



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

1188/H

*CA*

ICTR-99-52A-R  
28 January 2009  
{1188/H – 1183/H

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: 28 January 2009

ICTR Appeals Chamber  
Date: 28<sup>th</sup> January 2009  
Action: R-Juma  
Copied To: Concerned Judges

Parties, Archives, LOS,  
LSS  
*[Signature]*

Jean-Bosco BARAYAGWIZA

v.

THE PROSECUTOR

Case No. ICTR-99-52A-R

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**DECISION ON JEAN-BOSCO BARAYAGWIZA'S MOTIONS OF 11 DECEMBER 2008  
AND 6 JANUARY 2009**

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  
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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 and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively),

BEING SEIZED OF motions filed by Jean-Bosco Barayagwiza ("Motions" and "Applicant", respectively):

- "*Requête pour une ordonnance définissant le calendrier et les délais de dépôt des écritures relativement à la demande de révision de l'arrêt du 28 novembre 2007*", filed on 11 December 2008 ("First Motion");
- "*Requête demandant la prolongation du délai de dépôt de la réponse au mémoire du Greffier intitulé 'Submissions by the Registrar under Rule 33(B) of the Rules of Procedure and Evidence on the « Order Regarding Communication of Documents » dated 16 December 2008', et sollicitant l'autorisation de déposer un complément au mémoire en révision et/ou reconsidération déposé le 11 décembre 2008*", filed on 6 January 2009 ("Second Motion");

NOTING that the Prosecution has not filed a response to the Motions;

NOTING 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");

NOTING that, on 11 December 2008, the Applicant filed a request for review of the Appeal Judgement pursuant to Article 25 of the Statute of the Tribunal ("Statute" and "Request for Review", respectively);<sup>1</sup>

NOTING the "Order Regarding Communication of Documents" rendered by the Appeals Chamber on 16 December 2008 ("Order of 16 December 2008");<sup>2</sup>

NOTING the "Submissions by the Registrar under Rule 33(B) of the Rules of Procedure and Evidence on the 'Order Regarding Communication of Documents' dated 16 December 2008", filed on 23 December 2008 ("Registrar's Submission");

<sup>1</sup> *Jean-Bosco Barayagwiza v. The Prosecutor*, Case No. ICTR-99-52-R, "*Mémoire du requérant en vue de la révision et/ou reconsidération de l'arrêt du 28 novembre 2007*", filed on 11 December 2008.

<sup>2</sup> *Jean-Bosco Barayagwiza v. The Prosecutor*, Case No. ICTR-99-52A-R, Order Regarding Communication of Documents, filed on 16 December 2008.

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NOTING the "*Réponse au mémoire du Greffier du 23 décembre 2008 intitulé 'Submissions by the Registrar under Rule 33(B) of the Rules of Procedure and Evidence on the 'Order Regarding Communication of Documents' dated 16 December 2008'*", filed by the Applicant on 12 January 2009 ("Filing of 12 January 2009");

NOTING that in his First Motion, the Applicant requests an extension of time for any filings in the review proceedings in his case,<sup>3</sup> arguing that he will be transferred to a third State to serve his sentence,<sup>4</sup> where he may no longer communicate expeditiously with the Registry's services;<sup>5</sup> and that he will therefore not be able to meet the time limits provided for by the Rules of Procedure and Evidence of the Tribunal ("Rules");<sup>6</sup>

NOTING that, in the alternative, the Applicant requests the Appeals Chamber to provide a mechanism to ensure expeditious communication between the Applicant and the Registrar, in particular, communication via the internet; and, in a further alternative, requests the Appeals Chamber to allow the Applicant to remain at the UNDF until the conclusion of the review proceedings in his case;<sup>7</sup>

CONSIDERING that pursuant to Rule 116(A) of the Rules, the Appeals Chamber may grant a motion to extend a time limit upon a showing of good cause;

CONSIDERING that the Applicant's transfer to a State to serve his sentence does not automatically entail a delay in communication between the Applicant and the Registry's services;

FINDING therefore that the Applicant has not shown good cause for a blanket extension of time for any filings in the review proceedings in his case;

CONSIDERING that pursuant to Rule 33(A) of the Rules, the Registrar has an obligation to ensure a channel of communication between the Tribunal and a convicted person, even after he or she has been transferred to a State in which his or her sentence is to be served;<sup>8</sup>

<sup>3</sup> First Motion, para. 8(1).

<sup>4</sup> The Applicant submits that he has been informed by the Commander of the United Nations Detention Facility ("UNDF") that he will soon be transferred to a third State where he will serve his sentence. First Motion, para. 2.

<sup>5</sup> First Motion, paras. 3, 5, 6.

<sup>6</sup> In the Second Motion, the Applicant requests the Appeals Chamber to specify the rules applicable to review proceedings when disposing of the First Motion. Second Motion, para. 7. The Appeals Chamber, however, considers that in light of the outcome of this Decision and the fact that the prayer of the Second Motion fails to include this request, there is no need to address this argument.

<sup>7</sup> First Motion, para. 8(2) and (3).

<sup>8</sup> *Emmanuel Ndinabahizi v. The Prosecutor*, Case No. ICTR-01-71-R, Decision on Emmanuel Ndinabahizi's Motion of 1 December 2008, 17 December 2008, p. 3.

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**FINDING** that it falls to the Registrar to make any practical arrangements necessary to ensure expeditious communication between the Registry's services and a convicted person after he or she has been transferred to a State to serve his or her sentence;

**RECALLING** that pursuant to Article 26 of the Statute and Rule 103 of the Rules, imprisonment shall be served in Rwanda or any State designated by the Tribunal from a list of States which have indicated their willingness to accept convicted persons for the serving of sentences;

**FURTHER RECALLING** that Rule 119(A) of the Rules provides that a sentence pronounced by the Appeals Chamber shall be enforced immediately;

**CONSIDERING** that the Applicant, once transferred to a State to serve his sentence, may continue to fully participate in the review proceedings in his case; and that, pursuant to Rule 116 of the Rules, he may file a request for an extension of time for the filing of a specific document, if necessary;

**FINDING** that the Applicant has failed to demonstrate why he should remain at the UNDF until the conclusion of the review proceedings in his case;

**NOTING** that in his Second Motion, the Applicant first requests the Appeals Chamber to grant an extension of time until 15 January 2009 for the filing of his response to the Registrar's Submission;<sup>9</sup>

**NOTING** that in the Filing of 12 January 2009, the Applicant requests the Appeals Chamber to order the Registrar to provide within seven days from a decision of the Appeals Chamber a number of additional identified documents which the Registrar has so far failed to provide and to explain why – in case of the non-availability of any requested documents – they are not in the possession of the Registry's services;<sup>10</sup>

**FINDING** that the first portion of the Second Motion is moot;

**CONSIDERING** that the Appeals Chamber has an inherent discretion to determine whether, on the particular facts of each case, acceptance of a "response" to a submission by the Registrar is warranted;<sup>11</sup>

<sup>9</sup> Second Motion, paras. 5, 8(1). At paragraph 5 of the Second Motion, the Applicant requests an extension of 15 days from 2 January 2009.

<sup>10</sup> Filing of 12 January 2009, para. 15(1), (2). The Applicant also reiterates his request for leave to file additional submissions to his Request for Review taking into consideration the documentation annexed to the Registrar's Submission. Filing of 12 January 2009, para. 15(3).

<sup>11</sup> For example, the Appeals Chamber notes that in its Order of 16 December 2008, it did accept a request made by the Applicant in a "response" to a submission of the Registrar on the basis, *inter alia*, that "the Registrar has not explained why certain of the documents identified by the Applicant are not in the possession of the Registry." Accordingly, the

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**CONSIDERING** that, instead of filing a "response" to the Registrar's Submission before the Appeals Chamber, the Applicant should have: (1) informed the Registrar that in his view some of the information and documentation provided in the Registrar's Submission was inaccurate or incomplete and sought his further assistance; and (2) contacted his former defence counsel, Mr. Calderera and Mr. Pognon, and requested that they provide the Applicant with the information in their possession to which the Registrar's Submission refers;<sup>12</sup>

**FINDING** therefore that the Filing of 12 January 2009 does not necessitate any action on the part of the Appeals Chamber;

**NOTING** that in his Second Motion, the Applicant further requests leave to file additional submissions to his Request for Review taking into consideration the documentation annexed to the Registrar's Submission;<sup>13</sup>

**NOTING** that the Applicant submits in support of this request that he repeatedly encountered difficulties in receiving documentation from the Registrar that he required in order to prepare his Request for Review; that he anticipated problems in communication with the Registrar from a State to which he was going to be transferred; and that, therefore, when he was informed that his transfer to a State to serve his sentence was imminent, he filed his Request for Review without having had the opportunity to take into account the documentation that the Registrar subsequently provided in the annex to the Registrar's Submission;<sup>14</sup>

**CONSIDERING** that at the time the Applicant's Request for Review was filed and despite numerous efforts undertaken by the Applicant, the Applicant had not yet received all the documentation that he had requested from the Registrar with a view to preparing his Request for Review;

**FINDING** therefore that the Applicant should be allowed to file additional submissions to his Request for Review taking into consideration the material annexed to the Registrar's Submission which had previously not been available to him;

**FOR THE FOREGOING REASONS,**

**DISMISSES** the First Motion;

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Appeals Chamber found 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."

<sup>12</sup> See Registrar's Submission, paras. 4(a), (d), (e) and (f).

<sup>13</sup> Second Motion, paras. 6, 8(2).

<sup>14</sup> Second Motion, paras. 2, 6.

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**PARTIALLY GRANTS** the Second Motion;

**INSTRUCTS** the Applicant, should he deem it necessary, to file within twenty (20) days of the filing of this Decision either additional submissions to his Request for Review or a consolidated Request for Review;

**ORDERS** that the time limit for the Prosecution's response pursuant to Rule 120 of the Rules shall start to run from the filing of the Applicant's additional submissions to his Request for Review or his consolidated Request for Review; or, should the Applicant choose not to present any additional submissions, from the date the time limit set above expires;

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

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

Done this 28<sup>th</sup> day of January 2009,  
at The Hague, The Netherlands.



[Seal of the Tribunal]

A handwritten signature in black ink, appearing to read "Fausto Pocar", is written over a horizontal line.

Fausto Pocar  
Presiding Judge