



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

2136/H

ICTR-98-44-A

30th June 2010

{2136/H - 2133/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: R. June

Copied To: Concerned Judges,

Parties, Judicial Archives,
LOs, LSS

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 COPIE CERTIFIÉE CONFORMÉ À L'ORIGINAL PAR MOI	NAME / NOM: KAGEL, KUMELLA, A., ALANZA SIGNATURE: DATE: 30 JUNE 2010
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DECISION ON THE MOTION OF THE ASSOCIATION OF DEFENCE ATTORNEYS IN ARUSHA FOR LEAVE TO FILE *AMICUS CURIAE* SUBMISSIONS IN RELATION TO ALOYS NTABAKUZE'S MOTION REGARDING THE ARREST AND INVESTIGATION OF LEAD COUNSEL PETER ERLINDER

Association of Defence Attorneys in Arusha

John Philpot

Office of the Prosecutor

Hassan Bubacar Jallow
Alex Obote-Odora
George W. Mugwanya
Inneke Onsea
Renifa Madenga
Abubacarr Tambadou
Evelyn Kamau
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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

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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 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 2 June 2010", filed on 15 June 2010 ("Request"), in which the Association of Defence Attorneys in Arusha ("ADAD") requests to be granted *amicus curiae* standing and to be permitted to file submissions in respect of Ntabakuze's Motion;³

NOTING that ADAD seeks leave to provide submissions on: (i) the harassment of and threats against Defence counsel before the Tribunal in Rwanda; (ii) the impact of the charges in Rwanda against Mr. Erlinder on the representation of Defence counsels' clients; and (iii) the adverse consequences of the arrest, detention, and prosecution of Mr. Erlinder on the fair trials of Defence counsels' clients;⁴

NOTING that, in support of its Request, ADAD submits that it is the only organisation that can provide credible, first-hand information about the experience of Defence counsel in Rwanda, and

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 See also Supplementary Submission in Support of 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 2 June 2010, 23 June 2010.

⁴ Request, p. 8. See also *ibid.*, paras. 15-26, 28.

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about the effect of Mr. Erlinder's arrest on Defence counsel and the resulting adverse consequences to the fair trial rights of their clients;⁵

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;⁶

NOTING that Ntabakuze has not responded to the Request;

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;⁷

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;⁸

CONSIDERING that the proposed submissions of ADAD would focus on the effect of Mr. Erlinder's arrest on other Defence counsel appearing before the Tribunal,⁹ and that ADAD fails to appreciate that, in respect of the Motion, the Appeals Chamber is only seised with the *Bagosora et al.* case and not the general situation of Defence counsel in Rwanda or other proceedings before the Tribunal;

CONSIDERING, in any event, that ADAD's submissions would address issues which have largely already been raised by Ntabakuze in his Motion;

⁵ Request, paras. 10, 11, 13, 14.

⁶ 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.

⁷ See *The Prosecutor v. Ildéphonse 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.

⁸ *Idem*.

⁹ See, in particular, Request, paras. 13-17, 20, 22-26, 28.

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


FOR THE FOREGOING REASONS,

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.





Judge Patrick Robinson
Presiding