



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

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**BEFORE THE PRE-APPEAL JUDGE**

ICTR-99-52-A  
13-12-2006

Before: Judge Andréia Vaz, Pre-Appeal Judge  
Registrar: Mr. Adama Dieng  
Decision of: 13 December 2006

(9247/A - 9244/A)

Ferdinand NAHIMANA  
Jean-Bosco BARAYAGWIZA  
Hassan NGEZE  
(Appellants)

v.

THE PROSECUTOR  
(Respondent)

Case No. ICTR-99-52-A

JUDICIAL RECORDS/ARCHIVES  
2006 DEC 13 11:51

**DECISION ON HASSAN NGEZE'S REQUEST FOR A STATUS CONFERENCE**

Counsel for Hassan Ngeze  
Mr. Bharat B. Chadha

Counsel for Ferdinand Nahimana  
Mr. Jean-Marie Biju-Duval  
Ms. Diana Ellis

Counsel for Jean-Bosco Barayagwiza  
Mr. D. Peter Herbert  
Mr. Tanoo Mylvaganam

Office of the Prosecutor  
Mr. James K. Stewart  
Mr. Neville Weston  
Mr. Abdoulaye Seye

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I, ANDRÉSIA VAZ, Judge of 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) and Pre-Appeal Judge in this case,<sup>1</sup>

**BEING SEIZED OF** the "Appellant Hassan Ngeze's Request of an Extremely Urgent Status Conference Pursuant to Rule 65bis(B) of the Rules of Procedure and Evidence" filed on 6 December 2006 ("Appellant" and "Request", respectively), in which the Appellant requests the Appeals Chamber to convene a status conference on 13 December 2006, or any other date, in order to enable him to address "his personal problems (including his deteriorating mental and physical condition) and the absence of Co-counsel Behram Shroff who has recently resigned from the defence team on account of illness";<sup>2</sup>

**NOTING** that the Prosecution has not yet filed a response to the Appellant's Request;

**CONSIDERING**, however, that, in view of its nature, this Request may be disposed of without giving the Prosecution the opportunity to respond to it, especially because no prejudice will be caused to the Prosecution;<sup>3</sup>

**RECALLING** that, pursuant to Rule 65bis(A) of the Tribunal's Rules of Procedure and Evidence ("Rules"), the purpose of a status conference is "to organise exchanges between the parties so as to ensure expeditious trial proceedings";

**CONSIDERING** that, pursuant to Rules 28 and 31 of the Rules Covering the Detention of Persons Awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal<sup>4</sup> ("Detention Rules"), the medical officer is responsible for the physical and mental health of the detainees and the administration of any treatment or medication to them;

**NOTING** that Rule 32 of the Detention Rules prescribes the procedure to be followed in cases where the medical officer "considers that the physical or mental health of a detainee has been or will be adversely affected by any condition of his detention";

<sup>1</sup> Order of the Presiding Judge Designating the Pre-Appeal Judge, 19 August 2005; Corrigendum to the Order of the Presiding Judge Designating the Pre-Appeal Judge, 25 August 2005.

<sup>2</sup> Request, p. 2.

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**NOTING** that, according to Rules 82 and 83 of the Detention Rules, where a detainee is not satisfied with the conditions of his or her detention, he or she is entitled to "make a complaint to the Commanding Officer or his representative at any time" and, in case of an unsatisfactory response, to "make a written complaint, without censorship, to the Registrar, who shall forward it to the President";

**CONSIDERING** that the Appellant does not specify whether he has followed this procedure or why it was impossible for him to comply with it before seizing the Pre-Appeal Judge with a request to hold a status conference to address these issues;

**FINDING** therefore that the Appellant has not exhausted the remedies available to him under the Detention Rules;<sup>5</sup>

**CONSIDERING** also that the Appellant does not explain how the alleged physical and psychological problems he faces affect the preparation of his appeal and has thus not demonstrated any threat to the fairness and expeditiousness of the proceedings on appeal;<sup>6</sup>

**NOTING** further that the Appellant wishes to address the absence of his Co-Counsel who, according to him, resigned due to illness;

**NOTING** that the Registrar of the Tribunal is presently seized of the Co-Counsel's request of 3 December 2006 to be withdrawn from the case due to health issues resulting notably in his inability to be travel to Arusha in preparation of the Appeals Hearing scheduled for 16-18 January 2007;

**CONSIDERING** that the matters concerning the appointment and/or withdrawal of members of a Defence team are within the primary competence of the Registrar of the Tribunal;<sup>7</sup>

**RECALLING** that the Appeals Chamber has the statutory duty to ensure the fairness of the proceedings on appeal<sup>8</sup> and, thus, has jurisdiction to intervene matters concerning counsel, but only after an appellant has followed the requisite complaints procedure under the Directive;<sup>9</sup>

<sup>3</sup> See Decision on the Prosecutor's Motion to Be Relieved from Filing the Appeal Book and Books of Authorities, 27 November 2006, p. 2; *Sylvestre Gacumbitsi v. The Prosecutor*, Case No. ICTR-01-64-A, Decision on the Appellant's Motion of 8 December 2005, 16 December 2005, para. 2.

<sup>4</sup> Adopted on 5 June 1998.

<sup>5</sup> Decision on Hassan Ngeze's Motion for a Psychological Examination, 6 December 2005 ("Decision of 6 December 2005"), p. 4.

<sup>6</sup> See Decision on Hassan Ngeze's Request for a Status Conference, 13 December 2005 ("Decision of 13 December 2005"), p. 3; Decision of 6 December 2005, p. 5; Decision on Hassan Ngeze's "Request of an Extremely Urgent Status Conference Pursuant to Rule 65bis of Rules of Procedure and Evidence", 20 September 2005 ("Decision of 20 September 2005"), p. 3.

<sup>7</sup> Cf. Directive on the Assignment of Defence Counsel adopted on 9 January 1996, as amended ("Directive").

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CONSIDERING that the Appellant has not shown that a status conference is necessary to ensure expeditious proceedings on appeal in the present case;<sup>10</sup>

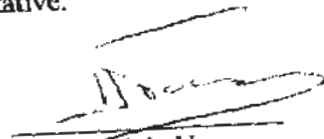
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FINDING, therefore, that there is no need to convene a status conference under Rule 65bis of the Rules with regard to the Request,

FOR THE FOREGOING REASONS,

DISMISS the Request.

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

  
Andrézia Vaz  
Pre-Appeal Judge

Dated this 13<sup>th</sup> day of December 2006,  
In Arusha, Tanzania

[Seal of the Tribunal]



<sup>5</sup> Decision on Appellant Ferdinand Nahimana's Motion for Assistance from the Registrar in the Appeals Phase, 3 May 2005, paras 4 and 7; Decision on "Appellant Hassan Ngeze's Motion for Leave to Permit his Defence Counsel to Communicate with him during Afternoon Friday, Saturday, Sunday and Public Holidays", 25 April 2005, p. 3. See also *Prosecutor v. Milan Milutinović et al.*, Case No. IT-99-37-AR.73.2, Decision on Interlocutory Appeal on Motion for Additional Funds, 13 November 2003 ("*Milutinović et al.* Decision of 13 November 2003"), para. 19.

<sup>9</sup> See Decision on Hassan Ngeze's Motions Concerning Restrictive Measures of Detention, 20 September 2006, p. 5 Decision on Hassan Ngeze's Motion to Set Aside President Muse's Decision and Request to Consummate his Marriage, 6 December 2005, p. 4; *Milutinović et al.* Decision of 13 November 2003, para. 20.

<sup>10</sup> See also Decision of 13 December 2005, p. 4; Decision of 20 September 2005, p. 3.

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