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UNITED NATIONS
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**Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda**

ICTR-00-55B-A

11th July 2011

{937/H – 932/H}

IN THE APPEALS CHAMBER

Before:

Judge Fausto Pocar, Presiding
Judge Mehmet Güney
Judge Andréia Vaz
Judge Theodor Meron
Judge Carmel Agius

ICTR Appeals Chamber

Date: 11th July 2011

Action: R. Yuma

Copied To: Concerned Judges

Registrar:

Mr. Adama Dieng

Parties, Judicial Archives,
LOs, LSS

Decision of:

11 July 2011

ILDEPHONSE HATEGEKIMANA

v.

THE PROSECUTOR

Case No. ICTR-00-55B-A

**DECISION ON ILDEPHONSE HATEGEKIMANA'S MOTION FOR LEAVE TO AMEND
HIS NOTICE OF APPEAL**

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 Segoete
Mr. Leo Nwoye

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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NAME / NOM: ROUEL KUMEMO A. AFHINDE

SIGNATURE: [Signature] DATE: 11 July 2011

1. 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) is seised of a motion filed on 20 May 2011 by Mr. Ildephonse Hategekimana requesting leave to amend his notice of appeal.¹

A. Procedural Background

2. On 6 December 2010, Trial Chamber II of the Tribunal ("Trial Chamber") 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 The written judgement was filed in English on 14 February 2011.³ On 28 February 2011, the Pre-Appeal Judge denied Mr. Hategekimana's request that the 30-day time limit for filing his notice of appeal commence after the filing of the French translation of the Trial Judgement.⁴ The Pre-Appeal Judge also indicated that, upon an application made after the filing of the French translation of the Trial Judgement and good cause being shown, leave may be granted to vary the grounds of appeal according to Rule 108 of the Rules of Procedure and Evidence of the Tribunal ("Rules").⁵

3. On 16 March 2011, Mr. Hategekimana filed his Notice of Appeal advancing 11 grounds of appeal.⁶ The French translation of the Trial Judgement was served on him on 12 April 2011.⁷ In the Motion, although he explained in general the nature of the amendments sought,⁸ Mr. Hategekimana did not attach the proposed amended notice of appeal. On 23 May 2011, the Pre-Appeal Judge

¹ *Requête en extrême urgence d'Ildephonse Hategekimana aux fins d'être autorisé à modifier et ajouter de nouveaux moyens d'appel*, 20 May 2011 ("Motion").

² T. 6 December 2010 p. 12. See also *The Prosecutor v. Ildephonse 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 On 20 January 2011, the Pre-Appeal Judge denied Mr. Hategekimana's request for extension of time to file his appeal submissions from the filing of the written Trial Judgement and French versions of relevant documents on the grounds that his request was premature since the Trial Judgement had not yet been filed and there was no indication in which language it or the Prosecution's submissions would be filed. See Decision on Ildephonse Hategekimana's Motion for Extension of Time for the Filing of the Notice of Appeal, 20 January 2011, paras. 2-5.

⁴ Decision on Ildephonse Hategekimana's Second Motion for Extension of Time for the Filing of the Notice of Appeal, 28 February 2011 ("Decision of 28 February 2011"), paras. 6-8. On 1 March 2011, the Pre-Appeal Judge denied Mr. Hategekimana's request for an extension of time to file his notice of appeal. See Decision on Ildephonse Hategekimana's Third Motion for Extension of Time for the Filing of the Notice of Appeal, 1 March 2011, p. 1.

⁵ Decision of 28 February 2011, para. 7.

⁶ *Acte d'appel du Lieutenant Ildephonse 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.

⁷ Motion, para. 3.

⁸ Motion, paras. 8, 9.

ordered him to file, by 30 May 2011, the proposed amended notice of appeal clearly indicating the amendments sought.⁹

4. On 30 May 2011, Mr. Hategekimana filed his Proposed Amended Notice of Appeal.¹⁰ On the same day, Mr. Hategekimana filed his Appellant's Brief, which incorporates the amendments to the Notice of Appeal proposed in his Motion.¹¹ The Prosecution responded to the Motion on 7 June 2011.¹² Mr. Hategekimana did not file a reply.

B. Submissions

5. Mr. Hategekimana requests leave to amend his Notice of Appeal pursuant to Rule 108 of the Rules. In particular, he seeks to consolidate several of his grounds of appeal and to add additional arguments related to grounds concerning his conviction for the murder of Jean Bosco Rugomboka and his sentence.¹³ He submits that a review of the French translation of the Trial Judgement and the preparation of his Appellant's Brief allowed him to identify these proposed amendments.¹⁴ He contends that the exclusion of the proposed amendments, in particular those concerning his sentence, would lead to a miscarriage of justice.¹⁵ Mr. Hategekimana further submits that the proposed amendments are in the interests of justice as they clarify his appeal and are not prejudicial to the Prosecution.¹⁶ He contends that, since the Prosecution has not yet responded to his Appellant's Brief, the proposed amendments will cause no delay in the appeal proceedings.¹⁷

⁹ Order for the Filing of Ildephonse Hategekimana's Proposed Amended Notice of Appeal, 23 May 2011, p. 2.

¹⁰ *Acte d'appel amendé du Lieutenant Ildephonse Hategekimana conformément à la décision intitulée «Order for the Filing of Ildephonse Hategekimana's Proposed Amended Notice of Appeal » rendue par le Juge de mise en état en appel le 23 mai 2011*, 30 May 2011 ("Proposed Amended Notice of Appeal"). On 9 June 2011, Mr. Hategekimana filed another proposed amended notice of appeal. Following correspondence between the Registry and Mr. Hategekimana's Counsel, Mr. Hategekimana's Counsel clarified that this filing was in fact a corrigendum filed exclusively for the benefit of the Prosecution. He further indicated that the Appeals Chamber should disregard it and consider as operative the Proposed Amended Notice of Appeal filed on 30 May 2011. See E-mail from the Registry, dated 16 June 2011.

¹¹ *Mémoire d'appel d'Ildephonse Hategekimana*, 30 May 2011 (public with confidential Annexes) ("Appellant's Brief of 30 May 2011"). See also *Corrigendum au mémoire d'appel d'Ildephonse Hategekimana déposé le 30/05/11*, 2 June 2011 ("Appellant's Brief" and "Corrigendum"). The corrigendum lists minor clerical mistakes in the table of contents, mistakes in the numbering of the paragraphs, and undue repetition in the Appellant's Brief of 30 May 2011. These clerical mistakes have been corrected in the Appellant's Brief filed along with the Corrigendum. See Corrigendum, pp. 1, 2.

¹² *Réponse du Procureur à la « requête en extrême urgence d'Ildephonse Hategekimana aux fins d'être autorisé à modifier et à ajouter de nouveaux moyens d'appel » déposée le 20 mai 2011*, 7 June 2011 ("Response").

¹³ Motion, paras. 7-9, 11-14. See also Appellant's Brief, para. 4; Proposed Amended Notice of Appeal, para. 7.

¹⁴ Motion, paras. 6, 9, 14. See also Proposed Amended Notice of Appeal, para. 3.

¹⁵ Motion, para. 17. In support of his contention, Mr. Hategekimana compares his sentence to sentences of life imprisonment imposed in cases where the accused played a prominent role and were present at the crime scene during the commission of the crimes. In his view, these circumstances do not apply to his case. See Motion, para. 18.

¹⁶ Motion, para. 10.

¹⁷ Motion, para. 16.

6. The Prosecution responds that it does not challenge the merits of the Motion because the Proposed Amended Notice of Appeal is almost identical to the Notice of Appeal.¹⁸

C. Applicable Law

7. In accordance with Rule 108 of the Rules, the Appeals Chamber may, on good cause being shown by motion, authorise a variation of the grounds of appeal set out in the notice of appeal. Such a motion should be submitted as soon as possible after identifying the new alleged error of the trial chamber or after discovering any other basis for seeking to vary the notice of appeal.¹⁹ Generally, the motion must explain precisely what amendments are being sought and show, with respect to each amendment, that the “good cause” requirement is satisfied.²⁰ The “good cause” requirement encompasses both good reason for including the proposed new or amended grounds of appeal and good reason as to why the proposed amendments were not included or correctly articulated in the original notice of appeal.²¹

8. In its previous determinations as to which proposed variations to a notice of appeal may be authorised within the scope of the good cause requirement, the Appeals Chamber has considered the following factors to be of relevance: (i) the proposed variation is minor but clarifies the notice of appeal without affecting its content; (ii) the opposing party has not opposed the variation or would not be prejudiced by it; (iii) the variation would bring the notice of appeal into conformity with the appeal brief; (iv) the variation does not unduly delay the appeal proceedings; or (v) the variation could be of substantial importance to the success of the appeal such as to lead to a miscarriage of justice if it is excluded.²²

¹⁸ Response, paras. 6-8.

¹⁹ See, e.g., *Dominique Ntawukulilyayo v. The Prosecutor*, Case No. ICTR-05-82-A, Decision on Dominique Ntawukulilyayo’s Motion for Leave to Amend his Notice of Appeal, 14 January 2011 (“*Ntawukulilyayo* Appeal Decision”), para. 10; *Tharcisse Renzaho v. The Prosecutor*, Case No. ICTR-97-31-A, Decision on Renzaho’s Motion to Amend Notice of Appeal, 18 May 2010 (“*Renzaho* Appeal Decision”), para. 9; *The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-A, Decision on Callixte Kalimanzira’s Motion for Leave to Amend his Notice of Appeal, 5 March 2010 (“*Kalimanzira* Appeal Decision”), para. 7; *Théoneste Bagosora et al. v. The Prosecutor*, Case No. ICTR-98-41-A, Decision on Anatole Nsengiyumva’s Motion for Leave to Amend his Notice of Appeal, 29 January 2010 (“*Bagosora et al.* Appeal Decision”), para. 10.

²⁰ See, e.g., *Ntawukulilyayo* Appeal Decision, para. 10; *Renzaho* Appeal Decision, para. 9; *Kalimanzira* Appeal Decision, para. 7; *Bagosora et al.* Appeal Decision, para. 10. See also Practice Direction on Formal Requirements for Appeals from Judgement, 4 July 2005, paras. 2, 3.

²¹ See, e.g., *Ntawukulilyayo* Appeal Decision, para. 10; *Renzaho* Appeal Decision, para. 9; *Kalimanzira* Appeal Decision, para. 7; *Bagosora et al.* Appeal Decision, para. 10.

²² See, e.g., *Kalimanzira* Appeal Decision, para. 8; *Bagosora et al.* Appeal Decision, para. 11; *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-01-73-A, Decision on Protais Zigiranyirazo’s Motion for Leave to Amend Notice of Appeal, 18 March 2009, para. 4; *Tharcisse Muvunyi v. The Prosecutor*, Case No. ICTR-2000-55A-A, Decision on “Accused Tharcisse Muvunyi’s Motion for Leave to Amend his Grounds for Appeal and Motion to Extend Time to File his Brief on Appeal” and “Prosecutor’s Motion Objecting to ‘Accused Tharcisse Muvunyi’s Amended Grounds for Appeal’”, 19 March 2007, para. 7; *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Motion of Dragan Jokić for Leave to File Third Amended Notice of Appeal and Amended Appellate Brief, 26 June 2006, para. 7.

D. Discussion

9. The Appeals Chambers recalls that the Pre-Appeal Judge expressly noted the possibility of an amendment of the Notice of Appeal after the filing of the French translation of the Trial Judgement, if good cause were shown.²³ The Appeals Chamber notes that the vast majority of the proposed amendments are minor as they are aimed at restructuring the presentation of the appeal. As the Prosecution submits, the text of the Proposed Amended Notice of Appeal largely mirrors the original Notice of Appeal. Although not entirely clear from the Proposed Amended Notice of Appeal alone, the main proposed change involves incorporating the more general and thematic arguments made in Grounds Two to Four and Ground Ten into Grounds Five to Nine, which relate to the specific crime sites. In the Proposed Amended Notice of Appeal, Mr. Hategekimana achieved this by adding Grounds Two to Four and Ground Ten to the titles of Grounds Five to Nine.²⁴ This consolidation is readily apparent in his Appellant's Brief, which clearly contains seven identifiable categories: (i) violations of fair trial rights; (ii) his convictions for the murder of Jean Bosco Rugomboka; (iii) the murder of Salomé Mujaweyezu, Alice Mukarwesa and Jacqueline Mukaburasa; (iv) the rape of Nura Sezirahiga; (v) the attack on Ngoma parish; (vi) the attack on the *Maison Générale* (Benébikira Convent); and (vii) his appeal against the sentence.

10. The Appeals Chamber considers that these proposed amendments essentially clarify and improve the legibility and comprehensibility of Mr. Hategekimana's appeal, without affecting its content. In the absence of an objection from the Prosecution and in view of the nature of these amendments, the Appeals Chamber is satisfied that there is good cause for allowing these proposed amendments to Mr. Hategekimana's Notice of Appeal. For clarity, the parties should consider each of the seven categories identified above as Grounds One to Seven.²⁵

11. Turning to the proposed amendment relating to Mr. Hategekimana's ground of appeal regarding his conviction for the murder of Jean Bosco Rugomboka, the Appeals Chamber notes that this proposed amendment concerns an alleged error of fact in the Trial Chamber's discretion in rejecting Defence Witness MZA's evidence.²⁶ This error of fact appears in a new paragraph of the

²³ Decision of 28 February 2011, para. 7.

²⁴ See Proposed Amended Notice of Appeal, pp. 16, 21, 24, 27, 28.

²⁵ See Appellant's Brief, paras. 8-35 (Ground One alleging violations of Mr. Hategekimana's fair trial rights); paras. 36-191 (Ground Two alleging errors in his conviction for the murder of Jean Bosco Rugomboka); paras. 192-242 (Ground Three alleging errors in his conviction for the murder of Salomé Mujaweyezu, Alice Mukarwesa and Jacqueline Mukaburasa); paras. 243-301 (Ground Four alleging errors in his conviction for the rape of Nura Sezirahiga); paras. 302-376 (Ground Five alleging errors in his conviction for the attack on Ngoma parish); paras. 377-424 (Ground Six alleging errors in his conviction for the attack on the *Maison Générale* (Benébikira Convent)); paras. 425-443 (Ground Seven alleging errors in his sentence).

²⁶ Motion, paras. 11, 12.

Proposed Amended Notice of Appeal,²⁷ which in fact repeats verbatim the allegation of a legal error in the assessment of this same witness advanced in paragraph 87 of the Notice of Appeal. Consequently, the Appeals Chamber is of the view that this amendment is minor and should be allowed.

12. On the other hand, the Appeals Chamber considers that the proposed amendments to Mr. Hategekimana's ground of appeal relating to his sentence are not minor variations. Rather, they advance new substantive arguments concerning alleged errors in the Trial Chamber's assessment of the aggravating and mitigating factors and Mr. Hategekimana's role in the crimes.²⁸ However, without pronouncing itself on the merits of Mr. Hategekimana's appeal, the Appeals Chamber considers that the additional arguments could be of substantial importance to the success of his appeal and, as such, should be allowed.

13. Finally, the Appeals Chamber observes that allowing the requested amendments at this stage of the proceedings would not result in any undue delay in the appeal proceedings or affect the briefing schedule. In this respect, it notes that Mr. Hategekimana has already incorporated the proposed amendments into his Appellant's Brief. The Appeals Chamber therefore considers that allowing the amendments would bring the Notice of Appeal into conformity with the Appellant's Brief. Moreover, the Prosecution has not opposed the Motion and would not be prejudiced by allowing the proposed amendments.

E. Disposition

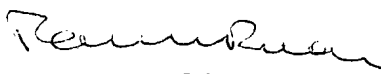
14. For the foregoing reasons, the Appeals Chamber **GRANTS** the Motion and **ACCEPTS** the Proposed Amended Notice of Appeal as the operative Notice of Appeal in this case.

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

Done this 11th day of July 2011,
at The Hague,
The Netherlands.



[Seal of the Tribunal]


Judge Fausto Pocar
Presiding

²⁷ See Proposed Amended Notice of Appeal, para. 88.

²⁸ See Proposed Amended Notice of Appeal, para. 142.