



ICTR-05-89-I
10-2-2012
(486-483)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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HAM

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: 10 February 2012

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THE PROSECUTOR
v.
Bernard MUNYAGISHARI

Case No. ICTR-2005-89-I

**DECISION ON PROSECUTOR'S OPPOSITION TO ADDITIONAL DEFENCE
SUBMISSIONS**

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 Chamber recalls its summary of the relevant procedural history from its prior Extension Decision of 2 February 2011.¹ In sum, the Prosecution filed 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").² The Defence filed its response to the 11 *bis* Motion on 1 February 2012 ("Defence Response").³ Additionally, on 3 February 2012, the Defence filed additional submissions and a letter from the Kigali Bar Association as an addendum to the Defence Response ("Defence Addendum").⁴ Both Defence filings were submitted within the time frame in which the Defence was allowed to respond to the 11 *bis* Motion.⁵

2. The Prosecution opposes the filing of the Defence Addendum. It argues that Defence has not demonstrated that it could not have filed the Defence Addendum with the Defence Response, and that this conduct amounts to litigating the 11 *bis* Motion in an "open-ended fashion", which could lead to "endless litigation".⁶ In the event that the Chamber allows the Defence Addendum, the Prosecution requests an additional seven days in which to conduct investigations and file a consolidated reply to the Defence Response and Defence Addendum.⁷

3. The Defence responds that the documents contained in the Defence Addendum were obtained after the filing of the Defence Response.⁸ Moreover, it was filed prior to the expiration of the deadline to respond.⁹ Furthermore, it is in the interest of justice to have all relevant information before the Chamber.¹⁰ While the Defence argues that the extension sought by the Prosecution is not justified, it does not oppose this aspect of the Motion.¹¹

¹ Decision on Prosecutor's Request for Extension (TC), 2 February 2012 ("Extension Decision"), paras. 1-4.

² 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.

³ *Réponse de la défense de Bernard Munyagishari à 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 ("Defence Response"). The complete Defence Response with accompanying annexes was circulated to the parties on 2 February 2011. See Extension Decision, para. 4.

⁴ *Addendum à la réponse de la défense de Bernard Munyagishari à 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*, 3 February 2012 ("Defence Addendum").

⁵ See Scheduling Order for Anticipated Rule 11 *bis* Motion (TC), 26 October 2011 ("Scheduling Order"); Decision on Defence Request to Delay Its Response to the Rule 11 *bis* Motion (TC), 17 January 2012.

⁶ Prosecutor's Opposition to Munyagishari's Additional Submissions, 3 February 2012 (the "Motion"), para. 3.

⁷ Motion, para. 4.

⁸ *Réponse de la défense de Bernard Munyagishari à l'opposition du Procureur déposée le 3 février 2012*, 7 February 2012 (the "Response"), paras. 3-5.

⁹ Response, para. 6.

¹⁰ Response, paras. 7-10.

¹¹ Response, para. 11.

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DISCUSSION

4. At the outset, the Chamber observes that the Defence Addendum was filed within the timeframe in which the Defence was allowed to respond to the 11 *bis* Motion. Moreover, the Chamber is satisfied that the Defence Addendum is relevant to the Defence Response and the ongoing transfer litigation. On these grounds, the Chamber denies this aspect of the Motion and will not exclude the Defence Addendum.

5. With respect to the Prosecution's request for an extension, the Chamber observes that the new information contained in the Defence Addendum is a single letter from the Kigali Bar Association (the "KBA").¹² The Defence has made an additional three pages of submissions, and the letter, which has been translated into French, is five pages.¹³ Moreover, the KBA has filed an *amicus curiae* brief in support of the Prosecution's 11 *bis* Motion.¹⁴ Thus the KBA is already involved in and knowledgeable about the particulars of this litigation. It appears to be cooperating with the Prosecution and is well positioned to promptly respond to Prosecution inquiries about the letter in the Defence Addendum. These factors weigh against the extension.

6. Nonetheless, the Defence does not oppose this aspect of the Motion. In light of the Defence position, the Chamber is also of the view that allowing seven additional days to file a consolidated response to the Defence Response and Defence Addendum does not materially impact the Accused's right to be tried without undue delay. The Chamber grants this aspect of the Motion.

¹² Defence Addendum.

¹³ Defence Addendum, Annex.

¹⁴ *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.




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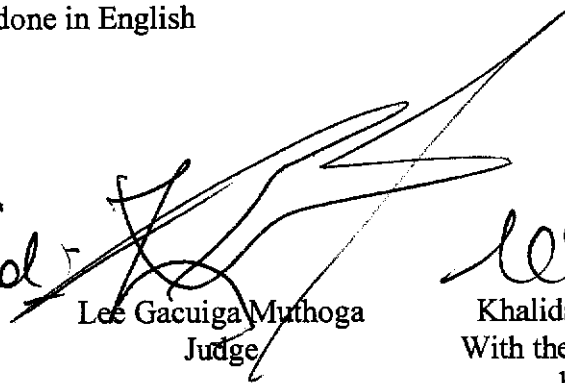
BASED ON THE FOREGOING, THE CHAMBER


DENIES the Prosecution request to exclude the Defence Addendum;

GRANTS the Prosecution request to have seven (7) days in addition to the period set forth in the Chamber's Extension Decision of 2 February 2011 in order to file a consolidated reply to the Defence Response and Defence Addendum.¹⁵

Arusha, 10 February 2012, done in English


Khalida Rachid Khan
Presiding Judge


Lee Gacuiga Muthoga
Judge


Khalida Rachid Khan
With the consent and on
behalf of
Seon Ki Park
Judge

[Seal of the Tribunal]



¹⁵ Extension Decision, p. 4. Because the Defence filings were completed on 3 February 2012, that is the day upon which the Prosecution's period to reply shall begin.