

ICTR-01-73-T
27-2-2007
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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER III

Case No. ICTR-2001-73-PT

ENGLISH

Original: FRENCH

Before: Judge Dennis C. M. Byron, presiding

Registrar: Adama Dieng

Date filed: 30 August 2005

THE PROSECUTOR

v.

PROTAIS ZIGIRANYIRAZO

JUDICIAL RECORDS ARCHIVES
2007 FEB 27 11 A 9: 37
[Signature]

**DECISION ON THE DEFENCE EXTREMELY URGENT MOTION FOR
TRANSLATION OF ESSENTIAL PROCEEDINGS OF THE
PROSECUTOR (PRE-TRIAL BRIEF)**

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

Office of the Prosecutor :

Wallace Kapaya
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Counsel for the Defence :

John Philpot
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CIII05-0094 (E)

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Translation certified by LSS, ICTR

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ("the Tribunal"),

SITTING as Trial Chamber III, composed of Judge Dennis C. Byron, presiding, in accordance with Rule 54 of the Rules of Procedure and Evidence (the "Rules");

BEING SEIZED OF the Motion entitled "Extremely Urgent Motion for Translation of Essential Proceedings of the Prosecutor (Pre-Trial Brief)", filed by Counsel for the Defence on 9 August 2005 (the "Motion");

CONSIDERING the "Prosecutor's Response to the Defence Extremely Urgent Motion for Translation of Essential Proceedings of the Prosecutor's Pre-Trial Brief", filed on 10 August 2005 (the "Response");

RECALLING the Scheduling Order of 6 May 2005, (the "Scheduling Order");

TAKING NOTE of the submission of the "Prosecutor's Pre-Trial Brief (Filed Pursuant to Rule 73 (B) (i) *bis* of the Rules of Procedure and Evidence)", filed on 22 July 2005 (the "Pre-Trial Brief"), the "Corrigendum to the Prosecutor's Pre-Trial Brief Filed on 22 July 2005", filed on 10 August 2005 (the "Corrigendum"), as well as the "Prosecutor's Request to Protais Zigiranyirazo to Admit Facts Pursuant to Rule 73 *bis* (B)(ii) of the Rules of Procedure and Evidence", filed on 22 July 2005;

TAKING NOTE of the filing by the Language Services Section of the Tribunal on 18 August 2005 of a French translation of the "Prosecutor's Pre-Trial Brief (Filed Pursuant to Rule 73 (B) (i) *bis* of the Rules of Procedure and Evidence";

CONSIDERING the Statute (the "Statute") and the Rules of the Tribunal, particularly Articles 20 and 31 of the Statute and Rule 3 of the Rules;

DECIDES as follows, based solely on the written Briefs of the parties, in accordance with Rule 73(A) of the Rules.

Arguments of the parties

Arguments of the Defence

1. The Defence requests the Trial Chamber, pursuant to Article 31 of the Statute and Rule 3(A) of the Rules, and the Scheduling Order, to order the Prosecutor to translate the Pre-Trial Brief into French, the working language of the Tribunal which the Accused understands. The Defence is of the opinion that pursuant to the case-law the Accused is entitled to understand the documents filed by the Prosecutor. The Defence recalls paragraph VII of the Scheduling Order, whereby the Trial Chamber instructed the Language Services Section of the Tribunal (the "Language Section") to give top priority to all the documents filed by the parties and, particularly, to translate as a matter of urgency the Pre-Trial Brief. Subsequently, the Prosecutor filed in English only his Pre-Trial Brief, together with a list of witnesses, summaries of their statements and the Prosecutor's Notice to Admit Facts. The Defence submits that these documents are essential to the Accused in order enable him to understand his case and prepare his defence. The Defence is of the view that the Prosecutor has the resources to provide the Accused with a French version of the documents in his

possession, since he has done so in the past. The Defence also contends that the Accused is seriously prejudiced by the delay in translation because he does not understand many of the issues raised at his trial. In conclusion, the Accused prays the Trial Chamber to order the Prosecutor to file with a Registry the French translation of his Pre-Trial Brief along with its Annexes I and III and to order the Registry to have Annex II to the Pre-Trial Brief translated into French by 29 August 2005 at the latest.

Arguments of the Prosecutor

2. On the basis of paragraph VII of the Scheduling Order and Article 12 *bis* of the Directive for the Registry, the Prosecutor argues that it is the Registry's responsibility to ensure that a document filed in only one language is translated. Furthermore, in the Prosecutor's view, the Defence in no way proves that the Registry has failed to comply, or is inordinately delaying compliance with paragraph VII of the Scheduling Order. The Prosecutor further contends that it is part of his functions to translate documents for parties even though he may in certain instances request the Language Section to translate documents. The Prosecutor recalls that the documents at issue are being translated by the Language Section pursuant to the Scheduling Order and that the Defence has not shown why the translation should now be done at the request of the Prosecutor and not pursuant to the Scheduling Order. Consequently, the Prosecutor prays the Trial Chamber to reject the Defence request for the Prosecutor to translate the documents filed by him with the Registry.

DELIBERATION

3. In accordance with Article 20 of the Statute, and the established case-law of the two special Tribunals,¹ the right to a fair trial implies that the Accused is entitled to understand the charges brought against him and for which he is being prosecuted. The Trial Chamber recalls that, pursuant to Article 31 of the Statute and Rule 3(A) of the Rules, the working languages of the Tribunal are English and French. It further recalls that, in accordance with Rule 3(E) of the Rules, the Registrar makes any necessary arrangements for interpretation and translation into the working languages of the Tribunal. It follows that the Accused is entitled to have disclosure of certain specific documents in a language that he understands, but not that every document in the case-file must be translated into the two working languages of the Tribunal.

4. The Trial Chamber notes that the Pre-Trial Brief has been translated into French and filed with the Registry on 18 August 2005. It is thus of the opinion that the Defence request is moot in this regard. Regarding the Annexes to the Pre-Trial Brief, the Chamber recalls that it is not the practice at the Tribunal automatically to translate this type of document. Following the Corrigendum filed by the Prosecutor, it appears that the Notice to Admit Facts that the Prosecutor intended to file is that which was filed separately on 22 July 2005 and not that constituting Annex III to the Pre-Trial Brief. However, contacts made by the Trial Chamber with the Registry show that this document is being translated and will be ready by 2 September 2005.

¹ *Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21, Decision on Defence application for forwarding the documents in the language of the Accused (Ch), 25 September 1996; *The Prosecutor v. Mika Muhimana*, Case No. ICTR-95-1B-I, 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 (Ch), 6 November 2001; *The Prosecutor v. Vincent Rutaganira*, Case No. ICTR-95-1C-P, *Décision relative à la requête aux fins de transmission des documents en versions française et kinyarwanda* [Decision on application for forwarding documents in French and Kinyarwanda] (Ch), 6 December 2004.

5. The Trial Chamber further notes that Defence Counsel understands English and French. Hence, Defence Counsel is in a position to fulfil his duty to inform the Accused of the gist of the arguments advanced by the Prosecution before the Chamber, and of that of any other briefs filed or disclosed relating to his case. Consequently, Annexes I and II do not need to be translated, particularly as some of the documents in these Annexes, owing either to their very nature or to the fact that they are already in French, the language in which the Prosecutor filed them. Therefore, the Defence Motion cannot succeed in respect of Annexes I and II to the Pre-Trial Brief.

FOR THE ABOVE REASONS, THE CHAMBER

I. REJECTS the Defence request for translation into French of Annexes I and II to the Pre-Trial Brief; and further

II. FINDS that the request is moot.

Done in Arusha, on 30 August 2005, in French.

[Signed]

Dennis C. M. Byron
Presiding Judge

[Seal of the Tribunal]

