



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

8498/H

ICTR-99-52-A
30 October 2006
[8498/H - 8495]

BEFORE THE PRE-APPEAL JUDGE

Before: Judge Andréia Vaz, Pre-Appeal Judge
Registrar: Mr. Adama Dieng
Decision of: 30 October 2006

ICTR Appeals Chamber
Date: 30 October 2006
Action: P.T.
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Ferdinand NAHIMANA
Jean-Bosco BARAYAGWIZA
Hassan NGEZE
(Appellants)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-99-52-A

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**DECISION ON THE APPELLANT JEAN-BOSCO BARAYAGWIZA'S
CORRIGENDUM MOTIONS OF 5 JULY 2006**

Counsel for Jean-Bosco Barayagwiza
Mr. D. Peter Herbert
Ms. Tanoo Mylvaganam

Office of the Prosecutor
Mr. James K. Stewart
Mr. Neville Weston
Mr. Abdoulaye Seye
Ms. Linda Bianchi

Counsel for Ferdinand Nahimana
Mr. Jean-Marie Biju-Duval
Ms. Diana Ellis

Counsel for Hassan Ngeze
Mr. Bharat B. Chadha
Mr. Behram N. Shroff

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: *Tchikinda Patrice*
SIGNATURE: *[Signature]* DATE: *30 Oct 2006*

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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

~~BEING SEIZED OF~~ the "Corrigendum Motion Relating to the Appellant Jean Bosco Barayagwiza's Reply to the Consolidated Respondents Brief" filed by Jean-Bosco Barayagwiza ("Appellant") on 5 July 2006 ("First Motion"), by which the Appellant seeks to amend "The Appellant Jean-Bosco Barayagwiza's Reply to the Consolidated Respondent's Brief" filed on 12 December 2005 ("Reply Brief");

NOTING that the Prosecution has not filed a response to the First Motion;

NOTING that the Appellant submits that the proposed corrections are meant to correct typing errors or obvious errors of grammar "making a factual correction not amounting to a substantial amendment of the [Reply Brief]";²

~~RECALLING~~ that "a party may, *without requesting leave from the Appeals Chamber*, file a corrigendum to their previously filed brief or motion whenever a minor or clerical error in said brief or motion is subsequently discovered and where correction of the error is necessary in order to provide clarification";³

CONSIDERING, consequently, there was no need for the Appellant to seize it with a Motion in this respect;⁴

FINDING that the submitted amendments indeed correct grammatical or typing errors, or inaccurate references, and do not amount to any substantial changes of the Reply Brief;

FINDING, therefore, that the Reply Brief should be read in accordance with the amendments proposed by the First Motion and allowed by the present decision;

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 First Motion, para. 3.

³ *The Prosecutor v. Željko Mejačić et al.*, Case No. IT-02-65-AR11bis.1 Decision on Joint Defense Motion for Enlargement of Time to File Appellants' Brief, 30 August 2005, p. 3 [emphasis added].

⁴ See Decision on Appellant Jean-Bosco Barayagwiza's Motions for Leave to Submit Additional Grounds of Appeal, to Amend the Notice of Appeal and to Correct his Appellant's Brief, 17 August 2006, para. 54.

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BEING ALSO SEIZED OF "The Appellant Jean Bosco Barayagwiza's Corrigendum Motion Concerning the French Translation of the Appellant's Reply to the Respondent's Consolidated Brief" filed by the Appellant on 5 July 2006 ("Second Motion"), proposing corrections to be made in the French translation of the Reply Brief;⁵

NOTING that the Prosecution has not filed a response to the Second Motion;

NOTING that the Appellant submits that the proposed corrections should be made in order to avoid a miscarriage of justice and that "the benefit of any doubt ought to be given to the party who submitted the original in English as to the choice of words that are provided in translation where there is text of questionable accuracy";⁶

CONSIDERING that the translation of the Reply Brief was certified by the Language Services Section of the Tribunal;

CONSIDERING that in these circumstances requesting specific relief through a motion, rather than merely filing a corrigendum, is warranted;

NOTING the "Registrar's Submission under Rule 33B of the Rules of Procedure and Evidence with Respect to the Appellant Jean Bosco Barayagwiza's Corrigendum Motion Concerning the French Translation of the Appellant's Reply to the Respondent's consolidated Brief Dated 5 July 2006" filed on 19 October 2006 and the Report of the Language Services Section of the Tribunal appended thereto ("Registrar's Submission" collectively);

CONSIDERING that, in light of the remarks and explanations contained in the Registrar's Submission, the Appellant's submissions do not raise doubt as to the accuracy of the translation,⁷ save for his objection 1 and, partly, objection 6;⁸

FINDING, consequently, that the title of paragraph 5 of the French Translation of the Reply Brief should read "*Critères généraux de l'impartialité judiciaire (par. 17 à 20)*", and that the third sentence of paragraph 28 of the same document should read as follows:

"Cet article n'était pas appliqué au TPIR, mais celui-ci n'était pas fondé en droit à juger un accusé en son absence, et ce, jusqu'à l'adoption de l'article 82 bis du Règlement à la session plénière des 26 et 27 mai 2003."

⁵ Réplique de l'Appelant Jean-Bosco Barayagwiza au Mémoire unique de l'Intimé, 12 avril 2006.

⁶ Second Motion, para. 3.

⁷ See, *Prosecutor v. Elizaphan Ntakirutimana and Gerard Ntakirutimana*, Case No. ICTR-96-10-A and ICTR-96-17-A, Decision on Defence Motion to Strike Annex B from the Prosecution Response Brief and for Re-Certification of the Record, 24 June 2004, p. 3.

⁸ Second Motion, paras 1 and 6.

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FINDING that the rest of the corrections proposed by the Appellant is not warranted;

FOR THE FOREGOING REASONS,

GRANT the First Motion;

GRANT the Second Motion **IN PART** as specified above and **DISMISS** the Second Motion in all other respects.

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

Dated this 30th day of October 2006,
At The Hague, The Netherlands.



Andréia Vaz
Pre-Appeal Judge

