



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

ICTR-96-3-R  
11 November 2008  
(546/H - 544/H)

*P.T.*

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

**Registrar:** Mr. Adama Dieng

**Decision of:** 11 November 2008

ICTR Appeals Chamber

Date: 11 November 2008

Action: P.T.

Copied To: concerned Judges,  
Parties, SCS, LOS, ALG, LGS,  
Archiver

Georges Anderson Nderubumwe RUTAGANDA

v.

THE PROSECUTOR

Case No. ICTR-96-3-R

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**Decision on Georges Rutaganda's Appeal Concerning Access to Closed Session  
Testimony and Sealed Exhibits**

**Office of the Prosecutor:**

Mr. Hassan Bubacar Jallow  
Mr. Alex Obote-Odora  
Mr. Richard Karegyesa  
Mr. George William Mugwanya

**The Applicant:**

Mr. Georges A. N. Rutaganda, *pro se*

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS

NAME / NOM: *Patrice Tchidimbo*

SIGNATURE: *Patrice Tchidimbo* DATE: *11/11/08*

**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),

**NOTING** the “Decision on Request for Closed Session Testimony and Sealed Exhibits” rendered by Trial Chamber I of the Tribunal (“Trial Chamber”) on 3 April 2008 in *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-T (“Impugned Decision”), in which the Trial Chamber dismissed Georges A.N. Rutaganda’s (“Applicant”) request for access to closed session testimony and sealed exhibits of Witness AWE in the case of *Tharcisse Renzaho*;

**BEING SEIZED** of “Rutaganda’s Appeal Motion Against the Trial Chamber Decision on Request for Closed Session Testimony and Sealed Exhibits of Witness ‘AWE’, Dated 3 April 2008”, filed by the Applicant on 6 October 2008 (“Motion”);<sup>1</sup>

**NOTING** the “Prosecutor’s Response to the Applicant’s ‘Appeal Motion Against the Trial Chamber Decision on Request for Closed Session Testimony and Sealed Exhibits of Witness AWE in Renzaho, Dated 3 April 2008’”, filed on 10 October 2008 (“Response”), opposing the Motion;

**NOTING** “The Applicant’s Reply to the Prosecutor’s Response to ‘Rutaganda’s Appeal Motion Against the Trial Chamber Decision on Request for Closed Session Testimony and Sealed Exhibits of Witness ‘AWE’ in Renzaho, Dated 3 April 2008’”, filed on 17 October 2008 (“Reply”);<sup>2</sup>

**NOTING** that on 17 April 2008 the Applicant filed a confidential request for reconsideration or certification of appeal against the Impugned Decision (“Request for Reconsideration or Certification”);<sup>3</sup>

**NOTING** the Applicant’s submission that Counsel for Tharcisse Renzaho filed written submissions with respect to the Applicant’s Request for Reconsideration or Certification and that the Registrar has failed to serve these filings on the Applicant;<sup>4</sup>

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<sup>1</sup> The Motion was received by the United Nations Detention Facility in Arusha, Tanzania (“UNDF”) on 30 September 2008, but was only filed with the Registry of the Tribunal on 6 October 2008.

<sup>2</sup> The Applicant submits that the Prosecution filed its response out of time, relying on 30 September 2008 as the date of filing of the Motion. Reply, para. 3. The Appeals Chamber notes that the time limit for the filing of a response starts running from the filing of a motion with the Registry. The date when the filing was received by the UNDF is irrelevant for the purpose of the calculation of time limits. The Applicant’s submission that the Response was filed out of time is therefore dismissed. The Appeals Chamber further finds that the Reply was filed out of time. However, the Response was served on the Applicant only on 14 October 2008. The Appeals Chamber agrees with the Applicant that this delay constitutes good cause for the delayed filing of his Reply.

**NOTING** that the Applicant requests the Appeals Chamber to set aside the Impugned Decision; to order the disclosure to the Applicant of the written submissions made by Counsel for Tharcisse Renzaho in relation to the Applicant's Request for Reconsideration or Certification; to order the disclosure to the Applicant of the closed session testimony and exhibits of Witness AWE in the case of *Tharcisse Renzaho*; and to appoint counsel to assist the Applicant;<sup>5</sup>

**NOTING** that the Applicant reiterates in his Reply that he was "obliged" to file the Motion because the Trial Chamber failed to dispose of his Request for Reconsideration or Certification;<sup>6</sup>

**CONSIDERING** that the Trial Chamber has not yet rendered a decision on the Applicant's Request for Reconsideration or Certification of the Impugned Decision, although it was filed about six and half months ago, on 17 April 2008, and it has not been withdrawn pursuant to the Practice Direction on Withdrawal of Pleadings;

**CONSIDERING** that the Appeals Chamber does not have jurisdiction to entertain the Appellant's request for access to the closed session testimony and sealed exhibits merely on the ground pleaded by the Appellant that the Trial Chamber has not dealt with the Request for Reconsideration or Certification;

**FINDING** therefore that the Motion is not properly before the Appeals Chamber;

**CONSIDERING**, however, that there is merit in the Appellant's complaint that the Trial Chamber has had the Appellant's Request for Reconsideration or Certification for some six months;


**URGES** the Trial Chamber to dispose of the Appellant's Request for Reconsideration or Certification;

**AND HEREBY DISMISSES** the Motion.

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

Done this 11<sup>th</sup> day of November 2008,  
at The Hague,  
The Netherlands.



  
Judge Fausto Pocar  
Presiding

<sup>3</sup> *Requête urgente en reconsidération de la "Decision on Request for Closed Session Testimony and Sealed Exhibits" du 03 avril 2008 ou, alternativement, en certification d'appel de ladite décision*, filed confidentially by the Applicant on 17 April 2008.

<sup>4</sup> Motion, para. 12.

<sup>5</sup> Motion, para. 43.

<sup>6</sup> Reply, para. 8.