



INTERNATIONAL
LAGENNES

ICTR-2001-67-1
1-7-2008
(726 - 723)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

726
2008
4

OR: ENG

TRIAL CHAMBER III

Before: Inés M. Weinberg de Roca, Presiding
Lee Gacuga Muthoga
Robert Fremr

Registrar: Adama Dieng

Date: 1 July 2008

JUDICIAL
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THE PROSECUTOR

v.

Fulgence KAYISHEMA

Case No. ICTR-2001-67-1

**DECISION ON THE DEFENCE'S REQUEST FOR EXTENSION OF TIME
TO FILE A COMPREHENSIVE RESPONSE TO THE PROSECUTOR'S MOTION
FOR REFERRAL AS WELL AS TO ALL OTHER
REQUESTS AND BRIEFS FILED IN THAT MOTION**

Rules 11 bis and 74 of the Rules of Procedure and Evidence

Office of the Prosecutor:
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George William Mungwanya
Inneke Onsea
François Nsanzuwera
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Defence Counsel:
Jwani Timothy Mwaikusa

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INTRODUCTION

Background

1. On 10 June 2001, the Prosecutor of the International Criminal Tribunal for Rwanda ("the Tribunal") filed an Indictment ("the Indictment") against Fulgence Kayishema ("the Accused"). The Indictment charges the Accused with genocide, complicity in genocide, conspiracy to commit genocide, and extermination as a crime against humanity.¹ The Indictment was confirmed on 4 July 2001 by Judge Lloyd G. Williams.²

2. On 11 June 2007, the Prosecutor filed a request for the referral of the Indictment against the Accused to the Republic of Rwanda ("the Referral Request").³ Pursuant to Rule 11bis of the Rules of Procedure and Evidence ("the Rules"), the President of the Tribunal, on 25 June 2007, designated this Trial Chamber to decide the motion.⁴

3. The Chamber granted the *amicus curiae* requests of: the Republic of Rwanda on 14 September 2007;⁵ Human Rights Watch ("HRW") on 8 November 2007;⁶ and the International Criminal Defence Attorneys Association ("ICDAA") and the Kigali Bar Association ("KBA") on 6 December 2007.⁷ The Republic of Rwanda filed its *amicus* brief on 1 October 2007,⁸ HRW on 4 January 2008,⁹ and the ICDAA on 4 January 2008.¹⁰ The KBA did not file an *amicus* brief.

¹ Indictment, 10 June 2001.

² Decision on Confirmation of the Indictment, 4 July 2001.

³ The Prosecutor's Request for the Referral of the Case of Fulgence Kayishema to Rwanda pursuant to Rule 11 bis of the Tribunal's Rules of Procedure and Evidence, 11 June 2007.

⁴ Designation of the Trial Chamber for the Referral of the Case of Fulgence Kayishema to Rwanda, 25 June 2007.

⁵ Decision on the Request of the Republic of Rwanda for leave to Appear as *Amicus Curiae*, 14 September 2007.

⁶ Decision on the Request by Human Rights Watch for Leave to Appear as *Amicus Curiae* in the Proceedings for Referral of the Indictment against Fulgence Kayishema to Rwanda, 8 November 2007.

⁷ Decision on the Application by the International Criminal Defence Attorneys Association (ICDAA) for Leave to File a Brief as *Amicus Curiae*, 6 December 2007; Decision on the Application by the Kigali Bar Association for Leave to Appear as *Amicus Curiae*, 6 December 2007.

⁸ *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 11bis, 1 October 2007.

⁹ Brief of Human Rights Watch as *Amicus Curiae* in Opposition to Rule 11 bis Transfer, 4 January 2008.

¹⁰ Brief of *Amicus Curiae*, International Criminal Defence Attorneys Association ("ICDAA"), Concerning the Request for Referral of the Accused to Rwanda pursuant to Rule 11bis of the *Rules of Procedure and Evidence*, 4 January 2008.

4. On 2 May 2008, the Chamber issued a Decision instructing the Registrar to appoint Defence Counsel.¹¹ On 15 May 2008, the Registrar sent Mr. Jwani Timothy Mwaikusa a letter appointing him as Defence Counsel for Fulgence Kayishema. On 1 July 2008, the Chamber issued corrigenda adding the Defence to those who may respond to the filed *amicus* briefs.¹²

Request for Time Extension

On 24 June 2008, Defence Counsel filed a request for a time extension in order to file a comprehensive response to the Referral Request ("the Motion").¹³ In the Motion, the Defence requested that the Chamber grant a time extension up to 28 July 2008,¹⁴ based on the following reasons:

- 1. Mr. Mwaikusa is newly appointed,¹⁵ and was only able to obtain the relevant materials on 11 June 2008;¹⁶
- 2. The Referral Request is 35 pages, with 12 annexes, and has generated numerous documents in response (38 to his count), including applications from amici, decisions on those applications and *amicus* briefs;¹⁷
- 3. The Defence would like his Response to take into account, and where necessary, respond to the *amicus* briefs;¹⁸ and
- 4. The Defence is currently working without a legal assistant.¹⁹

DISCUSSION

5. The Chamber observes that Rule 11 *bis* of the Rules does not specify a time frame within which the Defence must file a Reply to a Referral Request. The Chamber, may,

¹¹ Decision on the Referral of the Application to Appoint Defence Counsel, 2 May 2008.

¹² Corrigendum to the Decision on the Request by Human Rights Watch for Leave to Appear as *Amicus Curiae*, 1 July 2008; Corrigendum to the Decision on the Application by the International Criminal Defence Attorneys Association (ICDAA) for Leave to File a Brief as *Amicus Curiae*, 1 July 2008; Corrigendum to the Decision on the Request of the Republic of Rwanda for leave to Appear as *Amicus Curiae*, 1 July 2008.

¹³ Defence Request for Extension of Time to file a Comprehensive Response to the "Prosecutor's Motion for Referral of the Case of Fulgence Kayishema to Rwanda under Rule 11bis of the Tribunal's Rules of Procedure and Evidence" as well as to all other Requests and Briefs filed in that Motion ("the Motion"), 24 June 2008.

¹⁴ The Motion, paras. 6, 7 and concluding paragraph beginning with "WHEREFORE".

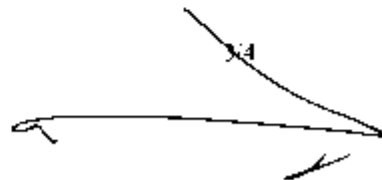
¹⁵ *Ibid.*, para. 1. Mr. Mwaikusa only accepted the position as the Accused's Defence Counsel on 16 May 2008.

¹⁶ *Ibid.*, paras. 2 and 3. The Defence stated that he received no documents until he was able to return to Arusha, make a request for the record

¹⁷ *Ibid.*, para. 4.

¹⁸ *Ibid.*, para. 5.

¹⁹ *Ibid.*, para. 7.



therefore exercise its discretionary power to manage proceedings to set a time frame for the submission of the Defence's Response to the Referral Request.

6. In light of the Defence's recent appointment, his lack of assistance, and the voluminous filings to date, the Chamber is satisfied 28 July 2008 is a reasonable deadline for submission of the Defence's Response to the Referral Request. Further, although the Chamber recalls granting the Defence 15 days from the date it received the *amicus curiae* briefs to file its response,²⁰ the Chamber hereby grants the Defence until 28 July 2008 to file replies to these *amicus curiae* briefs.

FOR THE FOREGOING REASONS, THE CHAMBER:

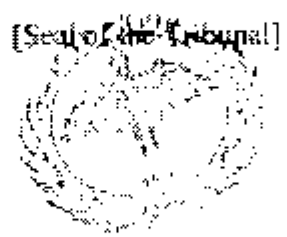
- I. **GRANTS** the Motion and consequently;
- II. **ORDERS** the Defence to file responses to the Referral Request and the *amicus* briefs no later than 28 July 2008.

Arush, 1 July 2008. (in English)

Inés M. Weinberg de Roca
Presiding Judge

With the consent and on behalf of
Lee Ganniga Muthoga
Judge
(Absent during signature)

Robert Fremr
Judge



²⁰ See footnote 12.