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**ANNEX A**

**AUTHORITY 13**

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

UNITED NATIONS  
NATIONS UNIES



**TRIAL CHAMBER II**

Original: English

**Before Judges:** William H. Sekule, Presiding  
Winston C. Matanzima Maqutu  
Arlette Ramarosan

**Registrar:** Adama Dieng

**Judgment of:** 1 December 2003

**THE PROSECUTOR**

**v.**

**Juvénal KAJELIJELI**

**Case No. ICTR-98-44A-T**

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**JUDGMENT AND SENTENCE**

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**Counsel for the Prosecution:**  
Ifema Ojemeni

**Counsel for the Defence:**  
Lennox S. Hinds  
Nkeyi M. Bompaka

### 3. Jurisprudence

#### (a) Responsibility under Article 6.1 of the Statute

756. Article 6(1) addresses criminal responsibility for unlawful conduct of an accused and is applicable to all three categories of crimes (genocide and derivative crimes; crimes against humanity; and violations of Article 3 Common to the Geneva Conventions and Additional Protocol II).

757. Article 6(1) reflects the principle that criminal responsibility for any crime in the Statute is incurred not only by individuals who physically commit that crime, but also by individuals who participate in and contribute to the commission of a crime in other ways, ranging from its initial planning to its execution, as specified in the five categories of acts in this Article: planning, instigating, ordering, committing, or aiding and abetting.<sup>989</sup>

758. Pursuant to Article 6(1), an individual's participation in the planning or preparation of an offence within the Tribunal's jurisdiction will give rise to criminal responsibility only if the criminal act is actually committed. Accordingly, crimes which are attempted but not consummated are not punishable, except for the crime of genocide, pursuant to Article 2(3)(b),(c) and (d) of the Statute.<sup>990</sup>

759. Jurisprudence has established that for an accused to incur criminal responsibility, pursuant to Article 6(1), it must be shown that his or her participation has substantially contributed to, or has had a substantial effect on, the completion of a crime under the Statute.<sup>991</sup>

760. The elements of the crimes of genocide, crimes against humanity, and violations of Article 3 common to the Geneva Conventions and Additional Protocol II, articulated in Articles 2 to 4 of the Statute, are inherent in the five forms of criminal participation enumerated in Article 6(1), for which an individual may incur criminal responsibility. These five forms of participation are discussed below.

#### ▪ Forms of Participation

##### (i) Planning

761. "Planning", implies that one or more persons contemplate a design for commission of a crime at both the preparatory and execution phases.<sup>992</sup> The existence of a plan may be

<sup>989</sup> *Semanza*, Judgment (TC), para. 377; *Kayishema and Ruzindana*, Judgment (AC), para. 185; *Musema*, Judgment (TC), para. 114; *Rutaganda*, Judgment (TC), para. 33; *Kayishema and Ruzindana*, Judgment (TC), paras. 196-197; *Akayesu*, Judgment (TC), para. 473.

<sup>990</sup> *Semanza*, Judgment (TC), para. 378; *Musema*, Judgment (TC), para. 115; *Rutaganda*, Judgment (TC), para. 34; *Akayesu*, Judgment (TC), para. 473.

<sup>991</sup> *Kayishema and Ruzindana*, Judgment (AC), paras. 186 and 198; *Ntakirutimana*, Judgment (TC), para. 787; *Bagilishema*, Judgment (TC), paras. 30, 33; *Musema*, Judgment (TC), para. 126; *Rutaganda*, Judgment (TC), para. 43; *Kayishema and Ruzindana*, Judgment (TC), paras. 199 and 207; *Akayesu*, Judgment (TC), para. 477.

<sup>992</sup> *Semanza*, Judgment (TC), para. 380; *Blaskic*, Judgment (TC), para. 386; *Musema*, Judgment (TC), para. 119; *Akayesu*, Judgment (TC), para. 480.

demonstrated through circumstantial evidence.<sup>993</sup> In *Bagilishema*, it was held that the level of participation in planning to commit a crime must be substantial, such as actually formulating a plan or endorsing a plan proposed by another individual.<sup>994</sup>

(ii) Instigating

762. The second form of participation, "instigating", involves prompting another person to commit an offence.<sup>995</sup> Instigation need not be direct and public.<sup>996</sup> Both positive acts and omissions may constitute instigation.<sup>997</sup> Instigation is punishable on proof of a causal connection between the instigation and the commission of the crime.<sup>998</sup>

(iii) Ordering

763. The third form of participation, "ordering", implies a situation in which an individual with a position of authority uses such authority to impel another, who is subject to that authority, to commit an offence.<sup>999</sup> No formal superior-subordinate relationship is required for a finding of "ordering" so long as it is demonstrated that the accused possessed the authority to order.<sup>1000</sup>

(iv) Committing

764. To "commit" a crime usually means to perpetrate or execute the crime by oneself or to omit to fulfil a legal obligation in a manner punishable by penal law. In this sense, there may be one or more perpetrators in relation to the same crime where the conduct of each perpetrator satisfies the requisite elements of the substantive offence.<sup>1001</sup>

(v) Aiding and Abetting in the Planning, Preparation, or Execution

765. "Aiding and abetting" relate to discrete legal concepts.<sup>1002</sup> "Aiding" signifies providing assistance to another in the commission of a crime. "Abetting" signifies facilitating, encouraging, advising or instigating the commission of a crime.<sup>1003</sup> Legal usage, including in the Statute and case law of ICTR and ICTY, so often inter-links the two terms that they are treated as a broad singular legal concept.<sup>1004</sup>

<sup>993</sup> *Blaskic*, Judgment (TC), para. 278.

<sup>994</sup> *Bagilishema*, Judgment (TC), para. 30.

<sup>995</sup> *Semanza*, Judgment (TC), para. 381; *Bagilishema*, Judgment, TC, para. 30; *Akayesu*, Judgment (TC), para. 482.

<sup>996</sup> *Semanza*, Judgment (TC), para. 381; *Akayesu*, Judgment (AC), paras. 478-482.

<sup>997</sup> *Kordic and Cerkez*, Judgment (TC), para. 387.

<sup>998</sup> *Semanza*, Judgment (TC), para. 381; *Bagilishema*, Judgment (TC), para. 30.

<sup>999</sup> *Semanza*, Judgment (TC), para. 382; *Bagilishema*, Judgment (TC), para. 30; *Rutaganda*, Judgment (TC), para. 39; *Akayesu*, Judgment (TC), para. 483.

<sup>1000</sup> *Kordic and Cerkez*, Judgment (TC), para. 388.

<sup>1001</sup> *Kayishema and Ruzindana*, Judgment (AC), para. 187; *Tadic*, Judgment (AC), para. 188; *Kunarac, Vukovac and Kovac*, Judgment (TC), para. 390; *Semanza*, Judgment (TC), para. 383.

<sup>1002</sup> *Semanza*, Judgment (TC), para. 385; *Akayesu*, Judgment (TC), para. 484.

<sup>1003</sup> *Semanza*, Judgment (TC), para. 384; *Ntakirutimana*, Judgment (TC), para. 787; *Akayesu*, Judgment, para. 484.

<sup>1004</sup> *Semanza*, Judgment (TC), para. 384, referring to Mewett & Manning, *Criminal Law* (3<sup>rd</sup> ed. 1994), p. 272 (noting

766. "Aiding and abetting", pursuant to the jurisprudence of the *ad hoc* Tribunals, relates to acts of assistance that intentionally provide encouragement or support to the commission of a crime.<sup>1005</sup> The act of assistance may consist of an act or an omission, and it may occur before, during or after the act of the actual perpetrator.<sup>1006</sup> The contribution of an aider and abetter before or during the fact may take the form of practical assistance, encouragement or moral support, which has a substantial effect on the accomplishment of the substantive offence.<sup>1007</sup> Such act of assistance before or during the fact need not have actually caused the consummation of the crime by the actual perpetrator, but it must have had a substantial effect on the commission of the crime by the actual perpetrator.<sup>1008</sup>

▪ **Mens Rea**

767. To be criminally culpable of a crime, the perpetrator who of the crime must possess the requisite *mens rea* for that underlying crime.<sup>1009</sup>

768. For purposes of accomplice liability, the *mens rea* requirement will be fulfilled where an individual acts with the knowledge that his or her act(s) assist in the commission of the crime by the actual perpetrator(s). While the accused need not know the precise offence being committed by the actual perpetrator(s), the accused must be aware of the essential elements of the crime, and must be seen to have acted with awareness that he or she thereby supported the commission of the crime.<sup>1010</sup>

769. An accused's position of superior authority, in and of itself, does not suffice to conclude that the accused, by his or her mere presence at the scene of the crime, encouraged or supported the offence. The presence of the accused at the crime site, however, may be perceived as a significant *indicium* of his or her encouragement or support.<sup>1011</sup> The requisite *mens rea* may be established from an assessment of the circumstances, including the accused's prior and similar behaviour, failure to punish or verbal encouragement.<sup>1012</sup>

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that aiding and abetting are "almost universally used conjunctively").

<sup>1005</sup> *Kayishema and Ruzindana*, Judgment (AC), para. 186; *Celebici*, Judgment (AC), para. 347; *Semanza*, Judgment (TC), para. 385. *Ntakirutimana*, Judgment (TC), para. 787; *Bagilishema*, Judgment (TC), paras. 33, 36; *Musema*, Judgment (TC), paras. 125-126; *Kayishema and Ruzindana*, Judgment (TC), paras. 200-202; cf *Akayesu*, Judgment (TC), para. 484.

<sup>1006</sup> *Kunarac, Vukovic and Kovac*, Judgment (TC), para. 391; *Semanza*, Judgment (TC), para. 386.

<sup>1007</sup> *Kayishema and Ruzindana*, Judgment (AC), para. 186; *Kunarac, VuKovac and Kovac*, Judgment (TC), para. 391; *Semanza*, Judgment (TC), para. 385.

<sup>1008</sup> *Kunarac, Vukovic and Kovac*, Judgment (TC), para. 391; *Semanza*, Judgment (TC), para. 386.

<sup>1009</sup> *Kayishema and Ruzindana*, Judgment (AC), para. 187; *Semanza*, Judgment (TC), para. 387.

<sup>1010</sup> *Kayishema and Ruzindana*, Judgment (AC), paras. 186-187; *Semanza*, Judgment (TC), para. 387; *Bagilishema*, Judgment (TC), para. 32; *Kayishema and Ruzindana*, Judgment (TC), para. 201.

<sup>1011</sup> *Kayishema and Ruzindana*, Judgment (AC), para. 186; *Bagilishema*, Judgment (TC), para. 32; *Kayishema and Ruzindana*, Judgment (TC), para. 201.

<sup>1012</sup> *Semanza*, Judgment (TC), para. 388; *Kayishema and Ruzindana*, Judgment (TC), paras. 201 and 205. *Aleksovski*, Judgment (AC), para. 162; *Vasiljevic*, Judgment (TC), para. 71; *Krnojelac*, Judgment (TC), paras. 75 and 90; *Kvočka*, Judgment (TC), paras. 255 and 262; *Kunarac*, Judgment (TC), para. 392; *Furundzija*, Judgment (TC), para. 249. But see *Ntakirutimana and Ntakirutimana*, Judgment (TC), para. 787 (stating that aiding and abetting, pursuant to Article 6(1) requires proof that an accused possessed the *mens rea* of the underlying crime, for example, the specific intent of genocide); *Akayesu*, (TC), paras. 485 and 547. The Trial Chamber observes that these cases do not provide any

**F. Conclusion**

968. Given all of the foregoing, the Chamber now sentences Kajelijeli as follows:

for Genocide (Count 2): **imprisonment for the remainder of his life;**

for Direct and Public Incitement to Commit Genocide (Count 4): **imprisonment for fifteen years;**

for Extermination as a Crime Against Humanity (Count 6): **imprisonment for the remainder of his life;**

969. These sentences shall run concurrently.

970. Credit for time served, calculated at five years, five months and twenty five days shall be deducted from the sentence given for Count 4.

971. In accordance with Rules 102(A) and 103, Kajelijeli shall remain in the custody of the Tribunal pending transfer to the State where he shall serve his sentence.

972. Judge Ramaroson appends her separate opinion to this Judgment.

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

Arusha, 1 December 2003

William H. Sekule  
Presiding Judge

Winston C. Matanzima Maqutu  
Judge

Arlette Ramaroson  
Judge

*(Seal of the Tribunal)*