



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-99-52-A

30-11-2005

(6079/A-6074/A)

BEFORE THE PRE-APPEAL JUDGE

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Before: Judge Andréia Vaz, Pre-Appeal Judge
Registrar: Mr. Adama Dieng
Order of: 30 November 2005

Ferdinand NAHIMANA
Jean-Bosco BARAYAGWIZA
Hassan NGEZE
(Appellants)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-99-52-A

1235
11/11/05
J. Stewart

**ORDER EXPUNGING FROM THE RECORD ANNEXURES "A" THROUGH
"G" OF APPENDIX "A" TO THE CONSOLIDATED RESPONDENT'S BRIEF
FILED ON 22 NOVEMBER 2005**

Counsel for Ferdinand Nahimana

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Mr. D. Peter Herbert
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Counsel for Hassan Ngeze

Mr. Bharat B. Chadha
Mr. Behram N. Shroff

I, **ANDRÉSIA VAZ**, 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 1994 and 31 December 1994 (“Appeals Chamber” and “Tribunal”, respectively) and Pre-Appeal Judge in this case;¹

RECALLING that, pursuant to Rule 108bis(B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), the Pre-Appeal Judge “shall take any measures related to procedural matters, including the issuing of decisions, orders and directions with a view to preparing the case for a fair and expeditious hearing”;

HAVING RECEIVED the Consolidated Respondent’s Brief filed by the Prosecution on 22 November 2005 (“Consolidated Respondent’s Brief”);

NOTING the Pre-Appeal Judge’s “Decision on the Prosecutor’s Extremely Urgent Motion for Extension of Page Limits”² of 15 November 2005 allowing the Prosecution’s request in part and authorising it to file a consolidated Respondent’s Brief not exceeding two hundred (200) pages or 60,000 words, whichever is greater;³

CONSIDERING that the Prosecution has complied with the page limit allowed for the Consolidated Respondent’s Brief;⁴

NOTING that two Appendixes (for a total of 41 pages) were filed together with the Consolidated Respondent’s Brief;

NOTING that, pursuant to Paragraph 4 of the Practice Direction on the Length of Briefs and Motions on Appeal,⁵ “[a]ny appendix or book of authorities does not count towards the page limit”;

¹ *Ferdinand Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, Order of the Presiding Judge Designating the Pre-Appeal Judge, 19 August 2005; *Ferdinand Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, Corrigendum to the Order of the Presiding Judge Designating the Pre-Appeal Judge, 25 August 2005.

² *Ferdinand Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, Decision on the Prosecutor’s Extremely Urgent Motion for Extension of Page Limits, 15 November 2005 (“Decision of 15 November 2005”).

³ Decision of 15 November 2005, p. 4.

⁴ The Consolidated Respondent’s Brief contains 206 pages, 8 of which are used for the Table of Contents.

⁵ Practice Direction on the Length of Briefs and Motions on Appeal, 16 September 2002, as amended (“Practice Direction”).

NOTING that, pursuant to the same provision, “[a]n appendix or book of authorities will not contain legal or factual arguments, but rather references, source materials, items from the record, exhibits and other relevant, non-argumentative material”;

CONSIDERING that Annexures A through G of Appendix A contain legal and factual arguments as follows:

- (1) Annexure A “Conspiracy: Nahimana-Barayagwiza-Ngeze” is a summary analysis prepared by the Prosecution of “some of the evidence” that allegedly demonstrates “a conspiracy among the three Appellants to commit genocide” and contains factual arguments;⁶
- (2) Annexure B “Details of the Trial Chamber’s Findings and of the Record on Instances of Incitement in RTLM Prior to 6 April 1994” contains an analysis of the Trial Chamber’s relevant findings in response to certain Appellants’ assertions;⁷
- (3) Annexure C “Details of the Trial Chamber’s Findings on Instances of Incitement in Kanguro” contains factual arguments relative to some Trial Chamber’s findings and related Appellants’ assertions;
- (4) Annexure D “Detailed Analysis of Nahimana’s List of Mere ‘Calls to Hatred or Violence’, Allegedly Insufficient to Constitute Incitement” contains factual arguments relative to the issue in question;
- (5) Annexure E “Pre-6 April 1994 RTLM Broadcasts” contains summaries and analysis of the Trial Chamber’s factual findings that allegedly demonstrate that “RTLM broadcasts made prior to 6 April 1994 contained calls for ethnic hatred and violence directed against Tutsis”;⁸
- (6) Annexure F “Nahimana – Genocide” contains the Prosecution’s analysis of the factual findings of the Trial Chamber that allegedly “demonstrate that RTLM broadcasts for which Nahimana was held culpable directly and substantially contributed to killings and other acts of violence underpinning his conviction, *inter alia*, for genocide”;⁹

⁶ Annexure A to the Consolidated Respondent’s Brief, p. 1.

⁷ See, e.g., Annexure B to the Consolidated Respondent’s Brief, paras. 5 – 8.

⁸ Annexure E to the Consolidated Respondent’s Brief, para. 1.

⁹ Annexure F to the Consolidated Respondent’s Brief, p. 1.

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(7) Annexure G “The Details of Nahimana’s Relationship with RTLM” contains the Prosecution’s factual arguments in response to an assertion made by the Appellant Ferdinand Nahimana in his Appellant’s Brief;

FINDING that Annexures A through G of Appendix A to the Consolidated Respondent’s Brief cannot be considered as appendixes under Paragraph 4 of the Practice Direction;

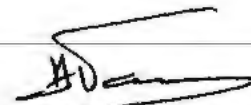
CONSIDERING that Annexure H of Appendix A “Chart of Factual Findings” and Appendix B “Authorities Cited” were filed in compliance with Paragraph 4 of the Practice Direction;

HEREBY

REJECT the filings of Annexures A through G of Appendix A to the Consolidated Respondent’s Brief;

DIRECT the Registry to return the aforementioned Annexures to the Prosecution and to expunge them from the record;

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



Andrézia Vaz
Pre-Appeal Judge

Dated this 30th day of November 2005,
At Arusha, Tanzania



[Seal of the Tribunal]