



ICTR-05-89-I
13-12-2011
(464-461)

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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: 13 December 2011

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THE PROSECUTOR
v.
Bernard MUNYAGISHARI

Case No. ICTR-2005-89-I

**DECISION ON THE REQUEST OF THE REPUBLIC OF RWANDA FOR
AMICUS CURIAE STATUS**

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INTRODUCTION

1. On 9 November 2011, the Prosecution filed a request, pursuant to Rule 11 *bis* of the Rules of Evidence and Procedure (the "Rules"), to transfer the case of *The Prosecutor v. Bernard Munyagishari*, ICTR Case No. 2005-89-I to the Republic of Rwanda ("11 *bis* Motion").¹ The 11 *bis* Motion is pending. On 18 November 2011, the Republic of Rwanda ("Rwanda") filed a request to make submissions as *Amicus Curiae* with respect to the 11 *bis* Motion (the "Motion").² The Motion was transmitted via email to the Defence on 21 November 2011.³

2. The Defence has not filed a response to the Motion. Rather, on 28 November 2011, the Defence requested that it be allowed a delay to file a response to the Motion until a translation by the Registry into French is provided ("Defence Motion").⁴ The Chamber denied the Defence Motion in a decision of 6 December 2011.⁵

DISCUSSION

3. Rule 74 of the Rules states that a Chamber "may, if it considers it desirable for the proper determination of the case, invite or grant leave to any State, organization or person to appear before it and make submissions on any issue specified by the Chamber".⁶ Determining whether leave to make submissions pursuant to Rule 74 of the Rules is a matter within the discretion of the Chamber.⁷

4. In determining the relevance of the anticipated submissions by Rwanda, the Chamber recalls that Rule 11 *bis* (C) of the Rules reads as follows:

In determining whether to refer the case in accordance with paragraph (A), the Trial Chamber shall satisfy itself that the accused will receive a fair trial in the courts of the State concerned and that the death penalty will not be imposed or carried out.

¹ Prosecutor's Request for the Referral of the Case of Bernard Munyagishari to Rwanda pursuant to Rule 11 *bis* of the Tribunal's Rules of Procedure and Evidence, 9 November 2011 ("11 *bis* Motion"), para. 96.

² Request by the Republic of Rwanda for Leave to Make Submissions as *Amicus Curiae* in the Matter of the Prosecutor's Rule 11 *bis* Request for the Referral of the Case of Bernard Munyagishari to Rwanda, dated 18 November 2011 and transmitted on 21 November 2011 (the "Motion").

³ The Defence has elsewhere stated that it received the Motion on 22 November 2011. See *Requête de la défense de Bernard Munyagishari aux fins de communication des traductions en application de l'Article 20 (4)(a) and 20 (4)(b) du Statut*, 28 November 2011, para. 8.

⁴ *Requête de la défense de Bernard Munyagishari aux fins de communication des traductions en application de l'Article 20 (4)(a) and 20 (4)(b) du Statut*, 28 November 2011 ("Defence Motion"), paras. 8, 11.

⁵ Decision on the Defence Requests for Translation and Delays (TC), 6 December 2011.

⁶ The threshold determination has been held to be whether the submissions will be relevant. *The Prosecutor v. Gaspard Kanyarukiga*, ICTR-02-78-I, Decision on the Request of the Republic of Rwanda for Leave to Appear as *Amicus Curiae* (TC), 9 November 2007, para. 2.

⁷ See *The Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-99-52-A, Decision on the Admissibility of the *Amicus Curiae* Brief Filed by the "Open Society Justice Initiative" and on its Request to be Heard at the Appeals Hearing (AC), 12 January 2007, p. 3. See also *The Prosecutor v. Ildephonse Hategekimana*, ICTR-00-55B-R11bis, Decision on the Republic of Rwanda for Permission to File an *Amicus Curiae* Brief (AC), 30 October 2008, p. 3; *The Prosecutor v. Gaspard Kanyarukiga*, ICTR-02-78-R11bis, Decision on Request from Republic of Rwanda for Permission to File an *Amicus Curiae* Brief (AC), 1 September 2008, p. 2.



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5. Rwanda submits that given its position as the concerned State, it is in a unique position to assist the Trial Chamber in its consideration of “the legislative framework protecting the fair trial rights of the accused, conditions of detention, the availability and protection of witnesses, the working conditions of defence counsel, and the independence and impartiality of the judiciary of Rwanda”.⁸ It further indicates that it can file submissions in relation to several issues that it had been previously asked to address by Chambers seized by the Prosecutor’s Rule 11 *bis* requests in the *Kayishema* and *Uwinkindi* proceedings.⁹

6. Rwanda has demonstrated that its submissions may assist this Chamber in the proper determination of the 11 *bis* Motion. Consequently, the Chamber invites Rwanda to provide written submissions and supporting materials on the issues it has stated it is prepared to address.

7. Rwanda has requested that it be allowed a period of 40 days to file its *Amicus Curiae* Brief.¹⁰ The Chamber, *proprio moto*, will require that if Rwanda makes written and documentary submissions as *Amicus Curiae*, it file them in English, as well as simultaneously file a French translation.

8. The Chamber has previously considered the law on translation and has, in particular, noted that given the Defence team’s capabilities in French and English, it is not entitled to French translations of Prosecution motions and briefs.¹¹ The logic extends to these filings as well. However, given the Defence team’s clear preference for French, bilingual submissions should assist in the expeditious advancements of proceedings.

9. Consequently, the Chamber shall allow Rwanda 40 days from the receipt of this decision to file its *Amicus Curiae* Brief and any supporting materials in English, while simultaneously filing a French translation.¹²

10. Rwanda has also requested the right to make oral submissions and to have the Chamber conduct a site-visit.¹³ The decision to allow Rwanda or any other party in these

⁸ Motion, para. 5.

⁹ Motion, para. 7. See also *The Prosecutor v. Fulgence Kayishema*, ICTR-01-67-R11bis, Decision on the International Criminal Defence Attorneys Association for Leave to Appear as Amicus Curiae and Invitation to the Republic of Rwanda to File Submissions (TC), 18 February 2011, pp. 3-4; *The Prosecutor v. Jean-Bosco Uwinkindi*, ICTR-01-75-1, Invitation to the Government of Rwanda to Make Submissions as *Amicus Curiae*, pursuant to Rule 74 of the ICTR Rules of Procedure and Evidence, on the Prosecution’s 11 *bis* Motion (TC), 18 January 2011, pp. 2-3.

¹⁰ Motion, para. 10(a).

¹¹ Decision on the Defence Requests for Translation and Delays (TC), 6 December 2011, para. 16.

¹² The Chamber is mindful that Rule 3 (E) of the Rules indicates that the Registrar “shall make any necessary arrangements for interpretation and translation of the working languages”. Communications between the Chamber and the Registry’s Language Services Section (“LSS”) indicate that the latter currently is under significant translation burdens pertaining to multi-accused judgements. While the Prosecution was asked to file its 11 *bis* Motion and its annexes in French, it chose not to, adding to the LSS’s heavy workload. The Chamber has broad authority under Rule 54 of the Rules to issue orders necessary for the conduct of the trial. Furthermore, allowing submissions of *amicus curiae* pursuant to Rule 74 of the Rules is entirely discretionary. Under the circumstances, imposing the burden to translate submissions on prospective *amicus curiae* is appropriate.

¹³ Motion, paras. 9, 10(b).

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proceedings to make oral submissions is premature.¹⁴ Likewise, it is too early to determine whether it would be in the interests of justice to conduct a site visit.¹⁵

BASED ON THE FOREGOING, THE CHAMBER

GRANTS Rwanda's request to file submissions as *Amicus Curiae* before the Chamber;

ORDERS Rwanda to file its *Amicus Curiae* Brief in English and French;

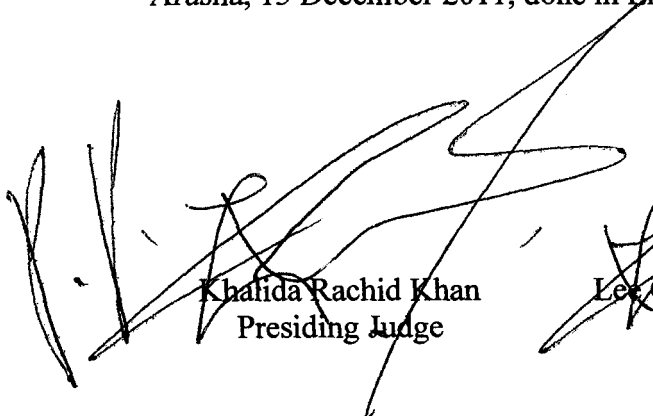
ORDERS Rwanda to file French translations of any supporting materials whose originals are in English;

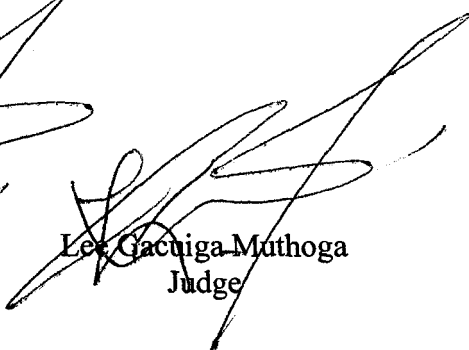
ORDERS Rwanda to file its *Amicus Curiae* Brief and any supporting materials within 40 days of receipt of this decision;

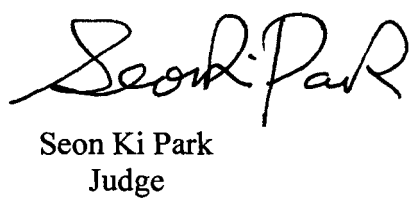
DENIES Rwanda's request to make oral submissions and to conduct a site-visit;

DIRECTS the Registry to transmit this decision to Rwanda and report back to Chamber within seven (7) days of the filing of this order;

Arusha, 13 December 2011, done in English


Khalida Rachid Khan
Presiding Judge


Leet Gacigira Muthoga
Judge


Seon Ki Park
Judge

[Seal of the Tribunal]



¹⁴ Cf. Rule 73 (A) of the Rules, which allows the Chamber to rule on motions “based solely on the briefs of the parties”.

¹⁵ Rule 4 of the Rules allows a Chamber to “exercise their functions away from the Seat of the Tribunal, if so authorized by the President in the interests of justice”.