



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

BEFORE THE PRE-APPEAL JUDGE

Before: Judge Andrézia Vaz, Pre-Appeal Judge
Registrar: Mr. Adama Dieng
Order of: 6 December 2006

**Ferdinand NAHIMANA
Jean-Bosco BARAYAGWIZA
Hassan NGEZE
(Appellants)**

v.

**THE PROSECUTOR
(Respondent)**

Case No. ICTR-99-52-A

ORDER FOR RE-CERTIFICATION OF THE RECORD

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

Office of the Prosecutor

Mr. James Stewart
Mr. Neville Weston
Mr. Abdoulaye Seye
Ms. Linda Bianchi
Mr. Alfred Orono Orono

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 and 31 December 1994 (“Appeals Chamber” and “Tribunal”, respectively) and Pre-Appeal Judge in this case;¹

NOTING that questions regarding the accuracy of the French and English transcripts of Witness AFB’s testimony have been raised by Jean-Bosco Barayagwiza in his Appeal Brief;²

NOTING that discrepancies related to the use of specific Kinyarwanda terms appear between the English and French versions of the transcripts of Witnesses AAM, AFB and AGK’s testimonies³ and between the Judgement and the transcripts of Witness X’s testimony;⁴

NOTING further, that Ferdinand Nahimana is challenging the translation, contained in Exhibit P105/2B, of the verb “*gufatanya*” allegedly used in his interview of 25 April 1994 with Radio Rwanda;⁵

CONSIDERING therefore, that it is in the interest of justice to clarify these questions before the appeal hearing and to review the relevant transcripts and exhibit for accuracy;

FOR THE FOREGOING REASONS,

HEREBY *proprio motu* ORDER the Registry

1. To review for accuracy the audio-tapes of the testimonies given before the Trial Chamber by Witnesses AAM, AFB, AGK and X as follows:

- Testimony of Witness AAM of 12 February 2001, to determine whether the Witness declared “**they**⁶ were shouting – they were singing tuzatsembatsembe, let me spell ; T-U-Z-A-T-S-E-M-B-A-T-S-E-M-B-E⁷, in other words, let’s exterminate them” - as quoted from

¹ Order of the Presiding Judge Designating the Pre-Appeal Judge, 19 August 2005; Corrigendum to the Order of the Presiding Judge Designating the Pre-Appeal Judge, 25 August 2005.

² Barayagwiza’s Appellant’s Appeal Brief, 12 October 2006, paras 112-14 (“Barayagwiza’s Appeal Brief”).

³ T. 12 February 2001 p. 103 and *CRA du 12 février 2001*, p.106 for Witness AAM ; T. 6 March 2001, pp. 61-62 and *CRA du 6 mars 2001*, p. 72 for Witness AFB; T. 21 June 2001, pp. 96-97, 99 and *CRA du 21 juin 2001*, p. 104, 106-107 for Witness AGK.

⁴ *Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52, Judgement, 3 December 2003, para. 336 (“Trial Judgement”).

⁵ Nahimana’s Revised Appeal Brief, para. 281 referring to Exhibit P105/2A, admitted on 20 March 2002, containing the Kinyarwanda transcription of the interview, which includes the words “*dufatanye*”, “*mfatanye*”, “*bagafatanya*” on p. 25 (2) and p. 28, and to Exhibit P105/2B admitted on 20 March 2003, which consists of the English version of the interview and which, according to Ferdinand Nahimana, translates the term “*gufatanya*” as “to work together”, see p. 3.

⁶ Emphasis added.

⁷ Emphasis added.

the English transcripts and in the Judgement⁸ or whether the witness stated “*Barayagwiza portait une casquette de la CDR, et il⁹ chantait, disait tuzitsembatsembe. Je vais épeler : T-U-Z-I-T-S-E-M-B-A-T-S-E-M-B-E¹⁰*” - as indicated in the French transcript.¹¹

- Testimony of Witness AFB of 6 March 2001, to ascertain which Kinyarwanda terms were used by the witness and translated into English¹² and French¹³ by the words “we shall exterminate them” and “*nous les exterminerons*”, respectively;
- Testimony of Witness AGK of 21 June 2001, to verify whether the witness used the terms “*tubatsembatsembe*” or “*tuzitsembambe*”,¹⁴
- Video-conference testimony of Witness X of 18 February 2002, to ascertain whether the witness used the term “*tubatsembatsembe*” as indicated in the Judgement.¹⁵

2. To confirm the English and French translations of the following purported Kinyarwanda terms mentioned in Barayagwiza’s Appeal Brief and Barayagwiza’s Reply,¹⁶ and in the Judgement:¹⁷

Tubatsembatsembe

Tulabatembatemba

Tuzabatsembatsemba

Gutsembatsemba

Tuzazitsembatsemba

Tuzitsembatsembe

Tuzatsembatsembe

Tabatsembatsembe

*Tuzitsembambe*¹⁸

⁸ T. 12 February 2001 p. 103 ; Trial Judgement, paras 702, 718, 797.

⁹ Emphasis added.

¹⁰ Emphasis added.

¹¹ *CRA du 12 février 2001*, p.106.

¹² T. 6 March 2001, pp. 61-62.

¹³ *CRA du 6 mars 2001*, p. 72.

¹⁴ T. 21 June 2001, pp. 96-97, 99 and *CRA du 21 juin 2001*, p. 104, 106-107.

¹⁵ Trial Judgement, para. 336.

¹⁶ Barayagwiza’s Appeal Brief, paras 112-115, 121, 123; The Appellant Jean Bosco Barayagwiza’s Reply to the Consolidated Respondent Brief, para. 80 (“Barayagwiza’s Reply”).

¹⁷ Trial Judgement, paras 308, 310, 319, 336, 340, 697, 702, 708, 718, 719, 797, 964, 967, 975, 1035.

¹⁸ This term is not mentioned in the Trial Judgement or in Barayagwiza’s Appeal Brief, but in Witness AGK’s testimony, *see* note 14 above.

3. To review for accuracy the translation - contained in Exhibit P105/2B- of the section of Ferdinand Nahimana's interview of 25 April 1994 with Radio Rwanda, where the Kinyarwanda verb "*gufatanya*" is allegedly used.¹⁹

4. To submit to the Appeals Chamber and the parties newly certified copies of the relevant portions of the transcripts and of Exhibit P105/2B in the official languages of the International Tribunal not later than 10 January 2007.

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

Done this 6th day of December 2006,
At The Hague, The Netherlands.

Andrésia Vaz
Pre-Appeal Judge

[Seal of the International Tribunal]

¹⁹ Nahimana's Revised Appeal Brief, para. 281 referring to Exhibit P105/2A, admitted on 20 March 2002, which contains the Kinyarwanda transcription of the interview and to Exhibit P105./2B, admitted on 20 March 2003, which contains the English translation of the interview. The English translation of the excerpt is as follows:

"André Nambaje : During these last days you were out, I suspect or rather I can confirm you were following the events occurring in Kigali town. You must also have known that the populations in virtually all the corners of the country have stood up to assist the military in defending our country. How do you view the zeal demonstrated by the Rwandans – indeed I am indeed referring to those of them who are patriots?"

F. Nahimana: Thank you Ndayambaje¹⁹ for asking me that question. The radio stations of this country of ours, to wit: Radio Rwanda and RTLM Radio – apart from Bujumbura where we could not listen to RTLM, but when we arrived in Bukavu, we could listen to radio Rwanda and RTLM Radio. We were satisfied with both radio stations because they informed use on how the population from all corners of the country had stood up and worked together with our armed forces, the armed forces of our country with a view to halting the enemy. What I can tell you about this is something I have often said."