



UNITED NATIONS  
NATIONS UNIES

**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**

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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

**THE PROSECUTOR**

**v.**

**Gaspard KANYARUKIGA**

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

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**DECISION ON *AMICUS CURIAE* REQUEST BY THE  
ORGANISATION OF DEFENCE COUNSEL (ADAD)**

**Rule 74 of the Rules of Procedure and Evidence**

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**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

## THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

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

**BEING SEIZED OF** the Motion by the Organisation of Defence Counsel (ADAD) for Leave to Appear and Make Submissions as *Amicus Curiae*, filed on 26 November 2007;

**NOTING** the Prosecution Response, filed on 30 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 Chamber has subsequently made decisions concerning several requests for *amicus curiae* status.<sup>1</sup> The current application seeks such status for the Organisation of Defence Counsel (ADAD) on the basis of its understanding of the impediments to fair trials involving the Rwandan Government.<sup>2</sup> The Prosecution does not oppose the application, but notes that ADAD members may not have an unfettered discretion to extend their duties beyond representing their specific clients, as well as the potential for duplication of arguments as between the Kanyarukiga Defence and ADAD.<sup>3</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>4</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 to the capacity of the Rwandan legal system to ensure a fair trial for the accused are relevant.

4. ADAD argues that its members and associates have more than a decade of professional experience specific to the ICTR and to impediments to fair trials involving the Rwandan Government, both within Rwanda and without. The organisation is therefore well-situated to provide the Chamber with specific, detailed evidence and analysis, as well as the benefit of its collective experience. ADAD's *amicus curiae* request should be granted as the organisation has a direct interest in the outcome of the proceedings. Both Defence Counsel and their clients stand to suffer "immediate, direct and irreparable harm" including a "threat-to-life" in the event of an adverse decision.<sup>5</sup>

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<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 International Criminal Defence Attorney's 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 of Ibuka and Avega (TC), 22 February 2008.

<sup>2</sup> Request, para. 16.

<sup>3</sup> Response, pp. 2-3.

<sup>4</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>5</sup> According to ADAD, it is an unincorporated voluntary association that has been the only organised representative body for Defence counsel at the ICTR for nearly ten years, with the purpose of ensuring fair trials

5. The Chamber observes that ADAD presents itself as the “only entity charged with representing the collective voice of the Defence Counsel”.<sup>6</sup> Its members are Defence Counsel who represent the interests of indictees at the Tribunal. Gaspard Kanyarukiga has been assigned a Defence Counsel to represent his interests. There is little doubt that ADAD would largely repeat arguments already provided by the assigned Defence Counsel. Duplicating submissions would not assist the Chamber in the proper determination of its case.<sup>7</sup> Nothing prevents Defence Counsel from seeking advice from the organisation.

**FOR THE ABOVE REASONS, THE CHAMBER**

**DENIES** the motion.

Arusha, 22 February 2008

Erik Mjøse  
Presiding Judge

Sergei Alekseevich Egorov  
Judge

Florence Rita Arrey  
Judge

[Seal of the Tribunal]

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and to permit the collective voice of Defence Counsel to be expressed at the ICTR. The majority of Defence attorneys at the ICTR are either formal members of ADAD or voluntary associates. The organization has attended ICTR Plenaries and has also played a consultative and representative role in resolving numerous issues including the arrest of a Defence Counsel and conditions of confinement at the UN Detention Facility. Request, paras. 9, 10, 11, 12, 16, 18.

<sup>6</sup> Request, para. 9.

<sup>7</sup> See similarly, *Prosecutor v. Munyakazi*, Case No. ICTR-1997-36-I, Decision on the Motion by ADAD (The Organisation of ICTR Defence Counsel) for Leave to Appear as *Amicus Curiae*, 13 December 2007 (TC) and Decision on ADAD’s (The Organisation of ICTR Defence Counsel) Motion for Reconsideration of Request for Leave to Appear as *Amicus Curiae*, 18 February 2008 (TC).