



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

75/H

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ICTR-05-89-AR11bis

4th July 2012

{75/H – 72/H}

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Pre-Appeal Judge
Registrar: Mr. Adama Dieng
Decision of: 4 July 2012

BERNARD MUNYAGISHARI

v.

THE PROSECUTOR

Case No. ICTR-05-89-AR11bis

**DECISION ON BERNARD MUNYAGISHARI'S MOTION FOR TRANSLATION AND
EXTENSION OF TIME FOR THE FILING OF HIS RESPONSE BRIEF**

Counsel for Bernard Munyagishari:

Philippe Moriceau

Office of the Prosecutor:

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

ICTR Appeals Chamber
Date: 4th July 2012
Action: R. Juma
Copied To: All concerned
Q

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS
NAME / NOM: CONSTANT K. HOMETOWU
SIGNATURE: *[Signature]* DATE: 04-07-2012

1. I, **Theodor Meron**, Presiding Judge of the Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 (“Appeals Chamber” and “Tribunal”, respectively) and Pre-Appeal Judge in this case,¹ am seised of a motion for translation and extension of time filed on 3 July 2012 by Mr. Bernard Munyagishari.² The Prosecution responded on 3 July 2012 that it does not oppose the request for extension of time.³

2. Mr. Munyagishari is charged before the Tribunal with conspiracy to commit genocide, genocide, complicity in genocide, and murder and rape as crimes against humanity.⁴ On 6 June 2012, the Referral Chamber Designated under Rule 11 *bis* ordered Mr. Munyagishari’s case to be referred to the authorities of the Republic of Rwanda for trial before the High Court of Rwanda, subject to certain conditions.⁵ Mr. Munyagishari and the Prosecution filed notices of appeal against the Referral Decision on 19 and 20 June 2012, respectively.⁶ On 28 June 2012, I granted Mr. Munyagishari leave to file his appeal brief within 15 days of the date on which he is served with the French translation of the Referral Decision.⁷ The Prosecution filed its appeal brief in English on 29 June 2012.⁸ In accordance with paragraph 6 of the Practice Direction, the response brief of Mr. Munyagishari is due no later than 9 July 2012.⁹

3. Mr. Munyagishari requests that the Appeals Chamber order the translation into French of the Prosecution Appeal Brief and grant him leave to file his response brief within 10 days of service of the French translation of the Prosecution Appeal Brief, pursuant to Rule 116 of the Rules of Procedure and Evidence of the Tribunal (“Rules”).¹⁰ In support of his Motion, Mr. Munyagishari submits that, while he knows French, he does not know English.¹¹ He further explains that he no longer benefits from the assistance of his bilingual Legal Assistant and that, without this assistance,

¹ Order Assigning a Pre-Appeal Judge, 21 June 2012.

² *Requête urgente de la Défense de Bernard Munyagishari aux fins de traduction du mémoire d’appel du Procureur et de prolongation du délai pour la réponse*, 3 July 2012 (“Motion”).

³ Prosecutor’s Response to Munyagishari’s Request for Extension of Time to File Respondent’s Brief, 3 July 2012, para. 3.

⁴ *The Prosecutor v. Bernard Munyagishari*, Case No. ICTR-05-89-I, Indictment, 8 September 2005.

⁵ *The Prosecutor v. Bernard Munyagishari*, Case No. ICTR-05-89-R11*bis*, Decision on the Prosecutor’s Request for Referral of the Case to the Republic of Rwanda, 6 June 2012 (“Referral Decision”), pp. 54, 55.

⁶ *Acte d’appel de la Défense de Bernard Munyagishari*, 19 June 2012; Prosecutor’s Notice of Appeal Pursuant to Rule 11 *bis* (H), 20 June 2012.

⁷ Decision on Bernard Munyagishari’s Motion for Extension of Time and Other Relief, 28 June 2012 (“Decision of 28 June 2012”), para. 9.

⁸ Prosecutor’s Appellant’s Brief, 29 June 2012 (“Prosecution Appeal Brief”).

⁹ Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Tribunal, dated 8 December 2006 (“Practice Direction”), para. 6 (“The opposite party shall file a response within ten days of the filing of the appeal brief.”).

¹⁰ Motion, para. 12.

his Counsel is not able to respond to the English version of the Prosecution Appeal Brief within the prescribed time-limit.¹² Mr. Munyagishari contends that his ability to properly respond to the Prosecution's appeal arguments therefore depends on the availability of the French translation of the Prosecution Appeal Brief.¹³

4. The Tribunal's Language Services Section indicated that the Prosecution Appeal Brief has already been sent for translation into French. Mr. Munyagishari's request that the Appeals Chamber order the French translation of this brief is therefore moot.

5. I recall that Rule 116 of the Rules allows for the extension of time of any deadline on a showing of good cause and provides that the requirement of good cause is satisfied "[w]here the ability of the accused to make full answer and Defence depends on the availability of a decision in an official language other than that in which it was originally issued".

6. I note that, while Mr. Munyagishari's Counsel indicated in his Form IL2 that he needs an interpreter to work in English, he also indicated that he has "used English as a working language before".¹⁴ I therefore consider that Mr. Munyagishari's Counsel should be able to discuss the contents of the Referral Decision and the Prosecution Appeal Brief, as well as any possible arguments in response, with Mr. Munyagishari. Accordingly, I am not satisfied that the ability of Mr. Munyagishari to make full answer and defence depends on the availability of the French translation of the Prosecution Appeal Brief.¹⁵

7. Nonetheless, a limited extension of time may be allowed in the interests of justice where it will not impact the overall time dedicated to considering the appeal.¹⁶ Given the fact that the main language of Mr. Munyagishari's Counsel is French, that the Prosecution does not oppose the request for extension of time, and that it is not anticipated that the overall briefing in this case will

¹¹ Motion, para. 4.

¹² Motion, paras. 9, 10.

¹³ Motion, para. 11.

¹⁴ *Formulaire IL2* for Philippe Moriceau, dated 7 April 2011.

¹⁵ Rule 116(B) of the Rules does not provide a basis for an extension of time for the filing of a response brief where the respondent's counsel can work in the language in which the appeal brief was filed. *See, e.g., Édouard Karemera and Matthieu Ndirumpatse v. The Prosecutor*, Case No. ICTR-98-44-A, Decision on Matthieu Ndirumpatse's Motion for an Extension of Time for the Filing of his Respondent's Brief, 14 June 2012 ("*Karemera and Ndirumpatse Decision*"), para. 7; *Callixte Kalimanzira v. The Prosecutor*, Case No. ICTR-05-88-A, Decision on Callixte Kalimanzira's Motion for an Extension of Time for the Filing of his Respondent's Brief, 26 October 2009, para. 5; *Siméon Nchamihigo v. The Prosecutor*, Case No. ICTR-01-63-A, Decision on Defence Motion for a French Translation of the Prosecutor's Respondent's Brief and for Extension of Time for the Filing of the Reply Brief, 8 July 2009, paras. 5, 6, 9. *See also Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-01-73-A, Decision on Protais Zigiranyirazo's Motion for an Extension of Time for the Filing of the Reply Brief, 3 July 2009, paras. 4, 5, 9.

¹⁶ *Karemera and Ndirumpatse Decision*, para. 8, fn. 22, and references cited therein.

be concluded until the end of September 2012,¹⁷ I am satisfied that, in the particular circumstances of this case, it is in the interests of justice to allow Mr. Munyagishari an extension of time of 10 days from the date on which he is served with the French translation of the Prosecution Appeal Brief to file his response brief.

8. For the foregoing reasons, I hereby

GRANT the Motion in part;

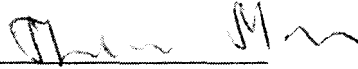
ORDER Mr. Munyagishari to file his response brief within 10 days of the date on which he is served with the French translation of the Prosecution Appeal Brief;

DIRECT the Registry to serve Mr. Munyagishari with the French translation of the Prosecution Appeal Brief as soon as it is available and to inform the Appeals Chamber when this translation has been served on Mr. Munyagishari; and

DISMISS the request for translation as moot.

Done in English and French, the English version being authoritative.

Done this 4th of July 2012,
At The Hague,
The Netherlands.



Judge Theodor Meron
Pre-Appeal Judge

[Seal of the Tribunal]



¹⁷ I recall that the filing of the French translation of the Referral Decision is anticipated around 31 August 2012. See Decision of 28 June 2012, fn. 13.