

MICT-13-33
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THE MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

CASE No. MICT-13-33

THE PRESIDENT

Before: Judge Vagn Joensen

Registrar: Mr. John Hocking

Date Filed: 14 July 2015

THE PROSECUTOR

v.

JEAN DE DIEU KAMUHANDA

Public

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 BENEFITTING FROM PROTECTIVE MEASURES

Office of the Prosecutor:
Mr. Hassan Jallow

Jean de dieu Kamuhanda:
Mr. Peter Robinson, Counsel

Counsel for Amicus Curiae:
John Philpot, Interim President, ADAD

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MOTION AND ORDER SOUGHT

1. The Association of Defence Lawyers at the International Criminal Tribunal for Rwanda (ADAD) (hereinafter “ *the Association* ”), respectfully submits this motion requesting the following orders:
 - i. **That leave be granted to the Association to appear as Amicus Curiae in the Motion by Jean de Dieu Kamuhanda for Decision on Contact with Persons Benefitting from Protective Measures**
 - ii. **That if leave is granted, the Association be given an opportunity to file a written submission in support of the said motion.**

LEGAL STATUS OF THE ASSOCIATION

2. ADAD is the recognized Defence Lawyer’s association at the ICTR representing defence counsel and legal assistants: its interim executive committee is composed of:

President:	John Philpot
Vice President:	Charles Taku
Secretary General:	Kennedy Ogetto
Members at large:	Beth Lyons
	Carmelle Marchessault
	André Tremblay

3. The Association’s objectives are the promotion of the respect of the Defence Attorneys’ professional interests in their mission to guarantee fair trials before the International Criminal Tribunal for Rwanda, and in general, everything related thereto.
4. The ADAD notes that the jurisdiction of the ICTR has been transferred to the The Mechanism for International Criminal Tribunals, (hereinafter “the MICT”).

BACKGROUND

5. On 1 July 2015, Jean De Dieu Kamuhanda filed a motion before the President of the MICT entitled *MOTION FOR DECISION ON CONTACT WITH PERSONS BENEFITTING FROM PROTECTIVE MEASURES* (hereinafter “the Motion”).
6. On 7 July 2015, Judge Vagn Joensen was designated Mechanism Single Judge to rule on the Motion.

LEGAL BASIS THE LAW ON AMICUS CURIAE

7. Rule 83 of the Rules of Procedure and Evidence empowers a 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. (emphasis added)
8. The Appeals Chamber of the ICTR defined the applicable law when it held that “the primary criterion for the Appeals Chamber in determining whether such submissions would assist the Appeals Chamber in its consideration of the questions at issue on appeal.”¹

ASSOCIATION SUBMISSIONS

9. The Association endorses the legal arguments raised in the *MOTION*.
10. The issues raised in the Motion are of serious concern to the members of the Association and will have an impact for all persons over whom the ICTR (whence the MICT) have jurisdiction. The Association has a strong interest in using its expertise and the broad constituency it represents to assist the Trial Chamber in its determination on the merits of the Motion.

¹ *Nahimana et al. v. 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.

11. The broad experience of ADAD members can assist the Trial Chamber in resolving the issues raised.
12. The issues raised in the Motion touch on the very nature of witnesses before a court. A witness does not belong to a party. His or her status is to help the court to determine factual issues before it.
13. Witness protection as an important part of the trial process balances issues of protection and security with the search for truth.
14. The Witness Support and Protection Unit of the MICT has the professional capacity and neutrality to ensure protection and security of witnesses while allowing Defense counsel to interview such witnesses who accept. There can be no undue pressure placed on the witnesses when contacted by this neutral organ.
15. Post-conviction remedies are of great importance and the ADAD with its international membership can be useful in helping the Tribunal. Members of ADAD have been counsel at the ICTR in a large number of cases in which various and disparate protective orders have been entered and employed. Submissions by ADAD as to the practical difficulties encountered as a result of those protective measures can be of substantial assistance to the Single Judge in understanding the need for the contact with witnesses at the post-conviction stage to be made by a neutral organ of the MICT.
16. The Association is deeply involved in issues of professional ethics, discipline and sanctions. It can provide special information to the Chamber from international and national jurisdictions, as well as from bar associations in various legal systems, to help the Chamber decide on the legal principles applicable to the Motion.

CONCLUSION

17. The Association prays that in the interests of justice and fairness, its plea to file an amicus submission on the above issues be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'J. Philpot', written in a cursive style.

John Philpot, Interim President
ADAD