

MICT-12-13  
23/07/2012  
(0785-0783)



ICTR-95-1D-R11bis  
30-03-2012  
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**International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda**

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**TRIAL CHAMBER III**

Before: Judge Vagn Joensen, presiding  
Judge Lee Muthoga  
Judge Gustave Gberdao Kam

Registrar: Adama Dieng

Date of filing: 30 March 2012

**THE PROSECUTOR**  
v.  
**CHARLES SIKUBWABO**

Case No. ICTR-95-1D-R11bis

UNICTR  
JUDICIAL RECORDS/ARCHIVES  
RECEIVED

2012 MAR 30 A 10: 02

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**PROSECUTOR'S RESPONSE TO DUTY COUNSEL'S  
REQUEST FOR CLARIFICATION**

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**Office of the Prosecutor**

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**Counsel for the Accused**

Jean Chrysostome Nkurunziza  
(Duty Counsel)

## SUBMISSIONS

1. On 12 March 2012, Duty Counsel for the Accused Charles Sikubwabo (“Accused”) filed his Confidential « *Requête de la Défense de Charles Sikubwabo tendant à obtenir clarification du contenu des documents transmis par le Bureau du Procureur en date du 13 Mars 2012 (art. 66 et suivants du RPP)* » (“Request”). In essence, Duty Counsel requests the Trial Chamber to order the Prosecutor to provide clarification in relation to the documents he disclosed to Duty Counsel on 13 March 2012 and to disclose to Duty Counsel the Gacaca judgement convicting the Accused.<sup>1</sup>
2. On 26 March 2012, the Chamber granted the Prosecutor’s request for referral of the case of the Accused to the Republic of Rwanda, pursuant to Rule 11 *bis*.<sup>2</sup> The Chamber is therefore *functus officio* in relation to the referral proceedings, and accordingly has no jurisdiction to consider the Request.<sup>3</sup>
3. In any event, as indicated by the Prosecutor in his 13 March 2012 disclosure<sup>4</sup> and as recognized by the Chamber in its 14 March 2012 decision,<sup>5</sup> the Prosecutor has already disclosed all Gacaca documents in his possession to Duty Counsel.
4. On 13 March 2012, the Prosecutor disclosed to Duty Counsel a Gacaca Judgement issued by the Court of Gishyita Sector on 21 July 2011, vacating a

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<sup>1</sup> Request, para. 9.

<sup>2</sup> *The Prosecutor v. Charles Sikubwabo*, Case No. ICTR-95-1D-R11bis, Decision on the Prosecutor’s Request for Referral of the Case to the Republic of Rwanda, 26 March 2012.

<sup>3</sup> *Prosecutor v. Uwinkindi*, Case No. ICTR-2001-75-AR11bis, Decision on Motion to Place on Record Certain Information by a Non-Party Applicant, 29 August 2011, para. 3 (stating that the Referral Bench became *functus officio* with issuance of its decision to refer Uwinkindi to Rwanda and accordingly lacked jurisdiction in the matter).

<sup>4</sup> *The Prosecutor v. Charles Sikubwabo*, Case No. ICTR-95-1D-R11bis, Prosecutor’s Response to Duty Counsel’s Request for Disclosure, 13 March 2012 (“Prosecutor’s Response to Disclosure Request”), para. 2.

<sup>5</sup> *The Prosecutor v. Charles Sikubwabo*, Case No. ICTR-95-1D-R11bis, *Décision relative à la requête de la Défense tendant à obtenir l’ordre de la Chambre pour la communication des documents Gacaca et autres pièces pertinentes relatifs à l’accusé Charles Sikubwabo*, 14 March 2012, para. 2. In this Decision, the Chamber dismissed Duty Counsel’s request for disclosure on the basis that, as the Prosecutor had already disclosed all relevant Gacaca documents in its possession to Duty Counsel, the request was moot.

Gacaca conviction entered in relation to the Accused, and an accompanying letter from the Gacaca Court of Gishyita Sector of the same date explaining the basis for the decision.<sup>6</sup> As the Prosecutor indicated in his Response accompanying this disclosure, these are the only documents in his possession, custody, or control.<sup>7</sup>

5. In particular, the Prosecutor is not in possession of the underlying Gacaca judgement convicting the accused. Nor is the Prosecutor under an obligation to obtain this document from Rwanda, particularly where, as here, the proceedings before the Trial Chamber are closed.<sup>8</sup> Duty Counsel should instead obtain a copy of this judgement and any clarification he may require from the relevant Rwandan authorities.

Dated and signed this 30<sup>th</sup> day of March 2012, Arusha, Tanzania.



James J. Arquin  
Chief, Appeals and Legal Advisory Division

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<sup>6</sup> The Gacaca Court of Gishyita Sector Judgement dated 21 July 2011 (in Kinyarwanda and an unofficial English translation) was attached to the Prosecutor's Response to Disclosure Request as **Annex A**. The original letter from the Gacaca Court of Gishyita Sector in Kinyarwanda dated 21 July 2011 and an unofficial English translation was attached to the Prosecutor's Response to Disclosure Request as **Annex B**.

<sup>7</sup> Prosecutor's Response to Disclosure Request, para. 2. See also *Jean de Dieu Kamuhanda v. The Prosecutor*, Case No. ICTR-99-54A-R68, Decision on Motion for Disclosure, 4 March 2010, paras. 27, 29, & 42 (extending presumption of good faith to similar assertion by the Prosecution).

<sup>8</sup> *Callixte Kalimanzira v. The Prosecutor*, Case No. ICTR-05-88-A, Judgement, 20 October 2010, para. 25 (Prosecution not required to obtain Gacaca documents of its witnesses); *Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005, para. 263 (Prosecution not required to obtain or disclose statements detained witnesses made to Rwandan authorities).

