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

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**Office of the President
Cabinet du Président**

Before: Judge Erik Møse, President

Original: English

Registrar: Mr Adama Dieng

Date: 6 June 2005

THE PROSECUTOR

VERSUS

ARSÈNE SHALOM NTAHOBALI

ICTR-97-21-T

**The President's Decision on the Appeal filed Against the Registrar's Refusal to Permit a
Confidential Interview with Georges Rutaganda**

For the Applicant:

Normand Marquis

JUDICIAL RECORDS/ARCHIVES
ICTR

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING in the person of Judge Erik Møse, President;

CONSIDERING an appeal of 28 February 2005 from Arsène Shalom Ntahobali against the Registrar's refusal to grant a request for an interview with Georges Rutaganda; the Registrar's response of 8 March 2005; and the Applicant's reply of 10 March 2005;

HEREBY DECIDES THE APPEAL**INTRODUCTION**

1. The Applicant is currently being tried for genocide, complicity in genocide, crimes against humanity and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II. On 17 January 2005, he requested an interview with Georges Rutaganda, a convicted prisoner, presently in the custody of the Tribunal. The Registrar granted his request, conditional upon a member of the Prosecution being present during the interview, to accommodate the objection raised by the Prosecutor.

SUBMISSIONS

2. The Applicant submits that the Registrar granted his request, conditional upon a member of the Prosecution being present at the interview, without considering the merits of the Prosecutor's objection. He argues that Rule 64 of the Rules Covering the Detention of Persons Awaiting Trial or Appeal before the Tribunal or otherwise Detained on the Authority of the Tribunal ("the Rules of Detention") confers on the Registrar the discretion to consider the merits of the Prosecutor's objection. The Registrar has not exercised this discretion which must be exercised in a fair and reasonable manner. The Applicant also raises the appropriateness of the Registrar's action in informing the Prosecutor of his request.

3. In response, the Registrar submits that there is no provision in the Tribunal's legal texts authorising him to question the Prosecutor's objections to confidential visits to detainees. He also submits that in order for the Prosecutor to invoke Rule 64 of the Rules of Detention, he has to be informed of impending visits.

DELIBERATION

4. The Applicant has filed his appeal pursuant to Rule 64 of the Rules of Detention. This Rule empowers the Registrar to prohibit, regulate or set conditions for contact between a detainee and any other person, following a request from the Prosecutor. In the present case, the Applicant was permitted to interview Georges Rutaganda in the presence of a representative from the Office of the Prosecutor. These conditions were set because Mr Rutaganda is in possession of disclosure materials which could be prejudicial to the Prosecution.

5. Rule 64 of the Rules of Detention confers on the detainee, who in the present case is Mr Rutaganda, the recourse of requesting the President of the Tribunal to deny or reverse the Prosecutor's request. This Rule does not allow the third party who had requested the visit or interview to seek a reversal of the Prosecutor's request. It follows that the Applicant cannot base the admissibility of his appeal on this rule. His appeal is therefore inadmissible.

6. This being said, it should be noted that the Registry merely acted in a manner envisaged in Rule 64 of the Rules of Detention when it informed the Prosecutor of the Applicant's request to interview Mr Rutaganda. The Registry is obliged, in fairness to Mr Rutaganda, to inform him of the requested visit, the objections raised by the Prosecutor, and the reasons for these objections. This places Mr Rutaganda in a position to challenge these objections, should he so choose.

7. As a neutral entity servicing the courts and the parties, it is not the Registry's role to determine the validity of the Prosecutor's objections. It is the President who may consider the validity of these objections, but as stated above, only at the request of the detainee concerned, who in the present case is Mr Rutaganda. It is noted that Mr Rutaganda has not expressed his willingness to participate in a confidential interview with the Applicant and he has also not challenged the Prosecutor's objection to this confidential interview.


8. The Applicant has requested an interview with Mr Rutaganda because he is a potential Defence witness. This has a direct bearing on his fair trial rights guaranteed in Article 20 of the Statute. It is noted that this matter was raised at a status conference in which the Applicant sought the intervention of Trial Chamber II.¹ The Presiding Judge of this Chamber

¹ *The Prosecutor v. Pauline Nyiramasuhuko et al.* Case No. ICTR-97-21-T, Minutes of the Status Conference of 25 February 2005 p. 6.

Judge of this Chamber recognised that this matter was the subject of review and took cognisance of the fact that due process needs to be followed.² This process has now been exhausted. The Applicant may therefore wish to consider seeking appropriate relief from Trial Chamber II.³ This Chamber would be best placed to determine the merits of his request and the Prosecutor's objection to this request.

FOR THE ABOVE MENTIONED REASONS, the Tribunal dismisses the appeal of 28 February 2005 filed by Arsène Shalom Ntahobali.

Arusha, 6 June 2005


Erik Møse
President



(Seal of the Tribunal)

² *The Prosecutor v. Pauline Nyiramasuhuko et al.* Case No. ICTR-97-21-T, Minutes of the Status Conference of 25 February 2005 p. 44.

³ *Prosecutor v. Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze and Anatole Nsengiyumva*, Case No. ICTR-98-41-T, Decision on Request for Subpoena of Major General Yaache and Cooperation of the Republic of Ghana, dated 23 June 2004; and *Prosecutor v. Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze and Anatole Nsengiyumva*, Case No. ICTR-98-41-T, Decision on Bagosora Defence's Request for a Subpoena Regarding Mamadou Kane, dated 22 October 2004.