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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-98-44-A

30th June 2010

{2132/H - 2129/H}

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Liu Daqun
Judge Theodor Meron

Registrar: Mr. Adama Dieng

Decision of: 29 June 2010

ICTR Appeals Chamber

Date: 30th June 2010

Action: A. Juma

Copied To: Concerned Judges,

Théoneste BAGOSORA
Aloys NTABAKUZE
Anatole NSENGIYUMVA

v.

THE PROSECUTOR

Case No. ICTR-98-41-A

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
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NAME / NOM: KAGEL, KUMELIA, A. AFANBE
SIGNATURE: [Signature] DATE: 30 JUNE 2010

Parties, Judicial Archives,
HOs, LSS [Signature]

**DECISION ON THE REQUEST OF THE INTERNATIONAL CRIMINAL BAR FOR
LEAVE TO FILE *AMICUS CURIAE* SUBMISSIONS IN RELATION TO ALOYS
NTABAKUZE'S MOTION REGARDING THE ARREST AND INVESTIGATION OF
LEAD COUNSEL PETER ERLINDER**

International Criminal Bar

Fabio Maria Galiani
Virginia C. Lindsay

Office of the Prosecutor

Hassan Bubacar Jallow
Alex Obote-Odora
George W. Mugwanya
Inneke Onsea
Renifa Madenga
Abubacarr Tambadou
Evelyn Kamau
William Mubiru
Aisha Kagabo
Ndeye Marie Ka

Counsel for Théoneste Bagosora

Raphaël Constant
Richard Perras

Counsel for Aloys Ntabakuze

Peter Erlinder
André Tremblay

Counsel for Anatole Nsengiyumva

Kennedy Ogetto
Gershom Otachi Bw'Omanwa

ICTR
CENTRAL REGISTRY
- 1 JUL 2010
ACTION: APPEALS/CMS
COPY 1:

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THE APPEALS CHAMBER of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States Between 1 January and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively);

NOTING that on 28 May 2010, Peter Erlinder, Lead Counsel for Aloys Ntabakuze ("Ntabakuze"), was arrested in Kigali by Rwandan authorities on charges of "genocide denial";¹

NOTING that the Appeals Chamber is seised of Ntabakuze's motion to order the Registrar to take immediate action to secure the release of his Lead Counsel, and to order the Government of Rwanda to stop all proceedings against his Lead Counsel;²

SEISED OF the "Urgent Request of the International Criminal Bar for Leave to File Amicus Curiae Submissions Pursuant to Rule 74 of the Rules of Procedure and Evidence", filed on 7 June 2010 ("Request"), in which the Executive Committee of the International Criminal Bar ("International Criminal Bar") requests leave to file *amicus curiae* submissions in relation to Ntabakuze's Motion;

NOTING the Prosecution's response that it does not object to the Request, but asking that, if the Request is granted, it be allowed to respond to the *amicus curiae* submissions;³

NOTING that Ntabakuze has not responded to the Request;

NOTING that, in support of its Request, the International Criminal Bar asserts that it would be an appropriate organisation to present views as an *amicus curiae* relating to functional immunity, equality of arms, and the right to counsel of choice so as to assist the Appeals Chamber in its work;⁴

NOTING further that the International Criminal Bar requests permission to file submissions addressing: (i) whether equality of arms guarantees are relevant in defining the scope of functional

¹ See Registrar's Submissions Under Rule 33 (B) of the Rules of Procedure and Evidence in Respect of the Appeals Chamber Order to the Registrar Dated 9 June 2010, 11 June 2010, para. 4. See also Aloys Ntabakuze's Extremely Urgent Request for Injunctions Against the Government of Rwanda for the Illegal Arrest of and Investigation Against Lead Counsel, P. Erlinder, for Statements Made in the Course of Appellant's Defence – Articles 19, 20, 28 & 29 of the Statute and Rule 54 of the RPE, 3 June 2010 ("Motion"), paras. 1, 2.

² Motion, para. 25.

³ Prosecutor's Consolidated Response to: "Urgent Request of the International Criminal Bar for Leave to File Amicus Curiae Submissions Pursuant to Rule 74 of the Rules of Procedure and Evidence", Filed on 7th June 2010 and "Urgent Motion to Appear as Amicus Curiae by the Association of Defence Lawyers in Arusha (ADAD) at the International Criminal Tribunal for Rwanda, Pursuant to Rule 74 (Rules of Procedure and Evidence) in Support of Appellant Aloys Ntabakuze's Extremely Urgent Request for Injunctive Relief" Filed on 15th June 2010, 17 June 2010, paras. 6, 7.

⁴ Request, paras. 17-20.

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immunity in the circumstances of this case; (ii) whether the arrest of Mr. Erlinder constitutes a breach of the functional immunity of defence counsel acting before the Tribunal and of the conditions of fair trial; (iii) whether the actions of the Rwandan Government amount to an obstruction of the course of justice at the Tribunal; and (iv) whether the fears of counsel in other cases before the Tribunal and other international tribunals are reasonable and undermine the independence of counsel and the right to a fair trial;⁵

CONSIDERING that, pursuant to Rule 74 of the Rules of Procedure and Evidence of the Tribunal ("Rules"), the Appeals Chamber "may, if it considers it desirable for the proper determination of the case, invite or grant leave to any State, organization or person to appear before it and make submissions on any issue specified by the Chamber";

CONSIDERING that granting leave to make submissions under Rule 74 of the Rules is a matter within the discretion of the Appeals Chamber;⁶

CONSIDERING that the primary criterion in determining whether to grant leave to an *amicus curiae* to make submissions is whether they would assist the Appeals Chamber in its consideration of the matter before it;⁷

CONSIDERING that the proposed submissions of the International Criminal Bar would address essentially the same issues already raised by Ntabakuze in his Motion, and that the International Criminal Bar appears to be focussed on the implications of the decision on counsel appearing before the International Criminal Court and other international tribunals generally;⁸

FINDING, as a result, that *amicus curiae* submissions of the International Criminal Bar would not assist the Appeals Chamber in the determination of Ntabakuze's Motion;

FOR THE FOREGOING REASONS,

⁵ Request, para. 22.

⁶ *The Prosecutor v. Ildphonse Hategekimana*, Case No. ICTR-00-55B-R11bis, Decision on Request from the Republic of Rwanda for Permission to File an *Amicus Curiae* Brief, 30 October 2008, p. 3; *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-2002-78-R11bis, Decision on Request from the Republic of Rwanda for Permission to File an *Amicus Curiae* Brief, 1 September 2008, p. 2; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on the Admissibility of the *Amicus Curiae* Brief Filed by the "Open Society Justice Initiative" and on its Request to be Heard at the Appeals Hearing, 12 January 2007, p. 3. See also *In the Case Against Florence Hartmann*, Case No. IT-02-54-R77.5-A, Decision on Application for Leave to File *Amicus Curiae* Brief, 5 February 2010, para. 4.

⁷ *Idem*.

⁸ See, in particular, Request, paras. 1, 2, 19, 21.

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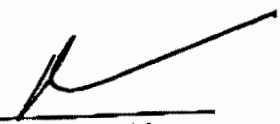
DENIES the Request.

Done in English and French, the English version being authoritative.

Done this 29th day of June 2010,
At The Hague,
The Netherlands.



[Seal of the Tribunal]



Judge Patrick Robinson
Presiding