



ICTR-99-52A-R
16th December 2008
{703/H - 701/H}

IN THE APPEALS CHAMBER

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

Registrar: Mr. Adama Dieng

Order of: 16 December 2008

ICTR Appeals Chamber
Date: 16-December-2008
Action: R. Tumbah
Copied To: Concerned Judges,
Parties, Legal Officers,
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Jean-Bosco BARAYAGWIZA

v.

THE PROSECUTOR

Case No. ICTR-99-52A-R

ORDER REGARDING COMMUNICATION OF DOCUMENTS

The Applicant

Mr. Jean-Bosco Barayagwiza, *pro se*

The Office of the Prosecutor

Mr. Hassan Bubacar Jallow

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SENT BY ME
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NAME / NOM: ROSETTE MUZIGO-MORRISON
SIGNATURE: DATE: 16/Dec/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 Jean-Bosco Barayagwiza's Motion of 15 September 2008", issued on 2 October 2008 ("Decision of 2 October 2008"), in which the Appeals Chamber directed the Registrar to provide an exhaustive response to Jean-Bosco Barayagwiza's ("Applicant") request for documents within seven days of the filing of the decision;

NOTING "The Registrar's Submission in regard to the Appeals Chamber's 'Decision on Jean-Bosco Barayagwiza's Motion of 15 September 2008'", filed confidentially on 3 November 2008 ("Registrar's Submission"),¹ in which the Registrar reiterates that all the files pertaining to the Applicant which are in the Registry's possession were made available to the Applicant and that the Registrar's efforts to contact the Applicant's former counsel to obtain documents have so far proven futile;²

NOTING the "*Réponse au mémoire du greffier du 3 novembre 2008 intitulé 'The Registrar [sic] Submission in regard to the Appeals Chamber's 'Decision on Jean-Bosco Barayagwiza's Motion of 15 September 2008'*", filed by the Applicant on 10 November 2008 ("Response"), in which the Applicant identifies a number of documents which the Registrar has failed to provide and which in his view must be located in the Tribunal's archives since they emanate either from the Registrar's services or are addressed to the Registrar or the President of the Tribunal;³

CONSIDERING that the Registrar did not indicate why the Registrar's Submission was filed confidentially and that it is in the interests of justice that it be filed publicly;

NOTING that the Applicant requests the Appeals Chamber to order the Registrar to instruct the pertinent services of the Registry to provide the requested documents to the Applicant within seven days of a decision; to order the Registrar to take the appropriate measures to ensure that the Applicant has access to the internet as well as to any documents from the Tribunal's library which

¹ On 14 October 2008, the Registrar submitted that due to an oversight, he had not been in the position to respond within the time granted. "The Registrar's Submission in regard to the Appeals Chamber's 'Decision on Jean-Bosco Barayagwiza's Motion of 15 September 2008'", filed on 14 October 2008, para. 2.

² Registrar's Submission of 3 November 2008, paras. 3-6.

³ Response, paras. 6, 7.

are not subject to the regular loan service of the library;⁴ and to take appropriate measures should the Registrar continue to display an attitude of obstruction of justice;⁵

CONSIDERING that the Registrar has not explained why certain of the documents identified by the Applicant are not in the possession of the Registry;⁶

FINDING that it would be useful at this stage of the proceedings to direct the Registrar to provide further detailed information on each of the requested documents, in particular, why they are not in the possession of the Registry's services;

CONSIDERING that in the Decision of 2 October 2008, the Appeals Chamber has already ruled on the Applicant's request for access to the internet and books of the Tribunal's library and that the Applicant does not provide any additional arguments which require reconsideration of that decision;

FOR THE FOREGOING REASONS,

ORDERS the Registrar, pursuant to Rule 33(B) of the Rules, to provide to the Applicant and the Appeals Chamber, within seven days from the filing of this decision, a detailed response to the Applicant's standing request for documents listed in Annex 4 of his "*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, explaining why – in case of the non-availability of any requested documents – they are not in the possession of the Registry's services, and informing the Appeals Chamber about the state of his efforts to contact the Applicant's former Counsel and obtain documents from him;

ORDERS the Registrar to lift the confidentiality of the Registrar's Submission.

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

Done this 16th day of December 2008,
At The Hague, The Netherlands.



A handwritten signature in black ink, which appears to read "Fausto Pocar".

Fausto Pocar
Presiding Judge

⁴ Response, paras. 5, 6, 10.

⁵ Response, para. 13.

⁶ At paragraph 6, item 1 of the Response, the Applicant requests information which belongs to the case file of another convicted person. The requested information is therefore not automatically available to the Applicant. In order to request access to confidential information in another case, specific procedures apply (*see e.g.* Rule 75 of the Rules of Procedure and Evidence of the Tribunal ("Rules") dealing with the variation of protective measures ordered for the protection of victims and witnesses). However, since the Registry has not advanced any reason as to why the Applicant should not be granted access to the information, the Appeals Chamber need not consider this matter.