

ICTR-01-75-I
10-05-2011
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**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

UNITED
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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: 10 May 2011

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THE PROSECUTOR

v.

JEAN-BOSCO UWINKINDI

Case No. ICTR-2001-75-R11bis

**DECISION ON THE INTERNATIONAL CRIMINAL DEFENCE ATTORNEYS
ASSOCIATION (ICDAA) REQUEST FOR LEAVE TO FILE SUPPLEMENTARY
SUBMISSIONS**

Office of the Prosecutor:

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

Counsel for the Defence:

Claver Sindyigaya
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. In February and March 2011, the International Criminal Defence Attorney’s Association (ICDAA) filed an *amicus curiae* brief opposing the Prosecution’s 11 *bis* Motion.³
4. On 14 March 2011 the Defence filed a response to the Prosecution’s 11 *bis* Motion.⁴
5. On 20 April 2011, the Prosecution filed a consolidated reply to the Defence response. This reply included submissions on the ICDAAs brief.⁵

¹*Prosecutor v. Jean-Bosco Uwinkindi*, Case No. ICTR-2001-75-R11*bis*, 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, 4 November 2010.

²Notice of Designation - *Prosecutor v. Jean Uwinkindi*, Case No. ICTR-2001-75-R11*bis*, 26 November 2010.

³*Prosecutor v. Jean-Bosco Uwinkindi.*, Case No. ICTR-2001-75-1, *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.

⁴*Prosecutor v. Jean-Bosco Uwinkindi*, Case No. ICTR-2001-75-R11*bis*, 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.

⁵*Prosecutor v. Jean-Bosco Uwinkindi*, Case No. ICTR-2001-75-R11*bis*, Prosecutor’s Consolidated Response To: (1) 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; (2) *Amicus Curiae* Brief of Human Rights Watch in opposition to Rule 11 *bis* Transfer; (3) *Amicus Curiae* Brief of the International Association of Democratic Lawyers (IADL) pursuant to Rule 74 (Rules of Procedure and Evidence); and (4) International Criminal Defence Attorneys Association (ICDAA) *Amicus Curiae* Brief, 20 April 2011.

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6. On 25 April 2011, the ICDAAs filed an application requesting leave to file supplementary submissions and annexes ("Application").⁶

7. On 29 April 2011, the Prosecution filed a response objecting to the ICDAAs application to file supplementary submissions and annexes ("Prosecution Submissions").⁷

8. On 3 May 2011, the Defence filed a response in support of the ICDAAs application ("Defence Submissions")⁸

SUBMISSIONS OF THE PARTIES

The ICDAAs

9. The ICDAAs recalls that in its *amicus* brief in the instant case it stated that it would be filing further *amicus* briefs in the cases of *Sikubwabo and Kayishema*, and that in the event that new information arose with respect to its submissions in these latter cases, it would request leave of the *Uwinkindi* Chamber to file additional submissions.⁹

10. According to the ICDAAs, it has received four documents of relevance since it filed its first brief in this case, and thus now seeks the Chamber's leave to file supplementary submissions.¹⁰

The Prosecution

11. The Prosecution argues that the ICDAAs has no standing to make the proposed supplementary submissions. Furthermore, the Prosecution and the Defence have already

⁶ *Prosecutor v. Jean-Bosco Uwinkindi*, Case No. ICTR-2001-75-I, *Amicus Curiae* request for leave to file supplementary submissions and annexures, , including the supplementary submissions and annexure. ("Application"), 26 April 2011.

⁷ *Prosecutor v. Jean-Bosco Uwinkindi*, Case No. ICTR-2001-75-I, Prosecutor's response to "*Amicus Curiae* request for leave to file supplementary submissions and annexures, , including the supplementary submissions and annexure" And request to expunge said submissions from the record ("Prosecution Submissions"), 28 April 2011.

⁸ *Prosecutor v. Jean-Bosco Uwinkindi*, Case No. ICTR-2001-75-I, Defence submissions relating to the ICDAAs request for leave to file supplementary submissions and annexures, ("Defence Submissions"), 3 May 2011.

⁹ Application, paras.2-3.

¹⁰ Application, paras. 4, 5, 6.

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filed their submissions, and thus the ICDAAs can not make additional submissions at this late stage, particularly when the parties themselves have no right to reply thereto.¹¹

12. The Prosecution asserts that the supplemental submission is an attempt to respond to specific arguments made by the Government of Rwanda (GoR) in its *amicus* brief. However, it notes that the ICDAAs had the GoR's *amicus* brief in its possession and indeed referred to it in its initial brief.¹²

13. The Prosecution states that the ICDAAs was accorded *amicus curiae* status and given 21 days within which to file its brief. The Chamber further granted the ICDAAs an extension of time to file its brief. Therefore the ICDAAs had ample time to make a complete submission.¹³

14. The Prosecution adds that although the allegations in paragraph 2 and annex 7 of the ICDAAs application are new, the underlying issues contained in the supplementary submission have been fully litigated by the parties and the *amici curiae*, including the ICDAAs. The supplementary submission does not contain new information capable of further assisting the Referral Chamber.¹⁴ The Prosecution seeks to have the Referral Chamber reject the supplementary submissions and expunge them from the record.¹⁵

The Defence

15. The Defence states that the reasons put forward by the ICDAAs for seeking leave to submit a new filing are valid and should be accepted. The ICDAAs indicated that it would be filing more detailed briefs in the *Kayishema* and *Sindikubabwo* Rule 11 *bis* case. The Defence recalls that the Referral Chamber in *Kayishema* indicated that "information will be gathered in relation to the referral request concerning Jean

¹¹ Prosecution Submissions, paras. 4, 6, 8.

¹² Prosecution Submissions, paras. 4, 7.

¹³ Prosecution Submissions, para. 5.

¹⁴ Prosecution Submissions, para. 9.

¹⁵ Prosecution Submissions, paras. 11, 12.

Uwinkindi and the outcome of that case...is likely to impact on the issues that will be raised in relation to the present referral request.”¹⁶

16. The Defence argues that the Prosecution erroneously compares the circumstances under which the Chamber denied the Government of Rwanda’s application to respond to the Defence submission and *amici curiae* briefs, with the ICDAAs request to submit supplementary documents.¹⁷ Furthermore, the Defence claims that it would be in the interests of justice to consider the supplementary documents.¹⁸

DELIBERATIONS

17. The Referral Chamber recalls that the ICDAAs was accorded status as *amicus curiae* in this case and granted an extension of time within which to file its brief. This gave the ICDAAs sufficient time to obtain all the related amendments, legal opinions and documents necessary to support its position.¹⁹

18. The Referral Chamber observes that the supplementary submission the ICDAAs seeks to admit, is an attempt to further respond to the GoR’s *amicus* brief. It is worth noting that the ICDAAs filed its initial *amicus* brief one month after the GoR filed its *amicus* brief, thus giving it ample time and opportunity to address all the issues raised in the GoR’s *amicus* brief.

19. The Referral Chamber notes that the ICDAAs is not a party to the proceedings and therefore has no standing to make supplementary submissions except where they are made through a party that has standing to make submissions in this proceeding.

¹⁶ Defence Submissions, para. 35.

¹⁷ Defence Submissions, paras. 6, 7.

¹⁸ Defence Submissions, para. 8.

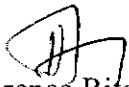
¹⁹ *Prosecutor v. Jean-Bosco Uwinkindi*, Case No. ICTR-2001-75-I, Decision on Request by International Criminal Defence Attorney’s Association (ICDAAs) for leave to appear as *Amicus Curiae* pursuant to Rule 74 of the ICTR Rules of Procedure and Evidence, 1 February 2011. “DIRECTS that the ICDAAs file its *amicus* brief with the Registry of the Tribunal within 21 days of the date of the present Decision” Decision on the International Criminal Defence Attorney’s Association (ICDAAs) request for extension of time to file *amicus curiae* brief. 10 February 2011, paras. 5, 8.

FOR THESE REASONS, THE REFERRAL CHAMBER

DENIES the ICDAAs request and

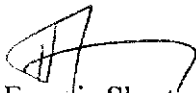
ORDERS that the ICDAAs supplementary submissions be expunged from the record.

Arusha, 10 May 2011, done in English.



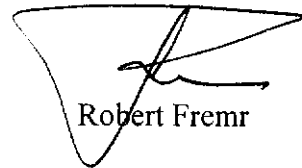
Florence Rita Arrey

Presiding Judge



Emile Francis Short

AP



Robert Fremr

Judge