



UNITED NATIONS  
NATIONS UNIES



ICTR - 99-52-A  
22 OCTOBER 2004  
(1587/H - 1585/H)  
Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

15

IN THE APPEALS CHAMBER

**Before:**

Judge Theodor Meron, Presiding  
Judge Mohamed Shahabuddeen  
Judge Florence Mumba  
Judge Fausto Pocar  
Judge Inés Mónica Weinberg de Roca

**Registrar:**

Mr. Adama Dieng

**Order of:**

22 October 2004

JUDICIAL RECORDS/ARCHIVES  
ICTR  
2004 OCT 25 A 9 44

Ferdinand NAHIMANA  
Jean-Bosco BARAYAGWIZA  
Hassan NGEZE  
(Appellants)

V.

**THE PROSECUTOR**  
(Respondent)

Case No. ICTR-99-52-A

ICTR Appeals Chamber

Date: 22 October 2004  
Action: PG  
Copied To: Concerned Judges

LOs, Parties, Judicial  
Archives, LSS  
Rwanda

**DECISION ON JEAN-BOSCO BARAYAGWIZA'S MOTION FOR APPOINTMENT OF  
COUNSEL OR A STAY OF PROCEEDINGS**

**Counsel for the Appellant**

Mr. Bharat Chadha

**Counsel for the Prosecutor**

Mr. James Stewart  
Ms. Melanie Werrett

|   |                                |
|---|--------------------------------|
| International Criminal Tribunal for Rwanda<br>Tribunal pénal international pour le Rwanda |                                |
| CERTIFIED TRUE COPY<br>COPIE CERTIFIÉE VRAI   | SEEN BY ME<br>ORIGINAL PAR MOI |
| NAME / N°   | ROSETTE MUZIGO-MORRISON        |
| SIGNATURE   | DATE: 22/10/04                 |

**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 "Tribunal", respectively);

**BEING SEISED** of the "*Demande d'arrêt définitif des procédures pour abus de procédure*" filed by Jean-Bosco Barayagwiza ("Appellant") on 7 September 2004 ("Motion"), in which the Appellant argues that the Registrar has committed an abuse of process in delaying the assignment of defence counsel and asks the Appeals Chamber to order the assignment of two defence counsel or either a permanent stay of proceedings or provisional release of the Appellant;

**NOTING** the "Prosecutor's Response" filed 14 September, in which the Prosecution opposes the Motion, arguing *inter alia* that the abuse of process doctrine is inapplicable and that the request for a permanent stay of proceedings or provisional release is unmeritorious, but nevertheless requests that the Registrar be directed to expedite the process of appointing new counsel for the Appellant;

**NOTING** the "*Réplique à la Réponse du Procureur datée du 14 septembre 2003 à ma 'Demande d'arrêt définitif des procédures pour abus de procédure'*" filed 20 September 2004;

**NOTING** the "Registrar's Representation pursuant to Rule 33(B) of the Rules of Procedure and Evidence Regarding Jean Bosco Barayagwiza's Motion for a Stay of Proceedings" (Registrar's Representation) filed 17 September 2004, in which the Registrar explains that Appellant has caused the delay in appointing new counsel by refusing to fill out a new Declaration of Means form and explaining that Duty Counsel, Mr. John Maruma, was assigned on 9 September 2004 "to give assistance and advice to Mr. Barayagwiza on his rights";

**NOTING** the "*Réplique à la Réponse du Greffier datée du 17 septembre 2003 à ma 'Demande d'arrêt définitif des procédures pour abus de procédure'*" filed 24 September 2004, in which the Appellant Barayagwiza argues *inter alia* that the Registrar failed to inform him that the new Declaration of Means form was required for the assignment of counsel or that his refusal to complete the form was causing the delay and notes that counsel was assigned to other detainees without requiring a new Declaration of Means form;

**NOTING** that under Articles 7 and 10 of the Directive on the Assignment of Defence Counsel ("Directive"),<sup>1</sup> the Registrar shall invite a suspect or accused requesting the assignment of counsel

<sup>1</sup> Directive on the Assignment of Defence Counsel, document prepared by the Registrar and approved by the Tribunal on 9 January 1996 as amended 6 June 1997, 8 June 1998, 1 July 1999, 27 May 2003 and 24 April 2004.

to make a Declaration of Means on the appropriate form in order to determine whether the suspect or accused is indigent in deciding whether to grant the request for the assignment of counsel.

**NOTING** that Article 10 *bis* of the Directive provides:

**Assignment of Counsel in the Interests of Justice**

If a suspect or accused,

- (i) Either requests an assignment of Counsel but does not comply with the requirement set out above within a reasonable time; or
- (ii) Fails to obtain or to request assignment of Counsel, or to elect in writing that he intends to conduct his own defence,

the Registrar may nevertheless assign him Counsel in the interests of justice in accordance with Rule 45(E) of the Rules and without prejudice to Article 18.

**CONSIDERING** that further delays in appointing counsel for the Appellant may have an adverse effect on the rights of the other Appellants in this case;

**FINDING** that, notwithstanding the Appellant's refusal to complete a new Declaration of Means Form, it would be in the interests of justice and would expedite resolution of the issues before the Tribunal for the Registrar to assign counsel to Appellant Barayagwiza;

**CONSIDERING** that the Registrar may continue to investigate and review Appellant's financial status by all available means;

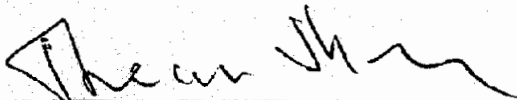
**NOTING** that under Article 18 of the Directive, the Registrar may withdraw the assignment of counsel if he finds that the accused is no longer in fact indigent, and that in such a case Rule 45(G) of the Rules of Procedure and Evidence would also allow the Trial Chamber to "[m]ake an order of contribution to recover the cost of providing counsel," thereby protecting the resources of the Tribunal;

**HEREBY** grants the Motion in part, and

**ORDERS** the Registrar to appoint counsel for Appellant Barayagwiza pursuant to Rule 10 *bis* of the Directive no later than 29 October 2004.

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

Dated this 22nd October 2004,  
At The Hague, The Netherlands.

  
Theodor Meron  
Presiding Judge

