



UNITED NATIONS  
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Tribunal pénal international pour le Rwanda  
International Criminal Tribunal for Rwanda

**IN THE APPEALS CHAMBER**

**Before:** Judge Rafael Nieto-Navia, Pre-Hearing Judge  
**Registrar:** Mr Agwu U Okali  
**Decision of:** 11 April 2000

**Clément KAYISHEMA and  
Obed RUZINDANA**

*(Appellants)*

v

**THE PROSECUTOR**

*(Cross-Appellant)*

*Case No.: ICTR-95-1-A*

ICTR  
COURT REGISTRY  
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**DECISION**

(PROSECUTOR'S MOTIONS FOR CORRECTION AND CLARIFICATION OF TRIAL RECORD; FOR CLARIFICATION OF BRIEFING TIME-LIMITS, AND TO EXTEND THE TIME-LIMIT)

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**Counsel for the Appellant Kayishema**

Mr André Féran  
Mr Phillipe Moriceau

**Counsel for the Appellant Ruzindana**

Mr Pascal Besnier  
Mr William van der Griend

**Counsel for the Prosecutor**

Mr Upawansa Yapa  
Mr Norman Farrell  
Mr Zhu Wen-qi

**I, JUDGE Rafael NIETO-NAVIA**, designated by the Presiding Judge as Pre-Hearing Judge, pursuant to Rule 108*bis* of the Rules of Procedure and Evidence (the 'Rules'),

**NOTING** the Judgment of Trial Chamber II dated 21 May 1999 (the 'Judgment') by which (a) Clément KAYISHEMA and Obed RUZINDANA (together, the 'Appellants') were respectively convicted on four counts of genocide and one count of genocide, and (b) the Appellants were respectively sentenced to four terms of life imprisonment and to one term of imprisonment for twenty-five years;

**NOTING** the three Notices of Appeal filed against the Judgment on 18 June 1999 by the Appellants and the Prosecutor (the 'Cross-Appellant');

**NOTING** the Scheduling Order issued by the Appeals Chamber on 3 September 1999 in which the Appeals Chamber ordered that the Appellants and the Cross-Appellant should file the briefs relating to their respective appeals by 28 October 1999, and that response and reply briefs should be filed in accordance with Rules 112 and 113 of the Rules;

**NOTING** that on 7 October 1999 each of the Appellants filed a motion for an extension of the time-limit for the filing of their briefs (the 'Appellants' Motions for Extension of Time-Limits'), on grounds of incompleteness of the trial record;

**NOTING** that on 19 October 1999, the Appellant Ruzindana filed his "Defence Brief under Rule 111 of the Rules of Procedure and Evidence";

**NOTING** that the Cross-Appellant on 20 October 1999 filed a response in agreement with the Appellants' Motions for Extension of Time-Limits, due to the incompleteness of the trial record;

**NOTING** that on 21 October 1999, the Appeals Chamber issued an Order which, for reasons stated in that Order, suspended the time-limits for the filing of briefs set by the Appeals Chamber in the Scheduling Order of 3 September 1999;

**NOTING** that on 27 October 1999, the Cross-Appellant filed a Notice of Receipt of Exhibits; that this notice was filed in order to update the Appeals Chamber on the fact that the Cross-Appellant may have, on 25 October 1999, received from the Registrar some, if not all, of the parts of the record on appeal, accompanied by a document dated 14 October 1999 and entitled the 'Addendum to the Registry Certificate on the Record';

**NOTING** that the Registry had indeed issued an Addendum on that date;

**NOTING** that on 25 November 1999, the Cross-Appellant filed the 'Prosecution Motion for Correction and Clarification of the Trial Record on Appeal' (the 'Prosecutor's Motion for Correction');

**NOTING** that the Prosecutor's Motion for Correction did not include a prayer for suspension of the time-limits within which the parties shall file their briefs;

**NOTING** that on 14 December 1999, the Appeals Chamber rendered a decision which, *inter alia*, disposed of the Appellants' Motions for Extension of Time-Limits, settling the time-limits within which the parties should file their briefs as follows:

- (i) each of the Appellants shall file his brief by the end of 90 days following the day on which the Addendum to the Registry Certificate on the Record was communicated to him;
- (ii) the Cross-Appellant shall file her brief (in the cross-appeal) by the end of 90 days following the day on which the Addendum to the Registry Certificate on the Record was communicated to her;
- (iii) the Appellants and the Cross-Appellant shall file their briefs in response by the end of 30 days following the day on which the briefs in (i) and (ii) above were respectively communicated to them;
- (iv) the Appellants and the Cross-Appellant may file briefs in reply by the end of 15 days following the day on which the responses in (iii) above were respectively communicated to them.

**NOTING** that on 29 December 1999 the Appeals Chamber ordered the Cross-

Appellant to submit in standard form a draft order of the precise relief sought in the Prosecutor's Motion for Correction and the Appellants to respond thereafter;

**NOTING** that a draft order was filed in due course by the Cross-Appellant on 6 January 2000 and that responses were filed by the Appellant Kayishema on 10 February 2000 and by the Appellant Ruzindana on 15 March 2000;

**NOTING** the observations on the Prosecutor's Motion for Correction submitted by the Registrar on 2 March 2000;

**NOTING** that on 19 January 2000, the Appellant Kayishema filed his Appellant's brief;<sup>1</sup>

**NOTING** the 'Prosecutor's Motion to Seek Clarification on the Time-Limits to File the Legal Brief' (the 'Prosecutor's Motion for Clarification of Briefing Time-Limits') filed on 24 February 2000;

**NOTING** that the Prosecutor's Motion for Clarification of Briefing Time-Limits was said to be motivated by a series of orders, including the orders in the decision of 14 December 1999, issued by this Chamber on the subject of briefing time-limits;

**NOTING** that the Prosecutor's Motion for Clarification of Briefing Time-Limits merely sets out a chronology of some of the Orders of this Chamber and other procedural actions in this appeal, with no discussion showing the source, nature and manner of the confusion in the minds of Prosecution Counsel;

**NOTING** that the Prosecution Counsel suggest in the Prosecutor's Motion for Clarification of Briefing Time-Limits that their confusion stems partly from the fact that this Chamber had not yet rendered a decision on the Prosecution Motion for Correction;

**NOTING** the responses to the Prosecutor's Motion for Clarification of Briefing Time-Limits filed by the Appellant Ruzindana on 9 March 2000 and by the Appellant Kayishema on 10 March 2000, in which the Appellants submit that the time-limits in question are perfectly clear from the series of orders issued and in the context of Rule 111;

**NOTING** the documents filed by the Appellant Ruzindana on 28 March 2000<sup>2</sup>, and by the Appellant Kayishema on 29 March 2000<sup>3</sup> in support of their claim that the Cross-Appellant is now out of time for filing her Appellant's brief and should thus be barred from so doing (the "Documents");

**NOTING** the Cross-Appellant's response to the Documents and the accompanying "Motion to Extend the Time-Limit for Filing its Appeal Brief" (the "Prosecutor's Motion to Extend the Time-Limit"), filed on 4 April 2000;

**CONSIDERING** that the Prosecutor's Motion for Clarification of Briefing Time-Limits is without object, since (a) the Appeals Chamber's decision of 14 December 1999 did clearly settle such time-limits, (b) the Prosecutor's Motion for Correction which did not have a prayer for suspension of time-limits could not have affected the time-limits established in the decision of 14 December 1999, and (b) the Appellants had already filed their briefs before the Prosecutor's Motion for Clarification of Briefing Time-Limits;

**CONSIDERING** nonetheless that a limited extension of time may be granted to the Cross-Appellant for filing her Appellant's brief without prejudice being caused to the Appellants;

**HEREBY DECIDE** as follows:

- 1) The Prosecutor's Motion for Clarification of Briefing Time-Limits is dismissed;

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<sup>1</sup> *Mémoire d'appel des jugements rendu contre Clément Kayishema le 21 mai 1999 par le Tribunal Pénal International pour le Rwanda (art 111 du Règlement de procédure et de preuve)*

<sup>2</sup> *Requête de l'Appelant Obed Ruzindana en irrecevabilité de la procédure d'appel du Procureur*, and the draft order filed on 29 march 2000.

- 2) The Prosecutor's Motion to Extend the Time-Limit is granted, and the decision of 14 December 1999 is modified as follows:
  - a) The Cross-Appellant shall file her Appellant's brief by 28 April 2000;
  - b) The Appellants and the Cross-Appellant shall file their briefs in response by 28 May 2000, pursuant to Rule 112 of the Rules;
  - c) The Appellants and the Cross-Appellant may file briefs in reply by 12 June 2000, pursuant to Rule 113 of the Rules;
- 3) The Prosecutor's Motion for Correction is granted to the following extent:
  - a) the Registry shall provide to the Parties a certified list or index indicating all written notices, motions, and responses filed by the Parties from the initial appearance of Appellant Kayishema on 1 May 1996;
  - b) the Registry shall provide to the Parties a certified list or index indicating all orders and decisions of the Trial Chamber;
  - c) the Registry shall provide to the Parties a certified list or index identifying and specifying what documents in the case files are certified translations of original documents;
  - d) the following documents shall not constitute any part of the trial record on appeal:
    - i) index document 13 (stamped as document 14)
    - ii) index document 14 (stamped as document 15)
    - iii) index document 15 (stamped as document 16)
    - iv) index document 16 (stamped as document 17)
    - v) all documents which pre-date the initial appearance of Appellant Clément Kayishema before the Trial Chamber on 1 May 1996 and which were not placed before the Trial Chamber for consideration
    - vi) all correspondence between the Parties and/or the Registry that were not filed by either a party or the Registry at trial before the Trial Chamber
    - vii) all documents relating to the arrest of the accused (the Appellants) and other accused, and

- viii) all documents from the Registry to other governments concerning the transfer of arrest warrants and indictments;
- e) all confidential and identifying information of protected victims and witnesses shall be redacted from Prosecution exhibit 32 and expunged from the transcripts, and shall not be revealed to the public or persons other than the Parties;
- f) all confidential and identifying information of protected victims and witnesses shall be redacted from Prosecution exhibits 73, 75, 76, and 346, and shall not be revealed to the public or persons other than the Parties;
- g) Prosecution exhibit 309 shall remain sealed and not be revealed to the public or persons other than the Parties;
- h) The Registry shall rectify the mislabelling of Prosecution exhibit 309 as Prosecution exhibit 310;
- i) all Prosecution and Defence exhibits which were designated as 'CONFIDENTIAL' by the Trial Chamber, stricken off the record at trial, filed under seal, or subject to an Order of expungement from the trial record shall not be revealed to the public or persons other than the Parties;
- j) the Registry shall provide an index to the Parties which identifies what exhibits are originals that were tendered by the Parties at trial;
- k) the Registry shall provide an index to the Parties which identifies what exhibits are certified translations of original exhibits as referred to in (h) above;
- l) the Registry shall provide to the Parties certified translations (in English and French) of all original documentary exhibits that were tendered at trial by the Parties, where such exhibits are susceptible of translation;
- m) the Registry shall cure the following errors and/or omissions in the trial record:
- i) Prosecution Exhibit 78 shall be the French version of that exhibit and Exhibit 78(A) shall be the English version
  - ii) the English translations of Annexes 20-21 to Prosecution Exhibit 103(B) shall be removed from Exhibit 103(A) and transferred to Exhibit 103(B)
  - iii) one copy of Prosecution Exhibit 104(A) shall be certified and sent to the

Prosecution

- iv) a full copy of Prosecution Exhibits 219(A), 331(A) and 337 shall be sent to the Prosecution
- v) a full copy of Prosecution Exhibit 348, with its corresponding highlights, shall be sent to the Prosecution
- vi) the French and English versions of Defence Exhibits 4(A) and 4(B) shall be clearly marked and described in a mutually corresponding manner that accurately reflects the nature of those exhibits as admitted at trial
- vii) the French and English versions of Defence Exhibit 5 shall be clearly marked and described in a mutually corresponding manner that accurately reflects the nature of those exhibits as admitted at trial
- viii) the French and English versions of Defence Exhibit 10(A) shall be clearly marked and described in a mutually corresponding manner that accurately reflects the nature of those exhibits as admitted at trial
- ix) the French and English versions of Defence Exhibit 12(A) shall be clearly marked and described in a mutually corresponding manner that accurately reflects the nature of those exhibits as admitted at trial
- x) a complete Defence Exhibit 15 shall be certified and forwarded to the Prosecutor
- xi) a complete Defence Exhibit 16, together with the designated parts, shall be forwarded to the Prosecutor
- xii) the French and English versions of Defence Exhibit 19 shall be clearly marked and described in a mutually corresponding manner that accurately reflects the nature of those exhibits as admitted at trial
- xiii) Defence Exhibit 20 as highlighted by the Defence shall be transmitted to the parties
- xiv) Defence Exhibit 32 shall be transmitted to the parties
- xv) Defence Exhibit 41(B), the English translation of Dr Pouget's report, shall be transmitted to the parties
- xvi) Defence Exhibit 40(B), the English translation of Dr Pouget's curriculum

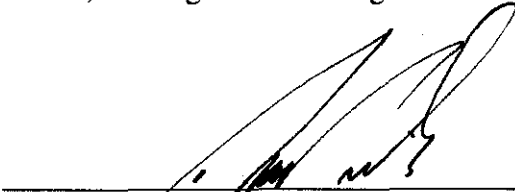


vitae, shall be transmitted to the parties, and

xvii) a complete Defence Exhibit 42(A) and 42(B), shall be forwarded to the Prosecutor.

4) All documents and exhibits to be provided under paragraph (3) above shall be sent to the parties on or before 19 April 2000.

Done in both English and French, the English text being authoritative.



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Rafael NIETO-NAVIA  
Pre-Hearing Judge

Dated this eleventh day of April 2000  
At The Hague,  
The Netherlands.

[Seal of the Tribunal]