



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

6137/H
EX

ICTR-99-52-A
06-December-2005
(6137/H-6133/H)

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andréia Vaz
Judge Theodor Meron

Registrar: Mr. Adama Dieng

Decision of: 6 December 2005

ICTR Appeals Chamber

Date: 06 December 2005

Action: R.J.

Copied To: Concerned Judges, SLOs,
LS & HLOS

Ferdinand NAHIMANA
Jean-Bosco BARAYAGWIZA
Hassan NGEZE
(Appellants)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-99-52-A

**DECISION ON HASSAN NGEZE'S MOTION FOR A PSYCHOLOGICAL
EXAMINATION**

Counsel for Hassan Ngeze

Mr. Bharat B. Chadha
Mr. Behram Shroff

Counsel for Jean-Bosco Barayagwiza

Mr. Donald Herbert
Mr. Tanoo Mylvaganam

Counsel for Ferdinand Nahimana

Mr. Jean-Marie Biju-Duval
Ms. Diana Ellis

Office of the Prosecutor

Mr. James Stewart
Mr. Neville Weston
Mr. Abdoulaye Seye

Case No. ICTR-99-52-A

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: Charles ZAMA	
SIGNATURE: [Signature]	DATE: 06/12/2005

6 December 2005

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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 1994 and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively),

BEING SEIZED OF "The Appellant Hassan Ngeze's Urgent Motion to Order the Registrar to Arrange for an Urgent Psychological Examination and Treatment of the Appellant Hassan Ngeze under Rule 74 bis of the Rules of Procedure and Evidence by Experts on Account of the Mental Torture Suffered by him at the UNDF", filed by Hassan Ngeze on 24 October 2005 ("Motion" and "Appellant", respectively), whereby the Appellant requests the Appeals Chamber "[t]o order the Registrar to arrange for the psychological examination and treatment" of the Appellant "by external experts";¹

NOTING that, in the Appellant's submission, the following factors justify such request: (i) the unreasonable denial by the UNDF Authorities of his "important visitors[']" access to him;² (ii) the existence of restrictive measures imposed on the Appellant with regards to his external contacts;³ and (iii) the fact that he has daily contact with people who "refused to testify and corroborate [...] his alibi during the trial proceedings";⁴

NOTING that the Appellant argues that the aforementioned factors result for him in "unbearable pain and anguish [...] which requires urgent psychological examination and treatment";⁵

NOTING that the Prosecution has not filed a Response;

NOTING that pursuant to Rule 74bis of the Rules of Procedure and Evidence ("Rules") read together with Rule 107 of the Rules, the Appeals Chamber "may, *proprio motu* or at the request of a party, order a medical, including psychiatric examination or a psychological examination of the accused";

CONSIDERING that the rights of detained persons and conditions of their detention are regulated by the Rules Covering the Detention of Persons Awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal⁶ ("Detention Rules");

¹ Motion, p. 2.

² *Ibid.*, para. 1.

³ *Ibid.*, para. 2.

⁴ *Ibid.*, para. 3.

⁵ *Ibid.*, p. 3.

⁶ Adopted on 5 June 1998.

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CONSIDERING that, pursuant to Rules 28 and 31 of the Detention Rules, the medical officer is responsible for the physical and mental health of the detainees and the administration of any treatment or medication to them;

NOTING that Rule 32 of the Detention Rules provides for the procedure to be followed in cases where the medical officer "considers that the physical or mental health of a detainee has been or will be adversely affected by any condition of his detention";

NOTING that, according to Rules 82 and 83 of the Detention Rules, where a detainee is not satisfied with the conditions of his or her detention, he or she is entitled to "make a complaint to the Commanding Officer or his representative at any time" and, in case of an unsatisfactory response, to "make a written complaint, without censorship, to the Registrar, who shall forward it to the President";

NOTING the Appellant's Urgent Letter to the Commanding Officer of UNDF of 4 January 2005 "Re: Prisoner Hassan Ngeze Concerns Addressed to the Commanding Officer and the Tribunal Authorities" annexed to the Motion, in which the Appellant informs the UNDF Commanding Officer of his understanding of his co-detainees' involvement in the present case and refers to his request for an investigation of an alleged conspiracy plan against him by his co-appellants followed by a Report from the Chief of the Court Management Section;⁷

NOTING that the Appellant does not mention any complaint filed by him to the Registrar in relation to these issues;

CONSIDERING that the issue of the Appellant's right to contact with the outside world has been resolved by the President's Decision on "Request for Reversal of the Prohibition of Contact" of 1 August 2005⁸ ("President's Decision") that dismissed the Appellant's request to review the prohibition of contact resulting from the restrictive measures⁹ imposed following the Prosecution's request of 5 July 2005,¹⁰ but did not preclude the Commanding Officer from allowing the visit of the Appellant's two children under the age of fourteen, based on humanitarian reasons;¹¹

⁷ Motion, Annex 2, p. 4.

⁸ *Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-A, Request for Reversal of the Prohibition of Contact, Office of the President, 1 August 2005.

⁹ *Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-A, Request for Reversal of the Prohibition of Contact, 12 July 2005.

¹⁰ *Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-A, Request for Urgent Restrictive Measures in the Case Prosecutor v. Hassan Ngeze, Pursuant to Rule 64 of the Rules Covering the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal, 5 July 2005.

¹¹ President's Decision, p. 3. It appears that the Commanding Officer allowed the Appellant to talk to one of his children on 5 October 2005 (Interoffice Memorandum to Mr. Hassan Bubacar Jallow, Prosecutor, from Mr. Saidou

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NOTING that the restrictive measures have been further extended for additional periods of 30 days pursuant to the Prosecution's requests of 4 August, 2 and 29 September 2005;¹²

NOTING that the "Appellant Hassan Ngeze's Urgent Request for Receiving Visits, Phone Call (in & out) from his Children, Family, Relatives and Friends", filed by the Appellant on 5 October 2005, is currently pending before the President;¹³

NOTING that the "Appellant Hassan Ngeze's Motion for Necessary Orders against the UNDF Authorities for Imposing Restrictive Measures during 4th November to 12th November 2005 without any Request of the Prosecutor", filed by the Appellant on 14 November 2005, is currently pending before the President;

NOTING that the "Appellant Hassan Ngeze's Extremely Urgent Motion for Reversal of Request of the Prosecutor on Prohibition of Contacts Pursuant to Rule 64 of the Rules of Detention" filed on 21 November 2005 is also currently pending before the President;

FINDING that the complaint procedure for the detention conditions has not been duly followed by the Appellant and that he has not yet exhausted the remedies made available to him by the Detention Rules;

FINDING also that, had the procedure of the Detention Rules been followed, the Appeals Chamber would only have jurisdiction to review a Registrar's or President's decision if the issues in question were closely related to the fairness of the proceedings on appeal;¹⁴

CONSIDERING that medical, psychological, and psychiatric examinations pursuant to Rule 74bis are typically ordered to establish the accused's fitness to stay in custody, his ability to stand trial,¹⁵

Guindo, UNDF Commanding Officer, Ref. ICTR-JUD-11-5-3-148, "Report on Measures Taken and the Implementation of the Restriction against Prisoner Hassan Ngeze", 5 October 2005, paras 3 - 4).

¹² *Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-A, Request for an Extension of the Urgent Restrictive Measures in the Case Prosecutor v. Hassan Ngeze, pursuant to Rule 64 [of] Rules Covering the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal, 4 August 2005; *Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-A, Request for a Further Extension of the Urgent Restrictive Measures in the Case Prosecutor v. Hassan Ngeze, pursuant to Rule 64 [of] Rules Covering the Detention of Persons Awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal, 2 and 29 September 2005 respectively.

¹³ See also, *Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-A, Prosecutor's Response to "Appellant Hassan Ngeze's Urgent Request for Receiving Visits, Phone Calls (in & out) from his Children, Family, Relatives and Friends", 12 October 2005.

¹⁴ *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Hassan Ngeze's Motion to Set Aside President Møse's Decision and Request to Consummate his Marriage, 6 December, p. 4; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Ferdinand Nahimana's Motion for Assistance from the Registrar in the Appeals Phase, 3 May 2005, paras. 4 and 7; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on "Appellant Hassan Ngeze's Motion for Leave to Permit his Defence Counsel to Communicate with him during Afternoon Friday, Saturday, Sunday and Public Holidays", 25 April 2005, p. 3. See also,

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his mental state at the time of the acts charged, as well as sentencing considerations such as ability to be reintegrated in society;¹⁶

FINDING that the Appellant has not demonstrated that any of these concerns are implicated, and specifically has not demonstrated any threat to the fairness of the proceedings on appeal;


FINDING therefore, that the Appellant has not demonstrated the need for an independent psychological examination under Rule 74bis;

FINDING that, in these circumstances and at this stage, the Appeals Chamber sees no reason to order a psychological or psychiatric examination of the Appellant pursuant to Rule 74bis of the Rules,

FOR THE FOREGOING REASONS,

DISMISSES the Motion.

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



Fausto Pocar
Presiding Judge

Dated this 6th day of December 2005,
At The Hague, The Netherlands



[Seal of the Tribunal]

Prosecutor v. Milan Milutinović et al., Case No. IT-99-37-AR.73.2, Decision on Interlocutory Appeal on Motion for Additional Funds, 13 November 2003, para. 19.

¹⁵ *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-T, Decision on the Defence Motion for a Medical Examination of the Accused pursuant to Rule 74bis of the Rules, p. 2.

¹⁶ *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-T, Decision on Defense Motion to Obtain the Assignment of Experts for the Accused Miroslav Kvočka, 12 May 2000, pp 2, – 3; *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-T, Decision on Defense Request for Assignment of Experts for the Accused Dragoljub Prcać, 18 May 2000, p. 2; *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-T, Decision on Defense Request for Assignment of Medical and Psychiatric Experts for the Accused Zoran Zigić, 21 June 2000, p. 2; *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-T, Decision on Defense Additional Motion for Psychological Evaluation of the Accused Dragoljub Prcać, 14 December 2000, p. 2.

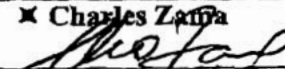


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**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

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**APPEALS CHAMBER – PROOF OF SERVICE
CHAMBRE D'APPEL - PREUVE DE NOTIFICATION**

Date: December 7, 2005		Case Name / <i>Affaire</i> : NAHIMANA ET AL. Case No / <i>No. de l'affaire</i> : ICTR-99-52-A	Ferdinand NAHIMANA, Jean-Bosco BARAYAGWIZA, Hassan NGEZE v. THE PROSECUTOR
To: A:	OTP, Trial Attorney in charge of case <input type="checkbox"/> In The Hague <input checked="" type="checkbox"/> In Arusha <input type="checkbox"/> In Kigali APPEALS UNIT <input checked="" type="checkbox"/> Ms Félicité Talon APPEALS CHAMBER <input checked="" type="checkbox"/> Judge / Juge Fausto Pocar, <input checked="" type="checkbox"/> Judge / Juge Mohamed Shahabuddeen <input checked="" type="checkbox"/> Judge / Juge Mehmet Güney <input checked="" type="checkbox"/> Judge / Juge Andresia Vaz <input checked="" type="checkbox"/> Judge / Juge Theodor Meron <input checked="" type="checkbox"/> Ms Catherine Marchi-Uhel <input checked="" type="checkbox"/> Mr Roman Boed <input checked="" type="checkbox"/> Concerned Associate Legal Officers <input checked="" type="checkbox"/> Mr Charles Zama DEFENSE <input checked="" type="checkbox"/> Accused / <i>accusé</i> : Ferdinand NAHIMANA, Jean-Bosco BARAYAGWIZA, Hassan NGEZE <small>(complete CMS4 Form)</small> <input checked="" type="checkbox"/> Lead Counsel / <i>Conseil Principal</i> : Mr Biju-Duval, Mr. Donald Herbert, Mr Bharat Chadha <input type="checkbox"/> In Arusha <small>(complete CMS 2)</small> <input checked="" type="checkbox"/> Fax Number: 00-33-1 53 80 47 48 00 44 207 841 6199/6197 00 255-27-250 8854 <input type="checkbox"/> Co-Counsel / <i>Conseil Adjoint</i> : Ms. Diana Ellis, Ms. Gabriele Della Morte, Ms. Nathalie Leblanc <small>(name / nom)</small> <input type="checkbox"/> In Arusha <small>(complete CMS 2)</small> <input type="checkbox"/> Fax Number:		
From: De:	<input type="checkbox"/> Koffi Afande <input checked="" type="checkbox"/> Charles Zama <input type="checkbox"/> Rosette Muzigo-Morrison 		
Subject Objet:	Kindly find attached the following documents / <i>Veillez trouver en annexe les documents suivants</i> :		
Documents name / <i>Titre du document</i>		Date Filed / <i>Date d'enregistrement</i>	Pages
DECISION ON HASSAN NGEZE'S MOTION FOR A PSYCHOLOGICAL EXAMINATION		06 December 2005	6137/H-6133/H