



UNITED NATIONS  
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**Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda**

**IN THE APPEALS CHAMBER**

**Before:** Judge Claude JORDA, Presiding  
Judge Lal Chand VOHRAH  
Judge Mohamed SHAHABUDEEN  
Judge Rafael NIETO-NAVIA  
Judge Fausto POCAR

**Registrar:** Mr. Agwu U. OKALI

**Decision of:** 22 August 2000

**Jean-Paul AKAYESU**  
*(Appellant)*

v.

**THE PROSECUTOR**  
*(Respondent)*

*Case No. ICTR-96-4-A*

**DECISION**

(ON THE CONSOLIDATION OR SUMMARIZATION  
OF MOTIONS NOT YET DISPOSED OF)

**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

**THE APPEALS CHAMBER** of the International Criminal Tribunal for the Prosecutor of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994 (respectively, “the Appeals Chamber” and “the Tribunal”);

**NOTING** the pending appeals by Jean-Paul Akayesu (“the Appellant”) against the Judgement of 2 September 1998 by Trial Chamber I finding the Appellant guilty on counts 1, 3, 4, 5, 7, 9, 11, 13 and 14 of the indictment and against the sentence delivered on 2 October 1998, and the pending appeal by the Prosecutor against the Judgement finding the Appellant not guilty on counts 2, 6, 8, 10, 12 and 15 of that same indictment;

**NOTING** the Scheduling Order of 30 November 1999 in which the Chamber, taking into account the number of Motions which the Appellant had introduced, required him to summarize and submit his Motions in a clear and concise manner in the form of a Brief of no more than 15 pages;

**CONSIDERING** that the Appellant has not complied rigorously with the terms of the Scheduling Order of 30 November 1999<sup>1</sup>;

**NOTING ALSO** the Scheduling Order of 24 May 2000 (“the Order”) issued by Judge Nieto-Navia, the pre-hearing Judge, ordering the Appellant to consolidate into a single document all his Motions not already disposed of by the Appeals Chamber;

**CONSIDERING** that the document in question was to contain only matters which should be regulated before the filing of the Appellant’s Brief pursuant to Rule 111 of the Rules of Procedure and Evidence (“the Rules”); and also that it was to be self-contained, making no reference to previous Motions filed, those being:

- (1) “Motion Seeking Leave to Amend the Notice of Appeal Relating to the Impartiality and Independence of the Tribunal and Add New Grounds of Appeal”, filed on 7 December 1999;

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1. See “Decision (Requests 1 and 7 of *Mémoire de l’Appellant concernant les requêtes suivantes visées par l’Ordonnance portant calendrier du 30 novembre 1999*)”, *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-1-A, 17 April 2000.

- (2) “Motion to Amend Notice of Appeal (Re : to clarify Part Two of the Notice of Appeal entitled : “Denial of Right to a competent counsel”) Exhibit A-2”, filed on 20 January 2000;
- (3) “*Requête pour une ordonnance de transcription de l’audience du 23 janvier 1997 et pour amender l’avis d’appel relativement à l’exclusion de l’accusé de l’audience*”, filed on 17 February 2000;
- (4) “*Requête pour produire des éléments de preuve en appel, en arrêt des procédures (ou en cassation de la condamnation) et en suspension des délais d’appel relativement à un conflit d’intérêt et inconduite du Procureur*”, filed on 17 February 2000;
- (5) “*Requête pour produire une preuve en appel Re : témoin expert M. Serge A. Desouter (et désistement d’un motif d’appel)*”, filed on 8 March 2000;
- (6) “Urgent Motion for Disclosure and for an Oral Hearing”, filed on 10 April 2000, and “Amended Urgent Motion for Disclosure and for an Oral Hearing”, filed on 17 April 2000;

**CONSIDERING** that the consolidation envisaged by the Appeals Chamber was for the applications to be summarized and recompiled by subject matter, purpose and relevance to the case;

**NOTING** the document entitled “*Consolidation ou synthèse des requêtes non encore adjudgées (en exécution du « Scheduling Order » du 24 mai 2000)*” (“the Consolidated Motion”), filed by the Appellant on 2 June 2000;

**CONSIDERING** that the Consolidated Motion sets out the original Motions in the same sequence as in the Order;

**CONSIDERING** that the Appellant states in the Consolidated Motion that his objective is to have evidence admitted relating to violations of the integrity of the judicial process and of the right to a complete and comprehensive defence; and that the Appellant argues moreover that the items of evidence whose admission he seeks have no bearing on his innocence or guilt and that consequently Rule 115 does not apply<sup>2</sup>;

**CONSIDERING** that the Appellant is seeking, essentially, to amend his initial Notice of Appeal by adding further grounds of appeal; to produce additional evidence; to produce

witness statements by affidavit; and secondly to call additional witnesses and obtain the forced disclosure of documents;

**CONSIDERING** that the document produced by the Appellant is a recapitulation of his earlier Motions which rehearses the same requests *in extenso* and in addition makes new ones;

**CONSIDERING** that the Consolidated Motion does not meet the requirements of clarity, conciseness and self-sufficiency stipulated by the Order, and moreover that the Appellant suggests that the Appeals Chamber should refer to other documents not featured in the Consolidated Motion<sup>3</sup>;

**NOTING** the “Prosecution’s Response to the ‘*Consolidation ou synthèse des Requêtes non encore adjugées en exécution du « Scheduling Order » du 24 mai 2000*’” (“the Response”), filed on 12 June 2000, in which the Prosecution requests the Appeals Chamber to dismiss the Consolidated Motion inasmuch as it fails to comply with the Order and fails to meet the requirements of Rule 115 for the admission of additional evidence or the requirements for the admission of additional evidence on appeal not covered by Rule 115; and moreover inasmuch as the Consolidated Motion fails to meet the criteria which have been adopted for amendments to a Notice of Appeal;

**RECALLING** that under Rule 115, the Party applying for leave to produce additional evidence must show that that evidence was not available to it during the trial proceedings;

**RECALLING** in this connection the *Semanza* Decision<sup>4</sup>, in which the Appeals Chamber adopted the admissibility criteria for additional evidence identified in the *Tadić* Decision<sup>5</sup> by the ICTY Appeals Chamber;

**RECALLING ALSO** that in cases for which there is no provision under Rule 115, the Appeals Chamber may allow access to new evidence under Rule 89 if and only if such

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2. The Appellant states that the first Motion is an exception (Consolidated Motion, para. 10).

3. Consolidated Motion, para. 7.

4. “Decision”, *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, 31 May 2000, para. 37: “To be admissible under Rule 115, evidence must not have been available to the moving Party at the time of the trial. [...]”; para. 38: “[...] the interests of justice require admission only if: (a) the evidence is relevant to a material issue; (b) the evidence is credible; and (c) the evidence is such that it would probably show that the conviction was unsafe”.

5. “Decision on Appellant’s Motion for the Extension of the Time-Limit and Admission of Additional Evidence”, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, 15 October 1998, para. 42: “[...] The corrective nature of [the appeals] procedure alone suggests that there is some limitation to any additional evidentiary material sought to be presented to the Appeals Chamber [...]”.

evidence is relevant to the appeal, if it has probative value, and if the interests of justice require that it should be admitted<sup>6</sup>;

**RECALLING** that the Appeals Chamber may grant a Party leave to amend a Notice of Appeal outside the time limits set by Rule 108 but that in exercising this discretionary power it must consider whether good cause has been shown by the moving Party, whether granting leave would cause material prejudice to the opposing party and whether the interests of justice require leave to be granted<sup>7</sup>;

**CONSIDERING** that the Consolidated Motion will be examined in light of the foregoing and that this examination will be carried out by subdividing the instant Decision to take into account all the Appellant's requests;

**First Request: Amendment of the Notice of Appeal (third ground of appeal)**

**NOTING** the Appellant's written submissions in which he applies for leave to reformulate and update his Notice of Appeal relative to the Tribunal's impartiality and independence, firstly to take into account events since 1998 and secondly to denounce the testimony of *Maître Pierre Prosper* as an expert in sociolinguistics and of *Mathias Ruzindana* as an expert witness;

**NOTING ALSO** that in those submissions the Appellant proposes to amend the said Notice of Appeal to denounce his arbitrary detention in Zambia and seeks leave to submit 24 exhibits (R-1 to R-13 and R-15 to R-25) in support of his application;

**CONSIDERING** that the exhibits R-1, R-5, R-6, R-7, R-13, R-15, R-16, R-17, R-18, R-19, R-20 and R-21 which the Appellant seeks to produce both predate October 1998, the date of pronouncement of sentence against him; and moreover do not meet the conditions for admissibility on appeal set forth in Rule 89;

**CONSIDERING** that the other exhibits have no relevance to the Appellant's appeal or to the integrity of the trial proceedings;

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6. "Decision (Concerning Motions 2, 3, 4, 5, 6 and 8 Appellant's Brief Relative to the Following Motions Referred to by the Order Dated 30 November 1999)", *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-1-A, 24 May 2000.

7. See op. cit. *supra*; also, "Order on Motion of Appellants Hazim Delić and Zdravko Mucić for Leave to File Supplementary Brief and on Motion of Prosecution for Leave to File Supplementary Brief", *Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-A, 31 March 2000, and in *Jean Kambanda v. The Prosecutor*, Case No. ICTR-97-23-A, "Decision (Appellant's Request for Leave to Add a Third Supplement to his Notice of Appeal)", 18 May 2000 and "Decision (Appellant's Motion for Leave to File a Second Supplementary Notice of Appeal and for Extension of Time to File Brief)", 8 December 1999.

**CONSIDERING** that it has not been established that the amendments sought in relation to the testimony of Mr. Prosper and Mr. Ruzindana have any relevance to the case on appeal;

**CONSIDERING** that the issue of the lawfulness of the Appellant's detention in Zambia was not raised before the Trial Chamber;

**CONSIDERING** that there is therefore cause to reject the Appellant's request to present additional evidence pursuant to Rules 115 and 89 and consequently to reject his request to amend the Notice of Appeal;

**Second Request: Amendment of the Notice of Appeal (second ground of appeal)**

**NOTING** the Appellant's written submissions seeking leave to amend his Notice of Appeal to clarify its second part relating to the "denial of the right to competent counsel" by reformulating the ground of appeal and by producing three exhibits (A-5 to A-7);

**NOTING** the Appellant's request for leave to produce an affidavit in evidence and to testify in respect of the second ground of his Notice of Appeal;

**CONSIDERING** that the ground of appeal as originally worded is sufficiently broad to encompass the amendment sought;

**CONSIDERING** that the exhibits and affidavit which the Appellant seeks to produce were available during the trial; that they were on no occasion produced; and moreover that they have no probative value in respect of the ground of appeal;

**CONSIDERING** that there is cause to reject the Appellant's request to produce additional evidence on the basis of Rules 115 and 89, and consequently to reject the request for amendment of the Notice of Appeal;

**Third Request: Order and amendment to the Notice of Appeal**

**NOTING** the Appellant's written submissions seeking, firstly, an Order for the hearing of 23 January 1997 to be transcribed and for admission of the transcript as new evidence, and, secondly, leave to amend the Notice of Appeal in respect of the Appellant's exclusion from that hearing;

**CONSIDERING** that the document which the Appellant seeks to have admitted as evidence relates to an incident that has no relevance to the Appellant's appeal or trial proceedings; and

that his exclusion from discussions relating to that incident cannot constitute a ground of appeal inasmuch as it was never mentioned before the Trial Chamber;

**CONSIDERING** that there is cause to reject the Appellant's request for an Order based on Rules 115 and 89 and to rule the ground of appeal inadmissible;

**Fourth Request: New evidence on appeal**

**NOTING** the Appellant's written submissions seeking leave to produce new evidence on appeal, stay proceedings and suspend the time limits for appeal firstly in respect of a conflict of interest and misconduct on the part of the Prosecution and secondly to add another ground to the Notice of Appeal and produce affidavits by witnesses who could be called upon to testify;

**CONSIDERING** that the act alleged in justification of the request for amendment concerns the private life of the person in question, and that the act, known at the time as common knowledge, as the Appellant argues, was never mentioned before the Trial Chamber and therefore cannot form a ground of appeal;

**CONSIDERING** that there is cause to reject the Appellant's requests based on Rules 115 and 89 and to rule the ground of appeal inadmissible;

**Fifth Request: Leave to produce new evidence**

**NOTING** the Appellant's written submissions seeking leave to produce the expert report by Mr. Serge A. Desouter in order to contradict testimony by a prosecution expert before the Trial Chamber and to demonstrate moreover that genocide was not planned and that the Prosecutor and the Tribunal are not independent;

**CONSIDERING** that the Appellant's Motion applying for leave to produce this evidence does not satisfy the conditions for such leave to be granted; and in particular that the evidence in question was available at trial and no explanation whatsoever has been given for the failure to produce it at that stage of the proceedings;

**CONSIDERING** that there is cause to reject the Appellant's application pursuant to Rule 115;

## **Sixth Request: Disclosure of documents**

**NOTING** the Appellant's written submissions applying for disclosure by the Prosecution of documents in its possession relating to investigations which the Prosecution is said to have undertaken; for a memorandum held by the President of the Tribunal to be made available to him; and for the possible hearing of witnesses with knowledge of the existence of these documents, which are said to constitute evidence for acquittal;

**CONSIDERING** that the information in those documents is in no wise decisive in the case on appeal, that they have no bearing on the question of the Appellant's innocence or guilt and therefore cannot form a ground of appeal;

**CONSIDERING** however that the memorandum by Michael Hourigan known as the "Report of 1 August 1997" has been released to the Parties, including the Prosecutor, in other proceedings consequent upon a number of Decisions by the Tribunal<sup>8</sup>;

**CONSIDERING** that the Appellant must also be given access to that document; and that the Prosecutor must therefore provide him with a copy of the memorandum she now has in her possession<sup>9</sup>;

**CONSIDERING** that, subject to the above, there is cause to reject the Appellant's request pursuant to Rule 89;

## **FOR THESE REASONS**

**DISMISSES** the Consolidated Motion in that it fails to meet either the requirements of the Order by the Appeals Chamber, or the admissibility criteria for additional evidence defined under Rule 115, or under Rule 89's general provisions in matters of evidence, or the criteria governing amendments to Notices of Appeal;

**ORDERS** the Prosecutor to disclose to the Appellant copy of the "Report of 1 August 1997" for any use which the latter may wish to make of it in support of his appeal if leave is requested and granted to produce that document as additional evidence;

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8. "Decision on Kabiligi's Supplementary Motion for Investigation and Disclosure of Evidence" and "Decision on Ntabakuze's Motion for Disclosure of Material", *The Prosecutor v. Gratién Kabiligi and Aloys Ntabakuze*, Case No. ICTR-97-34-I, 8 June 2000 and "Decision on Defence Motion for Disclosure of Evidence Pursuant to Rule 66 et al. and Rule 73", *The Prosecutor v. André Ntagerura*, Case No. ICTR-96-10A-I, 26 June 2000.

9. "Decision (Motion for Disclosure of the United Nations Memorandum Prepared by Mr. Hourigan on the 1994 Genocide in Rwanda)", *Clément Kayishema v. The Prosecutor*, Case no. ICTR-95 -1-AR72, 27 July 2000.



**RULES** the new grounds of appeal inadmissible in that they are without merit;

**DECIDES** that the Notice of Appeal shall stand as it did immediately before the making of the Appeals Chamber Order of 24 May 2000.

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

[signed]

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Claude Jorda,  
Presiding

Done at The Hague (Netherlands), 22 August 2000

[Seal of the Tribunal]