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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-98-41-A
23rd June 2009
{637/H – 634/H}

IN THE APPEALS CHAMBER

Before: Judge Mehmet Güney, Pre-Appeal Judge
Registrar: Mr. Adama Dieng
Decision of: 23 June 2009

ICTR Appeals Chamber
Date: 23rd June 2009
Action: A. J. J. J.
Copied To: Concerned Judges
SLO's, LO's, ALO's, Parties
CMS Arusha, LSS.
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Théoneste BAGOSORA
Aloys NTABAKUZE
Anatole NSENGIYUMVA
v.
THE PROSECUTOR

Case No. ICTR-98-41-A

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIÉE CONFORME A L'ORIGINAL PAR MOI
NAME / NOM: KUMEMU, A. A. E. E. E.
SIGNATURE: *[Signature]* DATE: 23 June 2009

**DECISION ON ALOYS NTABAKUZE'S MOTION FOR LEAVE
TO FILE A CORRECTED APPEAL BRIEF and
ORDER CONCERNING THE APPEAL BRIEF**

Counsel for Théoneste Bagosora
Raphaël Constant

Counsel for Aloys Ntabakuze
Peter Erlinder
André Tremblay

Counsel for Anatole Nsengiyumva
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Renifa Madenga
Inneke Onsea
Evelyn Kamau
William Mubiru
Priyadarshini Narayanan
Aisha Kagabo

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I, Mehmet GÜNEY, 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 ("Tribunal"), and Pre-Appeal Judge in this case,

NOTING the Notice of Appeal filed by Aloys Ntabakuze ("Ntabakuze") on 18 May 2009¹ against the Trial Judgement pronounced in this case on 18 December 2008 and filed on 9 February 2009;²

NOTING the Appeal Brief filed by Ntabakuze on 25 May 2009;³

BEING SEIZED OF the "Motion for Corrigendum of Ntabakuze Appeal Brief" filed by Ntabakuze on 29 May 2009 ("Motion"), in which he requests leave from the Appeals Chamber "to correct the [Appeal] Brief in order to alter some footnotes and to rephrase a few sentences"⁴ ("Proposed Corrections") and prays the Appeals Chamber to allow the filing of the corrected Appeal Brief annexed to the Motion;⁵

NOTING that the Prosecution did not file a response;

RECALLING that a party may, without requesting leave from the Appeals Chamber or the Pre-Appeal Judge, file a corrigendum to their previously filed motion or brief whenever a minor or clerical error in said motion or brief is subsequently discovered and where correction of the error is necessary in order to provide clarification;⁶

CONSIDERING that the Appeals Chamber or the Pre-Appeal Judge may otherwise authorize a variation of a previously filed motion or brief upon a showing of good cause;

CONSIDERING that:

- (i) Proposed Corrections 1, 2, 3, 4, 5, 8, 12 and 16 constitute minor corrections which contribute to clarify the Appeal Brief;

¹ Public Amended Notice of Appeal in the Interest of: Major Aloys Ntabakuze, 18 May 2009 ("Notice of Appeal").

² *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Judgement and Sentence, signed on 18 December 2008, filed on 9 February 2009 ("Trial Judgement").

³ Appeal Brief in the Interest of: Aloys Ntabakuze, 25 May 2009 ("Appeal Brief").

⁴ Motion, para. 2.

⁵ Motion, para. 5, referring to the "Amended Appeal Brief in the Interest of: Major Aloys Ntabakuze" annexed to the Motion.

⁶ See *Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Case No. IT-04-82-A, Decision on Bošković Defence Corrigendum to Respondent Brief, 16 April 2009, p. 3; *Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Decision on the Prosecution's Motion for Variance Concerning Order and Numbering of the Arguments on Appeal and on the Prosecution's Corrigendum to Appeal Brief, 3 May 2007, p. 2; *Ferdinand Nahimana et al. v. Prosecutor*, Case No.

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- (ii) Proposed Corrections 10, 11, 13, 14, 15, 16 and 17 provide necessary references⁷ omitted in the Appeal Brief;
- (iii) Proposed Corrections 7 and 9 provide additional references in support of arguments set out in the Appeal Brief;
- (iv) Proposed Correction 6 constitutes an addition of a substantive nature;

CONSIDERING that, save for Proposed Correction 6, all requested variations are minor and either correct or clarify the Appeal Brief without affecting its content and would not prejudice the Prosecution nor affect the expeditiousness of the appeal proceedings;

CONSIDERING that the addition of new information of a substantive nature in footnote 49 under Proposed Correction 6 alters the substance of the Appeal Brief, and that no justification was provided to explain why this new substantive information was not included in the original brief;

FINDING therefore that there is good cause to allow the Proposed Corrections, with the exception of Proposed Correction 6 that amounts to an impermissible substantive change;

NOTING *proprio motu* that, in his Appeal Brief, Ntabakuze indicates that "in order to present a clear, logical and exhaustive brief, [...] [he] slightly modified the organization of Grounds from his Notice of Appeal" and that "Grounds have therefore been re-numbered accordingly";⁸

NOTING that, as a result of this re-organization, most grounds of appeal and arguments have been set out and numbered in a different order than in the Notice of Appeal, which contravenes paragraph 4 of the Practice Direction on Formal Requirements for Appeals from Judgement;

CONSIDERING that the re-numbering of the grounds of appeal creates confusion and makes it difficult to relate the Appeal Brief to the Notice of Appeal;

CONSIDERING, however, that the setting out of the grounds of appeal and arguments in a different order than in the Notice of Appeal provides clarity and facilitates the understanding of

ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motions for Leave to Present Additional Evidence Pursuant to Rule 115 of the Rules of Procedure and Evidence, 8 December 2006, para. 14.

⁷ Practice Direction on Formal Requirements for Appeals from Judgement, dated 4 July 2005, para. 4(b).

⁸ Appeal Brief, para. 12 (footnote omitted).

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Ntabakuze's appeal, without altering the substance of the grounds of appeal as set out in the Notice of Appeal;⁹

FINDING therefore that the re-ordering of the grounds of appeal and arguments in the Appeal Brief should be allowed but that Ntabakuze should file a revised version of his Appeal Brief in which all grounds of appeal are referenced with the same numbers as in the Notice of Appeal;

FOR THE FOREGOING REASONS,

ALLOW Proposed Corrections 1 to 5 and 7 to 17 to Ntabakuze's Appeal Brief;

DENY the Motion in all other respects; and

ORDER Ntabakuze to file no later than Wednesday 24 June 2009 a revised version of his Appeal Brief in which all grounds of appeal are numbered as in the Notice of Appeal.

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

Done this twenty-third day of June 2009,
At The Hague, The Netherlands



[Seal of the Tribunal]

A handwritten signature in black ink, appearing to read "Mehmet Güneç", is written over a horizontal line.

Judge Mehmet Güneç
Pre-Appeal Judge

⁹ I emphasize that this statement should in no way be interpreted as a conclusion concerning whether Ntabakuze impermissibly varied the content of certain grounds of appeal as set out in his Notice of Appeal. This holding is strictly limited to the effect the re-ordering of the grounds of appeal and arguments had on their substance.