



ICTR-05-89-I
21-2-2012
(496-493)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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UNITED NATIONS
NATIONS UNIES

OR: ENG

TRIAL CHAMBER III

Before Judges: Lee Gacuiga Muthoga, Presiding
Seon Ki Park
Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 21 February 2012

THE PROSECUTOR
v.
Bernard MUNYAGISHARI

Case No. ICTR-2005-89-I

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DECISION ON DEFENCE REQUEST TO ADMIT A LETTER

Office of the Prosecutor

Hassan Bubacar Jallow
James J. Arguin
George Mugwanya
Inneke Onsea
Abdoulaye Seye
François Nsanzuwera
Erica Bussey

Counsel for the Accused

Philippe Moriceau
Majda Dautović
Natacha Fauveau-Ivanović

INTRODUCTION

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1. On 9 November 2011, the Prosecution filed in English a request, pursuant to Rule 11 *bis* of the Rules of Procedure and Evidence (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 Defence filed its response to the 11 *bis* Motion on 1 February 2012 and an addendum on 3 February 2012.²
2. On 15 February 2012, the Defence filed a request that the Chamber admit an open letter to the President of the Tribunal, and an attached resolution from the International Association of Democratic Lawyers ("IADL") opposing the transfer of Bernard Munyagishari to Rwanda.³ The Defence submits that the information and opinions of eminent jurists contained within the letter and resolution render it relevant to the Chamber.⁴ The resolution contains statements regarding fair trial issues including the independence of the Rwandan judiciary and the ability to provide an effective defence.⁵
3. On 16 February 2012, the Prosecution filed a response opposing the admission of the documents.⁶ Specifically, the Defence has failed to identify the Rule upon which the letter and resolution can be admitted.⁷ In the Prosecution's view, such a submission should have been made in the form of an *amicus curiae* brief under Rule 74 of the Rules, as the IADL did in *Uwinkindi*, the documents also could have been included in an annex to the Defence Response.⁸
4. On 20 February 2012, the Defence filed its reply.⁹ It argues that its failure to identify a specific rule of the Rules does not render the request inadmissible. Under Rule 89 (C) of the Rules, the Chamber may admit any relevant evidence which it deems to have probative value.¹⁰ Additionally, Rule 74 is inapplicable because the IADL has not requested to act as *amicus curiae*.¹¹

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 *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; *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").

³ *Requête de la défense de Bernard Munyagishari aux fins d'accepter la lettre ouverte et la résolution de l'association international des juristes démocrates relative au renvoi de l'affaire Munyagishari au Rwanda*, 15 February 2012, para. 6 ("Defence Motion").

⁴ Defence Motion, paras. 3-4.

⁵ Defence Motion, Annex: IADL Resolution Opposing the Transfer of the Munyagishari Case to Rwanda.

⁶ Prosecutor's Response to Defence Request to Admit a Letter and Resolution of the International Association of Democratic Lawyers (IADL), 16 February 2012 ("Prosecutor's Response").

⁷ Prosecutor's Response, para. 2.

⁸ Prosecutor's Response, paras. 3-4.

⁹ *Réplique de la défense de Bernard Munyagishari à la réponse du procureur à la requête de la défense aux fins d'accepter la lettre ouverte et la résolution de l'association international des juristes démocrates relative au renvoi de l'affaire Munyagishari au Rwanda*, 20 February 2012 ("Defence Reply").

¹⁰ Defence Reply, para. 3.

¹¹ Defence Reply, para. 4.



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DISCUSSION

5. Rule 11 *bis* (C) of the Rules states:

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.

The designated Trial Chamber may rely on any information it reasonably finds necessary in determining whether the proceedings following the transfer will be fair.¹² The failure by the Defence to identify the specific basis under the Rules according to which the letter and resolution should be admitted does not preclude the Chamber from considering the letter in this context.

6. The Chamber notes that the IADL was granted *amicus curiae* status in the *Uwinkindi* case under Rule 74 of the Rules. The IADL has not requested to appear as *amicus curiae* in the present case, nor has the Chamber invited it to *proprio motu*. Nonetheless, the IADL's failure to apply for *amicus curiae* status does not prevent the Chamber from considering its letter and resolutions, when properly brought before it through Defence submissions.¹³ Significantly, the independence of the judiciary and the ability to provide an effective defence are issues that will be considered by the Chamber in this context. Accordingly, the Chamber finds the IADL letter and resolution to be relevant to this assessment.

7. The Chamber recalls that the Trial Chamber in the *Gatete* case rejected the admission of a Human Rights Watch report on the basis that it was a general document that endorsed the conclusions of an *amicus curiae* brief by the same organisation that was already part of the file, having been annexed to the Defence response to the Prosecutor's 11 *bis* motion.¹⁴ The Trial Chamber in the *Kanyakuriga* case rejected the admission of additional evidence by the Defence in the form of a report. However, this was after the 11 *bis* referral decision had been rendered and prior to the Appeals Chamber decision.¹⁵ Neither of the above scenarios applies to the present situation.

¹² *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-01-75, Appeals Chamber Decision on Uwinkindi's Appeal Against the Referral of his Case to Rwanda and Related Motions, 16 December 2011 ("*Uwinkindi* Decision"), para. 28; *Prosecutor v. Radovan Stanković*, Case No. IT-96-23/2, Appeal Decision on Rule 11 *bis* Referral ("*Stanković*, Decision"), para. 50.

¹³ *Uwinkindi* Decision, para. 28; *Stanković*, Decision, para. 50.

¹⁴ *The Prosecutor v. Gatete*, Case No. ICTR-2000-61s, Trial Chamber Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 17 November 2008, para. 4, fn. 11.

¹⁵ *The Prosecutor v. Kanyakuriga*, Case No. ICTR-2002-78, Trial Chamber Decision on Defence Motion to Admit Additional Evidence, 19 June 2008, para. 3.

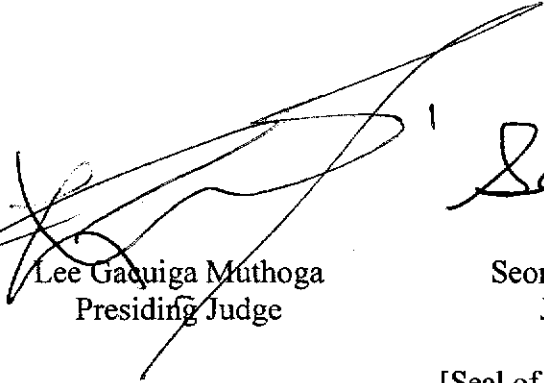


BASED ON THE FOREGOING, THE CHAMBER

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GRANTS, the Defence request to admit into evidence the open letter addressed to the President of the ICTR from the IADL, and the attached resolution, dated 15 February 2012.

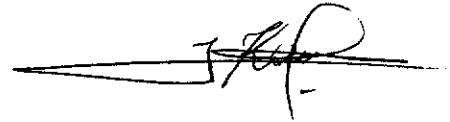
Arusha, 21 February 2012, done in English



Lee Gaguiga Muthoga
Presiding Judge



Seon Ki Park
Judge



Gberdao Gustave Kam
Judge

[Seal of the Tribunal]

