



ICTR-00-55B-A  
27-10-2011  
(1108bis/A - 1104bis/A)

1108bis/A  
A

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"Notre attitude détermine notre altitude"

"A Great Lawyer knows the Judge. A Good Lawyer knows the law"

Douala, 15 August 2011

**IN THE APPEALS CHAMBER**

ENGLISH  
Original: FRENCH

Before: Judge Mehmet Güney, presiding  
Judge Fausto Pocar  
Judge Andréia Vaz  
Judge Theodor Meron  
Judge Carmel Agius

Registrar: Adama Dieng

Date filed:

**THE PROSECUTOR**

v.

**ILDEPHONSE HATEGEKIMANA**

Case No. ICTR-00-55B-A

JUDICIAL RECORDS/ARCHIVES  
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H. J. Arguin

**REPLY TO THE PROSECUTOR'S RESPONSE TO ILDEPHONSE HATEGEKIMANA'S EXTREMELY URGENT MOTION TO ORDER THE PROSECUTOR TO DISCLOSE ALL MATERIALS IN HIS POSSESSION RELATING TO THE TRIAL OF THE ACCUSED PURSUANT TO RULE 68 OF THE RULES OF PROCEDURE AND EVIDENCE (RPE).**

Counsel for the Defence:  
Jean de Dieu Momo  
Arsin Raoul Djamfa  
Narcisse Gaétan Donfack Zébazé

Office of the Prosecutor:  
Hassan Bubacar Jallow  
James J. Arguin  
Alphonse Van  
Alfred Orono Orono  
Thembile Segoe  
Leo Nwoye  
Marie Ndeye Ka

A11-0225.TRE (E)

Translation certified by LSS, ICTR

**MAY IT PLEASE THE APPEALS CHAMBER,**

1. On 10 August 2011, the Prosecutor (Respondent) filed his response to Ildephonse Hategekimana's motion to order the Prosecutor to disclose all exculpatory materials in his possession.
2. In his reply, the Prosecutor recalled that he did not comply with the ten-day time limit allowed him under the Practice Direction for reasons *beyond his control* and that, in any case, this blatant violation of the provisions of the Practice Direction did not cause the Appellant any prejudice.
3. Such an explanation shows the levity and offhandedness with which the Prosecution has dealt with the Appellant's case from the beginning, violating all the rules prescribed to protect the presumption of innocence and all the rights to a fair trial.
4. The Prosecutor's response should be dismissed for having been filed out of time and also because he failed to comply with the Practice Direction on filing Appeal documents in 1,5 spacing. Obviously, at the ICTR, there are those who try to comply with the rules and those who do not bother about them!
5. The Prosecutor submits that his delay in responding did not cause any prejudice to the Defence. What exactly does he know about that? Lieutenant Ildephonse Hategekimana's Defence had four days to reply to the Prosecutor's response. His Counsel, who lives outside the location of the seat of the ICTR, checked his email for ten days, hoping to receive the said response.
6. After the tenth day, he stopped checking, whereas the Prosecutor served his response twelve days later. When he discovered the response five days later, it was obvious that the Prosecutor's failure to comply with the ten-day time limit, misled the Defence, so much so that the Defence could not comply with the prescribed four-day time limit it was allowed.

7. Consequently, because of the Prosecutor's failure to act in a timely fashion, the Defence replied five days after the filing time limit, even if the Prosecutor justified his delay by a reason beyond his control!
8. The Defence requests the Appeals Chamber not to accept the Prosecutor's response and to rule it inadmissible since it was filed out of time.
9. Conversely, the Defence requests the Chamber to accept its reply, although it is filed beyond the four-day limit for the reasons pleaded above.
10. With regard to the merits, it should be noted that the Prosecutor had previously disclosed under the seal of confidentiality a judgement of the Butare Court as well as an investigation report from the Butare Public Prosecutor's Office. The Prosecutor is being crafty when he hastens to submit that he does not object to the lifting of the seal of confidentiality on the said documents since he knew very well that the Appeals Chamber would order an end to this confidentiality which was not justified at all. It was not to lose face that he took the initiative to state that he did not object to the said lifting.
11. Furthermore and regarding the disclosure of materials in his possession, the Prosecutor did not expressly state that he did not have the materials for which disclosure is being sought. He merely requested the Defence to prove that he had them and to state how they are exculpatory.
12. It is because he wanted to create an emergency exit for himself if he was caught red-handed concealing exculpatory evidence that he is demanding proof.
13. Common sense is enough to show his bad faith: The investigation report from the Butare Public Prosecutor's Office shows that the Public Prosecutor's Office heard several people within the framework of the case *The Prosecutor v. Theogène Mukwiye, alias Ruhango, et al.* It was within the context of this case that the Prosecutor disclosed at the beginning of the trial the extrajudicial statements of Prosecution Witness Sadiki Sezirahiga, because of whom Hategekimana was sentenced for rape as a crime against humanity. However, this investigation report and the judgement of the Butare Court show that the perpetrator of the

rape of Nura Sezirahiga was Michel Murigande. The latter has been charged in the same case in Rwanda as *Sezirahiga*. Therefore, it stands to reason that the Prosecutor also had these extrajudicial statements which exculpate Hategekimana because Michel Murigande had pleaded guilty to his crimes. The same holds for everybody and the criminals convicted in this judgement that ruled on the four massacre sites on which the Trial Chamber found Hategekimana guilty.

14. Lieutenant Hategekimana was sentenced for a crime committed by other people who have made confessions. The documents whose disclosure is insistently being sought, considering the Judgement delivered by the Butare Court, would allow his exculpation on four of the six sites on which his guilt, namely for the rape and killing of Nura Sezirahiga, the murder of Rugomboka, the massacres perpetrated at the Ngoma Parish and at the Bénébikira Sisters' Convent, had unfairly been based by the Trial Chamber.
15. The Prosecutor is aware that his argument would irreparably fall through if he disclosed all the materials in his possession and he is trying in vain to extend his reprieve until additional evidence is available. He loses nothing by waiting.
16. With regard to the statement of Witness QCL in Canada, the Defence for Lieutenant Hategekimana is surprised that even the Prosecutor in Canada, like his counterpart of the ICTR, has refused to hand it over.

**FOR THE FOREGOING REASONS**

MAY IT PLEASE THE APPEALS CHAMBER

To find this Reply to the Prosecutor's response admissible;

To rule the Prosecutor's Response inadmissible on the grounds that it is time-barred under paragraph IX (20) of the Practice Direction and for violating the directive on the length of documents on appeal;

1104bis/A

To grant all the previous and current filings by Lieutenant Hategekimana.

The Appellant reserves the right to make further submissions.

Number of words: 975 apart from the cover page

A handwritten signature in black ink, appearing to read 'Jean de Dieu Momo', written over a horizontal line.

Jean de Dieu Momo

Lead Counsel

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