benefits other than those that already exist and which will, in such an eventuality, be extended pro-rata by virtue of the extension of service.

Please accept, Judge Rajohnson, the assurances of my highest consideration.

BAN Ki-moon