

ICTR-05-89 I
(2-2-2012)
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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: 2 February 2012

JUDICIAL RECORDS ARCHIVES
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THE PROSECUTOR
v.
Bernard MUNYAGISHARI

Case No. ICTR-2005-89-I

DECISION ON PROSECUTOR'S REQUEST FOR EXTENSION

Office of the Prosecutor
Hassan Bubacar Jallow
James J. Arguin
George Mugwanya
Inneke Onsea
Abdoulaye Seye
François Nsanzuwera

Counsel for the Accused
Philippe Moriceau
Majda Dautović
Natacha Fauveau-Ivanović

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INTRODUCTION

1. The Indictment against Bernard Munyagishari (the "Accused") was confirmed on 8 September 2005 and a warrant for his arrest was issued the same day.¹ On 25 May 2011, the Accused was arrested in the Democratic Republic of the Congo. He was transferred to the United Nations Detention Facility on 14 June 2011.² On 15 June 2011, the Court Management Section of the Tribunal informed the President that the Accused had been arrested and transferred to the custody of the Tribunal.³ On 20 June 2011, Munyagishari made an initial appearance pursuant to Rule 62 of the Rules of Procedure and Evidence (the "Rules") and pleaded not guilty to all counts.⁴
2. On 3 October 2011, the Prosecution requested, among other things, that a Trial Chamber be designated to adjudicate an anticipated motion, pursuant to Rule 11 *bis* of the Rules of Procedure and Evidence, to transfer the Accused to the Republic of Rwanda.⁵ On 13 October 2011, the President of the Tribunal designated Trial Chamber III (the "Chamber") to adjudicate the anticipated Rule 11 *bis* motion.⁶
3. On 26 October 2011, the Chamber issued a scheduling order directing the Prosecution to file its anticipated Rule 11 *bis* motion within 14 days of the order and that the Defence respond 30 days after the filing of the anticipated Rule 11 *bis* motion and accompanying annexes in French. The Chamber directed the Prosecution to file its reply seven days after the filing of the Defence response.⁷
4. On 9 November 2011, the Prosecution filed in English a request, pursuant to Rule 11 *bis* of 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").⁸ The Chamber received *amicus curiae* in briefs from the Republic of Rwanda and Kigali Bar Association on 19 and 23 January 2012, respectively.⁹ The Defence timely filed its

¹ Decision on Confirmation of an Indictment Against Bernard Munyagishari (Confirming Judge), 8 September 2005; Warrant of Arrest and Order for Transfer and Detention of Bernard Munyagishari (Confirming Judge), 8 September 2005.

² *Requête de la défense en vu d'obtenir l'ouverture du procès de l'accusé Bernard Munyagishari en application des Articles 19 (1) et 20 (4)(c) du Statut et de l'Article 73 bis du Règlement*, 24 November 2011, para. 1; Prosecutor's Response to "*Requête de la défense en vu d'obtenir l'ouverture du procès de l'accusé Bernard Munyagishari en application des Articles 19 (1) et 20 (4)(c) du Statut et de l'Article 73 bis du Règlement*", 28 November 2011, para. 4.

³ Order Relating to the Initial Appearance of Bernard Munyagishari (President), 16 June 2011, para. 1.

⁴ T. 20 June 2011 pp. 8-9.

⁵ 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.

⁶ 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, p. 2.

⁷ Scheduling Order for Anticipated Rule 11 *bis* Motion (TC), 26 October 2011 ("Scheduling Order").

⁸ 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.

⁹ Brief for the Republic of Rwanda as *Amicus Curiae*, 19 January 2012 ("Rwanda Brief"); *Amicus Curiae* Brief of the Kigali Bar Association in the Matter of the Prosecutor's Request for the Referral of the Case of [Bernard Munyagishari], 23 January 2012 ("KBA Brief").



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response on 1 February 2012, although the complete response and accompanying annexes were circulated today, 2 February 2012 ("Defence Response").¹⁰

5. On 1 February 2012, the Prosecution filed the current request, asking for a 30 day period in order to file its reply to the Defence Response (the "Motion"). In particular, it argues that the extension would be in the interest of justice to allow the Prosecutor to adequately address the issues raised in the Defence Response and in light of "the considerable time frames set by the Trial Chamber" for the filing of the Defence Response and *amicus curiae* briefs.¹¹

6. The Defence has not yet filed a response and the period to do so has not yet elapsed.¹² However, the Chamber considers that the immediate adjudication of the Motion is in the interests of justice and will assist in the fair and expeditious conduct of proceedings.¹³

DISCUSSION

7. The Chamber has previously observed that the Rules do not stipulate the time within which the Defence must file a response to a Rule 11 *bis* request.¹⁴ Nonetheless, the parties' rights to file responses are enshrined in the Rules.¹⁵ On the contrary, there is no explicit grant of a right to reply. Notwithstanding, the Chamber, balancing both the interests of justice as well as the need to expeditiously advance proceedings, ordered that a Prosecution reply be filed within seven days of the Defence Response.¹⁶

8. In this context, the Chamber considers that the Prosecution motion fails to justify the extension sought. At the outset, the Prosecution waited over three months before even indicating its intent to file an 11 *bis* Motion. It has had over a week to consider and digest *amicus curiae* briefs, which were filed *in support of* the 11 *bis* Motion.¹⁷ These circumstances weigh against an extension.

9. While the Prosecution argues that the Defence has raised several issues specific to the Accused's case that could not have been anticipated, this proposition is made without any citation to the Defence Response.¹⁸ Without greater specificity, the Chamber considers this argument unpersuasive, particularly in light of the Prosecutor's extensive experience litigating Rule 11 *bis* motions.

¹⁰ *Réponse de la défense de Bernard Munyagishari a la requête du Procureur aux fins de renvoi de l'affaire Munyagishari au Rwanda en application de l'Article 11 bis du Règlement de Procédure et de Preuve*, 1 February 2012.

¹¹ Prosecutor's Request for Extension of Time, 1 February 2012 (the "Motion"), para. 2.

¹² Rule 73(E) of the Rules of Procedure and Evidence (any response shall be filed five days from the date on which Counsel received the motion).

¹³ See Article 19 (1) of the Statute of the Tribunal. See also Rule 54 of the Rules of Procedure and Evidence.

¹⁴ Scheduling Order, para. 8.

¹⁵ See Rule 73(E) of the Rules of Procedure and Evidence. The Chamber observes that the term "reply" is used in place of "response" in the Rules.

¹⁶ Scheduling Order, p. 6.

¹⁷ See Rwanda Brief, para. 24; KBA Brief, para. 54.

¹⁸ Motion, para. 4.

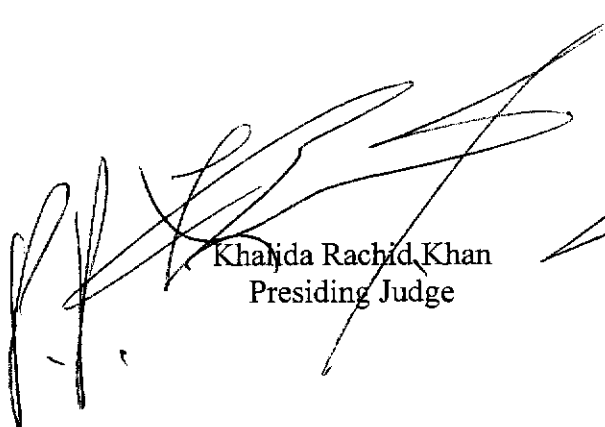
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10. Nonetheless, the Chamber observes that the Defence Response is 55 pages and includes 51 annexes. The voluminous nature of the submissions justifies an extension of an additional seven (7) days to reply, which also conforms with the Accused's right to be tried without undue delay.

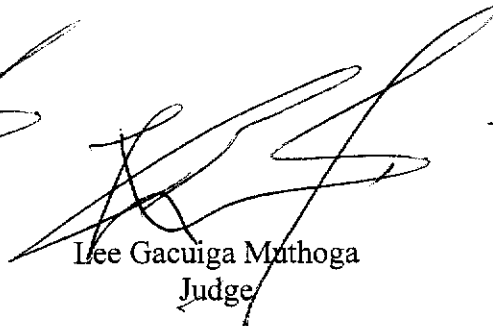
BASED ON THE FOREGOING, THE CHAMBER

GRANTS, IN PART, the Motion. The Prosecution shall file its reply fourteen (14) days from the filing and receipt of the Defence Response and accompanying annexes.

Arusha, 2 February 2012, done in English



Khajida Rachid Khan
Presiding Judge



Lee Gacuga Muthoga
Judge



Seon Ki Park
Judge

[Seal of the Tribunal]

