



UNITED NATIONS  
NATIONS UNIES

**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**

OR: ENG

**TRIAL CHAMBER DESIGNATED UNDER RULE 11 *BIS***

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

**Registrar:** Adama Dieng

**Date:** 19 February 2008

**THE PROSECUTOR**

**v.**

**Yussuf MUNYAKAZI**

*Case No. ICTR-1997-36-I*

**DECISION ON THE REQUEST OF THE REPUBLIC OF RWANDA  
TO BE SERVED WITH THE *AMICUS* BRIEF OF THE INTERNATIONAL  
CRIMINAL DEFENCE ATTORNEYS ASSOCIATION (ICDAA) FOR THE  
REFERRAL OF THE ABOVE CASE TO RWANDA PURSUANT TO RULE 11 *BIS*  
AND TO PREPARE A WRITTEN RESPONSE**

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

**Office of the Prosecutor:**

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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.<sup>1</sup> On 17 January 2003, Judge Winston C. Matanzima Maqutu authorised the Amended Indictment.<sup>2</sup>

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

3. On 9 November 2007, the Chamber granted the *amicus* request of the Republic of Rwanda.<sup>5</sup> On 6 December 2007, the Chamber granted the *amicus* request of the International Criminal Defence Attorneys Association (“the ICDA”).<sup>6</sup>

### *Rwanda’s Request*

4. On 5 February 2008, the Republic of Rwanda filed a request to be served with the *amicus* brief of the ICDA, and for time to prepare a response to the brief (“Request”).<sup>7</sup> In their Request, the Republic of Rwanda stated that it had become aware that the ICDA had filed an *amicus* brief which included allegations against Rwanda.<sup>8</sup> The Republic of Rwanda requested that the Chamber allow it to respond to those “issues and concerns”,<sup>9</sup> as

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<sup>1</sup> Amended Indictment, 29 November 2002.

<sup>2</sup> Décision Relative à la Requête Unilatérale du Procureur aux Fins D’Autorisation de Modifier L’Acte D’Accusation, 17 January 2003.

<sup>3</sup> 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.

<sup>4</sup> Designation of a Trial Chamber for the Referral of the Case of *Yussuf Munyakazi* to Rwanda, 2 October 2007.

<sup>5</sup> Order for Submissions of the Republic of Rwanda as the State Concerned by the Prosecutor’s Request for Referral of the Indictment against Yussuf Munyakazi to Rwanda, 9 November 2007.

<sup>6</sup> Decision on the Application by the International Criminal Defence Attorney’s Association (ICDA) for Leave to File a Brief as *Amicus Curiae*, 6 December 2007.

<sup>7</sup> Request of the Republic of Rwanda to be served with (sic) Amicus Brief of the International Criminal Defense Attorney’s Association (ICDA) for the Referral of the above case to Rwanda pursuant to Rule 11*bis* and to prepare a written response, 5 February 2008 (the “Request”).

<sup>8</sup> The Request, paras. 1, 2.

<sup>9</sup> *Ibid.*, para. 3.

this response would be vital in enhancing a proper determination of the referral application.<sup>10</sup> The Republic of Rwanda stated that it had neither been formally served with the *amicus* brief of the ICDA, nor been given time to file the response.<sup>11</sup>

### ***ICDA's Response***

5. On 8 February 2008, the ICDA filed a Response to the Request.<sup>12</sup> Although the ICDA had no objection to the Republic of Rwanda being *served* with their *amicus* brief,<sup>13</sup> they objected to the Republic of Rwanda's request to *respond* to the *amicus* brief.<sup>14</sup>

6. The ICDA advocated a literal construction of Rule 74 of the Rules,<sup>15</sup> submitting that Rule 74 does not "open the door" to responses and replies between *amici*.<sup>16</sup> In support of this proposition, the ICDA cited Rule 103 of the International Criminal Court ("ICC") Rules of Procedure and Evidence which explicitly allows the Prosecutor and Defence the opportunity to respond to *amicus* observations.<sup>17</sup> The ICDA submitted that while "it seems logical that a party in a case, the Prosecutor or the Defence, have the possibility to react to the brief of an *amicus*",<sup>18</sup> that allowing the Republic of Rwanda to give more information than its initial *amicus* brief would risk confusing the roles of the Parties and the role of an independent *amicus* in the case.<sup>19</sup>

7. In the alternative, however, the ICDA requested that were the Chamber to allow the Republic of Rwanda to respond to its *amicus* brief, that the ICDA be permitted to file a reply to the Prosecutor's and Republic of Rwanda's responses to their *amicus* brief, as well as file responses to all the other *amicus* briefs submitted in the present case.<sup>20</sup>

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<sup>10</sup> *Ibid.*, para. 4.

<sup>11</sup> *Ibid.*, para. 3.

<sup>12</sup> Response of *Amicus Curiae* International Criminal Defense Attorney's Association (ICDA) Regarding the Request of the Republic of Rwanda to file Submissions on the Brief of the ICDA, 8 February 2008 (the "Response").

<sup>13</sup> The Response, para. 4.

<sup>14</sup> *Ibid.*, para. 8.

<sup>15</sup> *Ibid.*, para. 12.

<sup>16</sup> *Ibid.*, para. 11.

<sup>17</sup> *Ibid.*, paras. 13-16.

<sup>18</sup> *Ibid.*, para. 17.

<sup>19</sup> *Ibid.*, para. 23.

<sup>20</sup> *Ibid.*, paras. 25, 27.

## DISCUSSION

### *Moot Request*

8. On 6 December 2007, this Chamber issued a Decision granting the ICDA's application to file an *amicus* brief. In paragraph 14, the Chamber held that "The Prosecutor and Republic of Rwanda may file a response to the *amicus* brief within 15 days of receipt of the same."<sup>21</sup> On 18 February 2008, the Chamber issued a Corrigendum adding the Defence to those who could respond to the ICDA *amicus* brief.<sup>22</sup> The Chamber notes that on 8 February 2008, the Registry of the Tribunal served the Republic of Rwanda with the *amicus* brief of the ICDA.

9. The Chamber therefore considers that the Republic of Rwanda's Request is moot, as the right to be served with, and to respond to, the *amicus* brief of the ICDA was granted in the Chamber's Decision of 6 December 2007.

### *ICDA's Response – Amicus Differentiation*

10. Although the Chamber has determined that the Republic of Rwanda's Request is moot, the Chamber wishes to clarify the position of other *amici* with respect to the *amicus* Referral State.

11. The Chamber granted the Parties *and* the Referral State the right to respond to the *amicus* briefs, as the Chamber is of the view that the Referral State has a unique position as an *amici*. This differentiation among *amici* may be read into the Rules, and is supported by the jurisprudence.

12. The Chamber notes that Rule 74 provides that "A 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.*"<sup>23</sup> The Chamber is of the view that this wording allows the Chamber wide discretion with respect to inviting *amici* to provide submissions on *any issue* specified, and

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<sup>21</sup> Decision on the Application by the International Criminal Defence Attorney's Association (ICDA) for Leave to File a Brief as *Amicus Curiae*, 6 December 2007.

<sup>22</sup> Corrigendum to the Decision on the Application by the International Criminal Defence Attorney's Association (ICDA) for Leave to File a Brief as *Amicus Curiae*, 18 February 2008.

<sup>23</sup> Emphasis added.

that “any issue” would not only include *amicus* briefs and oral submissions, but may also include responses to *amicus* briefs, if the Chamber considers such responses would assist in the proper determination of an issue before it.

13. The Chamber also notes that there is authority in the Tribunal jurisprudence for this interpretation. In the *Bagaragaza* referral, the Parties and the Netherlands were granted the right to respond to each others’ submissions.<sup>24</sup> In the *Hategekimana* referral, the Referral State’s *amicus* request was granted, but the remaining three *amicus* applicants (including the ICDA) were left pending, as the Referral Bench held “it will be better able to determine whether and precisely how the remaining applicants may assist it after receiving the submissions of the Defence and the Republic of Rwanda.”<sup>25</sup>

14. This differentiation between the Referral State and other *amici* is therefore within the discretion of the Chamber. The Chamber is of the view that it is essential for the proper determination of the case to receive as much information as possible from the Referral State on its willingness and capacity to grant the Accused a fair trial.

**FOR THE FOREGOING REASONS, THE CHAMBER:**

- I. DETERMINES** the Republic of Rwanda’s Request to be served with the *amicus* brief of the ICDA as moot;
- II. DETERMINES** the Republic of Rwanda’s Request to prepare a written response to the *amicus* brief of ICDA as moot;
- III. CLARIFIES** that Rule 74 allows a Chamber to request or grant the right to a Referral State to file a response to any *amicus* brief filed; and
- IV. DIRECTS** the Registrar of the ICTR to notify the Republic of Rwanda and the ICDA of this Decision without delay.

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<sup>24</sup> *Prosecutor v. Bagaragaza*, Case No. ICTR-2005-86-11bis, Order for Further Submissions Concerning the Request for Referral of the Indictment to the Kingdom of the Netherlands, 31 January 2007, the disposition read “FOR THE FOREGOING REASONS, THE CHAMBER II. INVITES the Parties and the Netherlands to respond to each others’ submissions on the questions within 21 days from the date of the present Order.”

<sup>25</sup> *Prosecutor v. Hategekimana*, Case No. ICTR-2000-55B-I, Decision on the Request by the Republic of Rwanda, the Kigali Bar Association, the ICDA, and ADAD for Leave to Appear and Make Submissions as *Amici Curiae*, 4 December 2007.

Arusha, 19 February 2008, in English.

Inés M. Weinberg de Roca  
Presiding Judge

Lee Gacuiga Muthoga  
Judge

With the consent and on behalf of  
Robert Fremr  
Judge  
(Absent during Signature)

[Seal of the Tribunal]