



UNITED NATIONS
NATIONS UNIES



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before: Judge Rafael NIETO-NAVIA

Registrar: Mr Agwu U OKALI

Decision of: 17 April 2000

ICTR
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THE PROSECUTOR

v

Jean-Paul AKAYESU

Case No: ICTR-96-1-A

DECISION

(REQUESTS 1 AND 7 of *MÉMOIRE DE L'APPELANT CONCERNANT LES REQUÊTES SUIVANTES VISÉES PAR L'ORDONNANCE COMPORTANT CALENDRIER DU 30 NOVEMBRE 1999* (REGARDING RECORD ON APPEAL))

Counsel for Jean-Paul Akayesu

Mr John PHILPOT
Mr André TREMBLAY

Counsel for the Prosecutor

Mr Upawansa YAPA
Mr ZHU Wen-qi
Mr Norman FARRELL
Mr Karim KHAN

I, Rafael NIETO-NAVIA, Pre-Hearing Judge in this matter,

NOTING the pending Appeals by the Appellant Jean-Paul AKAYESU (the 'Appellant') and the Prosecutor against the Judgement of Trial Chamber I on 2 September 1998 (the 'Judgment') in which Trial Chamber I found the Appellant guilty on Counts 1, 3, 4, 5, 7, 9, 11, 13 and 14, and not guilty on Counts 2, 6, 8, 10, 12 and 15 of the indictment and the Sentence delivered on 2 October 1998;

NOTING the "Decision Relating to the Assignment of Counsel" issued by the Appeals Chamber on 27 July 1999 in which the Appeals Chamber *inter alia* directed that the Registrar assign Mr Philpot as lead counsel for the Appellant and the subsequent decision of the Registrar "*Décision Portant Retrait de la Commission d'Office de Maître BARLETTA CALDARERA Conseil de M.Jean-Paul Akayesu*" issued on 10 August 1999 removing the Appellant's Counsel at the time from office;

NOTING the Decision Ordering the Suspension of Time Limits for filing of Appeal Briefs issued on 21 October 1999 and considering that such time limits remain suspended;

NOTING THEREAFTER the "*Ordonnance Portant Calendrier*" (the '*Ordonnance*') issued by the Appeals Chamber on 30 November 1999 in which the Appeals Chamber ordered that, in view of the numerous motions filed by the Appellant since Mr Philpot was assigned to him as lead counsel, that these should be consolidated and that the Appellant should present his motions "*de manière claire et concise sous forme d'un mémoire n'excédant pas 15 pages;*"

NOTING that the Appellant failed to properly consolidate these motions and simply repeated them in shortened form as requests (each one now referred to as a 'Request') in his "*Mémoire de l'Appelant concernant les requêtes suivantes visées par l'Ordonnance comportant calendrier du 30 Novembre 1999*" (the '*Mémoire de l'Appelant*') filed on 10 December 1999;

NOTING FURTHER that the Appellant has continued to file motions with the Appeals

Chamber, some of which are repetitious and unduly lengthy;

CONSIDERING HOWEVER that the Appeals Chamber will now dispose of the first and seventh Requests, as numbered by the Appellant in the *Mémoire de l'Appellant*, and that the remaining Requests will be disposed of in a decision to follow;

NOTING the "Prosecution's Response to the "*Mémoire de l'Appellant Concernant Les Requêtes Suivant Visées par L'Ordonnance Comportant Calendrier de 30 Novembre 1999*" (the 'Prosecutor's Response') filed on 21 December 1999;

NOTING the Order of the Appeals Chamber on the "'Prosecutor's Urgent Request for Extension of Time" issued on 30 December 1999, wherein it ordered *inter alia* that the Prosecutor may file further submissions on matters relating to attachments to the *Mémoire de l'Appellant* following their receipt and analysis;

NOTING the "Prosecutor's Additional Response to the Defence's *Mémoire* pursuant to the Appeals Chamber's Order of 30 December 1999", (the 'Prosecutor's Additional Response') filed on 13 March 2000;

NOTING the Request for cancellation of the Registrar's certification of the trial record, due to several alleged errors and omissions in the Record, and a suspension of all time limits on the appeal pending a decision on the Request (originally filed as the "Motion to set aside the Registry's certification of the Record on Appeal to rectify the contents of the 'record' and to extend the time limits in respect of Appeals pursuant to Article 19 and 20 of the Statute and Rules 73 and 105 of the Rules of Procedure and Evidence," on 25 September 1999, and the "Reply to the Prosecutor's Response to the Motion to set aside the Registry's certification of the record on appeal to rectify the contents of the 'record' and to extend the time-limits in respect of appeals pursuant to Articles 19 and 20 of the Statute and Rules 73 and 105 of the Rules of Procedure and Evidence" on 5 November 1999);

NOTING the Prosecutor's Response wherein it is alleged that in this Request the Appellant seeks different measures to those sought in the motion originally filed by the Appellant, that such amendment would require leave of the Chamber, the motion having been filed by the Appellant and a response received from the Prosecutor and that accordingly it will rely on the response it filed to this motion, being the "Prosecutor's Response to the Defence's Motion for Annulment of the Certification of the Record" filed on 15 October 1999;

NOTING FURTHER the Request for the reconstruction of the Record on Appeal and forwarding of documents relating to the proceedings at first instance (originally filed as the "*Requête en reconstitution de la Case file en communication de documents de première instance et en prorogation des délais d'appel*" on 15 November 1999);

CONSIDERING that as these Requests are related it is expeditious to dispose of them together in this decision;

NOTING that the Appellant requests the Appeals Chamber to order the Registry to provide various documents referred to during the proceedings at first instance and transcripts of hearings at first instance;

NOTING the Response of the Prosecutor and the view that the problems raised by the Appellant could have been resolved reasonably easily by the Registry and endorsing these sentiments but noting also the suggestion by the Prosecutor as to how to resolve these problems;

CONSIDERING that it is acknowledged that both parties have had difficulties in obtaining the full Record on Appeal, pursuant to Rules 109 and 110 of the Rules of Procedure and Evidence (the 'Rules') and that the Registrar should make sufficient copies of the Record on Appeal for use of the parties, pursuant to Rule 110 of the Rules;

NOW DECIDES AS FOLLOWS:

- (i) Both parties shall provide the Registry with a full Index of the Record on Appeal as received by them from the Registry by 20 April 2000;
- (ii) The Registry shall provide to both parties and the Appeals Chamber electronically formatted transcripts of all transcripts of hearings at first instance, (in both official languages) including that of the initial appearance on 30 May 1996 and those held in camera, together with a full hard-copy index of the hearings;
- (iii) The Registry shall provide to both parties and the Appeals Chamber a full paginated index of and transcripts of the minutes of all status conferences held at first instance;
- (iv) The Registry shall provide to both parties and the Appeals Chamber a full paginated index of all documents and exhibits in the Record on Appeal and ensure, through liaison with both parties, that they are in possession of a full Record on Appeal. Should either party find that documents or exhibits as listed were omitted from their Record on Appeal, the Registry shall ensure that copies are provided;
- (v) The Registry shall provide to both parties and the Appeals Chamber, copies of the following documents (including in English):
 - The letter from Mr Johan Scheer mentioned by the President of the Trial Chamber during the hearing of 31 September 1996;
 - The three letters from the Appellant mentioned during the hearing of 20 November 1996;
 - A legible copy of the record of the Motion of 10 January 1997 involving the Appellant's wish to have Mr Michel Marchand assigned as Counsel;
 - The record of the two Motions mentioned during the hearing of 13

January 1997 concerning the Appellant's request for change of Counsel and request for his personal papers;

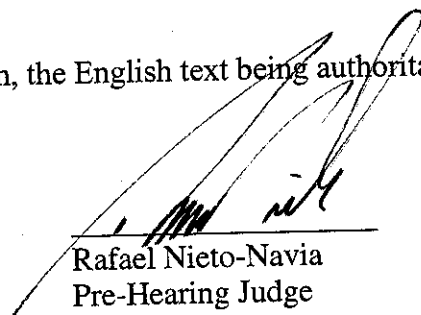
- All identifiable correspondence referred to by the Tribunal in its Decision issued on 16 January 1997, including the letters dated 8 and 9 January 1997;
- The Appellant's letter dated 18 September 1998 and the Trial Chamber's reply to that letter, both of which were mentioned by the Trial Chamber during the hearing of 28 September 1998;
- Copies of documentation relating to the detention of the Appellant, including the Request by the Prosecutor Richard Goldstone to the Zambian authorities of 22 November 1996.

The Registry shall include each of these documents in the Record on Appeal as newly constituted;

- (vi) The Registry shall translate the letter dated 28 November 1996 cited in Volume 4 of the Record on Appeal, numbered 35, into English and provide it to the parties and the Appeals Chamber;
- (vii) The Registry shall comply with this Order by 28 April 2000 and shall notify both parties and the Appeals Chamber forthwith should there be any difficulty in doing so;
- (viii) On or before 5 May 2000, the Registry shall make the arrangements to have a meeting with the Parties and the Registry, if requested by either party, with a view to settling the Record on Appeal in this case;
- (ix) The Registry shall thereafter provide to both parties and the Appeals Chamber a supplemental Certification of the Record on Appeal pursuant to Rule 109 of the Rules, reflecting such additions to the record as are consequent upon this decision;
- (x) In the meantime, the Appellant shall communicate any other queries he may have on the Record of Appeal direct to the Registrar; and

IN ALL OTHER RESPECTS hereby denies the Requests.

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



Rafael Nieto-Navia
Pre-Hearing Judge

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

[Seal of the Tribunal]