



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-2001-70-I
30-9-2004
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TRIAL CHAMBER III

ENGLISH
Original: FRENCH

Before: Judge Lloyd G. Williams, Q.C., presiding
Judge Andréia Vaz
Judge Khalida Rachid Khan

Registrar: Adama Dieng

Date filed: 5 March 2004

THE PROSECUTOR

v.

Emmanuel RUKUNDO

Case No. ICTR-2001-70-I

JUDICIAL RECORDS ARCHIVES
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ICTR

**DECISION ON DEFENCE MOTION FOR TRANSLATION INTO FRENCH
OF PROSECUTION AND PROCEDURAL DOCUMENTS IN
THE RUKUNDO CASE**

**Articles 20 and 31 of the Statute, and Rule 3 of the
Rules of Procedure and Evidence**

Office of the Prosecutor:

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Counsel for the Defence:

Philippe Moriceau

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the Tribunal),

SITTING as Trial Chamber III (the Chamber), in the person of Judge Andréia Vaz, designated pursuant to Rule 73(A) of the Rules of Procedure and Evidence (the Rules),

SEIZED of the "Defence Extremely Urgent Motion for Translation into French of Prosecution and Procedural Documents in the *Rukundo* case", filed on 21 March 2003 (the Motion),

CONSIDERING the Response to the Motion, filed by the Prosecution on 27 March 2003 (the Response) and the Defence Reply to the Response, filed on 4 April 2003 (the Reply),

CONSIDERING the Tribunal's Statute (the Statute) and the Rules,

DECIDES, as indicated hereafter, based solely on the written briefs of the parties, pursuant to Rule 73(A) of the Rules.

Parties' submissions

Motion

1. The Defence notes that the Accused has chosen French as the language of his defence, but most of the documents relating to the proceedings against him were disclosed in English. Furthermore, most of the available French translations were filed late. The Accused would therefore not be in a position to adequately prepare his defence and his right to a fair trial would be prejudiced.

2. Invoking Articles 20 and 31 of the Statute, Rule 3 of the Rules, various provisions of domestic and international law, as well as ICTR and ICTY case law, the Defence further considers that this situation violates the Accused's right to be informed of the nature and cause of the charge against him in a language which he understands, thereby undermining the equality of arms.¹

3. The Defence points out that before referring this matter to the Chamber, it contacted the Registry by letter dated 26 September 2001, and filed a brief on 30 May 2002. The Prosecution responded, by letter dated 11 December 2002, that it

¹ The Defence cites: Article 14 of the International Covenant on Civil and Political Rights, Article 6(3)(a) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 67(1) of the Statute of the International Criminal Court, and various provisions of national laws, including the Rwandan Legislative Decree No. 8/75 of 12 February 1975, and Article 31(2) of the Swiss Constitution. The Defence cites the following decisions: *The Prosecutor v. Mika Muhimana*, Case No. ICTR-95-1-B-1, "Decision on the Defence Motion for the Translation of Prosecution and Procedural Documents into Kinyarwanda, the Language of the Accused, and into French, the Language of his Counsel" (Trial Chamber), 6 November 2001 ("the Muhimana Decision of 6 November 2001"), and *Prosecutor v. Zejnir Delalić and Others*, Case No. IT-96-21, "Decision on Defence Application for Forwarding the Documents in the Language of the Accused" (ICTY, Trial Chamber), 25 September 1996 ("the Delalić Decision of 25 September 1996").

had no obligation to provide documents in French when the original document was in English or when the documents were public. Thus, the parties in question and the Registry have not been able to resolve this contentious issue themselves.

4. Consequently, the Defence prays the Chamber:

- (a) to order the Registry to transmit the French version of all decisions and orders already rendered, or which will be rendered, in the instant case in English;
- (b) to order the Registry to transmit the French version of all motions, briefs and other submissions by the Prosecution filed in English, including annexes to the documents;
- (c) to order the Registry to transmit "all documents disclosed between the Prosecution and the Defence, which documents the Prosecution intends to present as evidence during trial and during the various pre-trial proceedings";
- (d) to ascertain, before rendering its decisions, that there is a complete French version of motions, briefs and various submissions;
- (e) to order that the time limit for response and reply should start running only from the moment that the French version has been disclosed to the Accused.

Response

5. The Prosecution responds:

- (a) that the Motion is needless in that the applicable rules already provide for translation into French of the documents requested;
- (b) that the Motion is irrelevant regarding the point summarized in paragraph 5(c) above, in that *inter partes* disclosures should not involve the Chamber or the Registry, and because the Prosecution has already undertaken to communicate with the Defence in French;
- (c) that the request summarized in paragraph 5(d) above is too general, and that by requesting that the time limit to respond be predicated on the Prosecution's submissions filed in English, the Defence is seeking to circumvent Rule 72(D) of the Rules, by obtaining a time limit exceeding the regulatory five days;
- (d) that the Motion is frivolous as it is general, for the Defence has not exhausted the available remedies before referring the matter to the Chamber, and that it should not have been filed as an extremely urgent motion. The Prosecution, accordingly, suggests that the Chamber order

non-payment of fees for the filing of the Motion, pursuant to Rule 73(E) of the Rules.²

Reply

6. In reply, the Defence reiterates in the main the arguments advanced in its Motion.

Deliberations

7. Having considered the relevant case law, including the one cited by the Defence, the Chamber finds that in view of the Accused's right to a fair trial (Article 20(2) of the Statute) and of his right to be informed in detail in a language which he understands of the nature and cause of the charge against him (Article 20(4)(a) of the Statute), the Accused has the right to obtain the French translations of:

- (i) the decisions and orders rendered in his case;
- (ii) the supporting material transmitted to the Judge confirming the indictment against him, pursuant to Rule 66(A)(i) of the Rules;
- (iii) prior statements by Prosecution witnesses pursuant to Rule 66(A)(ii) of the Rules, insofar as the Prosecution intends to call them to testify; and
- (iv) evidence on which the Prosecution intends to rely, subject to Rule 69 of the Rules.

8. Under Article 31 of the Statute and Rule 3(A) of the Rules, the Tribunal's working languages are English and French, while Rule 3(E) of the Rules enjoins the Registrar to make any necessary arrangements for translation and interpretation of the working languages. It is therefore the Registrar's responsibility to make every effort to ensure the necessary translation of documents, filed in one of the Tribunal's working languages, into the other working language.

9. Lead Counsel for the Accused is French-speaking, but he also understands English and can explain the content of the documents to the Accused. In agreement with the findings of Trial Chamber I in the *Muhimana* Case, the Chamber finds that it is Counsel's duty to inform the Accused of the content of the opposing party's submissions in the motions brought before the Chamber, and of the content of other briefs filed or disclosed in his case. The Defence has therefore not justified why the time limit for the filing of parties' submissions should be systematically suspended until the day of receipt of the French translation of the Prosecution's submissions.

² Rule 73(E) of the Rules has become Rule 73(F), further to the amendment of Rule 73 at the last plenary session of the Tribunal, on 26 and 27 May 2003. Rule 73(F) states that: "In addition to the sanctions envisaged by Rule 46, a Chamber may impose sanctions against the Counsel if Counsel brings a motion, including a preliminary motion that, in the opinion of the Chamber, is frivolous or is an abuse of process. Such sanctions may include non-payment, in whole or in part, of fees associated with the motion and/or costs thereof."

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Nor has the Defence justified why the Chamber should wait for the filing of those translations before deciding on the parties' motions.

FOR THESE REASONS,

THE TRIBUNAL

(I) INSTRUCTS the Registrar to produce, as soon as practicable, the French translations of the documents referred to in paragraph 7 above,

(II) DENIES the Motion in all other respects.

Arusha, 5 March 2004.

(Signed) Andréia Vaz
Judge

[Seal of the Tribunal]

