

6810/H



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

ICTR-99-52-A  
23 February 2006  
(6807/H - 6810/H)

**IN THE APPEALS CHAMBER**

**Before:** Judge Fausto Pocar, Presiding  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Andrésia Vaz  
Judge Theodor Meron

**Registrar:** Mr. Adama Dieng

**Decision of:** 23 February 2006

International Criminal Tribunal for Rwanda  
Tribunal pénal International pour le Rwanda  
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NAME / NOM: Charles Zant  
SIGNATURE: [Signature] DATE: 23/02/2006

Ferdinand NAHIMANA  
Jean-Bosco BARAYAGWIZA  
Hassan NGEZE  
(Appellants)

v.

THE PROSECUTOR  
(Respondent)

Case No. ICTR-99-52-A

**DECISION ON HASSAN NGEZE'S MOTION REQUESTING TO RECTIFY THE  
DIFFERENTIAL AND UNEQUAL TREATMENT BETWEEN THE ICTR AND  
ICTY IN SENTENCING POLICIES AND OTHER RIGHTS**

**Counsel for Hassan Ngeze**

Mr. Bharat B. Chadha  
Mr. Behram Shroff

**Counsel for Jean-Bosco Barayagwiza**

Mr. Donald Herbert  
Mr. Tanoo Mylvaganam

**Counsel for Ferdinand Nahimana**

Mr. Jean-Marie Biju-Duval  
Ms. Diana Ellis

**Office of the Prosecutor**

Mr. James Stewart  
Mr. Neville Weston  
Mr. Abdoulaye Seye

ICTR Appeals Chamber  
Date: 23 February 2006  
Action: [Signature]  
Copied To: Concerned Judges, SLOs, LOs, AOs,  
Parties & translation

[Handwritten signature and notes]

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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 "ICTR", respectively),

BEING SEIZED OF the "Appellant Hassan Ngeze's Request for the Appeal [sic] Chamber to Take Appropriate Steps to Rectify the Differential and Unequal Treatment between the ICTR and ICTY in Sentencing Policies and Other Rights" filed by Hassan Ngeze ("Appellant") on 28 November 2005 ("Motion");

NOTING that the Office of the Prosecutor of the ICTR ("Prosecution") has not filed a response to the Motion;

NOTING that the Appellant submits that there are "explicit differences" in the operation of the ICTR as compared to the International Criminal Tribunal for the former Yugoslavia ("ICTY") in different areas "from indictment to sentencing", leading the Appellant to conclude that "those accused by the ICTR do not receive the same level of judicial propriety and fairness as their counterparts in the ICTY",<sup>1</sup> and requests the Appeals Chamber to "take adequate measures to rectify the differential and unequal treatment of the [A]ppellant Hassan Ngeze besides others, in its sentencing policies and other rights in comparison to the treatment of accused/s and convicts of the ICTY";<sup>2</sup>

NOTING that, with regard to the Appeals Chamber's jurisdiction, the Appellant argues that, due to the novelty and exceptional nature of his request,<sup>3</sup> the Appeals Chamber should consider the Motion for the sake of "principles of equity and fairness"<sup>4</sup> and "as a measure to develop and strengthen international criminal law jurisprudence",<sup>5</sup> despite the fact that the Motion "cannot be based on a discernable rule";<sup>6</sup>

NOTING that, the Appellant contends that he has *locus standi* to bring such a request because (a) "the Trial Chamber's judgment against the Appellant is one of the decisions that the Memorandum

<sup>1</sup> Motion, paras 3 and 5. In support of these submissions, the Appellant refers principally to Annex I to the Motion, a memorandum dated 31 October 2005 and entitled "Denunciation of a Two-Speed and Discriminatory International Justice", addressed by certain detainees to, *inter alia*, the United Nations Secretary-General ("Memorandum").

<sup>2</sup> *Ibid.*, Prayer.

<sup>3</sup> *Ibid.*, para. 6.

<sup>4</sup> *Ibid.*, para. 10.

<sup>5</sup> *Ibid.*, para. 11.

<sup>6</sup> *Ibid.*, para. 10.

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refers to in its statistics analysis" and he, thus, has "interest in the review requested",<sup>7</sup> and (b) "as an individual member of the global community [he] also has an obligation [sic] to expect efficacy and transparency";<sup>8</sup>

**NOTING** that the main differences between the ICTR and ICTY alleged by the Appellant relate to the following elements: conditions of detention;<sup>9</sup> presumption of innocence and burden of proof beyond reasonable doubt;<sup>10</sup> impartiality of the Trial Chambers;<sup>11</sup> verdicts and sentencing;<sup>12</sup> hierarchy of the crimes provided for by the respective Statutes of the ICTR and ICTY;<sup>13</sup> and selectiveness of prosecutions;<sup>14</sup>

**CONSIDERING** that Article 24 of the Statute of the ICTR provides that the Appeals Chamber has jurisdiction to hear "appeals from persons convicted by the Trial Chambers or from the Prosecution" on the grounds of "(a) [a]n error on a question of law invalidating the decision; or (b) [a]n error of fact which has occasioned a miscarriage of justice" with the view to "affirm, reverse or revise the decisions taken by the Trial Chambers";

**CONSIDERING** that, pursuant to Article 24 of the ICTR Statute, an accused or appellant cannot seize the Appeals Chamber of a general matter without alleging that there has been an error of law or of fact arising from a decision, order or judgement rendered by a Trial Chamber, which directly concerns him or her;

**CONSIDERING** that the Appellant had the possibility to raise, in his Notice of Appeal<sup>15</sup> and Appellant's Brief,<sup>16</sup> all issues pertaining to alleged errors of law and of fact in the Trial Judgement rendered in the present case;<sup>17</sup>

**FINDING** that the Motion does not set forth an error that the Appeals Chamber has jurisdiction to consider;

<sup>7</sup> *Ibid.*, para. 12.

<sup>8</sup> *Ibid.*, para. 14.

<sup>9</sup> *Ibid.*, para. 17.

<sup>10</sup> *Ibid.*, paras 18 – 19.

<sup>11</sup> *Ibid.*, para. 20.

<sup>12</sup> *Ibid.*, para. 21.

<sup>13</sup> *Ibid.*, para. 22.

<sup>14</sup> *Ibid.*, para. 25.

<sup>15</sup> Amended Notice of Appeal, 9 May 2005.

<sup>16</sup> Appeal Brief, 2 May 2005.

<sup>17</sup> *The Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-99-52-T, Judgement and Sentence, 3 December 2003.

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**FOR THE FOREGOING REASONS,**

**DISMISSES** the Motion in its entirety.

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

Dated this 23<sup>rd</sup> day of February 2006,  
At The Hague, The Netherlands



Fausta Poovar  
Presiding Judge



[Seal of the Tribunal]