



UNITED NATIONS  
NATIONS UNIES

ICTR-02-78-1  
22-02-2008  
(1364-1362)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

1364  
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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

JUDICIAL RECORDS/ARCHIVES  
2008 FEB 22 11:30

**THE PROSECUTOR**

v.

**Gaspard KANYARUKIGA**

*Case No. ICTR-2002-78-1*

**DECISION ON *AMICUS CURIAE* REQUEST BY THE INTERNATIONAL  
CRIMINAL DEFENCE ATTORNEYS ASSOCIATION (ICDAA)  
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

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**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

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

**BEING SEIZED OF** a Request for Permission to File an *Amicus Curiae* Brief by the International Criminal Defence Attorneys Association (ICDAA), filed on 20 November 2007;

**NOTING** that neither the Defence nor the Prosecution has filed any response.

**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 Chamber has subsequently made decisions concerning several requests for *amicus curiae* status.<sup>1</sup> The current application seeks such status for the ICDAA on the basis of its expertise on fair trial requirements for persons charged with international crimes before national and international courts.<sup>2</sup>

**DELIBERATIONS**

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.

3. Any submission by a potential *amicus curiae* must be relevant.<sup>3</sup> 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 the capacity of the Rwandan legal system to ensure a fair trial are relevant.

4. The ICDAA argues that it has the expertise to provide submissions on issues such as how to secure adequate legal representation for a person charged with international crimes, the proper infrastructure required to guarantee and ensure an independent defence, the appropriate financial support to ensure adequate representation of indigent accused, the financial assessment of what is necessary both in terms of travel expenses and investigations costs for the defence, and the measures to be taken to enable the security of all defence team members, including the safety mechanisms to be put in place for defence witnesses, particularly for Rwandan witnesses living abroad or inside their country.<sup>4</sup>

5. The Chamber observes that the ICDAA has not indicated any particular experience as to how the Rwandan legal system operates. However, the organisation has expertise in

<sup>1</sup> *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; Decision on Defence Request to Grant *Amicus Curiae* Status to Four Non-Governmental Organisations (TC), 22 February 2008; Decision on *Amicus Curiae* Request by the Organisation of Defence Counsel (ADAD) (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.

<sup>2</sup> Request, para. 15.

<sup>3</sup> *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.

<sup>4</sup> According to ICDAA, it is an international non-governmental organisation based in Canada which specialises in the field of international criminal justice and the rule of law. The organisation focuses on advocacy for fair trial rights in international and national criminal proceedings around the world. The ICDAA membership includes defence counsel practicing before international jurisdictions such as the ICTR, the ICTY and the Special Court for Sierra Leone. Request, paras. 3, 5, 7, 15.

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relation to the requirements needed to ensure that the rights of an accused in a case concerning international crimes are adequately protected. Its submissions may therefore be of value to the Chamber's assessment of whether the accused will receive a fair trial.

6. The ICDAAs are not affiliated with any party to the case and does not seek to protect the rights of the Accused in this particular trial.<sup>5</sup> It is therefore expected to exercise objectivity and impartiality in its submissions, as required by case law.<sup>6</sup> The ICDAAs has submitted *amicus curiae* briefs in other Rule 11 *bis* proceedings pending before the Tribunal.<sup>7</sup> It is expected that its submissions will contain answers given to questions posed by the bench in the other Rule 11 *bis* cases, 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 the International Criminal Defence Attorneys Association; **INVITES** the International Criminal Defence Attorneys Association to provide written submissions concerning the ability of the Republic of Rwanda to satisfy the fair trial requirements of Rule 11 *bis* (C) of the Rules, to be filed no later than Friday 7 March 2008.

Arusha, 22 February 2008

  
Erik Mose  
Presiding Judge

  
Sergei Alekseevich Egorov  
Judge

  
Florence Rita Arrey  
*p.p.* Judge

[Seal of the Tribunal]



<sup>5</sup> Request, para. 8.

<sup>6</sup> *Prosecutor v. Kayishema*, Case No. ICTR-2005-87-I, Decision on the *Amicus Curiae* Request of the Defence of Gaspard Kanyarukiga (TC), 14 September 2007, para. 6; *Prosecutor v. Milosević*, Case No. IT-02-54-T, Oral Decision (TC), T. 10 October 2002, pp. 11440-11441.

<sup>7</sup> *Prosecutor v. Kayishema*, Case No. ICTR-2001-67-I, Decision on the Request for Permission to File an *Amicus Curiae* Brief, International Criminal Defence Attorneys Association (ICDAAs) etc. (TC), 6 December 2007; Brief of *Amicus Curiae*, International Criminal Defence Attorneys Association (ICDAAs) etc., 3 January 2008. See also *Prosecutor v. Munyakazi*, Case No. ICTR-1997-36-I, Decision on the Application by the International Criminal Defence Attorneys Association (ICDAAs) for Leave to File a Brief as *Amicus Curiae* (TC), 6 December 2007; Brief of *Amicus Curiae*, International Criminal Defence Attorneys Association (ICDAAs) etc., 4 January 2008.