



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

86/H

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Gilney
Judge Liu Daqun
Judge Andréia Vaz

ICTR-97-36-R11bis

18 July 2008

(86/H – 83/H)

Registrar: Mr. Adama Dieng

Decision of: 18 July 2008

JUDICIAL RECORDS ARCHIVE
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THE PROSECUTOR

v.

YUSSUF MUNYAKAZI

Case No. ICTR-97-36-R11bis

ICTR Appeals Chamber

Date: 18 July 2008

Action: P.T.

Copied To: Concerned Judge
Pauze, Slos, Los, Alos,
LSS Archives, Applicant

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**DECISION ON REQUEST FROM THE REPUBLIC OF RWANDA FOR
PERMISSION TO FILE AN *AMICUS CURIAE* BRIEF**

Applicant

Republic of Rwanda

Office of the Prosecutor

Mr. Hassan Bubacar Jallow
Mr. Bongani Majola
Mr. Alex Obore-Odora
Mr. Richard Karegyasa

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR MOI	
NAME / NOM: <i>Patrice Tchidimbo</i>	
SIGNATURE: <i>[Signature]</i>	DATE: <i>18/07/08</i>

Counsel for Yussuf Munyakazi

Mr. Jwani Timothy Mwaikusa
Ms. Eliane Nyampinga

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THE APPEALS CHAMBER of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively);

NOTING the "Decision on the Prosecutor's Request for Referral of Case to the Republic of Rwanda" rendered pursuant to Rule 11*bis* of the Rules of Procedure and Evidence of the Tribunal ("Rules") by Trial Chamber III on 28 May 2008 ("Trial Chamber" and "Rule 11*bis* Decision", respectively);

NOTING that the Appeals Chamber is seized of an appeal by the Prosecution against the Rule 11*bis* Decision;¹

BEING SEIZED OF the "Request of the Republic of Rwanda for Permission to File an Amicus Curiae Brief Concerning the Prosecutor's Appeal of the Denial by Trial Chamber III, of the Request for Referral of the Case of Yussuf Munyakazi to Rwanda Pursuant to Rule 11 *bis* of the Rules" ("Request") filed on 30 June 2008 by the Republic of Rwanda ("Rwanda"), in which Rwanda requests leave to file an *amicus curiae* brief and to make oral submissions if there is to be an oral hearing;

NOTING that neither the Prosecution nor Yussuf Munyakazi ("Munyakazi") responded to the Request;

NOTING that, in support of its Request, Rwanda submits that it is best placed to provide information to the Appeals Chamber in relation to the law, legal procedure, witness protection programs and other state mechanisms applicable in Rwanda, and that, therefore, its submissions on several issues to be litigated on appeal would assist the Appeals Chamber in its determination of the case;²

CONSIDERING that, pursuant to Rule 74 of the Rules, the Appeals 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";

¹ *The Prosecutor v. Yussuf Munyakazi*, Case No. ICTR-97-36-R11*bis*, Prosecutor's Notice of Appeal (Rule 11 *bis* (H)), 12 June 2008.

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CONSIDERING that granting leave to make submissions under Rule 74 of the Rules is a matter within the discretion of the Appeals Chamber;³

CONSIDERING that the primary criterion in determining whether to grant leave to an *amicus curiae* to make submissions is whether this would assist the Appeals Chamber in its consideration of the appeal;⁴

RECALLING that, pursuant to Rule 74 of the Rules, the Trial Chamber requested that Rwanda appear as *amicus curiae* during the referral proceeding⁵ and that, in this capacity, Rwanda made written and oral submissions before the Trial Chamber;⁶

NOTING, however, that Rwanda submits that it did not have an opportunity to address several of the issues that are now the subject of the appeal in sufficient detail in its original *amicus curiae* brief nor during the hearing before the Trial Chamber;⁷

NOTING however that Rwanda had an opportunity to address several of the issues in question at trial;⁸

NOTING further that Rwanda submits that additional submissions would provide clarification of the issues on appeal;

³ Request, para. 9.

⁴ See *The Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-99-52-A, Decision on the Admissibility of the Amicus Curiae Brief Filed by the "Open Society Justice Initiative" and on its Request to be Heard at the Appeals Hearing, 12 January 2007 ("Nahimana Decision"), p. 3. See also *Prosecutor v. Ante Gotovina et al.*, Case No. IT-06-80-AR108bis.1, Decision on the Prosecutor's Motion to Strike Request for Review under Rule 108bis, 13 December 2006, para. 7.

⁵ *Nahimana Decision*, p. 3; *Prosecutor v. Radoslav Brdanin*, Case No. IT-99-36-A, Decision on Association of Defence Counsel Request to Participate in Oral Argument, 7 November 2005, p. 3. See also *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Decision on Amicus Curiae Application of Paul Bisengimana, 30 March 2004, p. 3.

⁶ *The Prosecutor v. Yussuf Muryakazi*, Case No. ICTR-97-36-I, Order for Submissions of the Republic of Rwanda as the State Concerned by the Prosecutor's Request for Referral of the Indictment against Yussuf Muryakazi to Rwanda, 9 November 2007.

⁷ *The Prosecutor v. Yussuf Muryakazi*, Case No. ICTR-97-36-I, Amicus Curiae Brief of the Republic of Rwanda in the Matter of an Application for the Referral of the Above Case to Rwanda Pursuant to Rule 11bis, 4 January 2008; *The Prosecutor v. Yussuf Muryakazi*, Case No. ICTR-97-36-I, T. 24 April 2008 pp. 33-37, 51-58, 64-67, 70, 74-77.

⁸ Request, para. 11.

⁹ Muryakazi raised the specific issue of whether a transferee would be subject to life imprisonment in isolation in its written pleadings before the Trial Chamber (*The Prosecutor v. Yussuf Muryakazi*, Case No. ICTR-97-36-R11bis, Defence Response to Prosecutor's Request for Referral of the Case of Yussuf Muryakazi to Rwanda pursuant to Rule 11bis of the Tribunal's Rules of Procedure and Evidence, 2 October 2007, para. 4.4). Rwanda had an opportunity to respond on this point in its *amicus curiae* brief (*The Prosecutor v. Yussuf Muryakazi*, Case No. ICTR-97-36-I, Amicus Curiae Brief of the Republic of Rwanda in the Matter of an Application for the Referral of the Above Case to Rwanda Pursuant to Rule 11bis, 4 January 2008), but did not do so. In addition, two Trial Chamber Judges posed direct questions on this precise point to Rwandan government representative, Mr. Ngoga, during the hearing (*The Prosecutor v. Yussuf Muryakazi*, Case No. ICTR-97-36-I, T. 24 April 2008 pp. 66-67, 76-77).

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CONSIDERING that Rwanda has a practical interest in the determination of the appeal;

CONSIDERING that the issues identified by Rwanda as matters to which it could provide further detail are relevant to the determination of the appeal and that the Appeals Chamber may be assisted in the determination of the appeal by further *amicus curiae* submissions from Rwanda;

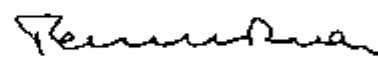
FOR THE FOREGOING REASONS,

GRANTS leave to Rwanda to file an *amicus curiae* brief, to be submitted within 10 days of the filing of the present Decision and to be no longer than 10 pages in length;

ORDERS Muryakazi and the Prosecution, if they wish to do so, to file responses to the *amicus curiae* brief of no longer than 10 pages in length within 5 days of the filing of the brief;

DECLARES that if the Appeals Chamber deems it necessary to hold an oral hearing, it will issue a Scheduling Order, indicating whether oral submissions from *amicus curiae* will be permitted.

Done in English and French, the English text being authoritative.



Judge Fausto Pocar
Presiding

Dated this 18th day of July 2008,
at The Hague, The Netherlands.



[Seal of the Tribunal]