

## Annotated Leading Cases of International Criminal Tribunals

The International Criminal Tribunal for Rwanda 2005-2006

André Klip and Göran Sluiter (eds.)



## TABLE OF CONTENTS

Table of Contents
Preface
Part 1/ Preliminary matters
1. Referral
Decision on the Prosecution Motion for Referral to the Kingdom of Norway (Rule <i>Wbis</i> of the Rules of Procedure and Evidence), <i>Prosecutor</i> v. <i>Bagaragaza</i> , Case No. ICTR-2005-86-R116¿s, T. Ch. Ill, 19 May 2006.
Decision on Rule <i>Ubis</i> Appeal, <i>Prosecutor</i> v. <i>Bagaragaza</i> , Case No. ICTR-05-86~AR116/s, A. Ch., 30 August 2006.
Commentary Isodoro Blanco Cordero
2. Joint Criminal Enterprise
Decision on Jerome Bicamumpaka's Request for a Declaration that the Indictment Does not Allege that He is Liable for any Form of Joint Criminal Enterprise (Rules 72 (A) (ii), 72 (G), and 73 (A) of the Rules of Procedure and Evidence), <i>Prosecutor</i> v. <i>Bizimungu, Mugenzi, Bicamumpaka and Mugiraneza</i> , Case No. ICTR-99-50-T, T. Ch. II, 23 March 2006.
Decision on Jurisdictional Appeals: Joint Criminal Enterprise, <i>Prosecutor</i> v. <i>Karemera</i> , <i>Ngirumpatse and Nzirorera</i> , Case No. ICTR-98-44-AR72.5, ICTR-98-44-AR72.6, A. Ch., 12 April 2006
Decision on Defence Motions Challenging the Pleading of a Joint Criminal Enterprise in a Count of Complicity in Genocide in the Amended Indictment (Articles 2 and 6(1) of the Statute), <i>Prosecutor</i> v. <i>Karemera, Ngirumpatse and Nzirorera</i> , Case No. ICTR-98-44-T, T. Ch. III, 18 May
Separate Opinion of Judge Short on Complicity in Genocide and Joint Criminal Enterprise Theory (Articles 2 and 6(1) of the Statute and Rule 72 of the Rules of Procedure of Evidence), 23 May 2006.
Decision Pursuant to Rule 72(E) of the Rules of Procedure and Evidence on Validity of the Prosecution Appeal Regarding the Pleading of Joint Criminal Enterprise in a Count of Complicity in Genocide, <i>Prosecutor</i> v. <i>Karemera, Ngirumpatse and Nzirorera</i> , Case No. ICTR-98-44-AR72.7, A.Ch., 14 July 2006.
Commentary Helmut Satzger
3. Joinder/ severance
Decision on Request for Severance of Three Accused, <i>Prosecutor</i> v. <i>Bagosora, Kabiligi</i> <sup>^</sup> Ntahakuze and Nsengiyumya, Case No. ICTR-98-41-T. T. Ch. I. 27 March 2006.

Decision on Severance or Exclusion of Evidence Based on Prejudice Arising from Testimony of Jean Kambanda, <i>Prosecutor</i> v. <i>Bagosora, Kabiligi, Ntabakuze, Nsengiyumva</i> , Case No. ICTR-98-41-T, T. Ch. L, 11 September 2006.	75
Commentary Ousman Njikam	81
Part 11 Procedural matters	
4. Disclosure and other evidentiary matters	
Decision on Admissibility of Newspaper Article and Subpoena to Journalist, <i>Prosecutor</i> v. <i>Karera</i> . Case No. ICTR-01-74-T, T. Ch. I, 23 January 2006.	. 85
Decision on Defence Motions for Disclosure of Information Obtained from Juvenal Uwilingiyimana (Rules 66(B) and 68(A) of the Rules of Procedure and Evidence), <i>Prosecutor</i> v. <i>Karemera, Ngirumpatse and Nzirorera</i> , Case No. ICTR-98-44-T, T. Ch. III, 27 April 2006.	89
Decision on Kanyabashi's Oral Motion to Cross-ExamineNtahobali Using Ntahobali's Statements to Prosecution Investigators in July 1997, <i>Prosecutor</i> v. <i>Ndayambaje</i> (Case No. ICTR-96-8-T), <i>Prosecutor</i> v. <i>Kanyahashi</i> (Case No. ICTR-96-15-T), <i>Prosecutor</i> v. <i>Nyiramasuhuko andNtahobali</i> (Case No. 1CTR-97-21-T) and <i>Prosecutor</i> v. <i>Nsabimana and Nteziryayo</i> (Case No. ICTR-97-29-T), Joint Case No. ICTR-98-42-T, T. Ch. II, 15 May 2006.	. 95
Decision on Ntabakuze Motion for Exclusion of Evidence, <i>Prosecutor</i> v. <i>Bagosora, Kabiligi, Ntabakuze and Nsengiyumva,</i> Case No. ICTR-98-41-T, T. Ch. I, 29 June 2006.	109
Decision on Interlocutory Appeal Regarding the Role of the Prosecutor's Electronic Disclosure Suite in Discharging Disclosure Obligations, <i>Prosecutor</i> v. <i>Karemera</i> , <i>Ngirumpatse and Nzirorera</i> , Case No. ICTR-98-44-AR73.7, A. Ch., 30 June 2006.	.125
Decision on the Defence Motion for Disclosure of Exculpatory Information with Respect to Prior Statements of Prosecution Witnesses, <i>Prosecutor</i> v. <i>Zigiranyirazo</i> , Case No. ICTR-2001-73-T, T. Ch. III. 6 July 2006.	
Decision on Kabiligi Motion for Exclusion of Evidence, <i>Prosecutor</i> v. <i>Bagosora, Kabiligi, Ntabakuze and Nsengiyumva</i> , Case No. ICTR-98-41-T, T. Ch. I, 4 September 2006	. 137
Commentary Ignaz Stegmiller	145
5. Witnesses, counsel and fair trial	
Decision on Arséne Shalom Ntahobali's Extremely Urgent-Strictly Confidential - Under Seal - Motion to Have Witness NMBMP Testify via Video-Link, <i>Prosecutor</i> v. <i>Nyiramasuhuko and Ntahobali</i> , Case No. ICTR-97-21-T, Joint Case No. ICTR-98-42-T, T. Ch. II, 2 March 2006	
Decision on Ntahobali's Strictly Confidential Motion to Recall Witnesses TN, QBQ, and QY, for Additional Cross-Examination (Rule 54, 73(A), 90(G), Rules of Procedure and Evidence), <i>Prosecutor v. Nyiramasuhuko and Ntahobali</i> , Case No. ICTR-97-21-T, Joint Case No. ICTR-98-42-T, T. Ch. II, 3 March 2006.	
Decision on Motion for Further Alibi Particulars, Prasecwtor v. <i>Karera</i> , Case No. ICTR-01-74-T, T. Ch. I, 7 March 2006.	

Decision on Nyiramasuhuko's Motion for Separate Proceedings, a New Trial, and Stay of Proceedings (Rules 82(B) and 72(D), Rules of Procedure and Evidence), <i>Prosecutor</i> v. <i>Nyiramasuhuko andNtahobali</i> , Case No. ICTR-97-21-T, Joint Case No. ICTR-98-42-T, T. Ch. II, 7 April 2006.	77
Decision on Urgent Motion for the Deposition of Joseph Serugendo, <i>Prosecutor</i> v. <i>Serugendo</i> , Case No. 1CTR-05-84-I, T. Ch. I, 8 June 2006.	<del>)</del> 7
Decision on Request to Direct Registry to Comply with Order Concerning Witness Protection, Prosecutor v. Bagosora, Kabiligi, Ntabakuze and Nsengiyumva, Case No. ICTR-98-41-T, T. Ch. I, 3 July 2006	)1
Review of the Registrar's Decision Denying Request for Withdrawal of Co-Counsel, <i>Barayagwiza v. Prosecutor</i> , Case No. ICTR-99-52-A, Pres., 29 August 2006.	05
Commentary Michele Caianiello	38
6. Scope of the appeal	
Decision on Motion for Reconsideration Concerning Standards for Granting Certification of Interlocutory Appeal, <i>Prosecutor v. Bagosora, Kabiligi, Ntabakuze and Nsengiyumva</i> , Case No. ICTR-98-41-T. T. Ch. I, 16 February 2006	15
Reconsideration of Oral Ruling of 1 June 2005 on Evidence Relating to the Crash of the Plane Carrying President Habyarimana, <i>Prosecutor</i> v. <i>Bizimungu, Mugenzi, Bicamumpaka and Mugiraneza,</i> Case No. ICTR-00-56-T, T. Ch. II, 23 February 2006.	19
Decision on Justin Mugenzi's Application for Certification to Appeal the Trial Chamber's Decision on Defence Motions Pursuant to Rule 98¿sis (Rule 73(B) of the Rules of Procedure and Evidence), <i>Prosecutor v. Bizimungu, Mugenzi, Bicamumpaka and Mugiraneza</i> , Case No. ICTR-99-50-T, T. Ch. II, 20 March 2006.	23
Decision on Certification of Interlocutory Appeal Concerning Prosecution Disclosure of Defence Witness Statements, <i>Prosecutor</i> v. <i>Bagosora, Kabiligi, Ntabakuze and Nsengiyumva</i> , Case No. ICTR-98-41-T, T. Ch. 1, 22 May 2006.	27
Decision on Appellant Jean-Bosco Barayagwiza's Motion Requesting Examination of the Defence Motion Dated 28 July 2000 and Remedy for Abuse of Process, <i>Nahimana, Barayagwiza andNgeze</i> v. <i>Prosecutor</i> , Case No. ICTR-99-52-A, A. Ch., 23 June 2006	31
Decision on Appellant Jean-Bosco Barayagwiza's Motions for Leave to Submit Additional Grounds of Appeal, to Amend the Notice of Appeal and to Correct his Appellant's Brief, <i>Nahimana, Barayagwiza andNgeze</i> v. <i>Prosecutor</i> , Case No. ICTR-99-52-A, A. Ch., 17 August 2006	41
Decision on "Prosecutor's Motion for Variation of Notice of Appeal Pursuant to Rule 108", <i>Simba v. Prosecutor</i> , Case No. ICTR-01-76-A, A. Ch., 17 August 2006	:57
Commentary Goreth Kyakuwa	63
7. Judicial notice	
Decision on Prosecution Motion for Judicial Notice (Rule 94 of the Rules of Procedure and Evidence), <i>Prosecutor v. Karemera</i> , <i>Ngirumpatse andNzirorera</i> , Case No. ICTR-98-44-R94, T. Ch. ill, 9 November 2005.	271

	the Rules and Article 7 of the Statute, <i>Prosecutor v. Bizimungu, Ndindiliyimana, Nzuwonemeye and Sagahutu</i> , Case No. ICTR-00-56-T, T. Ch. II, 6 December 2005.	277
	Decision on Prosecutor's interlocutory Appeal of Decision on Judicial Notice, <i>Prosecutor</i> v. <i>Karemera, Ngirumpatse and Nzirorera</i> , Case No. 1CTR-98-44-AR73(C), A. Ch., 16 June 2006	283
	Commentary Marloes Kleijn Hesselink	299
8	. Cooperation of states	
	Decision on Nzuwonemeye's Motion Requesting the Cooperation from the Government of the Netherlands Pursuant to Article 28 of the Statute, <i>Prosecutor</i> v. <i>Bizimungu, Ndindiliyimana, Nzuwonemeye and Sagahutu</i> , Case No, ICTR-00-56-T, T. Ch. II, 13 February 2006	305
	Decision on Defence Motion to Report Government of a Certain State to United Nations Security Council and on Prosecution Motions under Rule $66(C)$ of the Rules (Article 28 of the Statute of the Tribunal and Rule $66(C)$ of the Rules of Procedure and Evidence), <i>Prosecutor v. Karemera</i> , <i>Ngirumpatse and Nzirorera</i> , Case No. ICTR-98-44-R94, T. Ch. Ill, 15 February 2006	.309
	Decision on Request for a Subpoena, <i>Prosecutor</i> v. <i>Bagosora, Kabiligi, Ntabakuze and Nsengiyumva,</i> Case No. ICTR-98-41-T, T. Ch. I, 11 September 2006.	315
	Commentary Micaela Frulli.	319
F	Part 3/ Judgement and sentencing	
9	. Judgements	
	Judgement and Sentence, <i>Prosecutor</i> v. <i>Simba</i> , Case No. ICTR-01-76-T, T. Ch. I, 13 December 2005.	. 325
	Commentary Gerhard Kemp.	421
	Judgement and Sentence, <i>Prosecutor</i> v. <i>Bisengimana</i> , Case No. ICTR-00-60-T, T. Ch. II, 13 April 2006.	429
	Judgement and Sentence, <i>Prosecutor v. Serugendo</i> , Case No. ICTR-2005-84-I, T. Ch. I, 12 June 2006.	. 471
	Commentary Eric Iverson.	490
	Judgement. <i>Gacumbitsi</i> v. <i>Prosecutor</i> , Case No. Case No. ICTR-2001-64-A, A. Ch., 7 July 2006 Separate Opinion of Judge Shahabuddeen  Joint Separate Opinion of Judges Liu and Meron Separate Opinion of Judge Schomburg on the Criminal Responsibility of the Appellant for Committing Genocide.	547 560
	Partially Dissenting Opinion of Judge Güney	
	Commentary Anne-Marie de Brouwer.	. 583
	Judgement, <i>Prosecutor</i> v. <i>Ntagerura, Bagambiki andImanishimwe</i> , Case No. ICTR-99-46-A, A. Ch7 July 2006.	
	Dissenting Opinion of Judge Schomburg	093

(	Commentary	Dov Jacobs.								703
	Judgement, <i>I</i> Separate	Prosecutor v. Opinion	Mpamb of		o. ICTR-01-65 Lattanzi,		. I, 11 Se Septer		2006 2006	
	-	•					•			
(	Commentary	Edit	th	Weemaels	and	Joan	ına	Spano	oudis	780
	•				uvunyi, Case					*
(	Commentary	Menno Doli	man							925
Pa	rt 4/ Post c	onviction or	acavitta	ıl issues						
			асчини	u issues						
10	. Sentencing	3								
ł	between the	ICTR and IC	CTY in	Sentencing I	ng <b>to</b> Rectify the Policies and O 2-A, A. Ch., 2	ther Righ	ts, Nahir	nana, Ba	ırayagwiz	;a
(	Commentary	Jens David	Ohlin							938
11	. Early relea	ase/ enforcei	ment of	sentences						
					cutor v. Rutago					
					of Sentence,					
(	Commentary	Wendy de E	Bondt an	d <i>Els de Bus</i>	ser					954
12	. Review									
					v. Prosecuto					
(	Commentary	Heikelina V	<sup>7</sup> errijn S	tuart						985
	Index									995
	Contributor	s and Edito	rc							990