



**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

UNITED NATIONS
NATIONS UNIES

OR: ENG

TRIAL CHAMBER III

Before Judges: Khalida Rachid Khan, Presiding
Lee Gacuiga Muthoga
Seon Ki Park

Registrar: Adama Dieng

Date: 26 October 2011

THE PROSECUTOR
v.
Bernard MUNYAGISHARI
Case No. ICTR-2005-89-I

SCHEDULING ORDER FOR ANTICIPATED RULE 11 *BIS* MOTION

Office of the Prosecutor
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Counsel for the Accused
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INTRODUCTION

1. On 3 October 2011, the Prosecution requested that 1) a Trial Chamber be designated to adjudicate an anticipated motion pursuant to Rule 11 *bis* of the Rules of Procedure and Evidence¹; 2) the designated Trial Chamber issue a scheduling order for the filing of briefs by the Parties and any *amicus curiae*; 3) the designated Trial Chamber grant an opportunity to the authorities of the Republic of Rwanda to be heard; and 4) the designated Trial Chamber grant referral of the case to Rwanda and order that protective measures issued by the Tribunal upon confirmation of the Indictment apply *mutatis mutandis* in Rwanda (the “Motion”).²

2. On 13 October 2011, the President of the Tribunal designated Trial Chamber III, composed of Judges Khalida Rachid Khan, Presiding, Lee Gacuiga Muthoga and Seon Ki Park to adjudicate the anticipated Rule 11 *bis* motion (“Designation Decision”).³ No further orders were issued.

3. On 19 October 2011, the Defence filed a request indicating that only Counsel for the Accused (and not the Accused himself) had received the Motion. It further noted that Defence Counsel, who works in French, only received an English version of the Motion (the “Response”).⁴ The Defence further requests a delay of three months to respond to the Prosecution’s anticipated Rule 11 *bis* motion in order to compose a defence team and in light of the importance of its work.⁵

DISCUSSION

4. At the outset, the Prosecution’s requests that the Chamber grant Rwandan authorities the opportunity to be heard with respect to the anticipated Rule 11 *bis* motion as well as issues pertaining to the extension of protective measures to proceedings in Rwanda are premature. The Chamber has not received any request from the Rwandan authorities to make submissions.⁶ Furthermore, no orders have been issued related to witness protection nor has transfer pursuant to Rule 11 *bis* been granted. The Chamber denies these aspects of the Motion.

¹ All further references are to the Tribunal’s Rules of Procedure and Evidence unless otherwise indicated.

² Prosecutor’s Request for the Referral of the Case of Bernard Munyagishari to Rwanda Pursuant [sic] Rule 11 *bis* of the Rules of Procedure and Evidence, 3 October 2011 (the “Motion”), para. 6.

³ Designation of a Trial Chamber to Consider the Prosecutor’s Request for the Referral of the Case of Bernard Munyagishari to Rwanda (TC), 13 October 2011 (“Designation Decision”), p. 2.

⁴ *Réquete en Demande de Délai sur la Demande d’Application de l’Article 11 bis*, 19 October 2011 (the “Response”), paras. 3, 6. The Chamber considers these aspects of the Response moot in light of the Designation Decision.

⁵ Response, para. 7.

⁶ Cf. *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-2002-78-I, Decision on Defence Request to Grant *Amicus Curiae* Status to Four Non-Governmental Organizations (TC), 22 February 2008, para. 5 (noting that *amicus curiae* status is normally only granted where an application has been made by the organisation seeking it).

5. The Prosecution also requests that the Chamber issue a scheduling order for the filing of briefs by the Parties and any *amicus curiae*. The Indictment against the Accused was confirmed 8 September 2005.⁷ On 15 June 2011, the Court Management Section of the Tribunal informed the President that the Accused, Bernard Munyagishari, had been arrested and transferred to the custody of the Tribunal.⁸ On 20 June 2011, Munyagishari made an initial appearance pursuant to Rule 62 and pleaded not guilty to all counts.⁹

6. The Prosecution has not made any submissions between the initial appearance of the Accused on 20 June 2011 and the filing of the Motion on 3 October 2011 (more than three months later). In light of the Prosecution submissions, which imply that it is prepared to file its anticipated Rule 11 *bis* motion, the Chamber sees no reasons for any further delay.¹⁰ The Chamber orders the Prosecution to file its anticipated Rule 11 *bis* motion as soon as practicable, but not more than 14 days from the filing of this decision.

7. Turning to the briefing schedule of any *amicus curiae*, the Chamber considers that any order related to this is also premature as no requests to appear before the Chamber in this capacity have been received.¹¹ Notwithstanding, any individual, organisation or State that desires to be granted *amicus curiae* status should submit such a request before the Chamber shortly after the filing of the anticipated Rule 11 *bis* motion.¹²

8. The Chamber next considers the Defence request for a three month delay in filing its response to the anticipated Rule 11 *bis* motion. The Rules do not stipulate the time within which the Defence must file a response to a Rule 11 *bis* request.¹³ Thus, Trial Chambers have held that they may exercise discretion to establish an appropriate time-frame.¹⁴

9. Determining the appropriate time-frame for a Defence team to respond to a Rule 11 *bis* request is a fact-specific inquiry. Whether translations of the Rule 11 *bis* motion and accompanying annexes have been provided to the Defence may be a relevant

⁷ Decision on Confirmation of an Indictment Against Bernard Munyagishari (Confirming Judge), 8 September 2005.

⁸ Order Relating to the Initial Appearance of Bernard Munyagishari (President), 16 June 2011, para. 1.

⁹ T. 20 June 2011 pp. 8-9.

¹⁰ See Motion, para. 5 (“The Prosecutor shall, subject to a scheduling order of the Trial Chamber designated to hear this matter, file a detailed brief in support of this application.”).

¹¹ See fn. 6, *supra*.

¹² Such submissions should demonstrate circumstances justifying the grant of *amicus curiae* status in light of Rules 11 *bis* and 74. See *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-2002-78-I, Decision on the Request of the Republic of Rwanda for Leave to Appear as *Amicus Curiae* (TC), 9 November 2007, paras. 3-5.

¹³ *The Prosecutor v. Jean-Bosco Uwinkindi*, Case No. ICTR-2001-75-I, Decision on Defence Motion for Setting a Date for the Filing (sic) a Response to the Prosecution’s (Rule 11 *bis*) Request for the Referral of the Case of Jean Uwinkindi to Rwanda, and Request for Translation (TC), 8 December 2010, para. 19 (“*Uwinkindi* Decision”).

¹⁴ *Uwinkindi* Decision, para. 19; *The Prosecutor v. Fulgence Kayishema*, Case No. ICTR-2001-67-I, 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 (TC), 1 July 2008, para. 5 (“*Kayishema* Decision”); *The Prosecutor v. Ildephonse Hategekimana*, Case No. ICTR-00-55B-I, Scheduling Order for Filing of Submissions by the Parties, 4 December 2007, para. 4 (“*Hategekimana* Order”).

consideration.¹⁵ Importance has been placed on whether evidentiary materials supporting the motion, which are necessary for an accused to understand to ensure the benefit of a fair trial, have been submitted in a language understood by the accused.¹⁶

10. Moreover, the recent appointment of Defence counsel and composition of the Defence team, as well as the volume of the submissions are also relevant in determining the allowable delay for a Defence response.¹⁷ Whether a Defence team will be disadvantaged without being granted an extension and the importance of the issues that the Defence intends to brief in its response have also been considered relevant.¹⁸

11. The Chamber does not consider Defence Counsel's submission that he needs to compose a Defence team justifies the three month response-time to the anticipated Rule 11 *bis* motion. Defence Counsel was notified of his appointment on 8 July 2011.¹⁹ Two Legal Assistants have also been assigned to the Defence (one as of 1 August 2011 and another as of 24 October 2011).²⁰ The most recent appointment was made for the specific purposes of assisting with the anticipated Rule 11 *bis* motion.²¹ In this regard, the Defence team has already been composed. Furthermore, Defence Counsel's general assertion about the importance of the work is too vague to justify a three month delay in responding to the anticipated Rule 11 *bis* motion.²²

12. Defence Counsel has indicated that French is the working language of the Defence team.²³ The Chamber observes that Defence Counsel has worked in English before, although he requires translation of it.²⁴ Co-Counsel has not yet been assigned. Both of his Legal Assistants are bilingual.²⁵ Considering the important issues to be litigated in the anticipated Rule 11 *bis* motion, the Chamber considers that the time-frame in which to file a response should run from the filing of the anticipated Rule 11 *bis* motion and corresponding annexes (if any) in French.²⁶

¹⁵ *Hategekimana* Order, paras. 3, 5 and p. 3.

¹⁶ *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-2002-78-I, Decision on Defence Request for Extension of Time and Translation (TC), 22 October 2007, paras. 4-5.

¹⁷ *Kayishema* Decision, para. 6. *But see Uwinkindi* Decision, para. 20 (noting that the importance of the Rule 11 *bis* decision justified translation of the Prosecution motion into a language understood by the Accused).

¹⁸ *Uwinkindi* Decision, para. 26.

¹⁹ Registry Letter to Philippe Moriceau, 8 July 2011.

²⁰ Registry Contract for Majda Dautovic, 1 August 2011; Registry Contract for Natacha Fauveau-Ivanovic, 24 October 2011.

²¹ Registry Contract for Natacha Fauveau-Ivanovic, 24 October 2011.

²² *Cf. Uwinkindi* Decision, paras. 26-27 (submissions on the independence of the Rwandan judiciary would be central the Chamber's considerations and, in part, demonstrated good cause to allow more than a one month response time).

²³ Response, para. 6.

²⁴ See Moriceau *Formulaire IL 2*, signed 7 April 2011.

²⁵ See Majda Dautovic, *Composition de la défense* (V.VI), signed 2 August 2011, p. 2 (indicating "excellent" comprehension in English and French and having worked in both languages); see Natacha Fauveau-Ivanovic, *Composition de la défense* (V.VI), signed 21 October 2011, p. 3 (indicating "excellent" comprehension in English and French and having worked in both languages).

²⁶ The Chamber anticipates that, in the future, the Defence team shall be able to respond to motions filed in English without having to wait for translation into French.

13. In light of the foregoing, the Chamber considers that allowing the Defence to file a response 30 days after the filing of the anticipated Rule 11 *bis* motion and corresponding annexes (if any) in French sufficiently upholds the guarantees of the Accused's right to a fair and expeditious trial pursuant to Articles 19 and 20 of the Statute. In so determining, the Chamber observes that the anticipated Rule 11 *bis* motion has yet to be filed. Consequently, future circumstances and additional submissions may warrant a variation of this order.

14. The Prosecution has not made any submissions regarding the appropriate time-frame in which to file a reply. The Prosecution shall have 7 days from the filing of the Defence response to file any reply. Again, future circumstances and additional submissions may warrant a variation of this order.

BASED ON THE FOREGOING, THE CHAMBER

ORDERS the Prosecution to file its anticipated Rule 11 *bis* motion as soon as practicable, but not more than 14 days from the filing of this decision;

INSTRUCTS the Prosecution to, where possible, file French versions (or translations) of the anticipated Rule 11 *bis* motion and any accompanying annexes;

INSTRUCTS the Prosecution to, where possible, file Kinyarwanda versions (or translations) of the anticipated Rule 11 *bis* motion and any accompanying annexes;

INSTRUCTS the Prosecution, to the extent it is aware of any individual, organisation or State that wishes to make submissions in support of its anticipated Rule 11 *bis* motion, to inform the relevant entity that any request to be granted *amicus curiae* status should be submitted by the entity before the Chamber shortly after the filing of the anticipated Rule 11 *bis* motion;

ORDERS the Defence to file a response 30 days after the filing of the anticipated Rule 11 *bis* motion and any accompanying annexes in French;

INSTRUCTS the Defence, to the extent it is aware of any entity that wishes to make submissions in opposition of the anticipated Rule 11 *bis* motion, to inform the relevant entity that any request to be granted *amicus curiae* status should be submitted by the entity before the Chamber shortly after the filing of the anticipated Rule 11 *bis* motion;

ORDERS the Prosecution to file a reply 7 days after the filing of the Defence response;

DISMISSES all other aspects of the Motion.

Arusha, 26 October 2011

Khalida Rachid Khan
Presiding Judge

Lee Gacuiga Muthoga
Judge

Seon Ki Park
Judge

[Seal of the Tribunal]