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UNITED NATIONS  
NATIONS UNIES

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

**IN THE APPEALS CHAMBER**

**Before:** Judge Mohamed Shahabuddeen, Presiding  
Judge Mehmet Güney  
Judge Liu Daqun  
Judge Theodor Meron  
Judge Wolfgang Schomburg

**Registrar:** Mr. Adama Dieng

**Judgement of:** 7 July 2006

**SYLVESTRE GACUMBITSI**

v.

**THE PROSECUTOR**

*Case No. ICTR-2001-64-A*

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**JUDGEMENT**

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**Counsel for Sylvestre Gacumbitsi:**

Mr. Kouengoua  
Ms. Anne Ngatio Mbattang

**The Office of the Prosecutor:**

Mr. Hassan Bubacar Jallow  
Mr. James Stewart  
Mr. Neville Weston  
Mr. George Mugwanya  
Ms. Inneke Onsea

#### **D. Joint Criminal Enterprise (Ground of Appeal 5)**

158. The Appeals Chamber, following ICTY precedent, has recognized that an accused before this Tribunal may be found individually responsible for “committing” a crime within the meaning of Article 6(1) of the Statute under one of three categories of “joint criminal enterprise” (“JCE”) liability.<sup>364</sup> The present ground of appeal concerns the Appellant’s liability for murder, genocide, extermination and rape under the first and third categories.<sup>365</sup> The first (or “basic”) category encompasses cases in which “all co-perpetrators, acting pursuant to a common purpose, possess the same criminal intention” to commit the crime that is charged.<sup>366</sup> The third (or “extended”) category concerns cases in which the crime charged, “while outside the common purpose, is nevertheless a natural and foreseeable consequence of executing that common purpose.”<sup>367</sup>

159. At paragraph 289 of the Trial Judgement, the Trial Chamber stated:

The Prosecution seems to allege that the Accused participated in a joint criminal enterprise. However, the Chamber cannot make a finding on such allegation since it was not pleaded clearly enough to allow the Accused to defend himself adequately.

160. The Prosecution submits that this holding was in error.<sup>368</sup> It observes that the Indictment charged that the Appellant acted “in concert with” others in pursuit of a “common scheme, strategy, or plan”. The Prosecution argues that this language is the functional equivalent of “joint criminal enterprise” and sufficed to put the Appellant on notice, particularly in conjunction with the factual allegations in the Indictment and the “collective” nature of the crimes charged.<sup>369</sup> The Prosecution further contends that any vagueness in the Indictment was cured by its Pre-Trial Brief<sup>370</sup> and asserts that it consistently advanced the JCE theory at trial.<sup>371</sup> It argues that the Appellant should have been convicted on this theory for committing murder, genocide, extermination, and rape.<sup>372</sup>

##### **1. Applicable Law Concerning the Pleading of Joint Criminal Enterprise**

161. The relevant law concerning specificity of indictments as a general matter is set forth in Section II.B above. This Tribunal’s leading precedent on pleading practice with respect to JCE is

<sup>364</sup> *Ntakirutimana* Appeal Judgement, paras. 463, 468. See also *Rwamakuba* Decision on Interlocutory Appeal Regarding Application of Joint Criminal Enterprise to the Crime of Genocide.

<sup>365</sup> See Prosecution Appeal Brief, paras. 184, 205-208.

<sup>366</sup> *Ntakirutimana* Appeal Judgement, para. 463.

<sup>367</sup> *Ntakirutimana* Appeal Judgement, para. 465.

<sup>368</sup> Prosecution Appeal Brief, para. 184.

<sup>369</sup> Prosecution Appeal Brief, para. 191.

<sup>370</sup> Prosecution Appeal Brief, paras. 197-199.

<sup>371</sup> Prosecution Appeal Brief, paras. 200-203.

<sup>372</sup> Prosecution Appeal Brief, paras. 184, 210.