

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

APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Patrick Robinson
Judge Liu Daqun
Judge Andresia Vaz
Judge Carmel Agius

Registrar: Mr. Adama Dieng

Date: 18 January 2012

THE PROSECUTOR

v.

Augustin NDINDILYIMANA et al.

Case No. ICTR-00-56-A

**REQUEST BY IBUKA and SURVIVORS FUND (SURF)
FOR LEAVE TO MAKE SUBMISSIONS AS *AMICI CURIAE*
IN CONNECTION WITH THE PROSECUTOR'S
SENTENCING APPEALS**

Office of the Prosecutor

Hassan B. Jallow
James J. Arguin

Counsel for Bizimungu

Gilles St-Laurent

Counsel for Ndindiliyimana

Christopher Black

Counsel for Nzuwonemeye

Charles Taku

Counsel for Sagahutu

Fabien Segatwa

Applicants

IBUKA
Survivors Fund (SURF)

1. As the leading victims' rights organizations in Rwanda, IBUKA and Survivors Fund (SURF) (collectively, "the Victims' *Amici*") request that the Appeals Chamber grant them leave to make submissions as *amici curiae*, pursuant to Rule 74 of the ICTR Rules of Procedure and Evidence ("Rules"), in connection with the Prosecutor's appeal from the sentences imposed against Major General Augustin Bizimungu, Major General Augustin Ndindiliyimana, Major François-Xavier Nzuwonemeye, and Captain Innocent Sagahutu.

2. 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, organisation or person to appear before it and make submissions on any issue specified by the Chamber. A primary criterion for a Chamber in determining whether to grant leave to an *amicus curiae* to make submissions is whether such submissions would assist the Chamber in its considerations of the questions at issue.¹

3. The Victims' *Amici* submit that this requirement is satisfied here because their members represent all facets of Rwandan society affected by the 1994 genocide and, more particularly, by the types of crimes committed by the convicted in this case. Accordingly, they are uniquely positioned to assist the Appeals Chamber in understanding why the sentences imposed in this case should be set aside.

4. As developed more fully in our proposed amicus brief (a copy of which is attached so the Chamber can fully appreciate the assistance the Victims' *Amici* can provide), the sentences imposed by the Trial Chamber do not further the primary sentencing goals of deterrence and retribution, tolerate impunity among

¹ *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, p. 3; *The Prosecutor v. Yussuf Munyakazi*, Case No. ICTR-97-36-R11bis, Decision on Request by Rwanda for Permission to File an *Amicus Curiae* Brief, 18 July 2008, p. 3.

those responsible for the committing the gravest crimes, and demean the dignity of victims and survivors.

5. The Victims' *Amici* do not seek to submit an amicus brief out of a blind desire for vengeance or "eye-for-an-eye" justice. No sentence available to the Tribunal could erase the loss and pain inflicted by these offenders. As representatives of the victims of the Rwandan genocide, the Victims' *Amici* seek only to have the victims' collective voice heard so that the Tribunal can fashion sentences that better reflect its mission of preventing impunity and its commitment to doing justice to the victims' memory.

6. Regrettably, no victims were heard during the sentencing phase of this case. Had the victims been heard, they could have assisted the Chamber in better evaluating the gravity of the offenders' conduct. Had the victims been heard, they could have contributed to the offenders' rehabilitation by increasing their awareness of their crimes. At the same time, had the victims been heard, they could have helped restore dignity and power to those still struggling to overcome the traumas inflicted upon them.

7. The Tribunal, of course, must continue to give appropriate consideration to the individual circumstances of each case. But, those individual circumstances also should include consideration of the impact the convicted offenders' criminal conduct had and continues to have on their victims. Therefore, in the proposed amicus brief, the Victims' *Amici* explain why the Appeals Chamber should take this opportunity to not only correct the sentences imposed in this case but also to clarify the role that victims can and should play in the sentencing phase of trial.

8. As developed more fully in our proposed amicus brief, allowing victims to be heard at sentencing is consistent with the Tribunal's Statute and fundamental principles of national and international justice. Indeed, many national courts and other international bodies have recognized similar opportunities for victims

to be heard at sentencing. In preserving the rights of the guilty at sentencing, the Tribunal must not continue to be deaf to the voices of their victims.

9. All of these are matters that the Appeals Chamber should consider in reviewing the Trial Chamber's sentences in this case, and all of these are matters that neither of the parties to this appeal can effectively argue because they are matters unique to the victims' individual and collective experiences. Moreover, all are matters that the parties to this appeal, including particularly the Defence, can adequately and fully respond to in their remaining written and oral submissions.

10. While some might question why the Victims' *Amici* waited until now to raise these issues, the *amici* respond that the Appeals Chamber's recent judgment in *Bagosora* and *Nsengiyumva*, which drastically reduced the sentences imposed by the Trial Chamber in that case,² persuaded its members that they could no longer stand silently by while the Tribunal sentenced those responsible for the gravest violations of international law and human dignity to terms of imprisonment more appropriate for common criminals than convicted génocidaires. The Victims' *Amici* pray that the Tribunal will allow the victims' views to be considered as it evaluates the grossly inadequate sentences that the Trial Chamber imposed in this case.

11. For all of these reasons, the Victims' *Amici* respectfully request leave to submit an amicus brief on the matters outlined above and detailed more fully in the attached proposed brief. Should the Chamber allow this request, the Victims' *Amici* further request that the Chamber direct the Registrar to accept the attached amicus brief for filing.

² *Théoneste Bagosora et al. v. The Prosecutor*, Case No. ICTR-98-41-A, Judgement, 14 December 2011, para. 743.

Word count: 933.

Dated and signed this 18th day of January 2012, Kigali, Rwanda.

Professor Jean Pierre Dusingizemungu
President, IBUKA

Dr. David Russell
Director, Survivors Fund (SURF)