



UNITED NATIONS
INTERNATIONAL
CRIMINAL TRIBUNAL FOR RWANDA

ICTR-2001-67-I
1-7-2008
709-706

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

OR: ENG

TRIAL CHAMBER III

Before: Inés M. Weinberg de Roca, Presiding
Lee Gaciga Muboga
Robert Fremr

Registrar: Adama Dieng

Date: July 2008

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THE PROSECUTOR

v.

Fulgence KAYISHEMA

Case No. ICTR-2001-67-I

**DECISION ON THE REQUEST BY IBUKA & AVEGA
FOR LEAVE TO APPEAR AND MAKE SUBMISSIONS AS AMICUS**

Rules 11 bis and 74 of the Rules of Procedure and Evidence

Office of the Prosecutor:

Hassan Bubacar Jallow
Bongani Majola
Alex Obate-Odora
Richard Katagoywa
George Mugwanya
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François Nsanzuweru
Florida Kabasinga

Defence Counsel:

Jwani Timothy Mwaikusa

[Signature]

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INTRODUCTION

1. On 10 June 2001, the Prosecutor of the International Criminal Tribunal for Rwanda ("the Tribunal") filed an Indictment ("the Indictment") against Fulgence Kayishema ("the Accused"). The Indictment charges the Accused with genocide, complicity in genocide, conspiracy to commit genocide, and extermination as a crime against humanity.¹ The Indictment was confirmed on 4 July 2001 by Judge Lloyd G. Williams.²

2. On 11 June 2007, the Prosecutor filed a request for the referral of the Indictment against the Accused to the Republic of Rwanda ("the Referral Request").³ Pursuant to Rule 11*bis* of the Rules of Procedure and Evidence ("the Rules"), the President of the Tribunal, on 25 June 2007, designated this Trial Chamber to decide the Referral Request.⁴

Amicus Application

3. On 4 February 2008, Ibuka & Avega filed an application for leave to appear as *amicus curiae* ("the *Amicus Application*")⁵. In support of its application, Ibuka & Avega referred to Rule 74 of the Rules and submitted that its role as *amicus curiae* would assist the Chamber in its determination of the Referral Request.⁶ Specifically, Ibuka & Avega offered to make submissions on the following points:

- a. Rwanda's preparedness, competence, and readiness to offer a transparent and a fair trial to the Accused;
- b. The institutional, budgetary, legal aid, witness and victims protection and other relevant mechanisms and projects in place for Rwanda to receive and effectively handle the Tribunal's Rule 11*bis* cases, including the case of the Accused;
- c. Post-acquittal and post-conviction guarantees, including but not limited to social and economic re-integration available to the Accused persons tried by courts in Rwanda; and
- d. Security guarantees against any infringement on the life of any witness before and after trial.⁷

¹ Indictment, 10 June 2001.

² Decision on Confirmation of the Indictment, 4 July 2001.

³ The Prosecutor's Request for the Referral of the Case of Fulgence Kayishema to Rwanda pursuant to Rule 11*bis* of the Tribunal's Rules of Procedure and Evidence, 11 June 2007.

⁴ Designation of the Trial Chamber for the Referral of the Case of Fulgence Kayishema to Rwanda, 25 June 2007.

⁵ Request by Ibuka & Avega for Leave to Appear and Make Submissions as *Amicus Curiae* (pursuant to Rule 74 of the Tribunal's Rules of Procedure and Evidence) in Support of the Prosecutor's Rule 11*bis* Request for the Referral of the Case of Gatete Jean-Baptiste (sic) to Rwanda, 4 February 2008.

⁶ *Amicus Application*, paras. 2, 4, 5, 6 and 7.

⁷ *Ibid.*, para. 9.

4. Ibuka & Avega respectfully requested that the Chamber grant it leave to file an *amicus* brief in support of the Referral Request.⁸

Prosecutor's Response

5. The Prosecutor filed its Response on 8 February 2008, stating that it had no objection to the *Amicus* Application of Ibuka & Avega.⁹ Were the Chamber to grant the *Amicus* Application, the Prosecutor requested he be given the opportunity to respond to the *amicus* brief of Ibuka & Avega.¹⁰

DISCUSSION

6. The Chamber recalls that pursuant to Rule 74 of the Rules, it may grant leave to a State, organisation, or person to make submissions on any issue if it considers it desirable for the proper determination of the case. Pursuant to Rule 74, the decision to grant leave to an *amicus curiae* is at the sole discretion of the Chamber.

7. First, the Chamber considers that Ibuka & Avega have not demonstrated how, as an organisation representing genocide survivors,¹¹ they are well placed to assist the Chamber in determining the issues specified above.

8. Second, the Chamber is of the view that the substance of the *amicus* submissions offered by Ibuka & Avega would be very similar to extensive information already received from the State concerned, the Republic of Rwanda.¹² Given the information that Ibuka & Avega have proposed to provide in an *amicus* brief, the Chamber is of the view that this would merely be duplicating the information already offered by the Republic of Rwanda.

9. Third, having heard from the Republic of Rwanda, Human Rights Watch,¹³ and the International Criminal Defence Attorney's Association,¹⁴ the Chamber does not consider that Ibuka & Avega can assist further on the issues specified above.

⁸ *Ibid.*, para. 10.

⁹ Prosecutor's Response to "Request by Ibuka & Avega for leave to appear and make submissions as Amicus (pursuant to Rule 74 of the Tribunal's Rules of Procedure and Evidence) in Support of the Prosecutor's Rule 11 Bis Request for the Referral of the Case of Gatete Jean-Baptiste (sic) to Rwanda", 8 February 2008 ("Prosecutor's Response"), para. 4.

¹⁰ Prosecutor's Response, para. 4.

¹¹ *Amicus* Application, para. 1.

¹² *Amicus Curiae* Brief of the Republic of Rwanda in the Matter of an Application for the Referral of the above case to Rwanda pursuant to Rule 11bis, 1 October 2007.

¹³ Brief of Human Rights Watch as *Amicus Curiae* in Opposition to Rule 11bis Transfer, 4 January 2008.

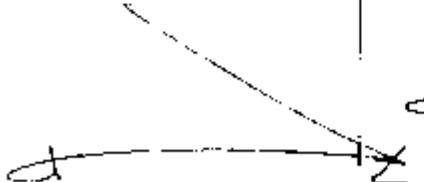
¹⁴ Brief of *Amicus Curiae*, International Criminal Defence Attorneys Association (ICDAA), Concerning the Request for Referral of the Accused Yussuf Munyakazi to Rwanda pursuant to Rule 11bis of the Rules of Procedure and Evidence, 4 January 2008.

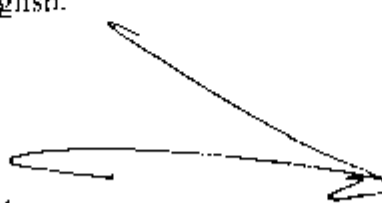
10. For the reasons stated above, the Chamber is not satisfied that receiving an *amicus curiae* brief by Ibuka & Avega would further assist the Chamber in a proper determination of the case.

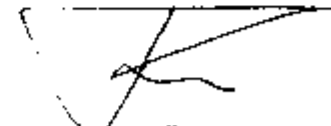
FOR THE FOREGOING REASONS, THE CHAMBER:

- I. DISMISSES the *Amicus* Application in its entirety.
- II. REQUESTS the Registrar to notify, without delay, the present Decision to Ibuka & Avega.

Arusha, 1 July 2008, in English.


Inés M. Weinberg de Roca
Presiding Judge


With the consent and on behalf of
Lee Gacuga Muthoga
Judge
(Absent during signature)


Robert Fremr
Judge

