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UNITED NATIONS
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**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

TRIAL CHAMBER I

OR:ENG

Before: Judge Lennart Aspegren, Presiding
Judge Laïty Kama
Judge Navanethem Pillay

Registry: Ms Marianne Ben Salimo

Decision of: 17 March 1999

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**THE PROSECUTOR
VERSUS
ALFRED MUSEMA**

Case No. ICTR-96-13-T

**DECISION ON
AN APPLICATION BY AFRICAN CONCERN
FOR LEAVE TO APPEAR AS AMICUS CURIAE**

The Office of the Prosecutor

Mrs Jane Anywar Adong
Mr. Charles Adeogun-Philips
Ms Holo Makwaia

Counsel for the Defence

Mr. Steven Kay QC
Prof. Michail Wladimiroff

Representative of the Applicant

Ms Adesola Adeboyejo

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Case No. ICTR-96-13-T

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal")

1. Trial Chamber I of the Tribunal, composed of Judge Lennart Aspegren, presiding, Judge Laity Kama, and Judge Navanethem Pillay, has received from African Concern, a charitable non-governmental organization, an application dated 23 November 1998 for leave to file a written brief as Amicus Curiae. In view of an error which occurred in this application, the applicant filed on 22 February 1999 a corrigendum thereto in order to clarify that the application did indeed pertain to the case "The Prosecutor versus Alfred Musema"(Case No. ICTR-96-13-T), presently before this Chamber.

2. In accordance with Rule 74 of the Tribunal's Rules of Procedure and Evidence (the "Rules"), the Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to any State, organization or person to appear before it and make submissions on any issue specified by the Chamber. Thus, the submissions of the Amicus Curiae must be relevant to the case, and such as to be of assistance for the proper determination thereof.

The application

3. African Concern seeks leave to appear as an Amicus Curiae in the determination of the powers of the Tribunal:

(a) *firstly*, to prosecute the accused for serious violations of Article 3 common to the 1949 Geneva Conventions and of Article 4(2)(e) of the 1977 Additional Protocol II thereto, pursuant to Article 4 of the Statute of the Tribunal, and under Rule 88 of the Rules for unlawful taking of property; and

(b) *secondly*, to order restitution under Article 23(3) (Penalties) of the Statute of the Tribunal and Rule 88 (Judgement) and Rule 105 (Restitution of Property) of the Rules for the said serious violations.

The parties

4. The Defence and the Prosecutor filed written responses to the said application on 1 March 1999 and 2 March 1999 respectively.

Prosecutor

5. The Prosecutor submitted that she was not particularly against any person filing a brief to appear as Amicus Curiae and that it fell to the discretion of the Chamber to decide whether to grant leave to the applicant to so appear. However, the Prosecutor argued that the main purpose of the application is for African Concern to have a platform to promote its interests as regards restitution in Rwanda.

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Defence

6. The Defence, for its part, submitted that the Chamber should not grant leave to the applicant to appear as an Amicus Curiae on the basis that the case against the accused does not allege any pillage or unlawful taking of property by the accused and thus that the Amicus Curiae as such would not be pertinent for the proper determination of this specific case.

The Tribunal

7. The Trial Chamber has reviewed the application and the submissions thereon.

First request

8. On the first request of African Concern, as pertains to the prosecution of the accused for violations of common Article 3 of the Geneva Conventions and of Article 4(2)(e) of Additional Protocol II, the Chamber notes that the acts covered by said Article 4(2)(e) are 'outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault', as incorporated in Article 4(e) of the Statute.

9. As a point of order, the Chamber also notes that African Concern has not specified which provision of common Article 3 of the Geneva Conventions is of relevance in the application. From reading the said Article, and keeping in mind the violations specified in Article 4(2)(e) of Additional Protocol II, the Chamber concludes that, for the purpose of the present application, the relevant provision of common Article 3 of the Geneva Conventions is (1)(c) thereof, 'outrages upon personal dignity, in particular humiliating and degrading treatment'.

Second request

10. As to the second request, the ordering of restitution of property for violations of common Article 3 of the Geneva Conventions and Article 4(2)(e) of Additional Protocol II, the Chamber notes that pursuant to the provisions of Rule 88 of the Rules, were the Chamber to find the accused guilty of a crime and conclude from the evidence that unlawful taking of property by the accused was associated with it, it shall make a specific finding to that effect in its Judgement. Thereafter, in accordance with Rule 105, the Chamber shall order the restitution either of the property or the proceeds or make such other order as it may deem appropriate.

11. Yet, the indictment does not contain any charges of unlawful taking of property.

Findings

12. Consequently, after review of the whole application, the Chamber considers that there appear no specific legal or factual arguments therein to support the applicant's two requests. The Chamber finds that one reference to *ratio decidendi* handed down by this Chamber in the judgement of 2 September 1998 in the case "The Prosecutor versus Jean-Paul Akayesu" (Case No. ICTR-96-4-T) does not, in itself, constitute a submission in support of the said requests. In

Case No. ICTR-96-13-T

addition to that, the Chamber sees no link between, on the one hand, common Article 3 of the Geneva Conventions and Article 4(2)(e) of Additional Protocol II, and on the other hand, as pertains to unlawful taking of property under Rule 88 of the Rules.

13. Moreover, were an Amicus Curiae granted leave to make submissions on the procedural elements and substantive background of Rules 88 and 105 of the Rules, the submissions must be relevant to the case, and such as to be of assistance for the proper determination thereof. Thus, in the present matter, the Chamber has considered the concise statement of facts in the indictment and the evidence so far adduced in this case, to see whether the Amicus Curiae brief would be desirable for the proper determination of the case.


14. The Chamber finds no sufficient legal or factual basis for granting leave to African Concern to appear as an Amicus Curiae in this case; hence the brief that African Concern wishes to file as an Amicus Curiae would not be desirable for the proper determination of the case.

FOR THE ABOVE REASONS,


THE TRIBUNAL

DENIES leave to African Concern to file a written brief pursuant to Rule 74 of the Rules as Amicus Curiae in the case of 'The Prosecutor v. Alfred Musema'.

Arusha, 17 March 1999.


Lennart Aspegren
Presiding Judge


Laiti Kama
Judge


Navanethem Pillay
Judge

(Seal of the Tribunal)