

Annotated Leading Cases of International Criminal Tribunals

The International Criminal Tribunal for Rwanda 2007-2008

André Klip and Göran Sluiter (eds.)



TABLE OF CONTENTS

Table of Contents	5
Preface	9
Part 1/ Preliminary Matters	
1. Deferral and Referral	
Decision on the Prosecutor's Request for Referral of Case to the Republic of Rwanda (Rule Ilbis of the Rules of Procedure and Evidence), <i>Prosecutor v. Munyakazi</i> , Case No. ICTR-97-36-Rlbis, T. Ch. III, 28 May 2008.	11
Decision on Prosecutor's Request for Referral to the Republic of Rwanda, Prosecutor v. Kanyarukiga, Case No. ICTR-2002- 78-RIlbis, T. Ch. 11bis, 6 June 2008	29
Decision on Prosecutor's Request for the Referral of the Case of Ildephonse Hategekimana to Rwanda (Rule 11bis of the Rules of Procedure and Evidence), Prosecutor v. Hategekimana, Case No. ICTR-00-55B-Rllbis, T. Ch. 11bis, 19 June 2008	53
Decision on Prosecution's Appeal against Decision on Referral Under Rule 11bis, Prosecutor v. Munyakazi, Case No. 1CTR-97-36-R11bis, A. Ch., 8 October 2008	71
Decision on Defence Judical and Administrative Application for Deferral in Favour of the ICTR (Articles 8(2), 9 and 28 of the Statute and Rules 9, 10, 11 and 73 of the Rules of Procedure and Evidence), <i>Prosecutor v. Nshogoza</i> , Case No. ICTR-2007-91-PT, T. Ch. III, 5 November 2008	85
Commentary André Klip	91
Part 2/ Procedural matters	
2. Disclosure and Evidence	
Decision on Third Request for Review, Nivitegeka v. Prosecutor, Case No. ICTR-96-14-R, A. Ch., 23 January 2008.	95
Decision on the Prosecutor's Motion for Admission of Certain Exhibits Into Evidence (Rule 89 (C) of the Rules of Procedure and Evidence), Prosecutor v. Karemera, Ngirumpatse and Nzirorera, Case No. ICTR-98-44-T, T. Ch. III, 25 January 2008	105
Decision on Prosper Mugiraneza's Motion for Records of all Payments Made Directly or Indirectly to Witness D (Rule 68 of the Rules of Procedure and Evidence), Prosecutor v. Bizimungu, Mugenzi, Bicamumpaka and Mugiraneza, Case No. ICTR-99-50-T, T. Ch. II, 18 February 2008	125
Oral Ruling Regarding Objection to Use of Certain Material by the Prosecution in the Cross-Examination of Defence Witness Augustin Karamage, <i>Prosecutor v. Bizimungu, Mugenzi, Bicamumpaka and Mugiraneza</i> , Case No. ICTR-99-50-T, T. Ch. II, 16 April 2008	129
Decision on Joseph Nzirorera's Motion for Inspection: Michel Bagaragaza (Rule 66(B) of the Rules of Procedure and Evidence), <i>Prosecutor v. Karemera, Ngirumpatse and Nzirorera</i> , Case No. ICTR-98-44-T, T. Ch. III, 10 July 2008.	133

Decision on Joseph Nzirorera's Motion to Strike Allegation of Conspiracy with Juvenal Kajelijeli on the Basis of Collateral Estoppel (Rule 73 of the Rules of Procedure and Evidence), <i>Prosecutor v. Karemera, Ngirumpatse and Nzirorera</i> , Case No. ICTR-98-44-T, T. Ch. III, 16 July 2008	137
Decision on Defence Motions Alleging Violation of the Prosecutor's Disclosure Obligations Pursuant to Rule 68, <i>Prosecutor v. Ndindiliyimana, Bizimungu, Nzuwonemeye and Sagahutu, Case No. ICTR-</i> 00-56-T, T. Ch. 11, 22 September 2008	141
Decision on Justin Mugunzi's Motion to Admit Transcript Extracts of General Romeo Dallaire's Evidence in the <i>Ndindiliyama</i> Proceedings (Article 19 and 20 of the Statute and Rules 68 (A) and (E), 89 (C), and 92bis (D) of the Rules of Procedure and Evidence), <i>Prosecutor v. Bizimungu, Mugenzi, Bicamumpaka and Mugiraneza</i> , Case No. ICTR-99-50-T, T. Ch. 11, 4 November 2008	159
Commentary Ignaz Stegmiller	166
3. Amicus Curiae and Counsel	
Decision on Amicus Requests and Pending Defence Motions and Order for Further Submissions, Prosecutor v. Hategekimana, Case No. ICTR-00-55B-R11bis, T. Ch. 11bis, 20 March 2008	175
Decision on the Referral of the Application to Appoint Defence Counsel (Rules 11 bis and 45 quater of the Rules of Procedure and Evidence), <i>Prosecutor v. Fulgence Kayishema</i> , Case No. ICTR-2001-67-I, T. Ch. 11bis, 2 May 2008	(85
Separate and Dissenting Opinion of Judge Muthoga	189
Decision on the Requests of the Republic of Rwanda to be Served with the Amicus Briefs of Human Rights Watch and International Criminal Defence Attorneys Association (ICDAA) and to Prepare a Written Response (Rules 11bis and 74 of the Rules of Procedure and Evidence), Prosecutor v. Fulgence Kayishema, Case No. ICTR-2001-67-I, T. Ch. III, 1 July 2008	191
Decision on Motions Requesting Assignment of Counsel of Choice (Articles 19 and 20 of the Statute and Rules 45 (H), 54 and 77 (F) of the Rules of Procedure and Evidence and Article 10bis of the Directive on the Assignment of Defence Counsel, Resecutor v. Nshogoza, Case No. ICTR-2007-91-PT, T. Ch. III, 13 October 2008.	195
Commentary Michele Caianiello	202
4. Human Rights	
Decision on Joseph Nzirorera's Motion for Mistrial (Article 20 of the Statute; Rules 66 and 68 of the Rules of Procedure and Evidence), <i>Prosecutor v. Karemera, Ngirumpatse and Nzirorera</i> , Case No. ICTR-98-44-T, T. Ch. III, 19 March 2008	211
Decision on the Motion by an Acquitted Person for Cooperation from Canada (Article 28 of the Statute), Prosecutor v. Niagerura, Case No. ICTR-99-46-A28, T. Ch. III, 15 May 2008	217
Decision on Motion for Leave to Appeal the President's Decision of 31 March 2008 and the Decision of Trial Chamber III Rendered on 15 May 2008, in re Ntagerura, Case No. ICTR-99-46-A28, A. Ch., 11 September 2008.	221
Decision on Motion to Appeal the President's Decision of 31 March 2008 and the Decision of Trial	
Chamber III of 15 May 2008, in re Ntagerura, Case No. ICTR- 99-46-A28, A. Ch., 18 November 2008	227

Decision on Ntahobali's Motion for a Stay of Proceedings for Undue Delay, <i>Prosecutor v. Ntahobali</i> , Case No.ICTR-97-21-T, Joint Case No. ICTR-98-42-T, T. Ch. II, 26 November 2008	235
Commentary Jarinde Temminck Tuinstra	246
Part 3/ Judgement and sentencing	
5. Judgements	
Judgement, Nahimana, Barayagwiza and Ngeze v. Prosecutor, Case No. ICTR-99-52-A, A. Ch., 28 November 2007	257
Partly Dissenting Opinion of Judge Pocar	535
Partly Dissenting Opinion of Judge Shahabuddeen	537
Partly Dissenting Opinion of Judge Güney	555
Partly Dissenting Opinion of Judge Meron	557
Commentary Steffen Wirth	600
Judgement and Sentence, Prosecutor v. GAA, Case No. ICTR-07-90-R77-I, T. Ch. III, 4 December 2007	613
Commentary Thom Dieben	617
Judgement and Sentence, Prosecutor v. Karera, Case No. ICTR-01-74-T, T. Ch. I, 7 December 2007	627
Commentary Cristina Fernandez-Pacheco Estrada	751
Judgement, Prosecutor v. Seromba, Case No. ICTR-2001-66-A, A. Ch., 12 March 2008	757
Dissenting Opinion of Judge Liu	813
Commentary Kai Ambos and Katarzyna Geler	828
Judgement and Sentence, Prosecutor v. Nchamihigo, Case No. ICTR-01-63-T, T. Ch. III, 12 November 2008	837
Commentary Paul de Hert and Dimcho Dimov	912
Index	927
Contributors and Editors	933