



UNITED NATIONS
NATIONS UNIES

ICTR-01-61-1
30-06-2008
(1923 - 1920)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

1923

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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: 30 June 2008

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THE PROSECUTOR

v.

Jean-Baptiste GATETE

Case No. ICTR-2001-61-11bis

DECISION ON *AMICUS CURIAE* REQUESTS

(IBUKA, AVEGA AND ICDA)

Rule 74 of the Rules of Procedure and Evidence

The Prosecution
Hassan Bubacar Jallow
Bongani Majola
Alex Obote-Odora
George William Mugwanya
Inneke Onsea
François Nsanzuwera
Florida Kabasinga
William Mubiru

The Defence
Richard Dubé
Isabella Teolis

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

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

BEING SEIZED OF a request for permission to file an *amicus curiae* brief by Ibuka and Avega, filed on 4 February 2008, and a similar request by the International Criminal Defence Attorneys Association (ICDAA), filed on 26 March 2008;

NOTING the Defence and Prosecution responses to the Ibuka and Avega motion; and the Prosecution response to the ICDAA motion, as well as the ICDAA reply;

HEREBY DECIDES the motions.

INTRODUCTION

1. On 28 November 2007, the Prosecution requested the transfer of Jean-Baptiste Gatete for trial in Rwanda under Rule 11 *bis* of the Rules of Procedure and Evidence.¹ Ibuka and Avega seek *amicus curiae* status on the basis of their knowledge as organisations for genocide survivors. The Defence disputes their impartiality, whereas the Prosecution does not object.² The ICDAA motion, which is not opposed by the Prosecution, is based on its expertise in fair trial requirements for persons charged with international crimes.³

DELIBERATIONS

2. Rule 74 of the Rules of Procedure and Evidence 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.⁴ Rule 11 *bis* (C) provides that the 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.⁵ An *amicus curiae* is also expected to exercise objectivity and impartiality in its submissions.⁶

4. The burden falls on the potential *amicus curiae* to show that it has sufficient expertise to provide submissions that are relevant to the Chamber's considerations. Ibuka and Avega state that they are genocide survivors' organisations, without explaining how this would

¹ Prosecutor's Request for the Referral of the Case of Jean-Baptiste Gatete to Rwanda Pursuant to Rule 11 *bis* of the Tribunal's Rules of Procedure and Evidence, filed on 28 November 2008.

² Request by Ibuka and Avega for Leave to Appear and Make Submissions etc., filed on 4 February 2008 p. 3; Prosecution Response, filed on 8 February 2008, p. 2; Defence Response, filed on 27 February 2008, paras. 6-8.

³ Request for Permission to File an *Amicus Curiae* Brief etc. by the International Criminal Defence Attorneys Association, filed on 26 March p. 2; Prosecution Response, filed on 31 March 2008, p. 2; ICDAA Reply, filed on 4 April 2008, p. 2.

⁴ *Musema*, Decision on an Application by African Concern for Leave to Appear as *Amicus Curiae* (TC), 17 March 1999, para. 13.

⁵ *Kanyarukiga*, Decision on *Amicus Curiae* Request by the International Criminal Defence Attorneys Association (ICDAA) (TC), 22 February 2008, para. 3.

⁶ *Kayishema*, Decision on the *Amicus Curiae* Request of the Defence of Gaspard Kanyarukiga (TC), 14 September 2007, para. 6; *Milosevic*, Oral Decision (TC), T. 10 October 2002, pp. 11440-11441.

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make them knowledgeable about the ability of the Rwandan legal system to ensure fair trials. Therefore, the Chamber will not grant *amicus curiae* status to these organisations.⁷

5. According to the ICDAAs motion, the organization has the expertise to provide submissions on issues such as how to guarantee adequate legal representation for persons charged with international crimes, the proper infrastructure to ensure an independent defence, the appropriate financial support to ensure adequate representation of indigent accused, the financial assessment of what is necessary in terms of travel expenses and investigation costs for the defence, and the measures to be taken to enable the security of all defence team members, as well as safety mechanisms to be put in place for defence witnesses, particularly for Rwandan witnesses living abroad or inside their country.⁸

6. The ICDAAs has not indicated any particular experience as to how the Rwandan legal system operates. However, the organisation has expertise in relation to the requirements needed to ensure that the rights of persons accused of international crimes are adequately protected. Its submissions may therefore be of value to the Chamber's assessment of whether Gatete will receive a fair trial, if transferred. The ICDAAs as it is not affiliated with any party to the case and does not seek to provide representation to Gatete.⁹ It is therefore expected to exercise objectivity and impartiality in its submissions. The organisation has been given *amicus curiae* status in other Rule 11 *bis* proceedings before the Tribunal.¹⁰

7. The Chamber considers a fourteen days period as reasonable for ICDAAs to file its submissions and similarly expects any responses by the Prosecution and Defence within a further fourteen days.¹¹

⁷ Ibuka and Avega motion, p. 3; *Kanyarukiga*, Decision on *Amicus Curiae* Request by Ibuka and Avega, 22 February 2008, para. 4.

⁸ Motion, para. 14. ICDAAs 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 ICDAAs membership includes defence counsel practicing before international jurisdictions such as the ICTR, the ICTY and the Special Court for Sierra Leone. ICDAAs motion, paras. 3, 5, 7, 11-12, 14.

⁹ ICDAAs motion, para. 8.

¹⁰ *Hategekimana*, Decision on Prosecutor's Request for the Referral of the Case of Hdephonse Hategekimana to Rwanda (TC), 19 June 2008, para. 7; *Kanyarukiga*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 6 June 2008, para. 4; *Munyakazi*, Decision on the Prosecutor's Request for Referral of Case to the Republic of Rwanda (TC), 28 May 2008, paras. 5-6; *Kayishema*, Brief of *Amicus Curiae*, International Criminal Defence Attorneys Association etc., 3 January 2008.

¹¹ The Prosecution requests that the ICDAAs file its brief within seven days of the filing of the decision and that it be permitted to respond to the submissions, Prosecution Response, p. 2. ICDAAs seeks fourteen days to make its submissions, ICDAAs Reply, p. 2.

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FOR THE ABOVE REASONS, THE CHAMBER

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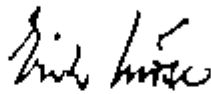
DENIES the motion filed by Ibuka and Avega;

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, by Monday 14 July 2008;

ORDERS that any response by the Prosecution and the Defence be filed by Monday 28 July 2008.

Arusha, 30 June 2008



Erik Mose
Presiding Judge



Sergei Alekseevich Egorov
Judge



Florence Rina Arrey
Judge

[Seal of the Tribunal]