

**Declassified to Public  
06 September 2012**

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

**D96**

---

**ANNEX A**

**AUTHORITY 18**

---



ICTR-96-14-T  
16-05-2003  
(6885 - 6671)

Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

6885

S. Nussa

Or. : Eng.

**TRIAL CHAMBER I**

**Before Judges:** Navanethem Pillay, presiding  
Erik Møse  
Andrésia Vaz

**Registrar:** Adama Dieng

**Judgement of:** 16 May 2003

**THE PROSECUTOR**

V.

**ELIÉZER NIYITEGEKA**

*Case No. ICTR-96-14-T*

JUNIOR RESEARCH ARCHIVES  
ICTR

2003 MAY 16 | P 1:26 |

**JUDGEMENT AND SENTENCE**

**Counsel for the Prosecution**

Carla Del Ponte  
Kenneth C. Fleming  
Melinda Y. Pollard  
Kirsten Keith

**Counsel for the Defence**

Sylvia Geraghty  
Feargal Kavanagh  
Cindy Hernández

*A*

### 3.12 Charges Of Individual Criminal Responsibility As A Superior

470. The Accused is charged pursuant to Article 6(3) of the Statute with individual criminal responsibility as a superior in Counts 1, 2, 4, 5, 6, 7, 8, 9 and 10 of the Indictment, by virtue of his actual and constructive knowledge of the acts and omissions of his subordinates, and his failure to stop or prevent them, or to discipline and punish them, for their acts in the preparation and execution of the crimes charged.

471. Article 6(3) provides that “[t]he fact that any of the acts referred to in Articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.”

472. In *Musema*, it was held that “a civilian superior may be charged with superior responsibility only where he has effective control, be it *de jure* or merely *de facto*, over the persons committing violations of international humanitarian law.” [384] The Appeals Chamber in *Delalic* held that “[a]s long as a superior has effective control over subordinates, to the extent that he can prevent them from committing crimes or punish them after they committed the crimes, he would be held responsible for the commission of the crimes if he failed to exercise such abilities of control.” [385]

473. The Prosecution submitted that the Accused’s subordinates were local authorities like bourgmestres and conseillers, Interahamwe, gendarmes, soldiers, communal police and armed civilians in Kibuye Prefecture. [386] It argued that the Accused incurs superior responsibility by virtue of his position as Minister of Information in the Interim Government, his influence in the Kibuye prefecture community, his leadership role in attacks and meetings, his issuing of orders to attackers, and his planning of attacks. The Prosecution further submitted that the Accused’s authority over attackers is borne out by Defence Witness TEN-23’s testimony. Witness TEN-23 testified to an incident when the Accused told Interahamwe, who were searching for Tutsi in a house, to leave the people in the house alone. The Interahamwe subsequently left (see II.2.7.4 above).

474. The Chamber notes that the Prosecution does not contend that the Accused incurs superior responsibility solely by virtue of his position as a Minister. [387] The Chamber further notes that Defence Witness Nkezabera stated that the Minister of Information in the Interim Government, had no *de jure* or *de facto* control over prefets or bourgmestres. [388] The Chamber finds that there is no evidence to show that a Minister of Information in Rwanda, by virtue of his position alone, would have effective control over the subordinates named by the Prosecution, like bourgmestres or Interahamwe. The Chamber also notes that influence in the community is not indicative of a superior-subordinate relationship, as discussed above.

475. With regard to the acts cited by the Prosecution as evidence of superior responsibility, the Chamber recalls that it found in II.2 above that the Accused led attacks in various areas in Bisesero. The evidence is that the Accused was one of the leaders of the attacks, and was usually in the front or middle of the attacking party and carrying a gun. However, there is no evidence to indicate that the Accused, rather than the other leaders present, were in a superior-subordinate relationship with the attackers. The evidence does not show that he had the ability to prevent or punish the crimes committed by the attackers. [389]

476. Turning to the Accused’s participation in meetings, such as was found in II.3.1.3, II.3.2.4 and II.3.3.4 above, the Chamber finds that the evidence adduced may indicate that the Accused had a

leadership role, but is insufficient to show that he was in a superior-subordinate relationship with the people in attendance at the meetings, in that he could prevent or punish the people at the meeting for their crimes.

477. In respect of his issuance of orders, the Chamber recalls that the Accused told an attacker to bring him an old man and young boy so that he could kill them and subsequently told them to remove their corpses (see II.2.9.4 and II.5.1.4 above). The Chamber also found that the Accused told attackers to go to work at Rugarama on 13 April (see II.4.2.4 above). In II.7.2.4 above, the Chamber found that the Accused instructed Interahamwe to insert a piece of wood into the genitalia of a dead woman. Defence Witness TEN-23 testified to an incident when the Accused ordered the Interahamwe to leave a house. The Chamber considers that while these acts show that the attackers carried out the Accused's orders, there is no evidence that they did so in a superior-subordinate hierarchy, or that the Accused had the ability to prevent or punish them for crimes committed. In respect of Witness TEN-23's evidence, the Chamber notes that the Accused persuaded the Interahamwe to leave after quoting a Rwandan proverb, and talking to them for approximately ten minutes; this exchange between the Accused and the Interahamwe is not that of a superior commanding his subordinate. The Chamber finds that the Prosecution has not adduced evidence of effective control by the Accused of the people he ordered to commit crimes, in that it has not been shown that the Accused could prevent or punish them for the crimes committed.

478. Therefore, the Chamber is not convinced of the existence of a superior-subordinate relationship. As a result, it is unnecessary to examine the other elements of superior responsibility. Accordingly, the Chamber finds that the Accused did not incur individual criminal responsibility as a superior under Article 6(3) as charged in Counts 1, 2, 4, 5, 6, 7, and 8 of the Indictment.

---

[360] Decision on the Prosecutor's Motion for Judicial Notice of Facts dated 4 September 2002.

[361] Defence's Reply to Prosecutor's Request to Admit Facts dated 21 June 2002; T. 17 Oct. 2002, p. 12.

[362] Defence's Reply to Prosecutor's Request to Admit Facts dated 21 June 2002.

[363] T. 20 June 2002, pp. 151-153.

[364] *Akayesu* (TC) para. 521.

[365] *Musema* (TC) paras. 191-194.

[366] Kayishema and Ruzindana were convicted of, *inter alia*, genocide, for crimes committed in the Bisesero region and in Kibuye Prefecture. However, the Indictment against Kayishema and Ruzindana was amended on 6 May 1996 to withdraw the conspiracy charges.

[367] *Akayesu* (TC) paras. 549-562.

[368] *Id.* para. 556.

[369] *Id.* para. 557.

[370] *Id.* para. 560.

[371] *Id.* para. 562.

[372] *Id.*, paras. 579-580.

[373] *Akayesu* (AC) paras. 460-469.

[374] *Akayesu* (AC) paras. 460-469.

[375] *Akayesu* (TC) paras. 591-592.

[376] *Vasiljevic* (TC) para. 229.

[377] *Akayesu* (AC) paras. 460-469.

[378] *Akayesu* (TC) para. 688.

[379] *Akayesu* (AC) paras. 460-469.

[380] See *Bagilishema* (TC) paras. 91-92.

[381] *Id.* para. 34, *Furundzija* (TC) para. 207.

[382] Prosecution Final Trial Brief, para. 230.

[383] *Id.*

[384] *Musema* (TC) para. 141; see also, *Bagilishema* (TC) paras. 37-50, *Bagilishema* (AC) paras. 24-62; *Delalic* (TC) paras. 330-400, *Delalic* (AC) paras. 182-314, *Kvocka* (TC) paras. 2-7.

[385] *Delalic* (AC) para. 198.

[386] Prosecution Final Trial Brief, para. 265.

[387] T. 27 Feb. 2003 pp. 19-20; Prosecution Final Trial Brief, para. 263.

[388] T. 14 November 2002 pp. 140-142.

[389] *Delalic* (TC) paras. 251-252.

---

[Contents](#) | [Chapter I](#) | [Chapter II](#) | [Chapter III](#) | [Chapter IV](#) | [Chapter V](#)

6770

*The Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-T

#### 4. Imposition of Sentence

501. **FOR THE FOREGOING REASONS**, having considered all of the evidence and the arguments of the Parties, the Statute, and the Rules, the Chamber imposes sentence as follows, delivering its decision in public, *inter partes* and in the first instance, and noting the general practice regarding sentencing in Rwanda.

502. For the crimes of which the Accused was found guilty, the Chamber **SENTENCES** Eliézer Niyitegeka to:

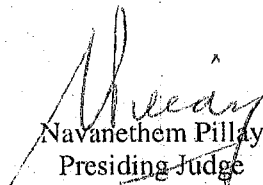
#### Imprisonment for the remainder of his life


503. The above sentence shall be served in a State designated by the President of the Tribunal, in consultation with the Chamber. The Government of Rwanda and the designated State shall be notified of such designation by the Registrar.


504. Until his transfer to his designated place of imprisonment, Eliézer Niyitegeka shall be kept in detention under the present conditions.

505. Pursuant to Rule 102(B) of the Rules, on notice of appeal, if any, enforcement of the above sentences shall be stayed until a decision has been rendered on the appeal, with the convicted person nevertheless remaining in detention.

Arusha, 16 May 2003

  
Navanethem Pillay  
Presiding Judge

  
Erik Møse  
Judge

  
Andréia Vaz  
Judge

(Seal of the Tribunal)

