



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

IN THE APPEALS CHAMBER

Before:

Judge Theodor Meron, Presiding
Judge Mohamed Shahabuddeen
Judge Fausto Pocar
Judge Inés Mónica Weinberg de Roca
Judge Wolfgang Schomburg

Registrar: Mr. Adama Dieng

Decision of: 3 November 2003

THE PROSECUTOR

v.

**THÉONESTE BAGOSORA
GRATIEN KABILIGI
ALOYS NTABAKUZE
ANATOLE NSENGIYUMVA**

Case No ICTR-98-41-AR93

**DECISION ON APPLICATION FOR EXTENSION OF TIME TO FILE
RESPONSE TO INTERLOCUTORY APPEAL**

Counsel for the Prosecution

Ms. Barbara Mulvaney
Mr. Drew White
Mr. Segun Jegede
Ms. Christine Graham
Mr. Rashid Rashid

Counsel for the Defence

Mr. Raphael Constant
Mr. Paul Skolnik
Mr. Jean Yaovi Degli
Mr. David Martin Speery

Mr. Peter Erlinder
Mr. André Tremblay
Mr. Kennedy Ogetto
Mr. Gershom Otachi Bw'omanwa

THE APPEALS CHAMBER of the International Criminal Tribunal for the Prosecution 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 (“Appeals Chamber” and “International Tribunal”, respectively),

BEING SEISED OF the “Application for an Extension of the Delay to Produce a Response to the “Prosecutor’s Appeal against the Trial Chamber’s ‘Decision on Admissibility of Proposed Testimony of Witness DBY’ rendered on 18 September 2003, and Oral Ruling of 22 September 2003” (“Application”), filed by counsel for the Defendant Aloys Ntabakuze (“Defendant”) on 16 October 2003;

NOTING that the Application seeks an extension of time until 7 November 2003 for the filing of a response to the “Prosecutor’s Appeal against the Trial Chamber’s ‘Decision on Admissibility of Proposed Testimony of Witness DBY’ rendered on 18 September 2003, and Oral Ruling of 22 September 2003,” (“Appeal”), filed by the Prosecutor on 9 October 2003;

NOTING the “Prosecutor’s Response to Defence Application for an Extension of Time to File a Response to the Prosecutor’s Appeal against the Trial Chamber’s ‘Decision on Admissibility of Proposed Testimony of Witness DBY’ rendered on 18 September 2003, and Oral Ruling of 22 September 2003” (“Response”), filed by the Prosecutor on 23 October 2003, in which the Prosecutor opposes the extension sought in the Application;

CONSIDERING that the time allotted for the filing of a response to an interlocutory appeal is governed by the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the Tribunal, dated 16 September 2002 (“Practice Direction”);

CONSIDERING that the Practice Direction does not specifically provide a deadline for the filing of a response where the appeal depends on certification of a Trial Chamber under Rule 73(B) of the Rules of Procedure and Evidence of the International Tribunal;

CONSIDERING that the deadline for the filing of a response in all appeals specifically addressed by the Practice Direction is ten days from the filing of the Appeal;

CONSIDERING that the parties have operated on the assumption that the Defendants’ response to the Appeal was due within ten days of the filing of the Appeal, thus on 20 October 2003;[\[1\]](#)

CONSIDERING that the Application seeking an extension was filed on 16 October 2003, and thus would be considered timely under the practice of the International Tribunal, even assuming that the Defendants' response to the Appeal was due on 20 October 2003;[\[2\]](#)

CONSIDERING that the parties and the Trial Chamber agree that the question raised by the Appeal raises an issue of general importance to proceedings before the International Tribunal;

CONSIDERING the submissions in the Application that the Defendants intend to submit a joint brief in response to the Appeal and that their effort to consult on the joint brief is hampered by the fact that several of their counsel are engaged in investigative missions in remote regions;

CONSIDERING that it would serve the interests of justice and the efficiency of these appellate proceedings for the Defendants to submit a joint response;

CONSIDERING that the extension sought in the Application is not unreasonable;

CONSIDERING the argument in the Prosecutor's Response that any delay in the resolution of this interlocutory appeal effectively prevents it from introducing certain evidence in the proceedings before the Trial Chamber, which will resume on 3 November 2003;

CONSIDERING, however, that the Appeal is likely to be resolved more expeditiously if the Defendants submit a joint brief after consultation between all counsel;

CONSIDERING also that the Prosecutor may proceed at trial with evidence that is not affected by the matter involved in the Appeal or, if necessary, seek a continuance or other appropriate measure from the Trial Chamber pending the outcome of the Appeal;

CONSIDERING that Rule 116(A) of the Rules permits the Appeals Chamber to grant a motion to extend a time limit "upon a showing of good cause";

CONSIDERING that, in the circumstances of this case, there is good cause for granting an extension of time pursuant to Rule 116(A) of the Rules;

FOR THE FOREGOING REASONS,

HEREBY GRANTS the Application; and

ORDERS that the Defendants' joint response to the Appeal may be filed on or before 7 November 2003.

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

Judge Theodor Meron
Presiding

Done this 3rd day of November 2003,
At The Hague,
The Netherlands.

[Seal of the Tribunal]

[1] The tenth day after the filing of the Appeal, 19 October 2003, was a non-working day of the Tribunal, thus the last day of the filing period is considered as falling on the first working day thereafter, 20 October 2003. *See* Practice Direction, para. 13.

[2] *E.g.*, *Rukundo v. Prosecutor*, No. ICTR-2001-70-AR108, Decision on Motion for Extension of Time to File Interlocutory Appeal, 23 October 2003, p. 3; *Sagahutu v. Prosecutor*, No. ICTR-00-56-I, Decision on Leave to Appeal Against the Refusal to Grant Provisional Release, 26 March 2003, p. 3.