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UNITED NATIONS
NATIONS UNIES

Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-00-55B-A

28 February 2011

{26/H - 23/H}

26H

EX

IN THE APPEALS CHAMBER

Before:

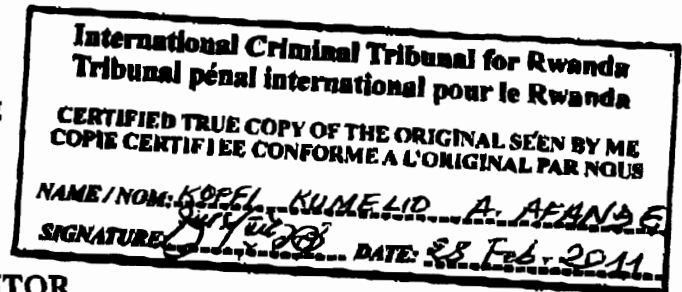
Judge Fausto Pocar, Pre-Appeal Judge

Registrar:

Mr. Adama Dieng

Decision of:

28 February 2011



THE PROSECUTOR

v.

ILDEPHONSE HATEGEKIMANA

Case No. ICTR-00-55B-A

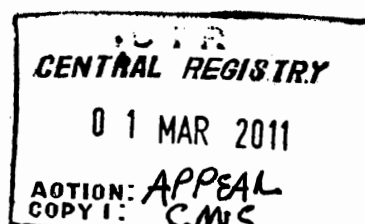
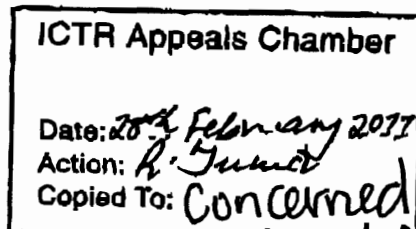
**DECISION ON ILDEPHONSE HATEGEKIMANA'S SECOND MOTION FOR
EXTENSION OF TIME FOR THE FILING OF THE NOTICE OF APPEAL**

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. James J. Arguin
Mr. Alphonse Van
Mr. Alfred Orono
Ms. Amina Justine Buruma
Mr. Leo Nwoye

Counsel for Ildephonse Hategekimana:

Mr. Jean de Dieu Momo



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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 ("Appeals Chamber" and "Tribunal", respectively) and Pre-Appeal Judge in this case, am seised of a motion filed on 21 February 2011 by Mr. Ildephonse Hategekimana for an extension of time to file his notice of appeal.¹ The Prosecution has not yet responded.²

2. On 6 December 2010, Trial Chamber II of the Tribunal convicted Mr. Hategekimana of genocide and murder and rape as crimes against humanity and sentenced him to imprisonment for the remainder of his life.³ The written Trial Judgement was filed in English on 14 February 2011, and the filing of the French version is anticipated around 9 May 2011. The Appeals Chamber has previously held that the 30-day time limit to file a notice of appeal runs from the date of the filing of the written trial judgement.⁴ Therefore, the deadline for the filing of Mr. Hategekimana's notice of appeal is 16 March 2011.

3. Mr. Hategekimana requests that the 30-day time limit for filing his notice of appeal commence only after the filing of the French translation of the Trial Judgement.⁵ He further requests that the French translation be communicated as soon as possible.⁶ Mr. Hategekimana's submits that he is unable to understand or work in English and that his Lead Counsel does not have sufficient mastery of English to understand the subtleties of legal language.⁷ Furthermore, Mr. Hategekimana notes that his entire Defence team was replaced after the close of his trial and that he has had only limited contact with the new Defence team to discuss the case.⁸ In addition, Mr. Hategekimana notes that the Registry did not allow him to have a Co-Counsel for the appeal proceedings.⁹ In view of foregoing, as well as the finality of an appeal, Mr. Hategekimana submits

¹ *Requête en extrême urgence aux fins de prorogation des délais de dépôt de l'Acte d'appel en vertu des articles 108bis et 116 du Règlement*, 21 February 2011 ("Motion").

² I consider that the Prosecution will not be prejudiced by the outcome of this decision and that it is in the interests of justice to render this decision without awaiting the Prosecution's response to the Motion.

³ T. 6 December 2010 p. 12. See also *The Prosecutor v. Ildephonse Hategekimana*, Case No. ICTR-00-55B-T, Judgement and Sentence, dated 6 December 2010 and filed on 14 February 2011 ("Trial Judgement"), paras. 697, 721, 729, 730, 748.

⁴ Decision on Ildephonse Hategekimana's Motion for Extension of Time for the Filing of the Notice of Appeal, 20 January 2011 ("Decision of 20 January 2011"), para. 3. See also *The Prosecutor v. Ephrem Setako*, Case No. ICTR-04-81-A, Decision on the Prosecution's Motion to Dismiss Ephrem Setako's Notice of Appeal, 2 July 2010, para. 12.

⁵ Motion, para. 28.

⁶ Motion, para. 28.

⁷ Motion, paras. 16-19, 22.

⁸ Motion, paras. 7-13, 21, 22.

⁹ Motion, para. 12.

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that it is essential that he review the French version of the Trial Judgement in order to instruct his counsel with respect to the filing of the notice of appeal.¹⁰

4. Rule 116(A) of the Tribunal's Rules of Procedure and Evidence ("Rules") allows for the extension of time of any deadline on a showing of good cause. Rule 116(B) of the Rules provides that the requirement for good cause is satisfied "[w]here the ability of the accused to make full answer and Defence depends on the availability of a decision in an official language other than that in which it was originally issued".

5. The filing of a notice of appeal marks the commencement of the appeal proceedings in a case and, since the time limits for the filing of the subsequent briefs are calculated from the date on which the notice of appeal is filed, any delay at such an early stage will affect subsequent filings.¹¹ In practice, Rule 116(B) of the Rules does not provide a basis for an extension of time for the filing of a notice of appeal where the convicted person's counsel can work in the language in which the Trial Judgement was pronounced.¹²

6. The determination of potential grounds of appeal falls primarily within the purview of counsel.¹³ Mr. Hategekimana's Lead Counsel has indicated that he has a good understanding of English.¹⁴ He has had more than six months to familiarize himself with the trial record since his assignment to this case on 16 August 2010.¹⁵ He has also been generally aware of the basis of Mr. Hategekimana's convictions since the pronouncement of the Trial Judgement more than two months ago on 6 December 2010, allowing an even more focused review.

7. Accordingly, even though the Lead Counsel did not participate in the trial proceedings, he should be reasonably well placed to discuss the contents of the Trial Judgement with Mr. Hategekimana as well as any possible grounds of appeal. While according to Mr.

¹⁰ Motion, paras. 15, 16, 21, 22, 25, 26.

¹¹ See, e.g., *Callixte Kalimanzira v. The Prosecutor*, Case No. ICTR-05-88-A, Decision on Callixte Kalimanzira's Motion for an Extension of Time for the Filing of Notice of Appeal, 20 July 2009 ("Kalimanzira Appeal Decision"), para. 5; *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-A, Decision on Anatole Nsengiyumva's Motion for Extension of Time for Filing Appeal Submissions, 2 March 2009 ("Bagosora et al. Appeal Decision"), p. 4; *François Karera v. The Prosecutor*, Case No. ICTR-01-74-A, Decision on François Karera's Motion for Extension of Time for Filing the Notice of Appeal, 31 December 2007 ("Karera Appeal Decision"), p. 10/H (Registry's pagination).

¹² See, e.g., *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-A, Decision on Tharcisse Renzaho's Motion for Extension of Time for the Filing of Notice of Appeal and Brief in Reply, 22 September 2009 ("Renzaho Appeal Decision"), paras. 4, 5; *Kalimanzira Appeal Decision*, paras. 5, 6; *Bagosora et al. Appeal Decision*, pp. 4, 5; *Karera Appeal Decision*, pp. 10/H, 9/H (Registry's pagination).

¹³ See, e.g., *Renzaho Appeal Decision*, para. 5; *Kalimanzira Appeal Decision*, para. 6; *Bagosora et al. Appeal Decision*, p. 5; *Karera Appeal Decision*, p. 9/H (Registry's pagination).

¹⁴ Decision of 20 January 2011, para. 4. In addition, in a form filed with the Registry, Mr. Hategekimana's Lead Counsel answered, "Yes of course" in response to the question of whether he had previously used English as a working language. See *Formulaire ILI* for Jean de Dieu Momo, received by the Registry on 30 October 2002.

¹⁵ See Correspondence from Defence Counsel and Detention Management Section to Mr. Jean de Dieu Momo, Ref. No. ICTR-JUD-11-5-2-10-1407-lw, 16 August 2010.

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Hategekimana contact with his Lead Counsel has been limited, Mr. Hategekimana has not identified any current impediment to such consultations. In the present circumstances, Mr. Hategekimana has not demonstrated good cause for an extension of time to file his notice of appeal. If application is made after the Trial Judgement becomes available in French and good cause is shown, leave may be granted to vary the grounds of appeal according to Rule 108 of the Rules.


8. For the foregoing reasons, the Motion is **DENIED**.

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

Done this 28th day of February 2011,
at The Hague,
The Netherlands.



[Seal of the Tribunal]


Judge Fausto Pocar
Pre-Appeal Judge