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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED
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OR: ENG

TRIAL CHAMBER II

Before Judges: Florence Rita Arrey, Presiding
Emile Francis Short
Robert Fremr

Registrar: Adama Dieng

Date: 8 April 2011

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THE PROSECUTOR

v.

JEAN-BOSCO UWINKINDI

Case No. ICTR-2001-75-R11bis

**DECISION ON APPLICATION BY GOVERNMENT OF RWANDA FOR LEAVE
TO REPLY TO SUBMISSIONS MADE BY THE DEFENCE AND AMICI
OPPOSING THE PROSECUTION'S 11 BIS MOTION**

Office of the Prosecutor:

Hassan Bubacar Jallow
Bongani Majola
Richard Karegyesa
James Arguin
George Mugwanya
Inneke Onsea

Counsel for the Defence:

Claver Sindayigaya
Iain Edwards
Bettina Spilker

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INTRODUCTION

1. On 04 November 2010, the Prosecution filed a Motion requesting that the case of the *Prosecutor v. Jean Uwinkindi* be referred to the authorities of the Republic of Rwanda for trial in the High Court of Rwanda ("11 bis Motion") pursuant to Rule 11 bis of the Rules of Procedure and Evidence ("Rules").¹
2. On 26 November 2010, the President designated Trial Chamber II, as composed of Judge Florence Rita Arrey (presiding), Judge Emile Francis Short and Judge Robert Fremr, to decide the Prosecution's 11 bis Motion.²
3. On 18 January 2011, the Trial Chamber invited the Government of Rwanda (GoR) to appear as *amicus curiae* in the present case.³
4. On 18 February 2011, the Government of Rwanda filed its *amicus* brief in support of the Prosecution 11 bis Motion.⁴
5. On 14 March 2011 the Defence filed its response to the Prosecution's 11 bis Motion.⁵
6. In February and March 2011, three *amici curiae* filed briefs opposing the 11 bis Motion.⁶

¹ *Prosecutor v. Jean-Bosco Uwinkindi*, Case No. ICTR-2001-75-R11bis, Prosecutor's request for the referral of the case of Jean-Bosco Uwinkindi to Rwanda pursuant to Rule 11bis of the Tribunal's Rules of Procedure and Evidence, 4 November 2010.

² Notice of Designation - *Prosecutor v. Jean Uwinkindi*, Case No. ICTR-2001-75-R11bis, 26 November 2010.

³ *Prosecutor v. Jean-Bosco Uwinkindi*, Case No. ICTR-2001-75-I, Invitation to the Government of Rwanda to make submissions as *Amicus Curiae* on the Prosecution's 11 bis Motion pursuant to Rule 74 of the ICTR Rules of Procedure and Evidence, 18 January 2011.

⁴ *Prosecutor v. Jean-Bosco Uwinkindi*, Case No. ICTR-2001-75-I, Amicus Curiae Brief for the Republic of Rwanda in support of the Prosecution's application for referral Pursuant to Rule 11bis, 18 February 2011.

⁵ *Prosecutor v. Jean-Bosco Uwinkindi*, Case No. ICTR-2001-75-R11bis, Defence response to the Prosecutor's request for the referral of the case of Jean-Bosco Uwinkindi to Rwanda pursuant to Rule 11 bis of the Tribunal's Rules of Procedure and Evidence, 14 March 2011.

⁶ *Prosecutor v. Jean-Bosco Uwinkindi*, Case No. ICTR-2001-75-I, *Amicus curiae* brief of Human Rights Watch in opposition to the Rule 11 bis transfer, 17 February 2011; *Amicus Curiae* brief of the International

7. On 4 April 2011, the Government of Rwanda filed an application requesting leave to reply to the Defence Response to the 11 bis Motion and the *amici* opposing the Prosecutor's request for referral ("Application").⁷

8. On 6 April 2011, the Prosecution filed a response in support of the application made by the Republic of Rwanda ("Prosecution Response").⁸ The Prosecution states that the Republic of Rwanda should be allowed to provide the necessary clarifications and specific information that will assist the referral Chamber to reach an informed decision.⁹

9. On 7 April 2011, the Defence filed a response opposing the application made by Republic of Rwanda ("Defence response").¹⁰ The Defence submits that the Republic of Rwanda has no standing in the instant proceedings,¹¹ and that the Motion was filed out of time with no good cause provided for the delay.¹² In addition, the Republic of Rwanda has failed to give details of the matters which it wishes to address¹³. Finally, the Defence posits that granting the application would delay determination of the 11 bis Motion and thus unnecessarily prolong the detention of the Accused.¹⁴

Criminal Defence Attorneys Association, 11 March 2011; *Amicus Curiae* brief of the International Association of Democratic Lawyers, 17 March 2011.

⁷ *Prosecutor v. Jean-Bosco Uwinkindi*, Case No. ICTR-2001-75-I, Application of the Republic of Rwanda for leave to file submissions as *Amicus Curiae* in reply to serious allegations against the Republic of Rwanda and misrepresentations of facts regarding the functioning of its justice system made by Jean Uwinkindi and *amici* opposing the Prosecutor's Request for the referral of the case of Jean Uwinkindi, ("Application"), 4 April 2011.

⁸ *Prosecutor v. Jean-Bosco Uwinkindi*, Case No. ICTR-2001-75-I, Prosecutor's response to the application by the Republic of Rwanda for leave to reply to submissions by Jean Uwinkindi and *amici* opposing the Prosecutor's Request for the referral of the case of Jean Uwinkindi, 6 April 2011.

⁹ Prosecution Response, para. 2.

¹⁰ *Prosecutor v. Jean-Bosco Uwinkindi*, Case No. ICTR-2001-75-I, Defence Submissions on the Application of the Republic of Rwanda for leave to file submissions as *Amicus Curiae* in reply to serious allegations against the Republic of Rwanda and misrepresentations of facts regarding the functioning of its justice system made by Jean Uwinkindi and *amici* opposing the Prosecutor's Request for the referral of the case of Jean Uwinkindi, ("Defence response"), 7 April 2011.

¹¹ Defence response, paras. 8-11.

¹² Defence response, paras. 12-14.

¹³ Defence response, paras. 15-16

¹⁴ Defence response, para. 17.

DELIBERATIONS

10. The Government of Rwanda submits that the Defence response to the 11 *bis* Motion and the *amici curiae* briefs filed in opposition to the 11 *bis* Motion “are largely speculative and rely on incorrect information regarding the functioning of the Rwandan judicial system. These submissions raise serious allegations and distort available facts and information regarding the implementation of judicial and penal reforms” in Rwanda. The GoR further argues that the allegations put forward by the Defence and the three *amici curiae* whose briefs tend to support the Defence position “amount to impermissible attempts to mislead the Trial Chamber particularly on the issues of judicial independence, corruption and political interferences [sic] in judicial matters.”¹⁵

11. The Referral Chamber recalls that the Government of Rwanda was accorded status as *amicus curiae* in this case. Therefore it has no standing to respond to the submissions of the Defence and *amici curiae* as requested. Should the GoR have any information it deems relevant to the instant proceedings the proper avenue is to transmit this information to the ICTR Office of the Prosecutor, a party which does have standing to respond to the submissions at issue, for its consideration.

12. The Chamber observes that the deadline for the Prosecution Reply to the Defence Response to the 11 *bis* Motion is 13 April 2011. In the interests of justice and in order to provide the Prosecution and the Government of Rwanda with time to consult, the Chamber will provide Prosecution seven extra days within which to file its reply.

FOR THESE REASONS, THE REFERRAL CHAMBER

DENIES the Government of Rwanda's Application;

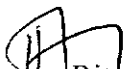
¹⁵ Application, para.4.

*Decision on application by Government of Rwanda for leave to
reply to submissions made by the Defence and amici
opposing the Prosecution's 11 bis Motion*

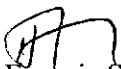
Prosecutor v. Uwinkindi

ORDERS the Prosecution to file its Reply to the Defence Response to the 11 *bis* Motion
on or before 20 April 2011.

Arusha, 8 April 2011, done in English.


Florence Rita Arrey

Presiding Judge


Emile Francis Short



[Seal of the Tribunal]


Robert Fremr

Judge