



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

7643/H

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ICTR-98-42-A

22nd April 2013

{7643/H -7640/H}

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Pre-Appeal Judge
Registrar: Mr. Bongani Majola
Decision of: 22 April 2013

ICTR Appeals Chamber
22 APR 2013
Date: *Chamber Defence*
Action: *OTR-AAA*
Copied To: *OPU*

THE PROSECUTOR

v.

Pauline NYIRAMASUHUKO
Arsène Shalom NTAHOBALI
Sylvain NSABIMANA
Alphonse NTEZIRYAYO
Joseph KANYABASHI
Élie NDAYAMBAJE

Case No. ICTR-98-42-A

**DECISION ON PROSECUTION'S MOTION FOR EXTENSION OF TIME
TO FILE ITS RESPONSE BRIEFS**

Counsel for Pauline Nyiramasuhuko
Nicole Bergevin and Guy Poupart

Counsel for Arsène Shalom Ntahobali
Normand Marquis and Mylène Dimitri

Counsel for Sylvain Nsabimana
Josette Kadji and Pierre Tientcheu Weledji

Counsel for Alphonse Nteziryayo
Titinga Frédéric Pacere and
Gershom Otachi Bw'Omanwa

Counsel for Joseph Kanyabashi
Michel Marchand and Alexandra Marcil

Counsel for Élie Ndayambaje
Pierre Boulé and Claver Sindayigaya

Office of the Prosecutor
Hassan Bubacar Jallow
James J. Arguin
Deborah Wilkinson

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS
NAME / NOM: **ROSETTE MUZIGO-MORRISON**
SIGNATURE: *[Signature]* DATE: **22/04/13**

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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;¹

NOTING the Trial Judgement pronounced in this case by Trial Chamber II of the Tribunal on 24 June 2011 and issued in writing in English on 14 July 2011;²

NOTING the appeal briefs filed by Ms. Pauline Nyiramasuhuko, Mr. Arsène Shalom Ntahobali, Mr. Sylvain Nsabimana, Mr. Alphonse Nteziryayo, Mr. Joseph Kanyabashi, and Mr. Élie Ndayambaje on 8 April 2013;³

NOTING that, pursuant to Rule 112 of the Rules of Procedure and Evidence of the Tribunal (“Rules”), the Prosecution shall file its consolidated response brief or separate response briefs within 40 days of the filing of the Appeal Briefs;

BEING SEISED OF the “Prosecution Urgent Motion for Extension of Time Limit” filed on 12 April 2013 (“Motion”), in which the Prosecution requests a 75-day extension of the time-limit, to 1 August 2013, for filing its responses to the Appeal Briefs;⁴

NOTING that the Prosecution submits, *inter alia*, that: (i) “[t]he complexity and size of the Trial Judgement and of the appeals, as well as the need to coordinate the prosecution’s response to six interrelated appellant’s briefs, establishes good cause” for the requested extension of time;⁵ (ii) the requested extension will not delay the proceedings;⁶ (iii) it is in the interests of justice “that the prosecution file the best pleading possible” and “have sufficient time to prepare meaningful respondent’s briefs”;⁷

¹ Order Assigning a Pre-Appeal Judge, 21 July 2011.

² *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Judgement and Sentence, delivered in public and signed on 24 June 2011, filed on 14 July 2011 (“Trial Judgement”).

³ *Mémoire d’appel de Pauline Nyiramasuhuko*, 8 April 2013 (confidential); *Mémoire d’appel d’Arsène Shalom Ntahobali*, 8 April 2013 (confidential); *Mémoire d’appel*, 8 April 2013; Confidential Appeal Brief on Behalf of Alphonse Nteziryayo, 8 April 2013 (confidential) (“Nteziryayo Appeal Brief”); *Mémoire d’appel de Joseph Kanyabashi*, 8 April 2013; *Mémoire d’appel d’Élie Ndayambaje*, 8 April 2013 (together “Appeal Briefs”).

⁴ Motion for Extension of Time, paras. 1, 10, 11.

⁵ Motion, para. 1. *See also ibid.*, paras. 2-4, 7, 10.

⁶ Motion, para. 6.

⁷ Motion, para. 7. *See also ibid.*, para. 10.

NOTING that Mr. Ntahobali does not object to the requested extension of time;⁸

NOTING that Ms. Nyiramasuhuko, Mr. Nteziryayo, Mr. Kanyabashi, and Mr. Ndayambaje object to the Motion⁹ on the grounds, *inter alia*, that: (i) the requested extension would unduly delay the appeal proceedings;¹⁰ (ii) the Prosecution has already had nearly two years to analyse the Trial Judgement, and was able to start preparing its response briefs 18 months ago;¹¹ (iii) the Prosecution has greater resources than the Defence;¹² (iv) the Prosecution's task is not as complex and voluminous as it contends;¹³ (v) some of the arguments in response may apply to various aspects of the Appeal Briefs;¹⁴ and (vi) the Prosecution fails to show good cause for such an "extraordinary extension of the statutory time limits";¹⁵

NOTING that, in reply, the Prosecution submits, *inter alia*, that "[t]he 1005 pages and over 307,000 words of the [Appeal Briefs], in which virtually every legal and factual finding of the Trial Chamber is challenged on multiple levels, demand[] a reasonable amount of time to analyse, research, and draft responses to";¹⁶

CONSIDERING that Rule 116(A) of the Rules allows for the extension of a time limit upon a showing of good cause;

CONSIDERING that an extension of time for the filing of the Prosecution's response briefs would impact the overall time dedicated to considering the appeals in this case;

CONSIDERING, nonetheless, that it is in the interests of justice to ensure that the Prosecution has sufficient time to prepare meaningful response briefs in full conformity with the applicable provisions;

⁸ *Réponse d'Arsène Shalom Ntahobali à la Requête du Procureur intitulée : « Prosecution Urgent Motion for Extension of Time Limit »*, 15 April 2013, para. 2.

⁹ *Réponse de l'Appelante Pauline Nyiramasuhuko à la « Prosecution Urgent Motion for Extension of Time Limit »*, 16 April 2013 ("Nyiramasuhuko Response"), paras. 2, 22; *Réponse de Joseph Kanyabashi à la Requête du Procureur sollicitant un délai supplémentaire pour produire son mémoire*, 16 April 2013 ("Kanyabashi Response"), para. 12; *Réponse d'Élie Ndayambaje au « Prosecution Urgent Motion for Extension of Time Limit »*, 17 April 2013 ("Ndayambaje Response"), para. 2, p. 8; Nteziryayo's Response to "Prosecution Urgent Motion for Extension of Time Limit", 17 April 2013 ("Nteziryayo Response"), para. 2.

¹⁰ Nyiramasuhuko Response, paras. 3-12, 22; Nteziryayo Response, paras. 3, 4; Ndayambaje Response, para. 33. See also Nyiramasuhuko Response, para. 21; Kanyabashi Response, paras. 2-11; Ndayambaje Response, para. 32.

¹¹ Nyiramasuhuko Response, paras. 13, 19; Kanyabashi Response, para. 11; Ndayambaje Response, paras. 5-7. See also Ndayambaje Response, paras. 30, 31.

¹² Nyiramasuhuko Response, para. 19; Ndayambaje Response, para. 27.

¹³ Ndayambaje Response, paras. 22-24.

¹⁴ Ndayambaje Response, para. 25.

¹⁵ Nteziryayo Response, para. 5. See also Nyiramasuhuko Response, paras. 19, 22; Ndayambaje Response, paras. 21, 26, 27.

¹⁶ Prosecution Reply to Nyiramasuhuko, Ntahobali, Nteziryayo, Kanyabashi, and Ndayambaje Responses, 18 April 2013, para. 1.

CONSIDERING that the Prosecution has to simultaneously prepare responses to six separate appeal briefs, four of which are of significant length;

CONSIDERING the broad range of procedural, factual, and legal issues raised in the Appeal Briefs, some of which are of significant complexity or require the examination and discussion of considerable parts of the voluminous trial record;

CONSIDERING further that the Prosecution received notice of the full scope of the appeals of Ms. Nyiramasuhuko, Mr. Ntahobali, and Mr. Kanyabashi only recently¹⁷ and that Mr. Nteziryayo's request to expand the scope of his appeal is presently under consideration by the Appeals Chamber,¹⁸

FINDING in light of the foregoing that there is good cause for an extension of the time limit for the filing of the Prosecution's response briefs;

CONSIDERING, however, that in light of the resources available to the Prosecution and the need for expeditious appeal proceedings, a more limited extension of time than the extension requested by the Prosecution is justified in the present case;

HEREBY GRANT the Prosecution's Motion **in part**; and

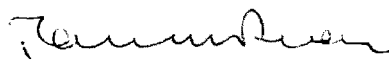
ORDER the Prosecution to file its response briefs no later than 100 days from the date of filing of each corresponding appeal brief.

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

Done this twenty-second day of April 2013,
At The Hague,
The Netherlands.



[Seal of the Tribunal]



Judge Fausto Pocar
Pre-Appeal Judge

¹⁷ See Decision on Joseph Kanyabashi's Motion to Amend his Notice of Appeal, 5 April 2013; Decision on Pauline Nyiramasuhuko's Motion to Amend her Amended Notice of Appeal, 18 February 2013; Decision on Arsène Shalom Ntahobali's Motion to Amend his Amended Notice of Appeal, 23 October 2012.

¹⁸ See Nteziryayo's Urgent Motion for Leave to Amend the Notice of Appeal, 26 March 2013. The Prosecution has filed a motion seeking to strike aspects of the Nteziryayo Appeal Brief that allegedly go beyond the scope of his appeal. See Prosecution Motion to Strike Nteziryayo's New Appeal Grounds, 18 April 2013.