



UNITED NATIONS
NA PLOSICHIFA

ICTR-02-78-1
22-02-2008
(1361-1359)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

1361
van

OR: ENG

TRIAL CHAMBER DESIGNATED UNDER RULE 11 BIS

Before Judges: Erik Møse, presiding
Sergei Alekseevich Egorov
Florence Rita Arrey

Registrar: Adama Dieng

Date: 22 February 2008

2008 FEB 22 1 P 1-30
JUDICIAL RECORDS/ARCHIVES
RECEIVED

THE PROSECUTOR

v.

Gaspard KANYARUKIGA

Case No. ICTR-2002-78-1

**DECISION ON DEFENCE REQUEST TO GRANT *AMICUS CURIAE* STATUS TO
FOUR NON-GOVERNMENTAL ORGANISATIONS**

Rule 74 of the Rules of Procedure and Evidence

The Prosecution

Hassan Bubacar Jallow
Bongani Majola
Silvana Arbia
Alex Obote-Odora
Richard Karegyesa
Georges Mugwanya
Inneke Onsea
François Nsanzuwera
Florida Kabasinga

The Defence

Ernest Midagu Bahati
Camille Yuma

6/2

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING as a Trial Chamber designated under Rule 11 *bis*, composed of Judge Erik Møse, presiding, Judge Sergei Aleksceovich Egorov, and Judge Florence Rita Arrey;

BEING SEIZED OF the "Requête urgente de la défense demandant à la Chambre d'inviter certaines organisations en amicus curiae" etc., filed on 2 November 2007;

NOTING the Prosecution Response, filed on 7 November 2007, and the Defence Reply, filed on 9 November 2007;

HEREBY DECIDES the motion.

INTRODUCTION

1. On 7 September 2007, the Prosecution requested the transfer of the Accused for trial in Rwanda under Rule 11 *bis* of the Rules of Procedure and Evidence. The Republic of Rwanda was granted *amicus curiae* status in the transfer proceedings on 9 November 2007.¹ The Chamber has subsequently made decisions concerning several requests for *amicus curiae* status.² The present Defence motion seeks such status for four organisations, namely Amnesty International, Human Rights Watch, Reporters Sans Frontières and Liprodor.

2. The Defence submits that, in addition to regular annual reports, the organisations have issued recent reports which are relevant to the assessment of the Rwandan judicial system, and will contradict the submissions which are anticipated by the Republic of Rwanda.³ The Prosecution leaves the matter at the discretion of the Trial Chamber, noting that the Defence has not demonstrated how the *amicus curiae* submissions would assist the Chamber.

DELIBERATIONS

3. 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.

4. Any submission by a potential *amicus curiae* must be relevant.⁴ Rule 11 *bis* (C) provides that the Trial Chamber shall satisfy itself that the accused will receive a fair trial in the courts of the State concerned. It follows that submissions by an organisation with expertise relating to the capacity of the Rwandan legal system to ensure a fair trial are relevant.

5. The request for *amicus curiae* status is not filed by the four non-governmental organisations but by the Defence. According to the wording of Rule 74, the Chamber has the discretion to invite any organisation or person to assist the court.⁵ However, *amicus curiae*

¹ *Prosecutor v. Kanyarukiga*, Case No. ICTR-2002-78-I, Decision on the Request of the Republic of Rwanda for Leave to Appear as *Amicus Curiae* (TC), 9 November 2007.

² *Prosecutor v. Kanyarukiga*, Case No. ICTR-2002-78-I, Decision on *Amicus Curiae* Request by the Organisation of Defence Counsel (ADAD) (TC), 22 February 2008; Decision on *Amicus Curiae* Request by the International Criminal Defence Attorneys Association (ICDAA) (TC), 22 February 2008; Decision on *Amicus Curiae* Request by the Kigali Bar Association (TC), 22 February 2008; Decision on *Amicus Curiae* Request by Ibuka and Avega (TC), 22 February 2008.

³ The Defence Reply (para. 7) refers to the Reporters Sans Frontières Report of April 2007, Amnesty International Report of 16 March 2007, Human Rights Watch Report of July 2007 and World Report 2007.

⁴ *Prosecutor v. Musema*, Case No. ICTR-96-13-T, Decision on an Application by African Concern for Leave to Appear as *Amicus Curiae* (TC), 17 March 1999, para. 13.

⁵ *Prosecutor v. Gotovina, Čermak and Markač*, Case No. IT-06-90-ar108bis.1, Decision on Prosecution's Motion to Strike Request for Review Under Rule 108bis (AC), 13 December 2006, para. 7 clarifies that the

status has in practice only been granted where the organisations have themselves made requests. The Chamber is not aware of any ICTR or ICTY case law granting such status where the application has been made on behalf of the organisation.⁶ By filing an *amicus curiae* request, an organisation demonstrates a clear intention to accept the invitation of the Chamber to provide submissions for the relevant proceedings. In the absence of such requests, the Chamber will not invite Amnesty International, Reporters Sans Frontières and Liprodor. This does not, however, prevent the Defence from referring to reports by these organisations in its submissions.

7. The situation is different for Human Rights Watch. This organisation requested and was granted *amicus curiae* status in Rule 11 *bis* proceedings presently before another Trial Chamber, and it has filed its submissions.⁷ As it would be preferable to have available similar material in the present case, the Chamber grants the request to give *amicus curiae* status to Human Rights Watch. It is expected that the submissions will contain answers given to questions posed by the bench in the other Rule 11 *bis* case, as well as observations on trials before the High Court of Kigali and the Supreme Court, which are intended to hear cases transferred from the ICTR.


FOR THE ABOVE REASONS, THE CHAMBER

GRANTS *amicus curiae* status to Human Rights Watch;

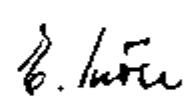
INVITES Human Rights Watch to provide written submissions, should it so wish, concerning the ability of the Republic of Rwanda to satisfy the fair trial requirements of Rule 11 *bis* (C) of the Rules, no later than Friday 7 March 2008;

DENIES the request to grant *amicus curiae* status to Amnesty International, Reporters Sans Frontières and Liprodor.

Arusha, 22 February 2008


Erik Mose
Presiding Judge


Sergei Alekseevich Egorov
Judge


Florence Rita Atrey
A.P. Judge

[Seal of the Tribunal]

Chamber has the discretion to grant *amicus curiae* status, subject to any person or organization having a legal right to such status.

⁶ In *Prosecutor v. Orić*, Case No. IT-04-18-A, Decision on Motion in Relation to Ground 5 of the Prosecution's Appeal" (AC), 12 September 2007, the Prosecution sought *amicus curiae* status for the Association of Defence Council. The issue of the sought *amicus curiae* motion was not discussed, but it was disallowed as it "failed to demonstrate that *amicus curiae* submissions would assist the Appeals Chamber in its determination of Ground 5 if it were to decide to address the legal issues presented therein" (p. 3). The current facts are distinguishable from the case where the Chamber itself makes the request, as in *Prosecutor v. Drdamin*, Case No. IT-99-36-A, Decision on Motion to Dismiss Ground 1 of the Prosecutor's Appeal (AC), 5 May 2005; or where a party requests the Chamber to appoint an *amicus curiae* to investigate a state of affairs, see *Prosecutor v. Perišić*, Case No. IT-04-82-PT, Decision on Motion to Appoint *Amicus Curiae* to Investigate Equality of Arms (TC), 18 June 2007.

⁷ *Prosecutor v. Kayishema*, Case No. ICTR-2001-67-I, Request by Human Rights Watch for Leave to Appear as *Amicus Curiae* Pursuant to Rule 74 of the ICTR Rules of Procedure and Evidence, 25 October 2007; 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 (TC), 8 November 2007; Brief of Human Rights Watch as *Amicus Curiae* in Opposition to Rule 11 *bis* Transfer, 3 January 2008.