



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

115/H

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IN THE APPEALS CHAMBER

**ICTR-01-63-A
30th March 2009
{115/H – 112/H}**

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Liu Daqun
Judge Theodor Meron
Judge Carmel Agius

Registrar: Mr. Adama Dieng

Decision of: 30 March 2009

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| International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda | |
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| SIGNATURE: <i>[Signature]</i> | DATE: <i>30 March 2009</i> |

SIMÉON NCHAMIHIGO

v.

THE PROSECUTOR

Case No. ICTR-2001-63-A

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**DECISION ON PROSECUTION MOTION ON THE FILING OF THE
DEFENCE NOTICE OF APPEAL**

Counsel for Mr. Siméon Nchamihigo

Mr. Denis Turcotte
Ms. Nathalie Leblanc

Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. Alex Obote-Odora
Mr. George Mugwanya
Ms. Inneke Onsea
Ms. Renifa Madenga
Ms. Evelyn Kamau
Mr. William Mubiru
Ms. Priyadarshini Narayanan
Ms. Aisha Kagabo

ICTR Appeals Chamber
Date: *30th March 2009*
Action: *R. Juma*
Copied To: *Concerned Judges,
Parties, Judicial archives,
LOs, LSS*

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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),

NOTING the Trial Judgement rendered by Trial Chamber III of the Tribunal (“Trial Chamber”) against Siméon Nchamihigo (“Appellant”) orally on 24 September 2008;

NOTING the written Trial Judgement filed on 12 November 2008;¹

NOTING the Notice of Appeal filed confidentially on 6 March 2009;²

BEING SEIZED of the Prosecution Motion on the Filing of the Defence Notice of Appeal, filed on 12 March 2009 (“Prosecution Motion”), seeking that the Appeals Chamber order the Appellant to file a public version of the Notice of Appeal that complies with the requirements of the Practice Direction on Formal Requirements for Appeals from Judgement of 4 July 2005 (“Practice Direction”);³

NOTING the response of the Appellant, filed on 20 March 2009;⁴

NOTING that the Prosecution did not file a reply;

NOTING the Prosecution’s submission that the Notice of Appeal should have been filed publicly as “there is no basis for a confidential filing”⁵ and that the Notice of Appeal does not comply with the Practice Direction;⁶

NOTING that the Appellant proposes to file publicly a revised version of his Notice of Appeal, which is annexed to his Response;⁷

¹ *The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-01-63-T, Judgement and Sentence, 12 November 2008 (“Trial Judgement”). A French translation of the Trial Judgement was filed on 6 February 2009.

² *Siméon Nchamihigo v. The Prosecutor*, Case No. ICTR-01-63-A, *Acte d’Appel de la Défense, Art. 24 du Statut du Tribunal et Art. 108 du Règlement de procédure et de preuve*, 6 March 2009 (“Notice of Appeal”).

³ Prosecution Motion, para. 4.

⁴ *Réponse de Siméon Nchamihigo à la “Prosecution Motion on the Filing of the Defence Notice of Appeal”*, 20 March 2009 (“Response”).

⁵ Prosecution Motion, para. 2.

⁶ Prosecution Motion, para. 3.

⁷ Response, para. 10 and Annex 2: *Acte d’Appel de la Défense Public et Corrigé, Art. 24 du Statut du Tribunal et Art. 108 du Règlement de Procédure et de Preuve*.

NOTING further the Prosecution's contention that the "Notice of Appeal fails to identify, in several instances, the findings challenged in the Trial Judgement or decisions at trial, and to provide specific references to paragraphs of the [Trial] Judgement";⁸

NOTING the Prosecution's assertion that the Notice of Appeal contains "several incorrect references to the Trial Judgement";⁹

NOTING that the Appellant does not object to these assertions,¹⁰ and states that the Notice of Appeal contains some clerical errors;¹¹

NOTING that the Appellant is prepared to file publicly a revised version of his Notice of Appeal,¹² which does not contain protected information;¹³

RECALLING that all submissions filed before the Tribunal shall be public unless there are exceptional reasons for keeping them confidential,¹⁴ and that parties shall file public redacted versions of all confidential briefs filed on appeal;¹⁵

RECALLING further that paragraph 1(c)(iii) of the Practice Direction requires a notice of appeal to identify "the finding or ruling challenged in the judgement, with specific reference to the page number and paragraph number";

CONSIDERING that the Notice of Appeal does not conform to paragraph 1(c)(iii) of the Practice Direction with regard to grounds of appeal 2, 3, 4, 5, 6, 23 and 35;

CONSIDERING that while many of these flaws were corrected in the revised version of the Notice of Appeal, Ground 35 remains uncorrected;

FINDING therefore that the Appellant has yet to file a revised version that fully complies with the requirements of paragraph 1(c)(iii) of the Practice Direction;

FOR THE FOREGOING REASONS,

GRANTS the Prosecution Motion;

⁸ Prosecution Motion, para. 3. The Prosecution points in particular to grounds of appeal 2, 3, 4, 5, 6, 23 and 35.

⁹ Prosecution Motion, para. 3. The Prosecution points in particular to grounds of appeal 16, 17 and 18.

¹⁰ Response, para. 2.

¹¹ Response, para. 2.

¹² Response, para. 10.

¹³ Response, para. 4.

¹⁴ Cf. Rules 69 and 78 of the Rules of Procedure and Evidence of the Tribunal ("Rules"). See also: *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Order to Appellant Hassan Ngeze to File Public Versions of His Notice of Appeal and Appellant's Brief, 30 August 2007, p. 2. ("*Nahimana et al.* Order 30 August 2007").

¹⁵ *Nahimana et al.* Order 30 August 2007, p. 2.

ORDERS the Appellant to file publicly, within 10 days, a revised version of his Notice of Appeal which conforms to the requirements of the Practice Direction;

REMINDS the Appellant that this does not change his pre-existing obligation to file his Appellant's brief, if any, within 75 days of the filing of the Notice of Appeal under Rule 111 of the Rules, that is, no later than 20 May 2009.

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

Done this 30th March 2009,
At The Hague,
The Netherlands.



[Seal of the Tribunal]

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

Judge Fausto Pocar
Presiding