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Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

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665/H

*CV*

2009 JUL -9 A 8: 11  
ICTR-01-63-A  
08<sup>th</sup> July 2009  
{665/H - 662/H}

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Pre-Appeal Judge

Registrar: Mr. Adama Dieng

Decision of: 8 July 2009

ICTR Appeals Chamber  
Date: 08<sup>th</sup> July 2009  
Action: A *Judicial*  
Copied To: *Concerned Judges, SLOs, LOS, ALOS, Parties, CRIS, LSS.*

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SIMÉON NCHAMIHIGO

v.

THE PROSECUTOR

Case No. ICTR-2001-63-A

2009 JUL -9 A 8: 23  
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JUDICIAL

**DECISION ON DEFENCE MOTION FOR A FRENCH TRANSLATION OF THE PROSECUTOR'S RESPONDENT'S BRIEF AND FOR EXTENSION OF TIME FOR THE FILING OF THE REPLY BRIEF**

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

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SIGNATURE: *[Signature]* DATE: *08 July 2009*

ICTR  
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- 9 JUL 2009  
ACTION: APPEALS  
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664/H

1. **I, FAUSTO POCAR**, Judge of 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 ("Tribunal") and Pre-Appeal Judge in this case,<sup>1</sup> am seized of a motion filed on 3 July 2009 by Siméon Nchamihigo ("Appellant") requesting a French translation of the Prosecutor's Respondent's Brief and an extension of time to file a Reply Brief.<sup>2</sup> The Prosecution does not object to the Motion.<sup>3</sup>

2. On 12 November 2008, Trial Chamber III convicted the Appellant of nine charges of genocide, two charges of murder as a crime against humanity, four charges of extermination as a crime against humanity and one charge of other inhumane acts as a crime against humanity,<sup>4</sup> and sentenced him to life imprisonment.<sup>5</sup>

3. The Appellant filed his Second Revised Notice of Appeal on 11 May 2009<sup>6</sup> and his Appellant's Brief on 20 May 2009.<sup>7</sup> The Prosecution filed its Respondent's Brief on 29 June 2009.<sup>8</sup> The Appellant asserts that the working language of his defence team is French,<sup>9</sup> and that although his native language is *Kinyarwanda*, he has a good knowledge of the French language.<sup>10</sup> The Appellant claims that he has the right to understand the Prosecution's arguments in a language with which he is familiar, especially given the length of the Respondent's Brief.<sup>11</sup> He therefore requests an extension of time to file his Reply Brief within 15 days from the filing of the French translation of the Respondent's Brief.<sup>12</sup>

<sup>1</sup> Order Designating a Pre-Appeal Judge, 29 April 2009.

<sup>2</sup> *Requête demandant la traduction Française du mémoire du procureur [sic]*, 2 July 2009 ("Motion").

<sup>3</sup> See Prosecution Response to Nchamihigo's "*Requête demandant la traduction française du mémoire du procureur*", 7 July 2009 ("Prosecution Response"), paras. 3, 6.

<sup>4</sup> *The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-01-63-T, Judgement and Sentence, 12 November 2008, para. 395 ("Trial Judgement").

<sup>5</sup> Trial Judgement, para. 396.

<sup>6</sup> *Acte d'appel de la défense révisé*, 11 May 2009 ("Second Revised Notice of Appeal"). On 11 November 2008, the Appeals Chamber granted the Appellant permission to file his notice of appeal thirty days from the date of the filing of the French version of the Trial Judgement in this case (See Decision on Motions for Extension of Time for Filing of Notices of Appeal, 11 November 2008). The Appellant filed his original notice of appeal confidentially on 6 March 2009 (*Acte d'Appel de la Défense*, 6 March 2009). Pursuant to the Appeals Chamber Decision on Prosecution Motion on the Filing of the Defence Notice of Appeal, 30 March 2009, the Appellant filed a first Revised Notice of Appeal on 14 April 2009 (*Acte d'Appel Révisé de la Défense*, 14 April 2009) ("Revised Notice of Appeal"). The Revised Notice of Appeal was invalidated by the Decision on Prosecution Motion on the Filing of the Defence Revised Notice of Appeal, 29 April 2009. The Appellant subsequently filed his Second Revised Notice of Appeal.

<sup>7</sup> *Mémoire d'appel de la défense*, 20 May 2009 ("Appellant's Brief"); *Corrigendum au Mémoire d'appel de la Défense*, 24 June 2009 ("Second Corrigendum"), filed pursuant to the Order on Appellant's Submissions, 9 June 2009.

<sup>8</sup> The Prosecutor's Respondent's Brief, 29 June 2009 ("Respondent's Brief").

<sup>9</sup> Motion, para. 3.

<sup>10</sup> *Ibid.* para. 4.

<sup>11</sup> *Ibid.* para. 7.

<sup>12</sup> *Ibid.* para. 10.

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4. According to Rule 113 of the Rules of Procedure and Evidence of the Tribunal ("Rules"), the Reply brief is to be filed 15 days after the Respondent's brief, which in this case would be 15 July 2009.<sup>13</sup> Rule 116(A) of the Rules allows the Pre-Appeal Judge to extend a time limit upon a showing of good cause. In support of the Motion, the Appellant points primarily to Article 31 of the Statute and Articles 2, 10, and 11 of the Universal Declaration of Human Rights.<sup>14</sup>

5. The Tribunal's deadlines for the filing of briefs pursuant to the Rules are essential to ensure the expeditious preparation of the case.<sup>15</sup> Extensions of time for the purpose of translation are generally accorded only where an appellant's counsel works in a language other than the one in which the Prosecution filed its submissions.<sup>16</sup> In limited cases, an extension of time has also been granted for the translation of the Prosecution's submissions into French, even where an appellant's counsel works in English. Normally, this occurs where the extension will not impact the overall time dedicated to considering the appeal.<sup>17</sup>

6. The Appellant's Counsel and Co-Counsel work in both French and English<sup>18</sup> and are therefore able to discuss the contents of the Respondent's Brief with the Appellant.<sup>19</sup> In addition, the Reply Brief is the only remaining submission to be filed in this appeal, and the appeals hearing in this case is expected to be held at the end of September 2009. Therefore, any extension of time may adversely impact the ability of the Appeals Chamber to hear this case in a timely manner.

7. The Appellant has made only general arguments about the need for a French translation of the Respondent's Brief, and an extension of time to file his Reply Brief. Because of the general nature of these arguments, which are not based on binding jurisprudence of the Tribunal, and the fact that the Appellant's Counsel and Co-Counsel can work in both English and French, the

<sup>13</sup> The Respondent's Brief was served electronically on the Defence on 30 June 2009.

<sup>14</sup> Motion, paras. 8, 9. Specifically, the Appellant refers to the following portions of Articles 2, 10, and 11 of the Universal Declaration of Human Rights, which state, respectively, and in relevant part that: (1) "[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as...language..."; (2) "[e]veryone is entitled in full equality to a fair and public hearing..."; and (3) "[e]veryone charged with a penal offence has the right to...all the guarantees necessary for his defence."

<sup>15</sup> *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-01-73-A, Decision on Protais Zigiranyirazo's Motion for an Extension of Time for the Filing of the Reply Brief, 3 July 2009, ("*Zigiranyirazo Decision*"), para. 6.

<sup>16</sup> See, e.g., *Zigiranyirazo Decision*, para. 5; *The Prosecutor v. Emmanuel Rukundo*, Case No. 2001-70-A, Decision on Motions for Extension of Time, 25 March 2009, p. 3.

<sup>17</sup> *Zigiranyirazo Decision*, para. 6.

<sup>18</sup> See "*Formulaire IL 2*" signed on 29 January 2002 by Counsel Denis Turcotte and "*Formulaire IL 2*" signed on 9 August 2007 by Co-Counsel Nathalie Leblanc, transmitted to the Appeals Chamber by the Registry on 6 July 2009, where both Counsel indicate that their mother tongue is French and that they have a good working knowledge of the English language.

<sup>19</sup> When the Appeals Chamber delivered its Decision on the Notices of Appeal (*The Prosecutor v. Simón Nchamihigo*, Case No. ICTR-2001-63-A, Decision on Motions for Extension of Time for Filing of Notices of Appeal, 11 November 2008), it was not informed that Counsel Denis Turcotte had indicated in "*Formulaire IL 2*" that he had a good knowledge of the English language. In addition, since then, Ms. Nathalie Leblanc, who is also able to work in English, has been appointed Co-Counsel.

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Appeals Chamber does not consider that the Appellant has established good cause under Rule 116(A) of the Rules.

8. In any event, a French translation of the Respondent's Brief is expected to be available prior to the appeals hearing. The Appellant will therefore have the opportunity to review it and to provide any additional instruction to his counsel, if necessary. Any additional matters arising from such a review can be raised during the hearing or, on good cause shown, through a motion to amend the Reply Brief.

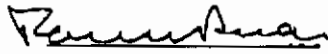
9. For the foregoing reasons, the Appellant has not demonstrated good cause for an extension of time for the filing of his Reply Brief, and, accordingly, the Motion is **DENIED**. The Appellant's counsel is reminded that the filing date for the Reply Brief, if any, is 15 July 2009.

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

Done this 8th day of July 2009,  
At The Hague,  
The Netherlands.



[Seal of the Tribunal]

  
Judge Fausto Pocar  
Pre-Appeal Judge