

ICTR-01-73-A  
29-6-2012  
(859/A - 845/A)

859/A  
MM



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

**Before:** The Appeals Chamber or a Pre-Appeal Judge, unnamed as yet

**Registrar:** Mr. Adama Dieng

**Decision of:** 18 June 2012

**Date filed:** 29 June 2012

JUDICIAL RECORDS ARCHIVES  
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**In RE :Protais Zigiranyirazo**

Case No. ICTR-01-73-A

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MOTION FOR LEAVE TO APPEAL OR FOR REVIEW OF TRIAL CHAMBER  
DECISION OF 18 JUNE 2012

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**For the Defense:**

John Philpot  
Charles Taku  
Kyle Gervais

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## Introduction

1. On 18 June 2012, Trial Chamber III rendered its decision on Decision on Protais Zigiranyirazo's Motion for Damages, hereinafter the Impugned Decision, rejecting the application for damages and the requested order:

**ORDERS** that Registrar pay the following amounts to the Applicant.

Description	Detail	Calculation	Total
Compensation for detention from July 25 2001 to 16 November 2009	3041 days from 25 July 2001 to 16 November 2009	150*3041	456,150
Compensation for Confinement to Tanzania Violation of the Right to return to Belgium	830 days to 24 February 2012	830 * 75	62,250
Moral Damages	From 25 July 2001 to 18 December 2008	2704 days at 50\$ per day	135,200
	From 18 December 2008 to 16 November 2009	332 days at 850\$ per day	282,200
	Deprivation of family contacts at 25\$ per day from 17 November 2009	830*25	20,750
Exemplary/Punitive Damages			50,000
Total			1,006,550 USD\$

**ORDERS** the Government of Belgium respectfully to admit the Applicant to its territory within two weeks of the decision to be rendered on this motion.

**ORDERS** the Registrar to pay costs to the Defence team of the Applicant, namely, John Philpot, Charles Taku and assistant Kyle Gervais taxed based on time allocated and the lump guidelines.

2. The Motion for Damages for Violations of the Fundamental rights of Protais Zigiranyirazo and Motion for Judicial Cooperation with the Kingdom of Belgium Application for Damages is referred to hereinafter as the Motion.

3. The Claimant applies for leave to appeal the Impugned Decision as described hereafter.

## Procedural History

4. The Applicant was arrested in Belgium in late May 2001 on an immigration issue. The Applicant originally travelled to Belgium to ask for refugee status.

5. On 18 July 2001, the Prosecutor applied to the Tribunal for the confirmation of an indictment against the Applicant and for related orders including an arrest warrant addressed to the Kingdom of Belgium.
6. On 20 July 2001, Judge Erik Møse confirmed the *Indictment* and ordered the *Arrest of Mr Zigiranyirazo* as described in the Motion.
7. On 23 July 2001, the Registrar sent the Kingdom of Belgium a copy of the *Arrest Warrant* with instructions on service of the arrest warrant. The Applicant was arrested on or about 25 July 2001.
8. The Motion with annexes is available on the court file.
9. He was transferred to Arusha on or about 3 October 2001 and appeared for the first time on 10 October 2001.
10. His trial commenced on 3 October 2005.
11. On 18 December 2008, Trial Chamber III rendered its verdict acquitting the Applicant of Counts 1, 3, and 5 and finding him guilty of Counts 2 and 4 (respectively Genocide and Extermination). The sentence was 20 years for Genocide and 15 years for Extermination.
12. He appealed his conviction since he was innocent.
13. On 16 November 2009, the Appeals Chamber granted the Appeal and ordered his immediate release, stating as follows at Paragraph 75 of its Judgment:

The crimes Zigiranyirazo was accused of were very grave, meriting the most careful of analyses. Instead, the Trial Judgement misstated the principles of law governing the distribution of the burden of proof with regards to alibi and seriously erred in its handling of the evidence. Zigiranyirazo's resulting convictions relating to Kesho Hill and the Kiyovu Roadblock violated the most basic and fundamental principles of justice. (our underlining)
14. Since 16 November 2009, he has been confined to Arusha, Tanzania, in a Tribunal safe house. He has not been returned to Belgium. He has not been reunited with his family in Belgium or in France. He has never been offered a concrete alternative of resettlement.
15. Shortly after 20 November 2010, Counsel for Claimant presented a claim or demand letter to the Registry. Counsel discussed the issue with the Deputy Registrar in early December 2010. The Claim was unanswered.
16. On 20 January 2012, he filed a new demand letter with the President and the Registrar as appears from the Court File.

17. On 24 January 2012, the then Acting President Joensen designated a Trial Chamber to handle this application as appears from the Court File.
18. On 1 February 2012, the Trial Chamber issued a scheduling order requiring a fully substantiated motion by 24 February 2012 as appears from the Court File.
19. On 24 February 2012, Applicant filed the Motion as appears from the Court file.
20. On 20 March 2012, the Trial Chamber issued a Scheduling Order requiring the Prosecution and the Registry to file their submissions by 18 April 2012.
21. Without entering into detail the pleadings of the parties were complete by 6 May 2012.
22. The Impugned Decision was issued on 18 June 2012 whence the instant application.

### **Law**

23. Neither the Statute nor the Rules provide for Appeals against decisions such as the Impugned Decision. However the Appeals Chamber has inherent jurisdiction of the enforcement of its orders and any decisions rendered as a consequence thereof.<sup>1</sup>
24. The law applicable to review of administrative decisions can be useful to the present application to the Appeals Chamber. In order to successfully challenge a discretionary decision, a party must demonstrate that the Trial Chamber has committed a “discernible error” resulting in prejudice to that party.<sup>2</sup> The Appeals Chamber will only overturn a Trial Chamber’s discretionary decision where it is found to be: (i) based on an incorrect interpretation of governing law; (ii) based on a patently incorrect conclusion of fact; or (iii) so unfair or unreasonable as to constitute an abuse of the Trial Chamber’s discretion.<sup>3</sup>
25. As reflected in the Ntagerura Leave to Appeal Decision,<sup>4</sup> this motion is not interlocutory and falls outside the scope of certification procedure of Rule 73 of RPE. Indeed, an appeal of findings of a court of first instance in the context of criminal proceedings is a fundamental right that has been acknowledged by this Tribunal.

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<sup>1</sup> In *re. André Ntagerura*, Decision on Motion for Leave to Appeal the President’s Decision of 31 March 2008 and the Decision of Trial Chamber III rendered on 15 May 2008, ICTR-99-46-a28, para. 12

<sup>2</sup> *Karadic* Facilities Decision, para. 11. See also *Prlic* Decision, para. 8.

<sup>3</sup> *Id.* See also *Milosevic* Decision, para. 10. These references are all drawn from *Prosecutor v. Radovan Karadic*, Case No. It-95-5/18-AR73.6, Decision on Radovan Karadic’s Appeal from Decision on Motion to Vacate Appointment of Richard Harvey, 12 February 2010

<sup>4</sup> In *re. André Ntagerura*, Decision on Motion for Leave to Appeal the President’s Decision of 31 March 2008 and the Decision of Trial Chamber III rendered on 15 May 2008, ICTR-99-46-a28

## Proposed Grounds of Appeal/Review

### Ground 1 - Compensation for Violations Stemming from Error in the TC Judgement of 18 December 2008.

26. This constitutes an erroneous and unreasonable of the finding at Paragraph 75 of the Appeals Chamber Judgement of 16 November 2009.

27. In the Impugned Decision, the Trial Chamber erred in Paragraphs 19-22 in interpreting the express words underlined below in Paragraph 75 of the Appeals Judgement :

The crimes Zigiranyirazo was accused of were very grave, meriting the most careful of analyses. Instead, the Trial Judgement misstated the principles of law governing the distribution of the burden of proof with regards to alibi and seriously erred in its handling of the evidence. Zigiranyirazo's resulting convictions relating to Kesho Hill and the Kiyovu Roadblock violated the most basic and fundamental principles of justice.

a. The Trial Chamber did not distinguish between a simple error of fact or law committed by a Trial Chamber which leads to a reversal of a judgment on appeal and an error violating the most basic and fundamental principles of justice equivalent to a violation of a right to a fair trial. As stated by dissenting opinion of Judge Park, the failure to distinguish between these two types of errors leads to an untenable situation.<sup>5</sup>

b. It erred in concluding that Article 85(3) of the Statute of the International Criminal Court reflects the current state of customary law with respect to compensation for acquitted persons. The Trial Chamber in Rwamakuba<sup>6</sup> approved on appeal<sup>7</sup> held the contrary. The Trial Chamber therefore erred at Paragraph 22 of the Impugned Decision in refusing to exercise its discretion to grant damages. There is no such discretion. Rather, the underlying principle defined at the ICTR is stated as follows:

Any violation of the rights of a person accused before the Tribunal requires a proportionate remedy.<sup>8</sup> The Appeals Chamber's decisions in the *Barayagwiza* and *Semanza* cases confirm that a remedy for a violation of the rights of the accused may include an award of financial compensation.<sup>9</sup> The absence

<sup>5</sup> Dissenting opinion of Judge Seon Ki Park in the Impugned Decision at para. 5.

<sup>6</sup> See Rwamakuba Trial Decision on Remedy 31 January 2007, para 22-28.

<sup>7</sup> André Rwamakuba vs The Prosecutor, Case No: ICTR-98-44C-, Decision on Appeal on Appropriate Remedy, para. 6, 10

<sup>8</sup> André Rwamakuba vs The Prosecutor, Case No: ICTR-98-44C-, Decision on Appeal on Appropriate Remedy, para. 24 (Rwamakuba Appeal Decision on Remedy); Laurent Semanza v. The Prosecutor, Case No. ICTR-97-20-A, Decision, 31 May 2000, para. 125 ("Semanza Appeal Decision").

<sup>9</sup> Semanza Appeal Decision, p. 34 ("That for the violation of his rights, the Appellant is entitled to a remedy which shall be given when judgement is rendered by the Trial Chamber, as follows:(a) If he is found not guilty, the Appellant shall be entitled to financial compensation ...")(emphasis added); Barayagwiza Appeal Decision, para 75(iii)("DECIDES that for the violation of his rights the Appellant is entitled to a remedy, to be fixed at the time of judgement at first instance, as follows: a) If the Appellant is found not guilty, he shall receive financial compensation ...")(emphasis added).

of an explicit provision providing for financial compensation in the Statute for violations of the rights of the accused as well as the Security Council's decision not to amend the Statute to expressly include such a remedy does not mean that remedies are not available.<sup>10</sup> (our underlining).

- c. The Trial Chamber erred at Paragraph 21 of the Impugned Decision in refusing to exercise its discretion since the claim was filed more than two years after the acquittal. Similarly, the Trial Chamber erred at Paragraph 19 of the Impugned Decision in taking into consideration the statutory 6 month time limit of Rule 173 of the ICC. The Trial Chamber was wrong in transposing Rule 173 of the ICC which has no application at the ICTR. As stated in Paragraph 6 of the Dissenting opinion, time limits cannot impede a Chamber from invoking its power to redress violations of a person's rights.
- d. It erred in refusing to award compensation and since it might open the "floodgates" to an unmanageable host of compensation claims. This is a spurious argument since the number of cases where the very serious violation arise are few: this is the only known instance of such a violation.

28. Given that the Trial Chambers errors constitute misinterpretation and misapplication of the Appeals Chamber Judgement of 16 November 2009, the Appeals Chamber has an inherent right to intervene and correct the record.

29. As point out above, the Trial Chamber (majority) applied an incorrect interpretation of governing law and was so unfair and unreasonable as to constitute an abuse of the Trial Chamber's discretion.

30. Due to these discernible errors, the Trial Chamber refused to award him the damages which should be recognized for him. The Dissenting opinion made a contrary finding in favor of compensation.

31. The Claimant asks the Appeals Chamber to intervene, to quash the Trial Chamber Decision and award the damages as requested with respect to the period 18 December 2008 to 16 November 2009 the whole as described in the Motion.

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<sup>10</sup> Rwamakuba, Decision on Appeal against Decision on Appropriate Remedy para. 24

**Ground 2 and 3 - Application for an Order Under Article 28, Compensation for Failure to Return the Claimant to Belgium, & Delay in Providing Legal Assistance.**

**Appeals Chamber jurisdiction**

32. On 16 November 2009, the Appeals Chamber made the following order:

**ORDERS**, in accordance with Rules 99(A) and 107 of the Rules, the immediate release of Protais Zigiranyirazo and **DIRECTS** the Registrar to make the necessary arrangements.

33. The Claimant considers that the “necessary arrangements” implied a mandatory return to Belgium where he was arrested on 25 July 2001.

34. In Paragraphs 23 to 28 of the Impugned Decision, the Trial Chamber discussed and ruled against the claimant with respect to the delay in providing legal assistance. In Paragraphs 52 -57 of the Impugned Decision, the Trial Chamber discussed and ruled against the Claimant concerning Compensation for failure to return the Claimant to Belgium. These two issues are inextricably interrelated and will be dealt with together in this application. It implicitly refused the application for a new Order under Article 28 of the Statute.

35. The Trial Chamber erred in law in applying the Appeal Chamber Judgment of 16 November 2009 refusing the Claimant compensation.

**Introduction**

36. Before spelling out in detail Ground 2 and 3 and the fundamental errors in law and in fact in the Impugned Decision, the Claimant will set forth in a cursory manner his argument with respect to the return to Belgium.

37. Claimant was a refugee applicant in Belgium from late May 2001. His refugee application was unresolved. Upon arrest in Belgium 25 July 2001 by the ICTR by virtue of the supra-national power bestowed upon the Tribunal, the Claimant was in the constructive custody of the Tribunal. The same supra-national power of the ICTR allowed for his transfer to Arusha on 3 October 2001. The transfer order had no provision that he be returned to Belgium if acquitted in order that he continue his pending refugee claim.

38. After his acquittal on 16 November 2009, the Claimant should have been immediately returned to Belgium by virtue of the principle of *statu quo ante* and the presumption of innocence. Once handed back to Belgium following his acquittal, he would have made the appropriate applications and Belgium, as a sovereign county would have decided on his status, including granting refugee status, family reunification, immigrant status or expulsion

from Belgium. There is no suggestion by the Claimant that the ICTR can bestow refugee status in Belgium.

39. He argued in the Motion that the Tribunal/Trial Chamber/Prosecutor neglected to obtain the necessary guarantees for his return to Belgium when the Tribunal exercised its supra-national powers to transfer the Claimant to Arusha.

40. The Claimant also argues that the ICTR should have assigned him counsel when he was in Belgium. Had counsel been assigned by the Tribunal upon his initial Tribunal arrest in Belgium, this counsel would have obtained from the Trial Chamber the proper guarantees to be returned to where he was residing were he to be acquitted by the ICTR. Failure to guarantee return to Belgium would have been a valid ground to refuse transfer.

41. Claimant's request for an Article 28 order is different from the general request in *Ntagerura* where the Appeals Chamber limited the scope of Article 28 to exclude a general broad Article 28 power with respect to resettlement of acquitted persons.<sup>11</sup> Claimant's application is based on the distinction described in the first instance in *Ntagerura*<sup>12</sup> whereby the situation of Mr Ntagerura would have been different had he sought an order that he be returned to Cameroun where he was arrested. No doubt the Trial Chamber would have ordered his return to Cameroun had Mr Ntagerura requested such an order. Instead Mr Ntagerura, rightly or wrongly, sought an order to be granted status in Canada.

42. Applicant hereby describes the fundamental factual and legal errors of the Trial Chamber with respect to relocating the Claimant upon his release ordered by the Appeals Chamber. The Claimant hereafter describes and develops arguments on the interrelated errors in the Impugned Decision which warrant intervention by the Appeals Chamber.

**Ground 2 - The Right to Return to Belgium by application of Article 28 of the Statute**

43. In Paragraphs 55, 56, and 57 of the Impugned Decision, the Trial Chamber was entirely wrong in fact and in law when it refused to envisage that Article 28 of the Statute could be applied to return the Claimant to Belgium upon his acquittal. The errors in fact and in law are described hereafter.

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<sup>11</sup> *Ntagerura v. The Prosecutor*, Decision on Motion to Appeal the President's Decision of 31 March 2008 And the Decision of Trial Chamber III of 15 May 2008, 18 November 2008, para 13.

<sup>12</sup> *The Prosecutor v. André Ntagerura*, Decision on the Motion by an Acquitted Person for Cooperation from Canada, 15 May 2008, TC, para 4

44. First, the Trial Chamber was wrong in fact in Paragraph 55 that the Claimant was asking the ICTR to invoke Article 28 to confer refugee status on the Claimant in Belgium or interfere with immigration policies of a sovereign state. This is a patently incorrect conclusion of fact. It is so unreasonable as to constitute an abuse of the Trial Chamber's discretion. The error is discernible. The Claimant simply argued in his motion that he had a right to be returned to where he was when the ICTR Registry had him arrested, held and eventually transferred to Arusha. He simply requested a *statu quo ante* status to be returned as a corollary of his arrest and acquittal. In this context, the Registrar should have invoked Article 28 in the days following the Claimant's release to return him to Belgium.

45. Secondly at Paragraph 56, the Trial Chamber erred in law in invoking the established case law of the Appeals Chamber in *Ntagerura*. The Appeals Chamber refused an Article 28 order against Canada because of the narrow scope of Article 28 of the Statute.<sup>13</sup> Indeed, the power under Article 28 pertains solely to the "investigation and prosecution of *persons accused* of committing serious violations of international humanitarian law".<sup>14</sup> Therefore there is no general power to require a particular country with no link to the individual to take an acquitted individual on his territory.

46. However, as held in the first instance in *Ntagerura*, an acquitted person is not to remain on Tanzanian territory,<sup>15</sup>

Under Article 28 of the Statute, Member States of the United Nations are bound to cooperate with the Tribunal at all stages of the procedure. In the case at hand, it is the opinion of the Trial Chamber that the Registrar has specific authority to request a State's cooperation. The Trial Chamber considers that such authority emanates from the Registrar's mandate to execute Trial Chamber decisions, and from the headquarters agreement which infers that an acquitted person is not to remain on Tanzanian territory." (our underlining)

47. In *Ntagerura*, the Trial Chamber declined the request with respect to Canada which was not the state of origin or of residence of Mr Ntagerura. It stressed that Mr Ntagerura did not wish to return to Rwanda or to Cameroun where he was arrested:<sup>16</sup>

Furthermore, it is the Trial Chamber's view that the obligation to cooperate does not in any way imply that Canada, which is neither the state of origin nor the country of residence at the time of the arrest, should grant resident status or extend preferential treatment in the processing of such a request. (our underlining)

<sup>13</sup> In re *André Ntagerura*, Case No : ICTR-99-46-A28, Decision on Motion to Appeal the President's Decision of 31 March 2008 and the Decision of Trial Chamber III of 15 May 2008, 18 November 2008, paras 14, 15.

<sup>14</sup> *André Ntagerura*, Decision on Motion to Appeal the President's Decision of 31 March 2008 And the Decision of Trial Chamber III of 15 May 2008, 18 November 2008, para 15.

<sup>15</sup> *The Prosecutor v. André Ntagerura*, Decision on the Motion by an Acquitted Person for Cooperation from Canada, 15 May 2008, TC, para 4.

<sup>16</sup> *The Prosecutor v. André Ntagerura*, Decision on the Motion by an Acquitted Person for Cooperation from Canada, 15 May 2008, TC, para 4.

48. This decision implies *a contrario* that a state which had handed over to the ICTR an accused present on his territory must take him back if acquitted. The situation of Mr Zigiranyirazo is distinct from that of Mr Ntagerura since he simple wishes to return where he was arrested.

49. In the Appeals Chamber Decision of 15 November 2008 at Paragraph 13, the Chamber approved the Trial Chamber reasoning :

the obligation to cooperate does not in any way imply that Canada which is neither the state of origin nor the country of residence at the time of the arrest, should grant residence status or extend preferential treatment in processing such a request.<sup>17</sup>

50. The obligation of the Kingdom of Belgium to accept that Mr Zigiranyirazo be returned to its territory is a corollary to the obligation of the Kingdom of Belgium to transfer the accused person, the Claimant, to the seat of the tribunal as it did in 2001. It flows therefore from its obligation to cooperate in the investigation and prosecution of *persons accused* of committing serious violations of international humanitarian law : in common terms "to take him back if acquitted."

#### **Ground 3 - Right to be assigned counsel**

51. In Paragraphs 26 to 28 of the Impugned Decision, the Trial Chamber erred in law in deciding that the Claimant had no right to be assigned counsel upon his arrest in Belgium on July 25, 2001. It also erred in fact and in law, in deciding that the Claimant was not prejudiced by the failure to be assigned counsel during his detention in Belgium.

52. The failure to assign counsel in Belgium when detained by the Tribunal is linked to the present situation of the Claimant.

53. The Trial Chamber erred at Paragraph 27 *in fine* of the Impugned Decision in stating that the right to be assigned counsel exists from the very moment of transfer to the Tribunal. This is wrong. The Right to be assigned counsel arises from the moment of arrest by the Tribunal.

54. In Paragraph 27, the Trial Chamber recognized the *Baraygwiza* precedent<sup>18</sup> that a person is in the constructive custody of the Tribunal when arrested in a third country on a Tribunal warrant. The Trial Chamber in the instant cased erred in law when quoting the

<sup>17</sup> Decision on Motion to Appeal the President's Decision of 31 March 2008 And the Decision of Trial Chamber III Of 15 May 2008, 18 November 2008

<sup>18</sup> Decision of 3 November 1999, Jean-Bosco Barayagwiza v. The Prosecutor, Decision, *Case No: ICTR-97-19-AR72* para. 61.

*Kajelijeli Appeal Judgement*<sup>19</sup> which mentioned that the obligation to provide counsel was immediate upon transfer to the Tribunal.

55. In *Kajelijeli*, the issue with respect to counsel<sup>20</sup> was one of delay in providing counsel and not whether the right to be assigned counsel arose upon arrest in a third country. The Appeals Chamber did not “decide” that the right to counsel arose upon transfer as opposed to upon his arrest in Benin. This issue was not discussed. Indeed, *Kajelijeli* was only held in Benin from 29 August to 9 September 1998 before being transferred to the UNDF in Arusha.<sup>21</sup> The issue of whether an Accused person detained in a third country by an ICTR arrest warrant and transfer order has not been decided.

56. Indeed, the Statute provides that counsel must be provided when it is in the interests of justice. Article 20 (4)(d) of the Statute states,

In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

...

(d) To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interest of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it; (our underlining)

57. In fact, the assignment of counsel was necessary with respect to the situation of the Accused in Belgium. An assigned counsel can verify if the transfer documents satisfied the requirements of the Statute and the Rules. An assigned counsel should have verified that the other conditions for transfer to Arusha were satisfied. No doubt he would have noticed the missing guarantees: that the Accused could be returned to Belgium if acquitted. He should have applied to the Trial Chamber asking that the transfer order be amended to obtain the appropriate guarantees for being returned to where he was when arrested. Indeed, the presumption of innocence is a strong argument in favor of assignment of counsel and the granting of appropriate guarantees.

58. The Claimant argued that he is partially detained in Arusha since his acquittal on 16 November 2008 since he had not been relocated. Indeed, Tribunal Spokesperson had used these terms “locked in a same place and not to be able to travel.”<sup>22</sup>

<sup>19</sup> *Kajelijeli Appeal Judgement*, 23 May 2005, para. 245

<sup>20</sup> There were other issues including a long detention period in Benin prior to being served an indictment and transfer order from the ICTR

<sup>21</sup> *Kajelijeli Appeal Judgement*, para. 225

<sup>22</sup> See para. 70 of Reply to the Responses of the Registry and the Prosecutor to the Motion for Damages for Violations of the Fundamental Rights of Protais Zigiranyirazo and Motion for Judicial Cooperation with the

59. The Claimant recognizes that the Appeals Chamber has held that the situation of M. Andre Ntagerura being confined to Arusha did not amount to a violation of his right rights to liberty and freedom of movement.<sup>23</sup> However, the situation of the Claimant is different since he has been offered no other country to be relocated to whereas Mr Ntagerura had been offered other countries to live in.<sup>24</sup> Furthermore, the situation is becoming more and more serious with the closing of the Tribunal.

60. The Claimant is deprived of contact with his family who live in Belgium and France as described in the Motion at Paragraphs 85 and 109-115.

61. Had the Accused been assigned counsel in Belgium, this entire situation would not have arisen since the appropriate guarantees to return to Belgium would have been granted or negotiated, whence the damages accruing to the Claimant for not being returned to Belgium.

62. The Registrar has the obligation to ensure the well-being of an acquitted person. Although he does not have the power to force just any country to take the Claimant on his territory, he does have the power to "undo" the arrest and transfer order served on the Kingdom of Belgium in 2012 and to force the Kingdom of Belgium to accept the Claimant on its territory. From the moment of his return to Belgium, the Claimant would be in a position to take the measures which would allow him to remain there.

#### **Ground 4 - Request for Costs**

63. The Trial Chamber did not rule on the request for costs for the Defence team. The Claimant requests that the Appeals Chamber order that costs as described in the Motion be awarded.

#### **Remaining Issues**

64. The Claimant notes two remaining issues which were incorrectly decided by the Trial Chamber in the Impugned Decision: Compensation for Undue Delay<sup>25</sup> and Compensation based on Strict Liability.<sup>26</sup>

65. However, the Claimant recognises that appeals on these specific elements of the Decision do not flow directly from the interpretation and implementation of the Appeals

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Kingdom of Belgium.

<sup>23</sup> In re André Ntagerura, Case No : ICTR-99-46-A28, Decision on Motion to Appeal the President's Decision of 31 March 2008 And the Decision of Trial Chamber III Of 15 May 2008, 18 November 2008. Paragraph 18.

<sup>24</sup> The Claimant does not wish to dissociate himself from the serious plight of Mr Ntagerura and other individuals released by the ICTR and residing in Arusha. However, his legal situation is somewhat different.

<sup>25</sup> Impugned Decision, para 33-42, in particular 36, 39-42.

<sup>26</sup> Impugned Decision, para 49, 50.

Chambers Judgement of 16 November 2009, and therefore may not be open to review by this Chamber.

66. Therefore, the Claimant invites the Appeals Chamber to review these issues *proprio motu*, as he believes them to be in the interest of justice and open questions in international criminal law.<sup>27</sup>

### **Proposed Resolution by the Appeals Chamber**

67. The Claimant requests that leave to appeal be granted on Ground 1, 2, 3 and 4 and that the Appeals Chamber quash the Impugned Decision for these Grounds. The Claimant asks the Appeal Chamber to review and rule on the Motion with respect to all items related to Grounds 1, 2, 3 and 4.

### **Scheduling Order**

68. With respect to potential scheduling, the Claimant wishes to inform the Appeals Chamber that Counsel Philpot responsible for these pleadings will be absent and out of contact with his office and the internet from 29 July to 19 August 2012 inclusive. Legal Assistant Gervais will be absent from 27 July 2012 for one week. He therefore requests that if the Appeals Chamber were to render a scheduling order, these time constraints for summer vacation be taken into consideration. With 7 days to file his motion, 7 days for the Registry to respond and 4 days for the Applicant to Reply, the 18 day window available in July would require that a decision be rendered by July 11, 2012. It is patently unreasonable to expect that the Appeals Chamber rule on this application by 10 or 11 July 2012. The Claimant therefore requests that the Decision be rendered after 19 August 2012.

69. The Claimant therefore prays that Appeals Chamber :

**RENDER** its decision after 19 August 2012

**GRANTS** the Applicant leave to seek the review the Impugned Decision on Grounds 1, 2, 3 and 4.

**DIRECTS** the Applicant to file his motion within seven days from the date of this decision;

**INVITES** the Registrar to respond within seven days from the date of the filing of the Applicant's motion;

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<sup>27</sup> For Compensation for Undue Delay, see: Motion for Compensation, para 28-47, Reply para 25-28; For Compensation based on Strict Liability, see: Motion for Compensation, para 48-70, Reply para 20-24.

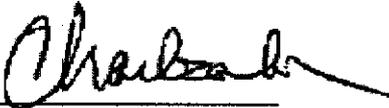
**DIRECTS** the Applicant to file his reply, if any, within four days from the date of the filing of the Registrar's response, as applicable;

Respectfully submitted,



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John Philpot,  
Counsel



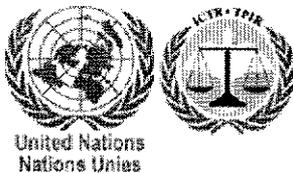
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Charles Taku



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Kyle Gervais,  
Legal Assistant



## TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

**COURT MANAGEMENT SECTION**  
(Art. 27 of the Directive for the Registry)

### I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

<b>To:</b>	<input checked="" type="checkbox"/> Team I N. M. Diallo	<input checked="" type="checkbox"/> Team II C. K. Hometowu N. M. Diallo	<input checked="" type="checkbox"/> Team III C. K. Hometowu
	<input checked="" type="checkbox"/> OIC, JLSJ P. Besnier	<input type="checkbox"/> OIC, JPU C. K. Hometowu	<input checked="" type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison
<b>From:</b>	<input type="checkbox"/> Chamber (names)	<input checked="" type="checkbox"/> Defence John Philpot (names)	<input type="checkbox"/> Prosecutor's Office (names) <input type="checkbox"/> Other: (names)
<b>Case Name:</b>	The Prosecutor vs. Protais Zigiranyirazo		<b>Case Number:</b> ICTR-01-73-A
<b>Dates:</b>	Transmitted: 29 June 2012		Document's date: 29 June 2012
<b>No. of Pages:</b>	15	<b>Original Language:</b>	<input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
<b>Title of Document:</b>	MOTION FOR LEAVE TO APPEAL OR FOR REVIEW OF TRIAL CHAMBER DECISION OF 18 JUNE 2012		
<b>Classification Level:</b>	<b>TRIM Document Type:</b>		
<input type="checkbox"/> Ex Parte	<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence
<input type="checkbox"/> Strictly Confidential / Under Seal	<input type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal
<input type="checkbox"/> Confidential	<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book
<input checked="" type="checkbox"/> Public	<input type="checkbox"/> Judgement	<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Book of Authorities
			<input type="checkbox"/> Submission from non-parties
			<input type="checkbox"/> Submission from parties
			<input type="checkbox"/> Accused particulars

### II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

**CMS SHALL take necessary action regarding translation.**

Filing Party hereby submits only the original, and **will not submit** any translated version.

Reference material is provided in annex to facilitate translation.

Target Language(s):

English                                       French                                       Kinyarwanda

**CMS SHALL NOT take any action regarding translation.**

Filing Party hereby submits **BOTH the original and the translated version** for filing, as follows:

Original	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

**CMS SHALL NOT take any action regarding translation.**

Filing Party **will be submitting the translated version(s)** in due course in the following language(s):

English                                       French                                       Kinyarwanda

**KINDLY FILL IN THE BOXES BELOW**

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### III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	<b>COMMENTS</b>	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: