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UNITED NATIONS
NATIONS UNIES

Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-00-55B-A
29th June 2011
{537/H - 535/H}

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Pre-Appeal Judge

Registrar: Mr. Adama Dieng

Decision of: 29 June 2011

ICTR Appeals Chamber
Date: 29th June 2011
Action: R. Juma
Copied To: Concerned Judges,

Parties, Judicial Archives,
LOS, LSS
[Signature]

ILDEPHONSE HATEGEKIMANA

v.

THE PROSECUTOR

Case No. ICTR-00-55B-A

**DECISION ON THE PROSECUTION'S MOTION TO EXPUNGE ANNEX A FROM
HATEGEKIMANA'S APPELLANT'S BRIEF**

Counsel for Ildephonse Hategekimana:

Mr. Jean de Dieu Momo

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. James J. Arguin
Mr. Alphonse Van
Mr. Alfred Orono
Mr. Thembile Segoele
Mr. Leo Nwoye

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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SIGNATURE: [Signature] DATE: 29 June 2011

24

I, **Fausto Pocar**, 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 ("Appeals Chamber" and "Tribunal", respectively) and Pre-Appeal Judge in this case,¹

RECALLING that, on 6 December 2010, Trial Chamber II of the Tribunal convicted Mr. Hategekimana of genocide and murder and rape as crimes against humanity and sentenced him to imprisonment for the remainder of his life;²

NOTING that Mr. Hategekimana filed his Notice of Appeal on 16 March 2011³ and his Appellant's brief on 30 May 2011;⁴

BEING SEISED of a Motion filed on 9 June 2011 by the Prosecution requesting the Appeals Chamber to expunge Annex A from the annexes contained in the Appellant's brief;⁵

NOTING that the Prosecution submits that Annex A consists of Mr. Hategekimana's motion which had been dismissed and which contains legal arguments and that, as such, it is contrary to paragraph 4 of the Practice Direction on the Length of Briefs and Motions on Appeal of 8 December 2006 ("Practice Direction") which prescribes that an appendix will not contain legal arguments;⁶

NOTING that the Prosecution therefore requests that Annex A be expunged and that the fees associated with its filing not be paid to Mr. Hategekimana's Counsel;⁷

NOTING the Response filed by Mr. Hategekimana on 14 June 2011, in which he explains that the arguments contained in the motion in Annex A mirror those developed in his first ground of appeal;⁸

¹ Order Assigning a Pre-Appeal Judge, 20 January 2011.

² T. 6 December 2010 p. 12. See also *The Prosecutor v. Ildéphonse Hategekimana*, Case No. ICTR-00-55B-T, Judgement and Sentence, dated 6 December 2010 and filed on 14 February 2011 ("Trial Judgement"), paras. 697, 721, 729, 730, 748. The French translation of the Trial Judgement was filed on 13 April 2011.

³ *Acte d'appel du Lieutenant Ildéphonse Hategekimana contre le Jugement rendu le 6 décembre 2010 par la Chambre de première instance II du Tribunal pénal international pour le Rwanda (TPIR)*, 16 March 2011 ("Notice of Appeal"). The English translation of the Notice of Appeal was filed on 16 May 2011.

⁴ *Mémoire d'appel d'Ildéphonse Hategekimana*, 30 May 2011 (public with confidential Annexes). See also *Corrigendum au mémoire d'appel d'Ildéphonse Hategekimana déposé le 30/05/11*, 2 June 2011 ("Appellant's brief").

⁵ Prosecutor's Motion for Order to Expunge Annex A from the Annexes filed with Hategekimana's Appeal Brief, 9 June 2011 ("Motion"), para. 8.

NOTING that the Prosecution did not file a reply;

CONSIDERING that in his Appellant's brief, Mr. Hategekimana only points to the filing of the motion attached as Annex A and that nothing in his brief seeks to incorporate the arguments contained in the motion by reference;⁹

CONSIDERING that the Practice Direction envisions that an appendix will contain, *inter alia*, material from the record and that the motion in Annex A constitutes such material;¹⁰

FINDING therefore that the Motion has no merit;

FOR THE FOREGOING REASONS,

DENY the Motion.

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

Done this twenty-ninth day of June 2011,
at The Hague,
The Netherlands.



[Seal of the Tribunal]

Judge Fausto Pocar
Pre-Appeal Judge

⁶ Motion, paras. 5-8, referring to *The Prosecutor v. Ildephonse Hategekimana*, Case No. ICTR-00-55B-T, Decision on Ildephonse Hategekimana's Motion Seeking the Nullification and Suspension of Proceedings against him and his Immediate Release for Violation of his Right to Presumption of Innocence, 27 January 2011.

⁷ Motion, para. 8.

⁸ *Réponse à la requête du Procureur sollicitant le retrait de l'annexe A des documents annexés au mémoire d'Ildephonse Hategekimana*, 14 June 2011 ("Response"), paras. 2-4, 7.

⁹ See Appellant's brief, para. 20.

¹⁰ See Practice Direction, para. 4.