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Mugwanya



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED
NATIONS
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UNIES

OR: ENG

TRIAL CHAMBER II

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

Registrar: Adama Dieng

Date: 8 April 2011

JUDICIAL RECORDS ARCHIVE
2011 APR - 8 1 A 10 47

THE PROSECUTOR

v.

JEAN-BOSCO UWINKINDI

Case No. ICTR-2001-75-I

DECISION ON APPLICATION BY THE KIGALI BAR ASSOCIATION FOR
LEAVE TO APPEAR AS *AMICUS CURIAE*

Office of the Prosecutor:

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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.¹

2. On 26 November 2010, the President designated Referral 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 14 March 2010, the Defence filed his response opposing the Prosecution's 11 bis Motion.³

4. In addition, three *amici curiae* filed briefs opposing the 11 bis Motion.⁴

5. On 1 April 2011, the Kigali Bar Association (KBA) filed an application before the Referral Chamber for leave to appear as *amicus curiae* in this case ("Application").⁵

6. On 6 April 2011 the Defence filed submissions relating to the KBA application ("Defence submissions").⁶ On the same day, the Prosecution filed submissions responding to the Application ("Prosecution submissions").⁷

¹ *Prosecutor v. Jean-Bosco Uwinkindi*, Case No. ICTR-2001-75-I, 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-I, 26 November 2010.

³ *Prosecutor v. Jean-Bosco Uwinkindi.*, Case No. ICTR-2001-75-I, Defence Response to the Prosecutor's Request for the Referral of the case of Jean Uwinkindi to Rwanda pursuant to Rule 11 bis of the Rules of Procedure and Evidence, 14 March 2011.

⁴ *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 Criminal Defence Attorneys Association, 11 March 2011; *Amicus Curiae* brief of the International Association of Democratic Lawyers, 17 March 2011.

⁵ *Prosecutor v. Jean-Bosco Uwinkindi*, Case No. ICTR-2001-75-I, Urgent Application by the Kigali Bar Association for leave to appear as amicus curiae in the matter of the Prosecutor's request for the Referral of the case of Jean Uwinkindi, 1 April 2011.

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SUBMISSIONS

Kigali Bar Association

7. The KBA submits that as the sole representative of the legal profession in Rwanda, its members play a central role in the daily administration of criminal justice and may have an important role to play with respect to this case or any that may be referred to Rwanda.⁸ The KBA argues that given the practical experience and expertise of its members in dealing with the administration of justice in Rwanda, it is uniquely positioned to provide valuable and reliable information⁹ that will clarify the assertions and assumptions contained in the Defence Response to the 11 bis Motion and *amici curiae* briefs opposing the Referral Request.¹⁰

8. The KBA disagrees with several points in the submissions made by Jean Uwinkindi and the three *amici curiae* who filed briefs in opposition to the Prosecutor's Request for transfer, particularly with reference to the current capacity and conditions of work for defence lawyers as well as the availability and protection of witnesses in Rwanda. Thus, it proposes submitting a short *amicus* brief to assist the Chamber in reaching an informed decision on these issues.¹¹

Defence Submissions

9. The Defence argues that the KBA has been aware of the existence and substance of the Prosecution's 11 bis Motion, knew the issues that the Defence and the *amici* briefs would address¹² and that the Chamber would rule on these issues in its decision regarding

⁶ *Prosecutor v. Jean-Bosco Uwinkindi*, Case No. ICTR-2001-75-I, Defence Submissions relating to the urgent application by the Kigali Bar Association for leave to appear as *amicus curiae* in the matter of the Prosecutor's request for the referral of the case of Jean Uwinkindi, 6 April 2011.

⁷ *Prosecutor v. Jean-Bosco Uwinkindi*, Case No. ICTR-2001-75-I, Prosecutor's response to the request of the Kigali Bar Association to appear as *amicus curiae* in the matter of the Prosecutor's request for the referral of the case of Jean Uwinkindi, 6 April 2011.

⁸ Application para. 5.

⁹ Application para. 6.

¹⁰ Application para. 4.

¹¹ Application para. 4.

¹² The issues of fair trial, availability and conditions of work of Defence counsel in Rwanda.

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the 11 bis Request,¹³ and yet failed to file an application to appear as Amicus until five months later.¹⁴

10. The Defence submits that the issues upon which the KBA proposes to focus in its *amicus* brief have already been dealt with comprehensively by the Prosecutor's 11 bis Request¹⁵ and by the Government of Rwanda (GoR) in its *Amicus Curiae* brief.¹⁶ The primary criterion in determining whether to grant leave to any *amicus curiae* is whether such submissions would assist the Chamber in considering the questions at issue¹⁷ and argues that in the instant case, further representations on these issues would be repetitious.¹⁸

11. The Defence adds that as the KBA is not a party to the proceedings it has no standing to respond to arguments raised by the Defence or supporting *amici* briefs.¹⁹ Nevertheless, it would appear that the purpose of the KBA's application is to provide arguments in opposition to the Defence arguments and the *amici* submissions.

12. The Defence argues that should the Chamber grant KBA's request to appear as *amicus* in this case, it would further extend the referral request proceedings since the Defence would inevitably reply to such KBA submissions thus prolonging the detention of the accused unnecessarily.²⁰

Prosecution Submissions

13. The Prosecution supports the KBA Application to appear as *amicus curiae* in the instant case as its members play a central role in the day to day administration of criminal justice. This places the KBA in a position to provide the Chamber and the parties with

¹³ Defence submissions para. 3.

¹⁴ Defence submissions para. 4.

¹⁵ 11 bis Motion, 4 November 2010, Annex I and M.

¹⁶ GoR *Amicus* brief, 18 February 2011, Annexes A, C and F.

¹⁷ Defence submissions para. 10.

¹⁸ Defence submissions para 10.

¹⁹ Defence submissions paras. 8, 9.

²⁰ Defence submissions para. 11.

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specific and useful information based on their experience and expertise in handling genocide and other criminal cases in Rwanda.²¹

14. The Prosecution notes that it has not opposed previous requests to submit briefs as *amicus curiae* in order to favour full and open air of views that can assist the Chamber in reaching an informed decision concerning the 11 bis Request. Moreover, it will not oppose should the Defence wish to file submissions in response to a KBA *amicus curiae* brief.²²

Deliberations

Applicable Law

15. Rule 74 of the Rules of Procedure and Evidence authorises the Chamber, if it considers it desirable for determining the case, to invite or grant leave to any State, organization or person to make submissions on any specified issue.

16. Rule 11 bis (C) directs that in referring a case to the authorities of another state for trial in accordance with Rule 11 bis (A), the Trial Chamber is obliged to satisfy itself that the accused will received a fair trial in the courts of the state concerned.

Analysis

17. At the outset, the Referral Chamber observes that in its request to appear as *amicus curiae* the KBA explicitly refers to the Defence Response to the 11 bis Motion and the *amici curiae* briefs, stating that the KBA "respectfully disagrees with several of [the] submissions on the matter."²³ Indeed, it would appear that the KBA filed its application extremely late for the primary purpose of responding to other submissions.²⁴ It is the view of the Chamber that the KBA has no standing to respond to the Defence response to the 11 bis Motion or the three *amici curiae* briefs filed thus far. Moreover,

²¹ Prosecution submissions, paras. 1, 2.

²² Prosecution submissions, para. 3.

²³ Prosecution submissions, paras. 3-4.

²⁴ Application, paras. 3-4.

this is not the purpose of the appointment of *amici curiae* pursuant to Rule 74. The only party with standing to address the Defence response to the 11 *bis* Motions and the *amici* briefs is the Prosecutor's Office of the ICTR. If the KBA has information it believes is relevant to the prior submissions, the proper avenue is to submit its comments to the Prosecution for consideration.

18. However, the Trial Chamber observes that the three *amici curiae* briefs filed thus far, have all supported the Defence stance while only the *amicus curiae* brief filed by the GoR supported the Prosecution position. In addition, the KBA is uniquely placed to address three issues related to the 11 *bis* Motion. Finally, the Chamber is of the view that to allow the KBA to make submissions, and the parties to make submissions regarding the brief, will not unduly delay the proceedings even at this very late stage. Therefore, in the interests of justice, the Referral Chamber will grant the Application to address:

- i) the legal provisions and practice regarding legal representation and access of accused persons to Defence counsel;
- ii) the access of Accused persons to legal aid services and pro bono services;
- iii) the working conditions of members of the Kigali Bar Association.

19. At the same time, in order to ensure finality in these proceeding, and to ensure that no undesirable precedent is set, the KBA is prohibited from making any submissions regarding the Defence Response to the 11 *bis* Motion or the three *amici* briefs supporting the Defence position.

FOR THESE REASONS, THE REFERRAL BENCH

GRANTS leave to the Kigali Bar Association to appear as *amicus curiae* in the present case.

REQUESTS that the Kigali Bar Association address only the following points in its *amicus curiae* brief:

- (i) The legal provisions and practice regarding legal representation and access of accused persons to Defence counsel;
- (ii) The access of Accused persons to legal aid services and pro bono services;
- (iii) The working conditions of members of the Kigali Bar Association.

DIRECTS that the Kigali Bar Association file its *amicus* brief with the Registry of the Tribunal within 14 days from the date of this Decision;

REQUESTS the Registrar of the ICTR to provide the KBA with all the documents related to the present case for a proper discharge of its *amicus* mandate;

REQUESTS the Registrar to notify, without delay, the present Decision to the KBA;

ORDERS the parties to file any submissions regarding the *amicus curiae* brief of the KBA within 10 days from the date on which the brief is filed.

Arusha, 8 April 2011, done in English.



Florence Rita Arrey


Presiding Judge



Emile Francis Short



[Seal of the Tribunal]



Robert Fremr

Judge