



UNITED NATIONS  
NATIONS UNIES

ICR-01-67-R11bis  
18-02-2011  
(1964-1960)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Vagn Joensen, Presiding  
Gberdao Gustave Kam  
Mparany Rajohnson

**Registrar:** Adama Dieng

**Date:** 18 February 2011

**THE PROSECUTOR**

v.

**FULGENCE KAYISHEMA**

*Case No. ICTR-01-67-R11bis*

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**DECISION ON THE INTERNATIONAL CRIMINAL DEFENCE ATTORNEYS  
ASSOCIATION FOR LEAVE TO APPEAR AS AMICUS CURIAE AND  
INVITATION TO THE REPUBLIC OF RWANDA TO FILE SUBMISSIONS**

*Rules 11 bis and 14 of the Rules of Procedure and Evidence*

**Office of the Prosecution:**  
Hassan Bubacar Jallow  
James J. Arguin  
Deborah Wilkinson

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## INTRODUCTION

1. On 17 January 2011, the Chamber deferred proceedings between the Parties in this case until a final decision is made in the *Uwinkindi* referral application or until Fulgence Kayishema is apprehended, whichever comes first.<sup>1</sup> The International Criminal Defence Attorneys Association (ICDAA) has filed an application for leave to appear as amicus curiae in the current proceedings.<sup>2</sup> The Prosecution has not made any submissions.

## DELIBERATIONS

2. The Chamber first recalls that on 3 February 2011 it clarified that it is the proceedings between the Prosecution and Fulgence Kayishema that have been deferred until a final decision in the *Uwinkindi* case is issued and that the Chamber will continue to decide issues concerning *amici curiae* and set timelines for any such submissions.<sup>3</sup>

3. Pursuant to Rule 11 *bis* (C) of the Rules of Procedure and Evidence, the Trial Chamber shall satisfy itself that the accused will receive a fair trial in the courts of the state concerned. The Chamber is mindful of prior Trial and Appeals Chambers decisions on the referral of a case to Rwanda and that more will be issued in relation to the *Uwinkindi* case.

4. Rule 74 empowers the Chamber, if it considers it desirable for the proper determination of the case, to invite or grant leave to any State, organization or person to appear before it and make submissions on any issue specified by the Chamber. The Chamber believes that receiving information on the matter pursuant to Rule 74 will assist it in determining whether the case of Fulgence Kayishema should be referred to the Republic of Rwanda.

### *The ICDAA*

5. The Chamber is satisfied that the ICDAA is an independent NGO not linked with any Party to this case and focusing on advocacy for fair trial rights in international and national criminal proceedings around the world and that the organization has significant relevant expertise and is in a

<sup>1</sup> *The Prosecutor v. Fulgence Kayishema*, Case No. ICTR-01-67-R11bis ("*Kayishema*"), Scheduling Order (TC), 17 January 2011. The Chamber subsequently denied a Prosecution's motion for reconsideration: Decision on Prosecutor's Request for Reconsideration and, in the Alternative, for certification of Interlocutory Appeal, 3 February 2011 ("Reconsideration Decision").

<sup>2</sup> 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 Fulgence Kayishema to Rwanda pursuant to Rule 11bis of the Rules, dated 18 January 2011 and filed on 21 January 2011.

<sup>3</sup> *Kayishema*, Reconsideration Decision, para. 4.

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position to provide information that may assist the Chamber in determining the issues raised in the Prosecution's Motion for referral of the *Kayishema* case to Rwanda. The chamber also notes that the ICDAА had already been granted *amicus curiae* status before the Tribunal in similar proceedings.<sup>4</sup> Consequently, the Chamber grants the ICDAА leave to participate in these proceedings as an *amicus curiae*.

#### *The Republic of Rwanda*

6. The Chamber considers that the Republic of Rwanda, being the designated receiving State for the referral request, may assist the Chamber with information of relevance to the current application. The Chamber, therefore, invites the Republic of Rwanda to participate in these proceedings as *amicus curiae*.

#### *The issues to be addressed*

The Chamber invites the *amici* to file written submissions addressing whether Fulgence Kayishema is likely to receive a fair trial if his case is referred to the authorities of the Republic of Rwanda, and in particular to address the issues listed below.

#### **FOR THESE REASONS, THE CHAMBER:**

- I. GRANTS** leave to the ICDAА to appear as *amicus curiae* in the present case;
- II. INVITES** the Republic of Rwanda to appear as *amicus curiae* in the present case;
- III. REQUESTS** the *Amici Curiae* to address the following points in their reports:
  - (i) Whether the Rwandan legal system is able, in practice, to provide the Accused with assistance in:
    - a) Securing adequate legal representation;
    - b) Providing appropriate financial support to an indigent accused;
    - c) Facilitating travel and investigations for Defence teams;

<sup>4</sup> *Kayishema*, Decision on the Request for Permission to File an *Amicus Curiae* Brief, International Criminal Defence Attorneys Association (ICDAА), 6 December 2007; *The Prosecutor v. Yussuf Munyakazi*, Case No. ICTR-1997-36-I, Decision on the Application by the International Criminal Defence Attorneys Association (ICDAА) for Leave to file a Brief as *Amicus Curiae*, 6 December 2007; *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-2002-78-I, Decision on *Amicus Curiae* Request by the International Criminal Defence Attorneys Association (ICDAА), 22 February 2008; *The Prosecutor v. Ildephonse Hategekimana*, Case No. ICTR-00-55B-R11bis, Decision on *Amicus* Requests and Pending Defence Motions and Order for Further Submissions, 20 March 2008; *The Prosecutor v. Gatete*, Case No. ICTR-2001-61-11bis, Decision on *Amicus Curiae* Request (Ibuka, Avega and ICDAА), 30 June 2008.


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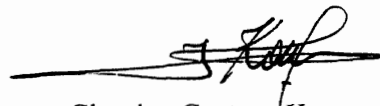
- d) Ensuring security for Defence teams.
- (ii) Whether there are any impediments that the Defence may face in the discharge of its function.
  - (iii) Whether Rwanda's witness protection programme is functional in practice:
  - (iv) What facilities and procedures exist for ensuring that witnesses and victims can be securely and safely accommodated and transported to the place of trial?
  - (v) Whether there any threats Prosecution witnesses and/or Defence witnesses may face before, during or after giving testimony in Rwanda?
  - (vi) What procedures exist for the procurement and the facilitation of safe and secure travel for witnesses, particularly for witnesses of Rwandan origin who reside abroad? Whether such witnesses will be able to benefit from a safe passage to and from Rwanda.
  - (vii) Whether Rwandan regulations governing the arrest and detention of an accused will afford to Fulgence Kayishema a protection equivalent to the one in place at the Tribunal.
  - (viii) Whether the detention facilities for accused persons in Rwanda comply with internationally recognized standards.
  - (ix) Whether, in the event of a referral, the Republic of Rwanda could proceed against the Accused *in absentia*, should he not be apprehended.
  - (x) Whether sending the observers to monitor the proceedings before the courts in the Republic of Rwanda in accordance with Rule 11 bis (D) (iv) would face any legal or practical obstacles;
  - (xi) Any other issues relevant to the implementation of Article 20 of the Statute.
- IV. **DIRECTS** that the ICDA file its *amicus* brief with the Registry of the Tribunal within 60 days of the date of the present Decision;
- V. **INVITES** the Republic of Rwanda to file its brief with the Registry of the Tribunal within 60 days of the date of the present Decision;
- VI. **REQUESTS** the Registrar to provide the ICDA and the Government of Rwanda with all the necessary documents related to the present case for a proper discharge of its *amicus* mandate; and

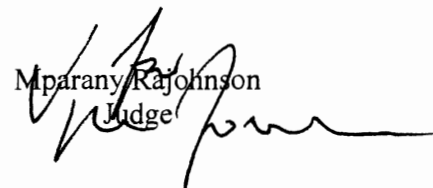
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VII. REQUESTS the Registrar to notify, without delay, the present Decision to the ICDA  
and to the Republic of Rwanda.

Arusha, 18 February 2011, done in English.

  
Vagn Joensen  
Presiding Judge

  
Gberdao Gustave Kam  
Judge

  
Mparany R. Johnson  
Judge

[Seal of the Tribunal]

