



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

**IN THE APPEALS CHAMBER**

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

Registrar: Mr. Adama Dieng

Decision of: 2 October 2008

**Jean-Bosco BARAYAGWIZA**

**v.**

**THE PROSECUTOR**

*Case No. ICTR-99-52A-R*

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**DECISION ON JEAN-BOSCO BARAYAGWIZA'S MOTION OF 15 SEPTEMBER 2008**

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**The Applicant**

Mr. Jean-Bosco Barayagwiza, *pro se*

**The Office of the Prosecutor**

Mr. Hassan Bubacar Jallow

**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 and 31 December 1994 (“Appeals Chamber” and “Tribunal”, respectively),

**RECALLING** its “Decision on Jean-Bosco Barayagwiza’s Motion of 6 March 2008”, issued on 11 April 2008 (“Decision of 11 April 2008”), in which the Appeals Chamber denied the request of Jean-Bosco Barayagwiza (“Applicant”) to order the Registrar to assign counsel at the Tribunal’s expense to assist him in the preparation of a motion for review and/or reconsideration of the judgement rendered by the Appeals Chamber on 28 November 2007 in *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A (“Appeal Judgement”);

**RECALLING FURTHER** its “Decision on Jean-Bosco Barayagwiza’s Motion of 2 May 2008”, issued on 9 September 2008 (“Decision of 9 September 2008”), in which the Appeals Chamber denied the Applicant’s request for reconsideration of its Decision of 11 April 2008 and dismissed as moot the Applicant’s request to order the Registrar to ensure that the Applicant is granted access to facilities and documents which to that date had purportedly been withheld by the Registrar;

**BEING SEIZED OF** the “*Demande de clarifications en relation avec la Décision du 9 septembre 2008 à propos de la Requête de Jean-Bosco Barayagwiza du 2 mai 2008*”, filed by the Applicant on 15 September 2008 (“Motion”), in which he requests the Appeals Chamber to clarify three specific points of its Decision of 9 September 2008;<sup>1</sup>

**NOTING** that the Applicant requests the Appeals Chamber to specify the measures it has taken or will take to guarantee his right to counsel for the purpose of review proceedings;<sup>2</sup>

**CONSIDERING** that in the Decision of 11 April 2008, the Appeals Chamber found that the Applicant failed to provide any information regarding the basis of a potential request for review and that it could therefore not conclude that in order to ensure the fairness of the proceedings it would

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<sup>1</sup> Motion, para. 12. The Appeals Chamber takes note of the “*Réponse de Jean-Bosco Barayagwiza à ‘Registrar’s Rule 33(B) Submission on the Appeals Chamber’s Order to the Registrar regarding Communication of Documents’*”, filed by the Applicant on 25 July 2008, which is annexed to the Motion.

<sup>2</sup> Motion, para. 12(a).

be necessary to authorize assignment of counsel to the Applicant under the Tribunal's legal aid scheme;<sup>3</sup>

**CONSIDERING** that in the Decision of 9 September 2008, the Appeals Chamber rejected the Applicant's motion to reconsider this finding, holding that the Applicant merely reiterated his request for a blanket assignment of counsel under the Tribunal's legal aid scheme and failed to demonstrate a clear error of reasoning in the Impugned Decision or that reconsideration is necessary to prevent an injustice;<sup>4</sup>

**FINDING** therefore that no further action is required by the Appeals Chamber on this matter;<sup>5</sup>

**NOTING FURTHER** that the Applicant requests the Appeals Chamber to specify the measures that it has taken or that it will take to ensure the Applicant's access to documentation he considers necessary to prepare a request for review in his case, in particular, the documentation available from the different services of the Registry;<sup>6</sup>

**NOTING** the exchange of correspondence between the Applicant and the Registrar concerning the access to documentation which the Applicant had requested and that he purportedly did not receive;<sup>7</sup>

**NOTING** that, on 1 September 2008, the Applicant addressed a letter to the Registrar requesting several documents, including documents he had previously requested in his letters to the Registrar, dated 30 July 2008 and 6 August 2008 ("Letter of 1 September 2008");<sup>8</sup>

**NOTING** that, on 10 September 2008, the Registry's Defence Counsel and Detention Management Section ("DCDMS") informed the Applicant that the totality of the documentation of the Applicant's case file in its possession had been communicated to him, and that any further documents requested from the Registry were not in the possession of DCDMS;<sup>9</sup>

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<sup>3</sup> Decision of 11 April 2008, p. 4.

<sup>4</sup> Decision of 9 September 2008, p. 4.

<sup>5</sup> The Appeals Chamber has previously informed the Applicant that, subject to certain conditions, he may be assisted by counsel in connection with a request for review at his own expense, at the expense of a third party, or on a *pro bono* basis. *See* Decision of 9 September 2008, pp. 3-4.

<sup>6</sup> Motion, para. 12(b).

<sup>7</sup> *See, inter alia*, Annexes to Motion.

<sup>8</sup> Motion, Annex 4, in which the Appellant provides a list of documents related both to his case and to another case before the Tribunal, which to-date he purportedly has not received.

<sup>9</sup> Motion, Annex 5.

**FINDING** that the Registrar should provide an exhaustive response as to the availability of the documents requested in the Letter of 1 September 2008;

**NOTING FURTHER** that the Applicant requests the Appeals Chamber to specify the measures that it has taken or that it will take to ensure his access to the internet, the Tribunal's library, and to the jurisprudence of the Tribunal and the International Criminal Tribunal for the former Yugoslavia;<sup>10</sup>

**CONSIDERING** the Registrar's submission that detainees at the Tribunal's detention facilities ("UNDF") have access to the CD-Rom of the Tribunal's jurisprudence through the UNDF Library;<sup>11</sup> and that all UNDF detainees benefit from the normal loan service of the Tribunal's Library;<sup>12</sup>

**FINDING** that the Applicant has failed to demonstrate that the Tribunal's policies impair the fairness of the proceedings;

**FOR THE FOREGOING REASONS,**

**GRANTS** the Motion in part;

**DIRECTS** the Registrar to provide an exhaustive response to the Applicant's request for documents within seven days of the filing of this Decision;

**DISMISSES** the Motion in all other respects.

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

Done this 2<sup>nd</sup> day of October 2008,  
At The Hague, The Netherlands.

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Fausto Pocar  
Presiding Judge

**[Seal of the Tribunal]**

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<sup>10</sup> Motion, para. 12(b). *See also ibid.*, para. 7(4).

<sup>11</sup> "The Registrar's Submissions Regarding the '*Recours très urgent de Jean-Bosco Barayagwiza contre le refus du Greffier de répondre à la demande d'assistance juridique en vue de la révision et/ou réexamen de l'Arrêt du 28 novembre 2007*'", filed on 14 March 2008, para. 10(ii).

<sup>12</sup> *Ibid.*, para. 10(iii).