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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
NATIONS UNIES

OR: ENG

TRIAL CHAMBER III

Before: Inés M. Weinberg de Roca, Presiding
Lee Gacuiga Muthoga
Robert Fremr

Registrar: Adama Dieng

Date: 6 December 2007

THE PROSECUTOR

v.

Yussuf MUNYAKAZI

Case No. ICTR-1997-36-I

DECISION ON THE APPLICATION BY THE KIGALI BAR ASSOCIATION FOR LEAVE TO APPEAR AS *AMICUS CURIAE*

Rules 11 bis and 74 of the Rules of Procedure and Evidence

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INTRODUCTION

1. On 29 November 2002, the Prosecutor of the International Criminal Tribunal for Rwanda ("the Tribunal") filed an Amended Indictment against Yussuf Munyakazi ("the Accused"). The Amended Indictment charges the Accused with genocide, or alternatively, with complicity in genocide, and extermination as a crime against humanity.[1] On 17 January 2003, Judge Winston C. Matanzima Maqutu authorised the Amended Indictment.[2]

2. On 7 September 2007, the Prosecutor filed a request for the referral of the case of the Accused to the Republic of Rwanda.[3] The President of the Tribunal designated this Trial Chamber to determine the matter in accordance with Rule 11*bis* of the Rules of Procedure and Evidence ("the Rules") on 2 October 2007.[4]

Amicus Application

3. On 9 November 2007, the Kigali Bar Association filed an application for leave to appear as *amicus curiae* ("the *Amicus* Application")[5]. In support of its application, the Kigali Bar Association referred to Rule 74 of the Rules and submitted that "the primary consideration for the ICTR judges is whether the applicant would, as an *Amicus Curiae*, further the interests of justice by assisting the judges in determining the issues at bar."[6]

4. The Kigali Bar Association submits that it meets this criterion as "the sole representative of the legal profession, which plays a central role in the administration of justice in Rwanda."[7] It submits that it would assist this Chamber to address the "legislative, judicial and institutional framework for the prosecution of international crimes in Rwanda [and] the role and capacity of the Kigali Bar Association in the administration of international criminal justice in Rwanda."[8] In addition, the Kigali Bar

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[1] Amended Indictment, 29 November 2002.
[2] Décision Relative à la Requête Unilatérale du Procureur aux Fins D'Autorisation de Modifier L'Acte D'Accusation, 17 January 2003.
[3] The Prosecutor's Request for the Referral of the Case of *Yussuf Munyakazi* to Rwanda pursuant to Rule 11 *bis* of the Tribunal's Rules of Procedure and Evidence, 7 September 2007.
[4] Designation of a Trial Chamber for the Referral of the Case of *Yussuf Munyakazi* to Rwanda, 2 October 2007.
[5] Application by the Kigali Bar Association for Leave to Appear as *Amicus Curiae* in the Matter of the Prosecutor's Request for the Referral of the Case of *Yussuf Munyakazi* to Rwanda, 9 November 2007 ("the *Amicus* Application").
[6] *Amicus* Application, para. 5.
[7] *Ibid.*, para. 6.
[8] *Ibid.*, para. 6.

Association submits that it would be ready and willing to assist this Chamber by addressing any issues requested of it.[9]

Prosecutor's Response

5. The Prosecutor filed its Response on 16 November 2007, stating that it does not oppose the Kigali Bar Association's Application for leave to appear as *amicus curiae*.[10] The Prosecutor did, however, request that the Chamber allow it "the opportunity to respond to the merits contained in the *Amicus Curiae* Brief, in the event that he identifies any matters or issues that may need such response."[11]

DISCUSSION

6. Rule 11 *bis* (A) of the Rules provides that the Chamber shall determine whether the State concerned is adequately prepared to accept the ICTR Indictment. In this determination, pursuant to Rule 11 *bis* (C), the Chamber shall satisfy itself that the accused will receive a fair trial in the courts of the State concerned.

7. The Chamber is of the view that in determining whether a fair trial is possible, it must consider the rights of the accused as enshrined in Article 20 of the Statute of the Tribunal, specifically: the right to a fair and public hearing; the accused's presumption of innocence; the right to have adequate time and facilities for the preparation of a defence; the right to communicate with counsel of the accused's choosing; the right to be tried without undue delay; the right to be present during all trial proceedings; the right to defend himself or herself in person or through legal assistance and without payment by him or her in any such case if the accused does not have sufficient means; the right to examine, or have examined, the witnesses against him or her; the right to obtain the attendance and examination of witnesses on the accused's behalf under the same conditions as witnesses against him or her; the right to the free assistance of an interpreter if the accused cannot understand or speak the language used in Court; and the right not to be compelled to testify against himself or herself or to confess guilt.

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[9] *Ibid.*, para. 7.
[10] Prosecutor's Response to "Application by the Kigali Bar Association for Leave to Appear as *Amicus Curiae* in the Matter of the Prosecutor's [sic] Request for Referral of the Case of *Munyakazi Yussuf* to Rwanda", filed on 14 November 2007, 16 November 2007("the Prosecutor's Response").
[11] *Ibid.*, para. 3.

8. The Chamber recalls that pursuant to Rule 74 of the Rules, it may grant leave to a State, organisation, or person to make submissions on any issue if it considers it desirable for the proper determination of the case.

9. The Chamber is of the view that in light of the Kigali Bar Association's experience with the current administration of criminal justice in Rwanda, and given their potential future role in the administration of *international* criminal justice in Rwanda, *amicus curiae* submissions from this organisation will assist the Chamber in a proper determination of the case.

10. The Chamber notes that Rule 74 does not impose a specific deadline for an *amicus* to fulfil its mandate. The Chamber may therefore exercise its discretion to set a reasonable deadline within which such mandate is to be fulfilled. In light of the issues to be addressed by the *amicus*, the Chamber is satisfied that a period of 21 days is reasonable for submission of the *amicus* brief. The Prosecutor and Republic of Rwanda may file a Response to the *amicus* brief within 15 days of receipt of the same.

FOR THE FOREGOENG REASONS, THE CHAMBER:

I. **GRANTS** leave to the Kigali Bar Association to file an *amicus* brief;

II. **REQUESTS** the Kigali Bar Association to address, in the *amicus* brief, the following matters:

a. Whether the Rwandan legal system legal system stipulates provisions providing an accused person with assistance in:

i. Securing legal representation of his choice;

ii. Financial support to indigent accused, and how indigency is assessed;

iii. Facilitating travel and investigations for Defence teams; and

iv. Ensuring security for Defence teams.

b. Whether persons accused of serious crimes in Rwanda actually enjoy these facilities?

c. What kind of impediments the Defence of the Accused may face in the discharge of its function, including specifically the accessibility of the Accused to Defence Counsel?

d. Whether foreign counsel may represent accused persons before Rwandan courts, and if so, whether there are any restrictions on their practice?

c. What facilities and procedures exist for ensuring that witnesses and victims can be securely and safely accommodated and transported to and from the place of trial in Rwanda?

d. What procedures exists for ensuring protection of witnesses before, during and after testifying in Court, specifically, whether Rwanda operates a witness protection program? If so, what are the main features of the witness protection program?

e. What kinds of threats Prosecution witnesses and/or Defence witnesses may potentially face before, during and after giving testimony in Rwanda?

f. Whether the detention facilities for accused persons in Rwanda comply with internationally recognized standards.

g. Any other relevant issues.

III. **DECIDES** that the *amicus* brief should be filed with the Registry of the Tribunal within 21 days from the date the Kigali Bar Association receives the relevant documents from the Registrar;

IV. **REQUESTS** the Registrar of the ICTR to provide the Kigali Bar Association with all relevant documents for a proper discharge of its *amicus* mandate;

V. **REQUESTS** the Registrar to notify the Kigali Bar Association of this Decision without delay.

Arusha 6 December 2007, in English.

Inés M. Weinberg de Roca
Presiding Judge

Lee Gacuiga Muthoga
Judge

Robert Fremr
Judge

[Seal of the Tribunal]