

**Declassified to Public  
06 September 2012**

Case No. 001/18-07-2008/ECCC/OCIJ

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**ANNEX A**

**AUTHORITY 17**

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**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**

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**Or.: Eng.**

**TRIAL CHAMBER I**

**Before:** Judge Erik Møse, presiding  
Judge Khalida Rachid Khan  
Judge Solomy Balungi Bossa

**Registrar:** Adama Dieng

**Date:** 15 July 2004

**THE PROSECUTOR**

**v.**

**EMMANUEL NDINDABAHIZI**

*Case No. : ICTR-2001-71-I*

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**JUDGEMENT AND SENTENCE**

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**The Prosecution**

Charles Adeogun-Phillips  
Wallace Kapaya  
Peter Tafah

**The Defence**

Pascal Besnier  
Guillaume Marçais

## CHAPTER III

### Legal Findings

#### 1. Genocide

##### 1.1 Applicable Law

452. The Chamber will consider the law applicable to those allegations of the Indictment which have been proven beyond a reasonable doubt. Count 1 of the Indictment charges the Accused with genocide in relation to the events at Gitwa Hill and the roadblocks along the Kibuye-Gitarama road.

453. In relevant part, Article 2(2) of the Statute defines genocide as

...any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring members of the group to another group.

The Indictment charges the Accused only with “genocide” under Article 2(3)(a), and not other modes of commission of the crime providing in the Statute, such as “direct and public incitement to commit genocide” (Article 2(3)(c)) or “complicity in genocide” (Article 2(3)(e)).

454. In addition to the material elements enumerated in (a) through (e) in Article 2(2), the specific intent for genocide requires that the perpetrator target his victims because of their membership of a protected group, with the intent to destroy at least a substantial part of that group.<sup>586</sup> The requisite intent may be proven by overt statements of the perpetrator or, as with any crime, by drawing inferences from circumstantial evidence of intent.<sup>587</sup> The actual

<sup>586</sup> *Semanza*, Judgement (TC), para. 312; *Krstic*, Judgement (AC), para. 12 (“The intent requirement of genocide under Article 4 of the [ICTY] Statute is therefore satisfied where evidence shows that the alleged perpetrator intended to destroy at least a substantial part of the protected group”); *Akayesu*, Judgement (TC), para. 521; (“Thus, the victim is chosen not because of his individual identity, but rather on account of his membership of a national, ethnical, racial or religious group”); *Nahimana et al.*, Judgement (TC), para. 948.

<sup>587</sup> *Rutaganda*, Judgement (AC), para. 525 (“In the absence of explicit, direct proof, the *dolus specialis* may therefore be inferred from the relevant facts and circumstances”); *Ntagerura et al.*, Judgement (TC), para. 663; *Semanza*, Judgement (TC), para. 313; *Akayesu*, Judgement (TC), para. 523; *Krstic*, Judgement (AC), para. 34 (“Where direct evidence of genocidal intent is absent, the intent may still be inferred from the factual circumstances of the crime”); *Jelusic*, Judgement (AC), para. 47 (“As to proof of specific intent, it may, in the absence of direct explicit evidence, be inferred from a number of facts and circumstances, such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive discriminatory acts”).

destruction of a substantial part of the group is not a required material element of the offence, but may assist in determining whether the accused intended to bring about that result.<sup>588</sup>

455. The Indictment alleges that the Accused is criminally responsible under Article 6(1) of the Statute, which provides:

A person who planned, instigated, ordered, committed, or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 of the present Statute, shall be individually responsible for the crime.

This section broadens the modes of culpable participation in offences defined by the Statute, including genocide.<sup>589</sup> In its closing arguments, the Prosecution refined its legal characterization of the Accused's participation, specifying that, with the exception of a single event, the Accused is guilty of instigating, and of aiding and abetting, genocide.<sup>590</sup>

456. Instigation is urging or encouraging, verbally or by other means of communication, another person to commit a crime, with the intent that the crime will be committed.<sup>591</sup> In accordance with general principles of accomplice liability, instigation does not arise unless it has directly and substantially contributed to the perpetration of the crime by another person.<sup>592</sup> Unlike the crime of direct and public incitement, instigation does not give rise to liability unless the crime is actually committed by a principal or principals.<sup>593</sup>

457. Aiding and abetting, though distinct concepts, are almost universally used conjunctively, as in Article 6(1) of the Statute, to refer broadly to any form of assistance and encouragement given to another person to commit a crime.<sup>594</sup> As with instigation, aiding and abetting is a form of accomplice liability that requires direct and substantial contribution to the perpetration of the crime by another person.<sup>595</sup> The assistance and encouragement may consist of physical acts, verbal statements, or even mere presence. The presence of a person in a position of authority at a place where a crime is being committed, or at which crimes are notoriously committed, may convey approval for those crimes which amounts to aiding and abetting.<sup>596</sup> It is not the position of authority itself that is important, but rather the encouraging effect that a person holding the office may lend to events.<sup>597</sup> In relation to the requisite mental element, it is now firmly established that the person aiding and abetting need not possess the principal's intent to commit genocide, but must at the least have knowledge of the principal's general and specific intent.<sup>598</sup>

<sup>588</sup> *Krstic*, Judgement (AC), para. 35; *Akayesu*, Judgement (AC), paras. 497, 730.

<sup>589</sup> *Semanza*, Judgement (TC), para. 377; *Celebici*, Judgement (TC), para. 319.

<sup>590</sup> T. 1 March 2004 p. 4. The nature of this participation had already been identified in the Indictment as arising under 6(1); the effect of the Prosecution's submission at closing arguments was to narrow, rather than add, to the Prosecution case. The single event in which the Accused is alleged to have directly participated is the attack on Gitwa Hill on or about 17 April, based on the testimony of Prosecution Witness CGV.

<sup>591</sup> *Semanza*, Judgement (TC), para. 381; *Akayesu*, Judgement (TC), para. 482.

<sup>592</sup> *Kayishema and Ruzindana*, Judgement (AC), para. 198; *Bagilishema*, Judgement (TC), para. 30.

<sup>593</sup> *Nahimana et al.*, Judgement (TC), paras. 1015, 1029; *Musema*, Judgement (TC), para. 115.

<sup>594</sup> *Semanza*, Judgement (TC), para. 384-385.

<sup>595</sup> *Kayishema and Ruzindana*, Judgement (AC), para. 198; *Krstic*, Judgement (AC), para. 137; *Bagilishema*, Judgement (TC), paras. 32-33.

<sup>596</sup> *Ntakirutimana*, Judgement (TC), paras. 788-789; *Semanza*, Judgement (TC), paras. 384-386; *Kayishema and Ruzindana*, Judgement (AC), paras. 201-202.

<sup>597</sup> *Rutaganda*, Judgement (AC), para. 528.

<sup>598</sup> *Akayesu*, Judgement (TC), paras. 539-541; *Semanza*, Judgement (TC), para. 338 ("The Accused need not necessarily share the mens rea of the principal perpetrator; the accused must be aware, however, of the essential

Signed on 12 July and issued on 15 July 2004 in Arusha, Tanzania.

Erik Møse  
Presiding Judge

Khalida Rachid Khan  
Judge

Solomy B. Bossa  
Judge

*(Seal of the Tribunal)*