

MICT-13-33
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**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No. MICT-13-33

Date: 13 August 2015

Original: English

SINGLE JUDGE

Before: Judge Vagn Joensen, Single Judge

Registrar: Mr. John Hocking

Decision of: 13 August 2015

THE PROSECUTOR

v.

JEAN DE DIEU KAMUHANDA

**DECISION ON ADAD-ICTR AND ADC-ICTY MOTIONS FOR LEAVE TO SUBMIT
AMICUS CURIAE OBSERVATIONS AND DECISION ON APPLICATION FOR LEAVE
TO REPLY**

Office of the Prosecutor

Mr. Hassan Bubacar Jallow
Mr. Richard Karegyesa
Mr. Abubacarr Tambadou
Mr. Cheickh Bangoura

Counsel for Kamuhanda

Mr. Peter Robinson

The Applicants

ADAD-ICTR
ADC-ICTY

**Received by the Registry
Mechanism for International Criminal Tribunals
13/08/2015 16:19**

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A smaller handwritten signature in black ink, appearing to be 'P.R.'.

1. **I, VAGN JOENSEN**, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) am seised of requests from the Association of Defence Lawyers at the International Criminal Tribunal for Rwanda (“ADAD” and “ICTR”, respectively) and the Association of Defence Counsel practising before the International Criminal Tribunal for the former Yugoslavia (“ADC” and “ICTY”, respectively) for leave to submit amicus briefs in support of a motion filed by Jean de Dieu Kamuhanda (“Kamuhanda”) and of a request from Kamuhanda to reply to submissions from the Prosecutor and the Registrar following my Order for Submissions (“Order”).¹

I. BACKGROUND

2. On 1 July 2015, Kamuhanda filed a motion with the Mechanism on the modalities for his Counsel to interview persons who have been granted protective measures in his case as part of investigations into possible new facts that may warrant a review of his conviction (“Motion”).² Kamuhanda requests, principally, a decision allowing his Counsel to interview any protected person in his case who, through the Witness Support and Protection Unit (“WISP”), consents to the interview or, in the alternative, permission to interview Prosecution Witness GAE.³ On 7 July 2015, I was designated as Mechanism Single Judge to rule on the Motion.⁴
3. On 8 July 2015, I invited the Prosecution and the Registrar to make submissions on Kamuhanda’s principal and alternative requests.⁵
4. On 14 and 23 July 2015, the ADAD and the ADC filed motions seeking leave to submit *amicus* briefs providing support for the Motion, in particular on the procedures for contacting witnesses who have been granted protective measures by the ICTR and ICTY in proceedings before the Mechanism.⁶
5. On 23 July 2015, the Prosecutor and the Registrar filed submissions pursuant to the Order.⁷

¹ Motion for Leave to Appear as Amicus Curiae by the Association of Defence Lawyers at the International Criminal Tribunal for Rwanda (ADAD) in Support of the Motion for Decision on Contact with Persons Benefiting from Protective Measures, 14 July 2015 (“ADAD Motion”); Association of Defence Counsel (ADC-ICTY) Request for Leave to Submit *Amicus Curiae* Observations, 23 July 2015 (“ADC Motion”); Application for Leave to Reply: Motion for Decision on Contact with Persons Benefiting from Protective Measures, 27 July 2015.

² Motion for Decision on Contact with Persons Benefiting from Protective Measures, 1 July 2015, paras. 1, 3 (“Motion”).

³ *Id.*, paras. 6-13.

⁴ Order Assigning a Single Judge to Consider an Application, 7 July 2015.

⁵ Order for Submissions, 8 July 2015, para. 3.

⁶ ADAD Motion, paras. 1, 14-17; ADC Motion, paras. 1, 3, 7-8.

⁷ Prosecutor’s Submissions on Motion for Contact with Persons Benefiting from Protective Measures, 23 July 2015; Registrar’s Rule 31(B) Submission Following the Order for Submissions of 8 July 2015, 23 July 2015.

6. On 27 July 2015, Kamuhanda filed a request for leave to reply to the Prosecutor's and the Registrar's submissions.⁸

7. On 3 August 2015, the Prosecutor filed a consolidated response objecting to the requests from the ADAD and the ADC.⁹

II. DISCUSSION

The Requests to File Amicus Briefs

8. Pursuant to Rule 83 of the Mechanism Rules of Procedure and Evidence, a Judge or Chamber has the discretion to invite an applicant to appear as *amicus curiae* and make submissions on any issue specified by the Judge or Chamber if it considers it desirable for the proper determination of the case.

9. As to the issues raised by Kamuhanda, the Motion suggests that "it would be prudent to establish a regime for contact with protected witnesses in post-conviction cases before the Mechanism that could apply on a global basis".¹⁰ I note that I have been assigned a matter in Kamuhanda's case and will address Kamuhanda's requests in relation to witnesses in his case. However, I have no jurisdiction to establish a global regime in post-conviction cases before the Mechanism.

10. Kamuhanda's principal request pertains to a variation of a protection order which was issued prior to his trial and compels him to apply to the bench or a judge thereof for permission to interview Prosecution witnesses, for the witness to consent to the interview and for the Prosecution to facilitate the interview.¹¹ The principal request, thus, seems to raise the following issues:

- (i) Does the conclusion of Kamuhanda's trial and appeal constitute a change of circumstances which warrants a reconsideration of the modalities for access for Kamuhanda's Counsel to interview Prosecution witnesses;
- (ii) If so, should access to interview a Prosecution witness, apart from consent from the witness, be at the discretion of Kamuhanda's Counsel or should access require a justification in relation to the particular witness to be approved by a Judge; and

⁸ Application for Leave to Reply: Motion for Decision on Contact with Persons Benefiting from Protective Measures, 27 July 2015, para. 1.

⁹ Prosecutor's Consolidated Response to ADAD-ICTR and ADC-ICTY Motions for Leave to Submit Amicus Curiae Observations, 3 August 2015, para. 2. The Prosecutor argues that the Applicant's do not articulate the specific point of law on which intervention is sought and do not establish how they meet the standard for being granted leave to make *amicus curiae* observations.

¹⁰ Motion, para. 7.

¹¹ *The Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-50-1, Decision on the Prosecutor's Motion for Protective Measures for Witnesses, 7 July 2000, paras. 2(i) and 9.

- (iii) Should consultation of the witness as to the consent and the facilitation of the interview, if any, be conducted by the Prosecution or by WISP.

11. I consider that these issues are of a general nature and not linked to facts particular to Kamuhanda's case.¹² Furthermore, since there seems to be no jurisprudence on the above issues in relation to post-conviction cases, the final outcome of Kamuhanda's principal request may impact on similar requests in other cases before the Mechanism. I, therefore, find it useful for my decision to allow the ADAD and the ADC to submit *amicus* briefs on these issues.

12. Kamuhanda's alternative request to be allowed to interview Witness GAE touches upon the particular circumstances of his trial and appeal and is not suited for submissions from non-parties.

Kamuhanda's Request for Leave to Reply

13. Under the circumstances, I also find it reasonable to allow Kamuhanda to reply to the submissions from the Prosecutor and the Registrar in response to the Order of 8 July 2015.

III. DISPOSITION

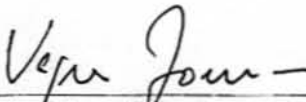
FOR THE FOREGOING REASONS, I

- I. **GRANT** leave to the ADAD and the ADC to file *amicus* briefs in the present case on the issues specified above;
- II. **DIRECT** that the *amicus* briefs be filed with the Registry of the Mechanism within thirty (30) days of the date of the present Decision;
- III. **GRANT** Kamuhanda's request for leave to reply to the submissions from the Prosecutor and the Registrar in response to the Order of 8 July 2015; and
- IV. **DIRECT** the Prosecutor, the Registrar and Kamuhanda to file their comments, if any, to the *amicus* briefs, and for Kamuhanda to file his reply, within 10 days of the filing of the last brief.

Done in English and French, the English being authoritative.

¹² See Practice Direction at the International Criminal Tribunal for the former Yugoslavia, Information Concerning the Submission of *Amicus Curiae* Briefs, IT/22, March 1997, para. 5 (IT/122).

Done this 13th day of August 2015,
At Arusha,
Tanzania



Judge Vagn Joensen
Single Judge

[Seal of the Mechanism]

