

9963/H



Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-99-52-A
5 March 2007
(9963/H - 9954/H)

IN THE APPEALS CHAMBER

P.T.

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andréia Vaz
Judge Theodor Meron

Registrar: Mr. Adama Dieng

Decision of: 5 March 2007

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS	
NAME / NOM: <i>Patrick T. D. D. D.</i>	
SIGNATURE: <i>[Signature]</i>	DATE: <i>05/03/07</i>

Ferdinand NAHIMANA
Jean-Bosco BARAYAGWIZA
Hassan NGEZE
(Appellants)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-99-52-A

ICTR Appeals Chamber
Date: <i>5 March 2007</i>
Action: <i>P.T.</i>
Copied To: <i>Concated Judge Parties, Doc. Log, ALOS LSS, Archives</i>
<i>[Signature]</i>

**DECISION ON THE PROSECUTOR'S MOTION TO PURSUE THE ORAL
REQUEST FOR THE APPEALS CHAMBER TO DISREGARD CERTAIN
ARGUMENTS MADE BY COUNSEL FOR APPELLANT BARAYAGWIZA AT
THE APPEALS HEARING ON 17 JANUARY 2007**

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

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

Counsel for Hassan Ngeze
Mr. Bharat B. Chadha
Mr. Dev Nath Kapoor

Office of the Prosecutor
Mr. James Stewart
Mr. Neville Weston
Mr. George Mugwanya
Ms. Linda Bianchi
Mr. Abdoulaye Seye
Mr. Alfred Orono Orono

9962/H

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 seized of "The Prosecutor's Motion to Pursue the Oral Request for the Appeals Chamber to Disregard Certain Arguments Made by Counsel for Appellant Barayagwiza at the Appeals Hearing on 17 January 2007" filed by the Office of the Prosecutor ("Prosecution") on 6 February 2007 ("Motion"). Counsel for Jean-Bosco Barayagwiza ("Appellant") filed its response opposing the Motion on 9 February 2007.¹

PROCEDURAL BACKGROUND

2. Trial Chamber I ("Trial Chamber") rendered its Judgement in this case on 3 December 2003.² Pursuant to the decisions of 17 May 2005³ and 6 September 2005,⁴ the Appellant filed both his amended Notice of Appeal and Appellant's Brief on 12 October 2005 ("Notice of Appeal" and "Appellant's Brief", respectively). The briefing with respect to the Appellant's appeal was completed on 12 December 2005.⁵ The Appellant's appeal was heard by the Appeals Chamber on 17 and 18 January 2007.

3. On 18 January 2007, the Prosecution made an oral request to the Appeals Chamber to disregard entirely the arguments made by Counsel for the Appellant on 17 January 2007 with respect to six alleged deficiencies in the pleading of the Indictment. The Prosecution claimed that these allegations were raised at the Appeals Hearing for the first time and were not contained in the Notice of Appeal or the Appellant's Brief ("Oral Request").⁶ In the alternative, the Prosecution sought leave to be granted "sufficient time from the receipt of the transcript of the oral arguments in order to respond sufficiently to those allegations."⁷ Upon this submission, the Presiding Judge of the Appeals Chamber invited the Appellant to address these issues during his oral submissions in reply to the Prosecution's arguments and to "indicate the precise place in which such issues were

¹ The Appellant Jean-Bosco Barayagwiza's Response to "Prosecutor's Motion to Pursue the Oral Request for the Appeals Chamber to Disregard Certain Arguments Made by Counsel for Appellant Barayagwiza at the Appeals Hearing on 17 January 2007 [sic]", 9 February 2007 ("Response").

² *The Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-99-52-T, Judgement and Sentence, 3 December 2003 ("Trial Judgement").

³ Decision on "Appellant Jean-Bosco Barayagwiza's Urgent Motion for Leave to Have Further Time to File the Appeals Brief and the Appeal Notice", 17 May 2005 ("Decision of 17 May 2005").

⁴ Decision on Clarification of Time Limits and on Appellant Barayagwiza's Extremely Urgent Motion for Extension of Time to File his Notice of Appeal and his Appellant's Brief, 6 September 2005 ("Decision of 6 September 2005").

⁵ The Appellant Jean-Bosco Barayagwiza's Reply to the Consolidated Respondent's Brief, 12 December 2005 ("Reply Brief").

⁶ T. 18 January 2007, pp. 15-16.

9961/H

raised in the briefs previously".⁸ In response to this invitation, the Appellant submitted that the arguments in contention were raised to further develop paragraphs 283 and 307 of the Appellant's Brief where they could not be fully elaborated in writing due to limited time.⁹ Furthermore, the Appellant suggested that the Appeals Chamber could, in any event, consider these arguments in the framework of its inherent jurisdiction.¹⁰

4. On 30 January 2007, pursuant to the Prosecution's Oral Request, the Appeals Chamber directed the Prosecution to file, should it so desire, a written motion specifying, *inter alia*, the alleged new arguments raised by the Appellant at the Appeals Hearing with respect to which it objected.¹¹

DISCUSSION

A. Submissions of the Parties

5. In its Motion, the Prosecution claims that the following six specific arguments raised by the Appellant at the hearing of 17 January 2007 ("Arguments" collectively), were not contained in the Notice of Appeal or the Appellant's Brief:

- that the Indictment failed to set out the material facts relating to the allegations concerning the Appellant's superior responsibility for "the CDR party and its members and to the RTLM and its employees" ("Argument 1");
- that the Indictment failed to plead the material fact that the Appellant "formally became the national president of the CDR party" ("Argument 2");
- that the Indictment failed to plead the material fact that the Appellant was a member of the Executive Committee of the CDR ("Argument 3");
- that the Indictment failed to plead the material fact that the Appellant was "Number 2" in the RTLM ("Argument 4");
- that the Indictment failed to plead the material facts relating to the distribution of weapons, particularly in relation to the evidence given by Witness AHB ("Argument 5"); and
- that the Indictment failed to plead the material facts relating to his supervision of activities at roadblocks, particularly in relation to the evidence given by Witness ABC ("Argument 6").¹²

⁷ *Ibid.*, p. 16.

⁸ *Ibid.*, p. 36.

⁹ *Ibid.*, p. 59.

¹⁰ *Id.*

¹¹ Memorandum from Ms. Catherine Marchi-Uhel, Head of Chambers, 30 January 2007.

¹² Motion, para. 3.

9960/H

6. The Prosecution notes that the Appellant introduced these Arguments in relation to his grounds of appeal 12, 18, 20, 13, 24-25 and 26, respectively, but submits that while these grounds indeed relate to the same facts, they do "not challenge the sufficiency of the pleading of these facts in the Indictment."¹³ It adds that paragraphs 283 and 307 of the Appellant's Brief (grounds 34 and 36) – to which the Appellant referred in his oral submissions¹⁴ – are not relevant to the new Arguments either since they only deal with two specific alleged defects in the Indictment, namely that (i) it did not allege that widespread and systematic attacks occurred in Rwanda before 1994, and (ii) it did not include reference to RTLM broadcasts that were aired before 6 April 1994.¹⁵ Therefore, the Prosecution submits that these Arguments constitute new grounds of appeal impermissibly raised by the Appellant during the oral hearing.¹⁶

7. The Appellant responds that he identified numerous defects in the Indictment as early as during the pre-trial stage of the case but that, despite the Trial Chamber's reassurances, these defects were never cured during the trial.¹⁷ Furthermore, the Appellant submits that his position "on various aspect[s] of that question" was dealt with in his Appellant's Brief (paragraphs 197-199, 283, 288 and 307) and Reply Brief (paragraphs 3, 59, 77).¹⁸ Therefore, he argues, the Prosecution was sufficiently put on notice of his Arguments and was not taken by surprise at the hearing of 17 January 2007.¹⁹ The Appellant also claims that it could be reasonably expected that he would elaborate on these issues in light of the "developing jurisprudence on the exclusion of evidence not included in the indictment."²⁰

8. The Appellant adds that his oral submissions should be read as complementing his Notice of Appeal and the Appellant's Brief, and that it would be contrary "to both the letter and the spirit" of the Tribunal's Statute and Rules of Procedure and Evidence ("Statute" and "Rules", respectively) to exclude the arguments relevant to "serious and systematic" defects in the Indictment, as that would result in rewarding the Prosecution's failure to adequately plead the charges against the Appellant.²¹ Finally, the Appellant reiterates that the Appeals Chamber can nevertheless consider the

¹³ *Ibid.*, para. 4.

¹⁴ *See supra*, para. 3.

¹⁵ Motion, para. 7.

¹⁶ *Ibid.*, paras 4, 8-10. In this respect, the Prosecution also notes that the Appellant has previously unsuccessfully attempted to modify his Notice of Appeal and the Appellant's Brief, but never sought to include any new grounds of appeal in relation to the new Arguments.

¹⁷ Response, para. 3, referring to his "Objection Based on Defects in the Form of the Indictment (Rule 72 of the Rules of Procedure and Evidence)", 19 July 2000, and to the oral decision *dismissing this motion* (T. 26 September 2000, pp. 12-14).

¹⁸ *Ibid.*, para. 4.

¹⁹ *Ibid.*, para. 5.

²⁰ *Id.*

²¹ *Ibid.*, para. 7.

9959/H

Appellant's Arguments "by virtue of its inherent power" as it has an "overarching duty" to correct fundamental errors made by a Trial Chamber even if both parties fail to raise them.²² In this respect, the Appellant requests the Appeals Chamber to consider the Arguments as validly pleaded and to "[d]ecide *proprio motu* to consider any other defects in the Indictment not raised by the Appellant but which must be dealt with in order to avoid a miscarriage of justice."²³

B. Analysis

9. As noted above, the Appellant presented the Arguments as related to his grounds of appeal 12, 18, 20, 13, 24-25 and 26.²⁴ The Appeals Chamber notes, however, that the relevant parts of the Notice of Appeal and Appellant's Brief do not contain any allegation that the Trial Chamber erred in convicting the Appellant on the basis of a defective Indictment:

- Ground 12 deals with alleged factual and legal errors in relation to an "incorrect application of [the] test for superior responsibility."²⁵ There is no allegation that the Indictment failed to set out the facts underlying the Appellant's superior responsibility for the CDR and the RTLM;

- Ground 18 alleges that the Trial Chamber erred in fact in finding that the Appellant succeeded Martin Bucyana as President of the CDR after his murder on 22 February 1994.²⁶ There is no allegation that the Indictment was defective in this respect;

- Ground 20 challenges the Trial Chamber's factual finding that the Appellant was a member of the CDR Executive Committee.²⁷ There is no allegation that the relevant facts in this respect had been insufficiently pleaded;

- Ground 13 alleges that the Trial Chamber erred in fact in finding that the Appellant was "second in command" at the RTLM and had an important role in the Initiative Committee of RTLM SA.²⁸ In his oral submissions, the Appellant argued in addition that "[t]he material facts finding the evidence on the findings that the Appellant was number 2 or second in the management of the RTLM Radio and company [...] were not mentioned in the indictment

²² *Ibid.*, para. 8.

²³ *Ibid.*, para. 9.3.

²⁴ Argument 1 presented as related to Ground 12 (T. 17 January 2007, pp. 57-58); Argument 2 presented as related to Ground 18 (T. 17 January 2007, p. 58); Argument 3 presented as related to Ground 20 (T. 17 January 2007, p. 67); Argument 4 presented as related to Ground 13 (T. 17 January 2007, p. 74); Argument 5 presented as related to Grounds 24 and 25 (T. 17 January 2007, p. 76); Argument 6 presented as related to Ground 26 (T. 17 January 2007, p. 81).

²⁵ Notice of Appeal, p. 2; Appellant's Brief, paras 140-149.

²⁶ Notice of Appeal, p. 2; Appellant's Brief, paras 181-184.

²⁷ Notice of Appeal, p. 2; Appellant's Brief, paras 186-189.

9958/H

nor in any of [the] Prosecution pre-trial statement[s]" and that the Indictment did not contain any mention that he "was with Nahimana, the most active member [] of the initiative committee",²⁹

- Grounds 24 and 25 allege factual errors with respect to the Appellant's responsibility for the distribution of weapons and his participation in the planning of killings in Gisenyi.³⁰

There is no allegation that the Indictment was defective in this respect;

- Ground 26 alleges that the Trial Chamber erred in fact in finding that the Appellant was involved in the supervision of roadblocks.³¹ Again, there is no allegation of any defects of the Indictment as suggested by the Appellant at the appeals hearing.

10. The Appeals Chamber also notes that neither the Notice of Appeal nor the Appellant's Brief contains a general allegation that the Indictment was defective, to which the new Arguments could be related. The Appellant's Brief alleges defects in the Indictment in only two limited respects: (i) the Indictment does not mention "the systematic and widespread attacks against the Tutsi population having taken place before 1994 and to which Kangura, the RTLM and the CDR party would have participated or would have contributed";³² and (ii) the Indictment does not refer to the "RTLM broadcasts aired before [] 6 April 1994 upheld as evidence of direct and public indictment to commit genocide."³³

11. Finally, the Appeals Chamber notes that the new Arguments are equally unrelated to the references provided by the Appellant in his Response.³⁴ In paragraphs 197-199 of his Appellant's Brief (Ground 23), the Appellant argues that the evidence was insufficient to support the Trial Chamber's findings on the Appellant's role in CDR meetings and demonstrations.³⁵ According to paragraph 288 of the Appellant's Brief (Ground 35), the Trial Chamber erred in law and in fact in finding (i) that massacres on a large scale were linked to the publications of *Kangura* or the broadcasts of RTLM; (ii) that "all activities of the CDR party and its members were, 'by nature

²⁸ Notice of Appeal, p. 2; Appellant's Brief, paras 150-156.

²⁹ Argument 4, T. 17 January 2007, p. 74.

³⁰ Notice of Appeal, p. 2; Appellant's Brief, paras 208-219.

³¹ Notice of Appeal, p. 2; Appellant's Brief, paras 220-227.

³² Appellant's Brief, para. 283.

³³ *Ibid.*, para. 307 with reference to paras 98-109 of the Appellant's Brief of Ferdinand Nahimana.

³⁴ *See supra*, para. 7.

³⁵ Appellant's Brief, para. 197: "The evidence on which the Prosecution relied to inculpate the Appellant in CDR meetings and/or demonstrations fell far short of the cogent quality required to establish the Appellant's role consistent with the allegations in the indictment. [...]" *Ibid.*, para. 198: "[...] The evidence of the Appellant's contributions was not probative of the allegations in the indictment. [...]"

9957/H

group rampage[s] of violence", especially "since such kind of charge was not [a] subject of discussion during the trial". Paragraphs 283 and 307 have already been discussed above.³⁶

12. As far as the Reply Brief is concerned, paragraph 3 argues that the Prosecution's claim³⁷ that the Appellant became a director of the RTLTM does not appear in the Indictment. This argument differs somewhat from Argument 4, according to which the Indictment did not plead the material fact that the Appellant was "number 2" at RTLTM. In any case, even if the allegation in Argument 4 could be said to be substantially the same as that made in paragraph 3 of the Reply Brief (a question the Appeals Chamber need not decide here), it would remain that the allegation of defect was not made in the Notice of Appeal or the Appellant's Brief,³⁸ and that the Prosecution objected to it at the hearing. As to paragraphs 59 and 77 of the Reply Brief, the first one states that the "theory of the Appellant being a lynchpin [...] was [never] alleged by the Prosecution in the indictment or the later amendment", whereas the second affirms that "[t]he Prosecution failed to refute the argument of the Appellant that RTLTM broadcasts were not charged against him in the indictment as being part of a systematic and widespread attack." These allegations are again different from the six Arguments made by the Appellant at the hearing.

13. In light of the foregoing, the Appeals Chamber finds that Arguments 1 to 6 pleaded by the Appellant during the Appeals Hearing of 17 January 2007 are in fact new submissions that go beyond the scope of the existing grounds of appeal and constitute new grounds of appeal. The Appeals Chamber recalls that pursuant to Rule 108 of the Rules, the Appeals Chamber "may, on good cause being shown by motion, authorise a variation of the grounds of appeal" contained in the notice of appeal. Such motions should be submitted "as soon as possible after identifying the new alleged error"³⁹ of the Trial Chamber or after discovering any other basis for seeking a variation to the notice of appeal. Generally, "a request to amend a notice of appeal must, at least, explain

³⁶ See *supra*, para. 10.

³⁷ See Consolidated Respondent's Brief, filed 22 November 2005, para. 11.

³⁸ The Appeals Chamber recalls that a reply should address the arguments made in a response, and not contain new allegations of error (Practice Direction on Formal Requirements for Appeals from Judgement, 4 July 2005 ("Practice Direction on Formal Requirements"), para. 6; see Decision on Appellant Jean-Bosco Barayagwiza's Motion for Leave to Present Additional Evidence Pursuant to Rule 115, 5 May 2006, para. 15; *Prosecutor v. Miroslav Deronjić*, Case No. IT-02-61-A, Judgement on Sentencing Appeal, 20 July 2005, paras 145-146; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Prosecution's Motion to Strike New Argument Alleging Errors by Trial Chamber Raised for First Time in Appellant's Reply Brief, 28 January 2005; *Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Decision on Prosecution's Motion to Strike Parts of the Brief in Reply, 27 September 2004).

³⁹ 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 ("Decision of 17 August 2006"), para. 9; *Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case No. IT-98-34-A, Decision on Mladen Naletilić's Motion for Leave to File Pre-Submission Brief, 13 October 2005, pp. 2-3.

9956/H

precisely what amendments are sought and why, with respect to each such amendment, the 'good cause' requirement of Rule 108 is satisfied."⁴⁰

14. In the present case, the Appeals Chamber is neither satisfied that the Appellant has properly sought leave to amend his grounds of appeal, nor that he has shown good cause⁴¹ for doing so more than a year after filing his Notice of Appeal and Appellant's Brief. Indeed, his only arguments justifying the fact that he pleaded these new grounds of appeal at such a late stage of the appellate proceedings, are that (i) he "had limited time in the brief to set them out";⁴² and (ii) the jurisprudence on "the exclusion of evidence not included in the indictment" has developed since he filed his briefs.⁴³ The first argument can be rejected as manifestly unfounded without further analysis.⁴⁴ With respect to the second, the Appeals Chamber notes that the Appellant cites a number of decisions, only three of them having been rendered after the completion of the briefing with respect to his appeal (the latest having been rendered on 18 September 2006), yet the Appellant never sought to amend his briefs to include those references upon their issuance.

15. Although the Appeals Chamber has concluded that the Appellant has not shown "good cause" justifying the amendments to his grounds of appeal at this stage in the appeals proceedings, the Appeals Chamber recalls having under limited circumstances permitted amendments even where there was no good cause shown for failure to include the new or amended grounds in the original notice – that is where the failure resulted from counsel's negligence or inadvertence. In such instances, the Appeals Chamber has permitted amendments which could be of substantial importance to the success of an appeal such as to lead to a miscarriage of justice if they were

⁴⁰ Decision of 17 August 2006, para. 9; *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Dragan Jokić's Motion to Amend Notice of Appeal, 14 October 2005, para. 7. See also Practice Direction on Formal Requirements for Appeals from Judgement, 4 July 2005 ("Practice Direction on Formal Requirements"), paras 2-3.

⁴¹ See Decision of 17 August 2006, paras 10-14 for an overview of this requirement.

⁴² T. 18 January 2007, p. 59.

⁴³ Response, para. 5.

⁴⁴ See, in particular, Practice Direction on Formal Requirements, para. 4 and Rule 111 of the Rules providing that an appellant's brief must set out *all the arguments* and authorities and be filed within seventy-five days of filing of the notice of appeal. The Appeals Chamber also recalls that the proceedings in relation to the Appellant were stayed from 19 May 2004 through 26 January 2005, pending the assignment of a new lead counsel (Decision on Jean-Bosco Barayagwiza's Motion Appealing Refusal of Request for Legal Assistance, 19 May 2004; Order Lifting the Stay of Proceedings in Relation to Jean-Bosco Barayagwiza, 26 January 2005, by which the Appellant was ordered to file "any amended or new Notice of Appeal no later than 21 February 2005" and "any amended or new Appellant's Brief no later than 9 May 2005"). The current Lead Counsel was assigned to the Appellant by the Registrar on 30 November 2004, and on 19 January 2005, the Appeals Chamber dismissed the Appellant's challenge to this assignment (Decision on Jean-Bosco Barayagwiza's Motion Concerning the Registrar's Decision to Appoint Counsel, 19 January 2005; Decision on Jean-Bosco Barayagwiza's Request for Reconsideration of Appeals Chamber Decision of 19 January 2005, 4 February 2005). Finally, pursuant to the Decisions of 17 May 2005 and 6 September 2005, the Appellant filed both his Notice of Appeal and Appellant's Brief on 12 October 2005.

RM

9955/H

excluded.⁴⁵ In these exceptional cases, the Appeals Chamber has reasoned, the interests of justice require that an appellant not be held responsible for the failures of his or her counsel.⁴⁶ In the instant case, the Appeals Chamber concludes that the failure on the part of the Appellant's Counsel to articulate these grounds at an earlier stage should not bar the Appellant from raising those grounds of appeal here. The Appeals Chamber notes that each of these grounds goes to the issue of the sufficiency of the Indictment brought against the Appellant, which directly impacts upon his due process right under Article 21(4)(a) of the Statute "to be informed promptly and in detail [...] of the nature and cause of the charge against him." Protection of this right is considered to be of such importance that the issue of alleged defects in the indictment falls into the limited category of issues considered to be an exception from the waiver doctrine.⁴⁷ In this case, therefore, the Appeals Chamber finds that the proposed new amendments, whether or not they are likely to succeed, could be of substantial importance to the Appellant's appeal such that their exclusion would lead to a miscarriage of justice.⁴⁸

DISPOSITION

16. For the foregoing reasons, the Appeals Chamber **DISMISSES** the Motion.

17. Having held that the six Arguments raised by the Appellant during the hearing of 17 January 2007 are admissible as new grounds of appeal and considering that the Prosecution was not in a position to respond to those grounds at the Appeals Hearing, the Appeals Chamber **GRANTS** the Oral Request **IN PART** and **ALLOWS** the Prosecution to file a written response of a maximum of 15 (fifteen) pages within 10 (ten) days of the present decision. The Appellant may, if he so chooses, file a reply of a maximum of 10 (ten) pages within 4 (four) days of the filing of the Prosecution's response.

⁴⁵ *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. 9 referring to *Prosecutor v. Dario Kordić and Mario Čerkez*, Case IT-95-14/2-A, Decision Granting Leave to Dario Kordić to Amend his Grounds of Appeal, 9 May 2002 ("Kordić and Čerkez Decision"), para. 5. See also Decision of 17 August 2006, para. 20.

⁴⁶ *Id.*

⁴⁷ *Eliézer Ntyitegeka v. The Prosecutor*, Case No. ICTR-96-14-A, Judgement, 9 July 2004, para. 200.

⁴⁸ See *Kordić and Čerkez Decision*, para. 7.

RM

9954/H

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

Dated this 5th day of March 2007.
At The Hague, The Netherlands



[Seal of the Tribunal]

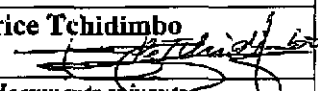
Fausto Pocar
Presiding Judge



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

REGISTRY AT THE HAGUE
Churchillplein 1, 2517 JW The Hague, The Netherlands
Tel: + 31 (0) 70 512-8225 / 8237 Fax : + 31 (0) 70 512 -8932

**APPEALS CHAMBER – PROOF OF SERVICE
CHAMBRE D'APPEL - PREUVE DE NOTIFICATION**

6 March 2007	Case Name / <i>Affaire</i> : NAHIMANA ET AL. Case No / <i>No. de l'affaire</i> : ICTR-99-52-A	Ferdinand NAHIMANA, Jean-Bosco BARAYAGWIZA, Hassan NGEZE v. THE PROSECUTOR
To: A:	ARUSHA ✕ Judicial Archives Fax Number: 1795251 APPEALS UNIT ✕ Ms Félicité Talon APPEALS CHAMBER ✕ Judge / Juge Fausto Pocar, Presiding ✕ Judge / Juge Mohamed Shahabuddeen ✕ Judge / Juge Mehmet Güney ✕ Judge / Juge Andresia Vaz ✕ Judge / Juge Theodor Meron ✕ Ms Catherine Marchi-Uhel ✕ Mr Roman Boed ✕ Concerned Associate Legal Officers ✕ Ms. Fatou Fall DEFENSE ✕ Accused / <i>accusé</i> : Ferdinad NAHIMANA, Jean-Bosco BARAYAGWIZA, Hassan NGEZE <small>(complete CMS4 Form)</small> ✕ Lead Counsel / <i>Conseil Principal</i> : Mr. Biju-Duval, Mr. Donald Herbert, Mr. Bharat Chadha <input type="checkbox"/> In Arusha <small>(complete CMS 2)</small> ✕ Fax Number: 00-33-1 53 80 47 48 00 44 207 841 6199/6197 00 255-27-250 8854 <input type="checkbox"/> Co-Counsel / <i>Conseil Adjoint</i> : Ms. Diana Ellis, Ms. Gabriele Della Morte, Mr. Dev Nath Kapoor <small>(name / nom)</small> <input type="checkbox"/> In Arusha <small>(complete CMS 2)</small> <input type="checkbox"/> Fax Number:	
From: De:	✕ Koffi Afande ✕ Patrice Tchidimbo 	
Subject Objet:	Kindly find attached the following documents / <i>Veillez trouver en annexe les documents suivants:</i>	
Documents name / Titre du document	Date Filed / Date d'enregistrement	Pages
Decision on the Prosecutor's Motion to pursue the Oral Request for the Appeals Chamber to disregard certain arguments made by counsel for Appellant Barayagwiza at the Appeals hearing on 17 January 2007	05 March 07	9963/A- 9954/A

No. of pages transmitted including this cover sheet / *nombre de pages transmises, page de garde comprise*: 10
 In case of transmission difficulties, please contact: Central Registry / *En cas de difficultés de transmission, veuillez contacter*:
 Tel: 31 (0) 70 512-8225 / 8237