

018

UNITED NATIONS
NATIONS UNIESTribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda66/H
ICTR-00-56-A
11th July 2011
{66/H - 57/H}IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Pre-Appeal Judge

Registrar: Mr. Adama Dieng

Decision of: 11 July 2011

ICTR Appeals Chamber

Date: 11th July 2011

Action: R. Guma

Copied To: Concerned

Augustin NDINDILIYIMANA
Augustin BIZIMUNGU
François-Xavier NZUWONEMEYE
Innocent SAGAHUTUJudges, Parties,
Judicial Archives,
LOs, LSS
P. Guma

v.

THE PROSECUTOR

Case No. ICTR-00-56-A

DECISION ON MOTIONS FOR EXTENSION OF TIME FOR
THE FILING OF APPEAL SUBMISSIONSDefence Counsel:Mr. Christopher Black for Augustin Ndingiliyimana
Mr. Gilles St-Laurent for Augustin Bizimungu
Mr. Charles A. Taku for François-Xavier Nzuwonemeye
Mr. Fabien Segatwa for Innocent SagahutuICTR
CENTRAL REGISTRY

12 JUL 2011

ACTION: APPEALS/CMS
COPY 1:The Office of the Prosecutor:Mr. Hassan Bubacar Jallow
Mr. James J. Arguin
Mr. William Egbe
Mr. Abubacar TambadouInternational Criminal Tribunal for Rwanda
Tribunal pénal international pour le RwandaCERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS

NAME / NOM: KAEFI KUMELIO A. AFANDE

SIGNATURE: [Signature] DATE: 11 July 2011

65/H

1. I, Patrick Robinson, Presiding 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 six motions filed by Mr. François-Xavier Nzuwonemeye,¹ Mr. Innocent Sagahutu,² Mr. Augustin Ndindiliyimana,³ Mr. Augustin Bizimungu,⁴ and the Prosecution⁵ for an extension of time to file their appeal submissions. The Prosecution responded to Mr. Ndindiliyimana's Motion.⁶ Mr. Nzuwonemeye responded to the Prosecution's Motion.⁷ No replies were filed.

A. Procedural Background

2. On 17 May 2011, Trial Chamber II of the Tribunal ("Trial Chamber") convicted all four accused in the *Ndindiliyimana et al.* case of murder as a crime against humanity and as a violation of Article 3 common to the Geneva Conventions and Additional Protocol II.⁸ In addition, the Trial Chamber convicted Mr. Ndindiliyimana and Mr. Bizimungu of genocide and extermination as a crime against humanity⁹ and convicted Mr. Bizimungu of rape as a crime against humanity and as a violation of Article 3 common to the Geneva Conventions and Additional Protocol II.¹⁰ The Trial

¹ Nzuwonemeye [sic] Motion for Extension to File Notice of Appeal Pursuant to Rule 116 of the Rules of Procedure and Evidence, and Article 31, ICTR Statute, 24 May 2011 (confidential) ("Nzuwonemeye's Motion").

² *Requête d'Innocent Sagahutu aux fins de report des délais prévus aux articles 108, 111, 112 et 113 du Règlement de procédure et de preuve conformément à l'article 116 (A) et (B) du Règlement et l'article 31 du Statut*, 24 May 2011 ("Sagahutu's Motion").

³ Ndindiliyimana's Application for Extension of Time to File a Notice of Appeal, 1 June 2011 ("Ndindiliyimana's Motion").

⁴ *Requête du Général Augustin Bizimungu en extension des délais de production de son acte d'appel et de son mémoire de l'appelant conformément à l'article 116 du Règlement de procédure et de preuve et de l'article 31 du Statut*, 23 June 2011 ("Bizimungu's Motion"). Mr. Bizimungu also filed his *Requête du Général Augustin Bizimungu afin que lui soient réservés ses droits à présenter une requête en prorogation des délais de production de son acte d'acte [sic] d'appel et de son mémoire en appel, conformément à l'article 116 du Règlement de procédure et de preuve et de l'article 31 du Statut, suivant le dépôt du Jugement écrit à intervenir portant sur sa condamnation et sur sa sentence*, 15 June 2011, to which the Prosecution responded. See Prosecutor's Response to Augustin Bizimungu's Application to Reserve [sic] his Right to File a Motion for Extension of Time to File a Notice of Appeal and Appeal Brief, 20 June 2011. In light of the filing of the written Trial Judgement, Mr. Bizimungu withdrew this motion. See Bizimungu's Motion, para. 5.

⁵ Prosecutor's Motion for Extension of Time to File a Notice of Appeal and for a Consolidated Briefing Schedule, 22 June 2011 ("Prosecution's Motion").

⁶ Prosecutor's Response to Augustin "Ndindiliyimana's Application for Extension of Time to File a Notice of Appeal", 8 June 2011 ("Prosecution Response").

⁷ Nzuwonemeye Defence Response to Prosecutor's Motion for Extension of Time to File a Notice of Appeal and for a Consolidated Briefing Schedule, filed 22 June 2011, 24 June 2011 ("Nzuwonemeye Response"). Mr. Sagahutu, Mr. Ndindiliyimana, and Mr. Bizimungu did not file a response to the Prosecution's Motion.

⁸ T. 17 May 2011 pp. 23-25. See also *The Prosecutor v. Augustin Ndindiliyimana et al.*, Case No. ICTR-00-56-T, Judgement and Sentence, dated 17 May 2011 and filed on 17 June 2011 ("Trial Judgement"), paras. 71, 73, 75, 77, 2106-2108, 2152-2157, 2163.

⁹ T. 17 May 2011 pp. 23, 24. See also Trial Judgement, paras. 71, 73, 2085, 2119, 2120, 2163.

¹⁰ T. 17 May 2011 p. 24. See also Trial Judgement, paras. 73, 2128, 2162, 2163.

64/H

Chamber sentenced Mr. Bizimungu to 30 years of imprisonment and Mr. Nzuwonemeye and Mr. Sagahutu to 20 years of imprisonment.¹¹ It sentenced Mr. Ndindiliyimana to the time-served and ordered his immediate release.¹² The written Trial Judgement was filed in English on 17 June 2011, and the filing of the French version is not anticipated before the end of March 2012.

B. Applicable Law

3. 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".

4. The Appeals Chamber has held that the 30-day time limit to file the notice of appeal runs from the date of the filing of the written Trial Judgement.¹³ Therefore, the deadline for the notices of appeal of the parties in this case should normally be filed no later than 18 July 2011. Under Rule 111 of the Rules, the parties' Appellant's briefs shall be filed within 75 days of filing of the notice of appeal.¹⁴

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.¹⁵ In accordance with the practice of the Tribunal, 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.¹⁶ This provision may,

¹¹ T. 17 May 2011 p. 26. See also Trial Judgement, paras. 79, 2266, 2268, 2269.

¹² T. 17 May 2011 pp. 25, 26. See also Trial Judgement, paras. 79, 2267, 2272.

¹³ *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, 28 February 2011 ("*Hategekimana* Appeal Decision of 28 February 2011"), para. 2; *The Prosecutor v. Yussuf Munyakazi*, Case No. ICTR-97-36A-A, Decision on Yussuf Munyakazi's Motion for an Extension of Time for the Filing of the Notice of Appeal, 22 July 2010 ("*Munyakazi* Appeal Decision of 22 July 2010"), para. 4; *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.

¹⁴ Where limited to sentencing, the Appellant's brief shall be filed within 30 days of the filing of the notice of appeal. See Rule 111(A) of the Rules.

¹⁵ 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 of 20 July 2009"), para. 5; *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-A, Decision on Anatole Ngegyumva's Motion for Extension of Time for Filing Appeal Submissions, 2 March 2009 ("*Bagosora et al.* Appeal Decision of 2 March 2009"), 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, 21 December 2007 ("*Karera* Appeal Decision of 21 December 2007"), Registry pagination ("r. p.") 10/H.

¹⁶ 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 of 22 September 2009"), paras. 4, 5; *Kalimanzira* Appeal Decision of 20 July 2009, paras. 5, 6; *Callixte*

63/H

however, provide a basis for an extension of time, upon request, for the filing of the convicted person's Appellant's brief pending the translation of the trial judgement into a working language of the Tribunal which he understands.¹⁷

C. Discussion

1. Nzuwonemeye's and Ndindiliyimana's Motions for Extension of Time to File Their Notices of Appeal

6. Mr. Nzuwonemeye submits that, unlike his Counsel who works in English, he is francophone and that he is therefore not in a position to instruct his Counsel on the preparation of his notice of appeal in the absence of the French translation of the Trial Judgement.¹⁸ Consequently, he requests that the 30-day time limit to file his notice of appeal commence after the filing and service of the French translation of the Trial Judgement.¹⁹ In support of his request, Mr. Nzuwonemeye points to several decisions of the Appeals Chamber allowing extensions of time for a notice of appeal in cases of francophone convicted persons even when counsel of the convicted person worked in English.²⁰

7. Mr. Ndindiliyimana requests a 30-day extension of time to file his notice of appeal from the filing of the French translation of the Trial Judgement.²¹ While his Counsel reads and understands English, according to the request, Mr. Ndindiliyimana "does not have sufficient understanding or command of the English language" to understand the Trial Judgement.²² Thus, Mr. Ndindiliyimana argues that he cannot instruct his Counsel on whether an appeal against his convictions is warranted and, if so, discuss the possible grounds of appeal in the absence of the French translation of the Trial Judgement.²³ In support of his request, Mr. Ndindiliyimana points to several decisions of the

Kalimanzira v. The Prosecutor, Case No. ICTR-05-88-A, Decision on Callixte Kalimanzira's Motion for Leave to File an Amended Notice of Appeal and for an Extension of Time for the Filing of his Appellant's Brief, 31 August 2009, para. 5. See also *Siméon Nchamihigo v. The Prosecutor*, Case No. ICTR-2001-63-A, 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, 8 July 2009, para. 6, n. 19 (noting that in granting an extension of time for the appellant's notice of appeal the Appeals Chamber had not yet been informed that the French speaking Counsel had good knowledge of and ability to work in English).

¹⁷ See, e.g., *The Prosecutor v. Ephrem Setako*, Case No. ICTR-04-81-A, Decision on Ephrem Setako's Motion for Extension of Time for the Filing of Appellant's Brief, 2 July 2010, para. 5; *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 Appellant's Brief, 21 October 2009, para. 4; *Renzaho Appeal Decision* of 22 September 2009, para. 4.

¹⁸ Nzuwonemeye's Motion, paras. 2, 13-17, referring to Article 20 of the Statute.

¹⁹ Nzuwonemeye's Motion, para. 1, p. 5.

²⁰ Nzuwonemeye's Motion, paras. 12, 13.

²¹ Ndindiliyimana's Motion, paras. 1, r. p. 16/A. Given the filing of the written Trial Judgement on 17 June 2011, Mr. Ndindiliyimana's request that the 30-day time limit for filing his notice of appeal commence after the filing of the Trial Judgement is now moot. See Ndindiliyimana's Motion, paras. 2, 16; Prosecution Response, paras. 2, 5.

²² Ndindiliyimana's Motion, para. 3.

²³ Ndindiliyimana's Motion, paras. 3, 15 (referring to Article 20 of the Statute), 16.

62/H

Appeals Chamber allowing an extension of time for a francophone convicted person's notice of appeal or briefs even when the convicted person's counsel works in English.²⁴

8. The Prosecutor responds that Ndindiliyimana's Motion is unfounded and should be dismissed.²⁵ It submits that the jurisprudence cited by Mr. Ndindiliyimana concerns situations in which both counsel for a convicted person and the convicted person are francophone.²⁶ According to the Prosecution, this is unlike Mr. Ndindiliyimana's situation where his Counsel works in English and therefore can discuss any possible grounds of appeal with him.²⁷

9. It follows from Nzuwonemeye's Motion that Mr. Nzuwonemeye's Counsel can work in English.²⁸ Likewise, Mr. Ndindiliyimana's Counsel also works in English.²⁹ Therefore, both Counsel are able to understand the Trial Judgement in its original language and discuss its contents as well as any possible grounds of appeal with Mr. Nzuwonemeye and Mr. Ndindiliyimana, respectively. In this respect, it is to be recalled that the determination of potential grounds of appeal falls primarily within the purview of Counsel, and that, 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 under Rule 108 of the Rules.³⁰

10. For these reasons, Mr. Nzuwonemeye and Mr. Ndindiliyimana have not demonstrated good cause for an extension of time for the filing of their notices of appeal.

2. Sagahutu's Motion for Extension of Time to File His Appeal Submissions

11. Mr. Sagahutu submits that he and his Counsel only work in French.³¹ Accordingly, Mr. Sagahutu submits that he should be accorded sufficient time to prepare his appeal after the filing of the French translation of the Trial Judgement.³² Based on the foregoing, Mr. Sagahutu requests the Appeals Chamber to extend the time for the filing of: (i) his notice of appeal to 30 days from the filing of the French translation of the Trial Judgement; (ii) his Appellant's brief to 75 days from the

²⁴ See Ndindiliyimana's Motion, paras. 12-14.

²⁵ Prosecution Response, paras. 2, 9.

²⁶ Prosecution Response, paras. 6, 7.

²⁷ Prosecution Response, paras. 6, 7.

²⁸ Nzuwonemeye's Motion, para. 13. See also Mr. Taku's Curriculum Vitae where he indicated that he is fluent in both English and French.

²⁹ Ndindiliyimana's Motion, para. 3. See also Form JL1 filed by Mr. Black on 18 January 2000 stating that his mother tongue is English and he can work in French.

³⁰ See, e.g., *Dominique Ntawukulilyayo v. The Prosecutor*, Case No. ICTR-05-82-A, Decision on Dominique Ntawukulilyayo's Motion for Extension of Time for Filing Appeal Submissions, 24 August 2011 ("Ntawukulilyayo Appeal Decision of 24 August 2011"), para. 7; *Munyakazi* Appeal Decision of 22 July 2010, para. 6; *Renzaho* Appeal Decision of 22 September 2009, para. 5; *Kalimanzira* Appeal Decision of 20 July 2009, para. 6; *Bagosora et al.* Appeal Decision of 2 March 2009, p. 5; *Karera* Appeal Decision of 21 December 2007, r. p. 9/H.

³¹ Sagahutu's Motion, paras. 3, 11, 16, 27.

³² Sagahutu's Motion, paras. 25-27 (referring to, *inter alia*, Article 31 of the Statute and to Rule 116(B) of the Rules), 29-32 (referring to Articles 19 and 20 of the Statute).

61/H

filing of his notice of appeal; (iii) his Response brief to 40 days from the French translation of the Prosecution's Appellant's brief; and (iv) his Reply brief to 15 days from the French translation of the Prosecution's Response brief.³³ In support of his request, he points to several decisions of the Appeals Chamber allowing extensions of time for a convicted person's notice of appeal or briefs.³⁴

12. As neither Mr. Sagahutu nor his Counsel work in English,³⁵ Mr. Sagahutu's ability to make full answer and defence depends on the availability of the French translation of the Trial Judgement for the preparation of his notice of appeal and Appellant's brief.³⁶ Accordingly, Mr. Sagahutu has established "good cause" within the meaning of Rule 116 of the Rules for extending the deadline for the filing of his notice of appeal to 30 days from the date of the filing of the French version of the Trial Judgement and for the filing of his Appellant's brief to 30 or 75 days from the date of the filing of the notice of appeal, depending on whether his appeal is limited solely to sentencing, as envisioned in Rule 111(A) of the Rules. However, these time limits may be reconsidered in light of any subsequent changes in the composition of Mr. Sagahutu's Defence team.³⁷

13. Since it is not clear in which language the Prosecution will file its briefs, Mr. Sagahutu's requests to be accorded extensions for the filing of his Response and Reply briefs pending receipt of the French translation of the Prosecution's Appellant's and Response briefs are premature.³⁸

3. Bizimungu's Motion for Extension of Time to File His Notice of Appeal and Appellant's Brief

14. Mr. Bizimungu contends that, since he only understands French,³⁹ the unavailability of the French translation of the Trial Judgement prevents him from instructing his Counsel on the

³³ Sagahutu's Motion, paras. 4, 5 (referring to paragraph 12 of the Practice Direction on Formal Requirements for Appeals from Judgment, 15 June 2007 ("Practice Direction")), pp. 7, 8. In addition, Mr. Sagahutu contends that his request for extensions of time should be allowed due to the unavailability of the written Trial Judgement. See Sagahutu's Motion, paras. 11, 16-24. However, in light of the filing of the written Trial Judgement on 17 June 2011, this particular request is moot.

³⁴ Sagahutu's Motion, para. 28. In particular, Mr. Sagahutu refers to the extensions granted by the Appeals Chamber in the *Jean de Dieu Kamuhanda* case. See Sagahutu's Motion, para. 33, referring to *Jean de Dieu Kamuhanda v. The Prosecutor*, Case No. ICTR-99-54A-A, Decision on Motion for Extension of Time for Filing of Notice of Appeal and Appellant's Brief Pursuant to Rules 108, 111, 115 and 116 of the Rules of Procedure and Evidence, 8 March 2004.

³⁵ Sagahutu's Motion, paras. 3, 11, 16, 27. See also Form IL1 filed by Mr. Segatwa on 12 May 1999 where he indicated that he cannot work in English.

³⁶ See, e.g., *Théoneste Bagosora v. The Prosecutor*, Case No. ICTR-98-41B-A, Decision on Théoneste Bagosora's Motion for Extension of Time for Filing Appeal Submissions, 15 January 2009, p. 3; *The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-A, Decision on Motions for Extension of Time, 25 March 2009, p. 3; *The Prosecutor v. Siméon Nchamthigo*, Case No. ICTR-2001-63-A, Decision on Motions for Extension of Time for Filing of Notices of Appeal, 11 November 2008, pp. 2, 3.

³⁷ See, e.g., *The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-01-70-A, Decision on the Filing of Emmanuel Rukundo's Reply Brief, 22 April 2010, para. 5.

³⁸ See, e.g., *The Prosecutor v. Ildephonse Hategekimana*, Case No. ICTR-00-55B-A, Decision on Ildephonse Hategekimana's Motion for Extension of Time for the Filing of the Notice of Appeal, 20 January 2011, para. 4.

³⁹ Bizimungu's Motion, para. 4.

60/H

preparation of his defence against the Trial Judgement.⁴⁰ Mr. Bizimungu submits that, although his Counsel has good knowledge of English, the Counsel works solely in French, which should be the only criterion for the Appeals Chamber's determination whether Mr. Bizimungu can properly prepare his appeal.⁴¹ Mr. Bizimungu therefore requests a 30-day extension of time to file his notice of appeal from the filing of the French translation of the Trial Judgement.⁴² He further requests a 75-day extension of time to file his Appellant's brief from the filing of his notice of appeal.⁴³ In the alternative, in the event that his request for an extension of time for the filing of his notice of appeal is denied, he seeks a 75-day extension of time to file his Appellant's brief from the filing of the French translation of the Trial Judgement.⁴⁴

15. It follows from Mr. Bizimungu's submissions as well as information provided by the Registry that his Counsel has a "very good" knowledge of English.⁴⁵ Therefore, he is able to understand the Trial Judgement in its original language and discuss its contents and any possible grounds of appeal with Mr. Bizimungu. In this respect, as recalled above, the determination of potential grounds of appeal falls primarily within the purview of Counsel; and, 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 under Rule 108 of the Rules.⁴⁶ Therefore, Mr. Bizimungu fails to show good cause for an extension of time to file his notice of appeal.

16. However, it is in the interests of justice to allow Mr. Bizimungu adequate time to read the Trial Judgement in a language he understands and to consult with his Counsel before filing his Appellant's brief.⁴⁷ Accordingly, good cause exists to grant an extension of time for the filing of

⁴⁰ Bizimungu's Motion, paras. 4, 15-17 (referring to Rule 116 (B) of the Rule), 20-25, 31, 32 (referring to Article 20 of the Statute). Mr. Bizimungu further submits that several factors affect his ability to communicate with his Counsel and that constitute good cause. In that regard, he stresses the followings factors: his Lead Counsel resides on a different continent and is only authorised to have three paid missions to Arusha; aside from phone and postal mail communication, which are, according to Mr. Bizimungu, inefficient, he has no other means to communicate with his Counsel. See Bizimungu's Motion, paras. 20-25. Moreover, Mr. Bizimungu refers to several decisions from the Appeals Chamber allowing extensions of time for the filing of a convicted person's appeal submissions where the length of the extensions depended on the working language of both the convicted person and his counsel. See Bizimungu's Motion, paras. 28, 35-38.

⁴¹ Bizimungu's Motion, paras. 27, 30, 40. See also Bizimungu's Motion, para. 29, referring to *Ntawukulilyayo* Appeal Decision of 24 August 2010.

⁴² Bizimungu's Motion, para. 1, r. p. 41/A.

⁴³ Bizimungu's Motion, para. 2, r. p. 41/A.

⁴⁴ Bizimungu's Motion, paras. 3, 41, r. p. 41/A. In addition, Mr. Bizimungu further submits that the extensions requested will not entail undue delays in or cause prejudice to the fair and efficient conduct of the proceedings. See Bizimungu's Motion, para. 5.

⁴⁵ See Bizimungu's Motion, para. 27. See also Form IL2 filed by Mr. St-Laurent, on 27 February 2002.

⁴⁶ See, e.g., *Ntawukulilyayo* Appeal Decision of 24 August 2010, para. 7; *Munyakazi* Appeal Decision of 22 July 2010, para. 6; *Renzaho* Appeal Decision of 22 September 2009, para. 5; *Kalimanziru* Appeal Decision of 20 July 2009, para. 6; *Bagosora et al.* Appeal Decision of 2 March 2009, p. 5; *Karera* Appeal Decision of 21 December 2007, r. p. 9/H.

⁴⁷ See, e.g., *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-01-73-A, Decision on Protais Zigiranyirazo's Motion for an Extension of Time, 28 January 2009, p. 3; *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-70-

59/H

Mr. Bizimungu's Appellant's brief. Given that Mr. Bizimungu's Counsel works in English and he may commence the preparation of the appeal in consultation with Mr. Bizimungu before receiving the French translation of the Trial Judgement,⁴⁸ it is appropriate in this instance to allow an extension of time of 40 days from the date of filing of the French translation of the Trial Judgement for filing the Appellant's brief.

4. Prosecution's Motion for Extension of Time to File Its Notice of Appeal and Appellant's Brief and Its Request for a Uniform Briefing Schedule

17. The Prosecution requests an extension of time to file the notice of appeal within 60 days following the delivery of the written Trial Judgement and that the time limit for its Appellant's brief commence from the filing of its notice of appeal.⁴⁹ The Prosecution contends that good cause exists for granting the requested extensions given, *inter alia*, the length of the trial proceedings, the complexity of the case and the record upon which it was based.⁵⁰ Consequently, the Prosecution submits that it is "unrealistic" for it to prepare a "meaningful Notice of Appeal" within the prescribed time limit and in accordance with the Rules and the Practice Direction, which require carrying out an "extensive review" of the Trial Judgement.⁵¹

18. The Prosecution also requests a "uniform briefing schedule" for all parties in the instant case with respect to the filing of the notices of appeal and the Appellant's briefs.⁵²

19. Mr. Nzuwonemeye responds that the Prosecution's requests for extensions of time and for a uniform briefing schedule fail to take into account the absence of the French translation of the Trial Judgement, which violates his fair trial rights to adequately instruct his Counsel on the preparation of his appeal.⁵³ While Mr. Nzuwonemeye concurs with the Prosecution's submissions regarding the

14-A, Decision on Eliezer Niyitegeka's Motion for an Extension of Time for the Filing of his Notice of Appeal, 13 June 2003, p. 4.

⁴⁸ Bagosora *et al.* Appeal Decision of 2 March 2009, p. 5.

⁴⁹ Prosecution's Motion, paras. 3, 16, 17.

⁵⁰ Prosecution's Motion, paras. 3, 5, 6-12, referring to *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Joint Motion for Extension of Time to File Notice of Appeal, 25 June 2010; *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Decision on Motions for Extension of Time to File Notices of Appeal, 23 March 2009 ("Milutinović *et al.* Appeal Decision 23 March 2009"). The Prosecution specifies, *inter alia*, that the Trial Chamber pronounced its oral Judgement two years after the close of the case in June 2009; that the case concerns four senior members of the Rwandan Armed Forces during the genocide; that during the course of the five years of the trial 216 witnesses gave evidence, over 900 exhibits were tendered into evidence, and that the trial transcripts "comprises [sic] over 24, 600 pages", that the Trial Judgement is 569 pages long and "raises questions of law of general importance", and that the accused were convicted under various modes of liability. See Prosecution Motion, paras. 7-12.

⁵¹ Prosecution Motion, paras. 14, 15. In particular, the Prosecution points to an Appeals Chamber decision holding that it is in the interest of justice that the parties should have sufficient time to "prepare meaningful notices of appeal in full conformity with the applicable provisions." See Prosecution Response, para. 5 (emphasis omitted), quoting *Milutinović et al.* Appeal Decision of 23 March 2009, p. 4.

⁵² Prosecution's Motion, paras. 3, 18.

⁵³ Nzuwonemeye Response, paras. 1, 4, 6.

58/H

complexity of the case, he contends that its request for a uniform briefing schedule is "premature" since "the threshold fair trial issue of translation" has not been "remedied".⁵⁴

20. Although the Trial Judgement is lengthy and the case raises complex issues, since the pronouncement of the Trial Judgement more than a month ago on 17 May 2011, the Prosecution has been aware of the basis of the four convicted persons' convictions, which has allowed an opportunity for it to prepare any possible grounds of appeal.⁵⁵ Moreover, the Prosecution may seek leave to vary any grounds of appeal under Rule 108 of the Rules. Accordingly, the Prosecution has not demonstrated good cause for the extensions of time for the filing of its notice of appeal and Appellant's brief. There is also no merit in the request for a uniform briefing schedule as it does not take into consideration the individual circumstances of the parties in the present case.

D. Disposition

21. For the foregoing reasons, I hereby

DENY Nzuwonemeye's and Ndindiliyimana's Motions;

GRANT, in part, Sagahutu's Motion; and

ORDER Mr. Sagahutu to file

- his notice of appeal, if any, no later than 30 days from the date on which the French translation of the Trial Judgement is filed; and
- his Appellant's brief, if any, no later than 75 days from the date of the filing of his notice of appeal or 30 days from the notice of appeal if his appeal is limited solely to sentencing;

DENY Sagahutu's Motion in all other respects;

GRANT, in part, Bizimungu's Motion;

ORDER Mr. Bizimungu to file

- his Appellant's brief, if any, no later than 40 days from the date on which the French translation of the Trial Judgement is filed;

⁵⁴ Nzuwonemeye Response, paras. 3-5. Mr. Nzuwonemeye further submits that the uniform briefing schedule as formulated implies that both the Prosecution and the Defence are equally positioned. This, in Mr. Nzuwonemeye's view, is not the case since the Prosecution is not faced with translation problems, unlike the Defence. See Nzuwonemeye Response, para. 6.

⁵⁵ See, e.g., *Hutegekimana* Appeal Decision of 28 February 2011, para. 6.

57/H

DENY Bizimungu's Motion in all other respects; and


DENY the Prosecution's Motion in its entirety.

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

Done this 11th day of July 2011,
at The Hague,
The Netherlands.



[Seal of the Tribunal]


Judge Patrick Robinson
Pre-Appeal Judge