



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: 10 March 2008

THE PROSECUTOR

v.

Yussuf MUNYAKAZI

Case No. ICTR-1997-36-I

**DECISION ON THE REQUEST BY HUMAN RIGHTS WATCH
FOR LEAVE TO APPEAR AS *AMICUS CURIAE*
*Rules 11 bis and 74 of the Rules of Procedure and Evidence***

Office of the Prosecutor:

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Defence Counsel:

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INTRODUCTION

1. On 29 November 2002, the Prosecutor of the International Criminal Tribunal for Rwanda (“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 (“the Referral Request”).³ 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 2007.⁴

Amicus Application

3. On 27 February 2008, Human Rights Watch (“HRW”) filed a request for leave to appear as *amicus curiae* (“*Amicus Application*”).⁵ In support of its application, HRW submits that it has valuable information on the current status of the Rwandan judicial system that will assist the Chamber in making a proper determination of the case, pursuant to Rule 74 of the Rules.⁶

4. HRW presents itself as a non-profit, non-governmental organisation headquartered in New York that is not affiliated with any party to this case. HRW submits it is dedicated to investigating and exposing human rights violations around the world and due to its extensive research in this area, is often called upon to assist international tribunals in prosecutions for war crimes, crimes against humanity and genocide.⁷ In this regard, HRW explains that its researchers have testified at the *ad hoc* tribunals and provided assistance to the International Criminal Court.⁸

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 Request for Leave to Appear as *Amicus Curiae* Pursuant to Rule 74 of the ICTR Rules of Procedure and Evidence, 26 February 2008.

⁶ *Amicus Application*, para. 1.

⁷ *Ibid*, para. 3.

⁸ *Ibid*, para. 6

5. HRW further submits that its work on human rights and justice in Rwanda is internationally acknowledged, as evidenced by the number of testimonies given before both the Tribunal and national jurisdictions by Alison Des Forges, senior adviser to its Africa Division, and other HRW researchers.⁹ HRW further states that it has published 15 reports on Rwanda beginning in 1991, and established an office in Rwanda in 1995, tasked with monitoring violations of international humanitarian law in 1994, as well as monitoring current human rights and justice issues.¹⁰ HRW adds that its researchers have been specifically monitoring the judicial system in Rwanda since 2005, assessing its performance following wide-reaching reforms in the years 2002 through 2004.¹¹ It explains that its monitoring system, which covers both conventional and *gacaca* trials, is based on interviews with judges, prosecutors, lawyers and the staff of Rwandan and international non-governmental organisations.¹²

6. In addition, HRW refers to this Chamber's decision dated 8 November 2007 granting HRW leave to appear as *amicus* in the case of *Fulgence Kayishema* ("*Kayishema* HRW Decision").¹³ HRW requests that the Chamber accept its *amicus* brief filed in the *Kayishema* case as a pleading in the present case, and attaches the brief to the *Amicus* Application.¹⁴

7. HRW concludes by briefly summarising the submissions of its attached *amicus* brief, namely that although Rwanda has made notable progress in improving its judicial system, there remain serious obstacles to fair and credible prosecutions in Rwanda, especially for persons accused of genocide and other crimes relating to the events of 1994.¹⁵ Among issues of concern, HRW alludes to the presumption of an accused person's innocence, the right of an accused to call witnesses in his or her defence and the right to be tried by a competent, independent and impartial court.¹⁶

⁹ *Ibid*, para. 6.

¹⁰ *Ibid*, para. 7.

¹¹ *Ibid*, para. 8.

¹² *Ibid*.

¹³ *The Prosecutor v. Fulgence Kayishema*, Case No. ICTR-2001-67-I. See Decision on the Request by Human Rights Watch for Leave to Appear as *Amicus Curiae* in the Proceedings for Referral of the Indictment against Fulgence Kayishema to Rwanda, 8 November 2007.

¹⁴ *Amicus* Application, para. 9 and Annex A.

¹⁵ *Ibid*, para. 10.

¹⁶ *Ibid*.

Prosecutor's Response

8. The Prosecutor filed its Response on 28 February 2008 (“Prosecutor’s Response”).¹⁷ Although the Prosecutor does not object to the *Amicus* Application, it requests that the Chamber considers the stage of proceedings in this case, including the oral hearing scheduled for 24 April 2008, as well as whether the Chamber requires further assistance.¹⁸ The Prosecutor requests that should leave be granted to HRW, the Prosecutor be allowed an opportunity to respond to the HRW *Amicus Curiae* brief.¹⁹

Defence Response

9. The Defence filed its Response on 4 March 2008.²⁰ The Defence supports the *Amicus* Application and refers to HRW’s integrity, competence, and experience,²¹ as well as its commitment to the protection of human rights around the world.²² The Defence further submits that HRW has consistently followed the human rights situation in Rwanda and has regularly published reports on its investigations.²³

DISCUSSION

10. 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. Pursuant to Rule 74, the decision to grant leave to an *amicus curiae* is at the sole discretion of the Chamber.

11. According to Rule 11*bis* (A), the Chamber shall determine whether the State concerned is adequately prepared to accept the referral of an ICTR indictment. In the instant case, the requirement of adequate preparedness should be addressed with respect to the Judiciary of the Republic of Rwanda as the State concerned by the Referral Request. The Republic of Rwanda may be considered to be adequately prepared to accept a referral case if it can guarantee the accused will receive a fair trial and that the death penalty will not be imposed or carried out, as required by Rule 11*bis* (C).

¹⁷ The Prosecutor’s Response to Human Rights Watch’s “Request for Leave to Appear as *Amicus Curiae* Pursuant to Rule 74 of the ICTR Rules of Procedure and Evidence”, 28 February 2008.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Defence Response to the Request of the [sic] Human Rights Watch to Appear as *Amicus Curiae* in the Matter of the Prosecutor’s Request for Referral of the Case of Yussuf Munyakazi to Rwanda, 4 March 2008.

²¹ *Ibid.*, para. 9.

²² *Ibid.*, para. 11.

²³ *Ibid.*, para. 12.

12. The Chamber notes that HRW bases its application to appear as *amicus* on several issues related to the ability of the Rwandan Judiciary to guarantee a fair trial to the Accused. In this regard, the Chamber emphasises that the issue of whether the Accused will receive a fair trial in Rwanda is vital for a proper determination of the case.

13. In light of HRW's submissions with regard to its extensive human rights experience around the world, particularly in relation to Rwanda, the Chamber is satisfied that HRW is amply qualified to appear as *amicus* and will assist the Chamber in a proper determination of this case pursuant to Rule 74.

14. With regard to the substance of the HRW *amicus curiae* brief, the Chamber recalls the issues which it requested HRW to address in the *Kayishema* HRW Decision.²⁴ The Chamber considers that those issues are similarly relevant to the instant case in assisting it to determine whether the Republic of Rwanda is adequately prepared to: (i) accept a referral from the Tribunal; and (ii) guarantee the Accused will receive a fair trial and that the death penalty will not be imposed or carried out. Accordingly, the Chamber requests HRW to limit its submissions to the points outlined by this Chamber in its *Kayishema* HRW Decision.²⁵

15. The Chamber now turns to consider HRW's request that its *amicus* brief filed in the *Kayishema* case²⁶ be accepted as a pleading in the present case.²⁷ The Chamber considers it preferable to avoid accepting filings from other cases, particularly as there is sufficient time for HRW to file a separate *amicus* brief for the purposes of this case. Indeed, the Chamber notes that HRW intends to make the same submissions in the instant case as in the *Kayishema* case. Therefore, the Chamber considers that filing a separate *amicus* brief in this case will not delay matters, nor will it place an undue burden on HRW. Furthermore, given that the submissions that HRW intends to make in this case are already prepared, and that a hearing is scheduled for 24 April 2008, the Chamber considers it appropriate that HRW file its *amicus curiae* brief within seven days of receipt of this decision.

16. The Prosecutor, the Defence and the Republic of Rwanda may file a response to the HRW *amicus curiae* brief within 15 days of receipt of the same.

²⁴ *Kayishema* HRW Decision, paras. II (i) to (ix).

²⁵ *Ibid.*

²⁶ *The Prosecutor v. Fulgence Kayishema*, Case No. ICTR-2001-67-I. See *Kayishema* HRW Decision.

²⁷ *Amicus* Application, para. 9 and Annex A.

FOR THESE REASONS, THE CHAMBER:

- I. GRANTS** leave to HRW to appear as *amicus curiae* in the present case;
- II. DIRECTS** that the HRW *amicus curiae* brief, addressing issues in accordance with paragraph 14 above, be filed with the Registry of the Tribunal within seven days from the date that HRW receives the present Decision;
- III. INVITES** HRW to attend a one day hearing on 24 April 2008 to elaborate and expand on the issues arising from its *amicus curiae* brief and answer questions from the Chamber;
- IV. DIRECTS** the Registry to provide HRW with all the documents related to the present case for a proper discharge of its *amicus* mandate;
- V. DIRECTS** the Registry to serve on the Prosecutor, the Defence and the Republic of Rwanda without delay, a copy of the HRW *amicus curiae* brief when it receives it; and
- VI. DIRECTS** the Registry to notify, without delay, the present Decision to HRW.

Arusha, 10 March 2008, in English.

Inés M. Weinberg de Roca
Presiding Judge
Signing in Buenos Aires

Lee Gacuiga Muthoga
Judge

Robert Fremr
Judge

[Seal of the Tribunal]