

ICTR-01-75-I
01-02-2011
(2258-2252)

2258
Muganya



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED
NATIONS
NATIONS
UNIES

OR: ENG

TRIAL CHAMBER II

Before Judges: Florence Rita Arrey, Presiding
Emile Francis Short
Robert Fremr

Registrar: Adama Dieng

Date: 1 February 2011

THE PROSECUTOR

v.

JEAN-BOSCO UWINKINDI

Case No. ICTR-2001-75-R11bis

**DECISION ON REQUEST BY INTERNATIONAL CRIMINAL DEFENCE
ATTORNEYS ASSOCIATION (ICDAA) FOR LEAVE TO APPEAR AS *AMICUS
CURIAE* PURSUANT TO RULE 74 OF THE ICTR RULES OF PROCEDURE
AND EVIDENCE**

Office of the Prosecutor:

Hassan Bubacar Jallow
Bongani Majola
Richard Karegyesa
James Arguin
George Mugwanya
Inneke Onsea

Counsel for the Defence

Claver Sindayigaya
Iain Edwards
Bettina Spilker

24

ICTR-01-75-0058

INTRODUCTION

1. On 30 June 2010, the Accused Jean-Bosco Uwinkindi was arrested in Uganda. He was transferred to the United Nations Detention Facility ("UNDF") in Arusha, Tanzania on 2 July 2010.¹
2. On 04 November 2010, the Prosecution, pursuant to Rule 11 *bis* of the Rules of Procedure and Evidence ("Rules"), filed a Motion requesting that the case of the *Prosecutor v. Jean Uwinkindi* be referred to the authorities of the Republic of Rwanda for trial in the High Court of Rwanda ("11 *bis* Motion").²
3. On 26 November 2010, the President designated Trial Chamber II, as composed of Judge Florence Rita Arrey (presiding), Judge Emile Francis Short and Judge Robert Fremr, to decide the Prosecution's 11 *bis* Motion.³
4. On 21 January 2011, the International Criminal Defence Attorney's Association (ICDAA) filed a Motion requesting leave to appear as *Amicus Curiae* in the instant case.⁴
5. On 25 January 2011, the Defence filed submissions supporting the ICDAA application.⁵
6. The Prosecution has filed no submissions on the application.

¹ *Prosecutor v. Jean-Bosco Uwinkindi*, Case No. ICTR-2001-75-R11*bis*, T. 1 December 2010 p.1. Uwinkindi made a further appearance following the filing of an Amended Indictment on 23 November 2010.

² *Prosecutor v. Jean-Bosco Uwinkindi*, Case No. ICTR-2001-75-R11*bis*, Prosecutor's request for the referral of the case of Jean-Bosco Uwinkindi to Rwanda pursuant to Rule 11*bis* of the Tribunal's Rules of Procedure and Evidence, 4 November 2010.

³ Notice of Designation - *Prosecutor v. Jean Uwinkindi*, Case No. ICTR-2001-75-R11*bis*, 26 November 2010.

⁴ *Prosecutor v. Jean-Bosco Uwinkindi*, Case No. ICTR-2001-75-R11*bis*, Request for Permission to file an *Amicus Curiae* Brief by the International Criminal Defence Attorneys Association (ICDAA), concerning the Prosecutor's Request for Referral of the Case of Jean-Bosco Uwinkindi to Rwanda pursuant to Rule 11 *bis* of the Rules (Rule 74 of the Rules of Procedure and Evidence), 21 January 2011 ("ICDAA Request").

⁵ *Prosecutor v. Jean-Bosco Uwinkindi*, Case No. ICTR-2001-75-R11*bis*, Defence submissions relating to the request by the International Criminal Defence Attorneys Association for leave to appear as *Amicus Curiae* pursuant to Rule 74 of the Rules of Procedure and Evidence ("Defence submissions"), 25 January 2011.

SUBMISSIONS OF THE PARTIES

7. The ICDAA submits that it is an NGO that is recognised “as an expert in the field of international criminal justice and the rule of law,”⁶ and that is objective, impartial and is not seeking leave to appear as *Amicus Curiae* “in order to protect the rights of the accused in this particular trial.”⁷ The ICDAA further asserts that its particular expertise is in assisting “in guaranteeing the fairness of criminal proceedings for people accused of international crimes and on best practices to achieve a full, thorough, structured and independent defence”.⁸ The ICDAA adds that it is composed of “defence counsels practicing actively before international jurisdictions such as the ICTR and ICTY” as well as national jurisdictions, and therefore that it is “well qualified to express its views on a broad range of defence matters.”⁹ Finally, the ICDAA notes that it was granted status as *Amicus Curiae* on this basis to address fair trial rights in the following prior Rule 11 *bis* proceedings before the ICTR: *Prosecutor v. Munyakazi*, *Prosecutor v. Kayishema*, *Prosecutor v. Kanyarukiga*, *Prosecutor v. Hategekimana*, and *Prosecutor v. Gatete*.¹⁰

8. With respect to the content of its proposed submission, the ICDAA offers to comment on amendments made by the Rwanda government to the relevant legal framework, in particular with regard to the independence of the judiciary and the protection of defence attorneys.¹¹

9. The ICDAA concludes that the issue of referral to Rwanda is of more importance today than ever as, since 2008, a number of national courts have denied extradition requests by Rwanda due to concerns about fair trial rights.¹²

⁶ ICDAA request, paras. 3-7.

⁷ ICDAA request, para. 17.

⁸ ICDAA request, para. 10.

⁹ ICDAA request, para. 11.

¹⁰ ICDAA request, paras. 12-13.

¹¹ ICDAA request, para. 24.

¹² ICDAA request, para. 25.

Deliberations

Applicable Law

10. Rule 11bis (A) of the Rules provide that a Trial Chamber may order the referral of a case to the authorities of a State on "...whose territory the crime was committed; or...having jurisdiction and being willing and adequately prepared to accept such a case", Rule 11bis (C) emphasizes on the need of the Trial Chamber to be satisfied that the accused will received a fair trial in the courts of the stated concerned and that the death penalty will not be imposed or carried out.

11. Rule 74 reads as follows:

A 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.

Discussion

12. The Chamber notes that in determining whether the accused will have a fair trial, the Chamber must ensure that the rights of the accused provided in Article 20 of the Statue of the Tribunal are respected.¹³ In arriving at a decision the Chamber will analyse

¹³ Article 20 of the Statue of the International Criminal Tribunal for Rwanda
Article 20: Rights of the Accused

1. All persons shall be equal before the International Tribunal for Rwanda.
2. In the determination of charges against him or her, the accused shall be entitled to a fair and public hearing, subject to Article 21 of the Statute.
3. The accused shall be presumed innocent until proven guilty according to the provisions of the present Statute.
4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;
 - (b) To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interest of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;

the judicial mechanisms, their effective implementation, and the political situation of Rwanda. Unbiased information regarding both the judicial and political atmosphere of the country is essential in determining whether the country is adequately prepared to provide the accused with a fair trial.

13. With respect to the application made by the ICDAA to appear as *amicus curiae*, the Referral Chamber considers that all its prior applications for such status have been reviewed favourably by the ICTR chambers' hearing Rule 11 *bis* referral to Rwanda motions.¹⁴ It further notes that the Prosecution has not objected to the application, and that the impartiality of the ICDAA has not been challenged. Thus, the Chamber is of the view that the ICDAA may well have significant information that could assist it in its ultimate determination on the instant referral.

FOR THESE REASONS, THE REFERRAL BENCH

- I. **GRANTS** leave to the ICDAA to appear as *amicus curiae* in the present case;
- II. **REQUESTS** that the ICDAA address the following points in its report:
 - (i) Amendments made by the Rwanda government to the relevant legal framework, in particular with regard to the independence of the judiciary and the protection of defence attorneys;

(e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;

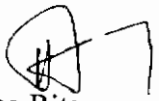
(f) To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the International Tribunal for Rwanda;

(g) Not to be compelled to testify against himself or herself or to confess guilt.

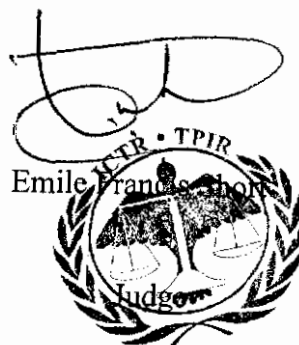
¹⁴ *Prosecutor v. Munyakazi*, ICTR-97-36-J, Decision on the Application by the International Criminal Defence Attorney's Association (ICDAA) for Leave to File a Brief as *Amicus Curiae*, 5 December 2007; *Prosecutor v. Kayishema*, ICTR-01-67-I, Decision on the Request for Permission to File an *Amicus Curiae* Brief, International Criminal Defence Attorney's Association (ICDAA) Concerning the Prosecutor's Request for Referral of the Case of Fulgence Kayishema to Rwanda Pursuant to Rule 11 *bis* of the Rules, 6 December 2007; *Prosecutor v. Kanyarukiga*, ICTR-02-98-I, Decision on *Amicus Curiae* Request by International Criminal Defence Attorney's Association (ICDAA), 2 February 2008; *Prosecutor v. Hategekimana*, ICTR-00-55B-R11bis, Decision on *Amicus* Requests and Pending Motions and Order for Further Submissions, 20 March 2008; *Prosecutor v. Gatete*, ICTR-01-61-11bis, Decision on *Amicus Curiae* Requests (Ibuka, Avega, and ICDAA), 20 June 2008.

- (ii) Any other issues relevant to the implementation of Article 20 of the Statute;
- III. **DIRECTS** that ICDAA file its *amicus* brief with the Registry of the Tribunal within 21 days of the date of the present Decision;
- IV. **REQUESTS** the Registrar of the ICTR to provide the ICDAA with all the documents related to the present case for a proper discharge of its *amicus* mandate;
- V. **REQUESTS** the Registrar to notify, without delay, the present Decision to the ICDAA;
- VI. **ORDERS** the parties to file any submissions regarding the report of *Amicus Curiae* within 14 days of the date on which the report is filed.

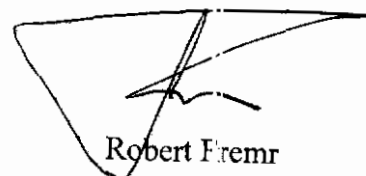
Arusha, 1 February 2011, done in English.


Florence Rita Murrey

Presiding Judge :



[Seal of the Tribunal]


Robert Fremr

Judge