



# ICTR BULLETIN DU TPIR

## The President and Prosecutor Address the UN Security Council

On 27 November 2001, the President of the International Criminal Tribunal for Rwanda, Judge Navanethem Pillay and the Prosecutor Ms Carla Del Ponte addressed the United Nations Security Council in New York on the work of the Tribunal.

Judge Pillay summarised the Tribunal's major achievements in the past year and future projections of its work. She reported that judicial, administrative and procedural steps undertaken have produced a significant increase in the number of trials in progress.

The President further said that seven trials involving seventeen accused persons were presently under way (see p.9). She explained that all three Trial Chambers were presently engaged in simultaneous trials on a twin or multi track system.

Judge Pillay also highlighted difficulties obstructing expeditious trials saying they included the complicated nature of proceedings at international level. "Trials of the accused who are alleged to have been architects of killings are far more complicated because command responsibility has to be established," she said.

The President said that in efforts to speed up the work of the Tribunal she had, among other moves, submitted a proposal to the Council for the creation of a pool of

*ad litem* judges, as had been done for the International Criminal Tribunal for the former Yugoslavia.

The Prosecutor Ms Del Ponte told the Security Council that her investigations in the Rwandan genocide had focussed on the leaders and "from the many thousands of significant targets we have selected under 200."

She explained that fifty-three accused persons were in custody, while 20 were still at large. Investigations against a total of 136 were still going on. "The Council, however, should not think that these figures present the picture of a Prosecutor out looking for business, and ranging broadly over all possible suspects whatever their involvement," she added, explaining that the 136 investigations might result at best in 45 new trials.

Mrs Del Ponte also supported the request submitted to the Council by the President for *ad litem* judges.

She further told the Council that there was now all the more reason for the international community to harden its resolve to pursue those responsible for genocide and crimes against humanity. "It is neither credible nor honourable to give support to the war against terrorism while not doing everything possible to bring to justice those responsible for genocide in Rwanda," she added.

Mrs Del Ponte said as things stood, bringing existing detainees to trial in the courtroom would take the Tribunal well into 2005 or even beyond. She explained that nineteen cases were reaching the indictment stage and 21 other investigations were going on. She added that one new area she was addressing concerns allegations of crimes committed during 1994 by members of the RPF Forces.

## Another International Court Opens in "The Hague of Africa"

A new international court, the East African Court of Justice, was inaugurated in Arusha on 30 November 2001, joining the ICTR in the building complex of the Arusha International Conference Centre (AICC) where it will be based.

The inauguration of the Court was witnessed by Presidents Daniel Arap Moi of Kenya, Yoweri Museveni of Uganda and Benjamin Mkapa of Tanzania, the three countries, which form the East African Community.

The East African Court of Justice is the judicial organ established to ensure adherence to law in the interpretation and application of and compliance with the Treaty for the establishment of the East African Community signed in Arusha on 30 November 1999.

The Court of Justice is composed of six judges, two from each of the three member states, including its President and Vice-President.

The Court will initially have jurisdiction over interpretation of the Treaty. It will have such other original, appellate, human rights jurisdiction as may be determined by the Council of Ministers at a suitable subsequent date.

On the same date the East African Legislative Assembly was also inaugurated. The Assembly will also be initially housed within the AICC complex, until a purpose built Assembly building is completed.

Arusha has thus perhaps become "The Hague of Africa" rather than Bill Clinton's more fanciful "Geneva of Africa."

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## Musema's Genocide Conviction Upheld

On 16 November 2001, the Appeals Chamber of the International Criminal Tribunal for Rwanda (ICTR) confirmed the conviction of Alfred Musema for genocide and for extermination as a crime against humanity. The Chamber also upheld the sentence of imprisonment for life for those crimes. Musema's conviction for rape as a crime against humanity was quashed by the Appeals Chamber on the basis of new evidence which it had heard.

In its judgment the Appeals Chamber considered six grounds of appeal submitted by Musema against his conviction as well as arguments that the sentence imposed by the Trial Chamber was too severe.

With regard to arguments relating to the credibility of certain prosecution witnesses to massacres or sexual crimes the Appeals Chamber considered that the Appellant had failed to prove that the Trial Chamber had erred in its evaluation of the evidence of the disputed witnesses. However, with regard to the alleged rape by Musema of a young woman known as Nyramusugi, the Appeals Chamber had heard additional evidence from two new witnesses.

It considered that the Trial Chamber would have reached a different conclusion if the evidence of the two new witnesses had been submitted together with the evidence available at the trial. It therefore found that there had been a miscarriage of justice and that Musema's conviction for rape as a crime against humanity must be quashed.

The Appeals Chamber pointed out that, before authorising an amendment to an indictment during the course of a trial, a Trial Chamber should be particularly careful that the fundamental rights of an accused as laid down in the Statute of the Tribunal were respected. In particular a Trial Chamber should ask itself whether the amendment would unduly prejudice the accused and should bear in mind that the later such an amendment was requested the more likely it was to prejudice the accused.

Musema had argued that the Trial Chamber had erred in law by convicting him of both genocide and extermination on the basis of the same facts. For the Appeals Chamber the test was whether the relevant provisions of the Statute for one of the crimes included a materially distinct constitutive element which was absent in the other provision. A constitutive element was to be considered materially distinct from another if it required the proof of a fact which was not required in the case of the other crime.

The criterion for a double conviction for the crimes of genocide and extermination as a crime against humanity was satisfied in this case and both convictions were confirmed, (for more detailed consideration of this issue see "Focus on Recent Tribunal Decisions" below).

So far as the appeal against sentence was concerned the Appeals Chamber observed that the quashing of his conviction for rape could not affect the exceptional gravity of the crimes for which he had been convicted. The appellant had failed to show that the Trial Chamber had committed any error such as to invalidate the sentence of imprisonment for life.

Musema will serve his sentence in a State to be designated by the President of the Tribunal among those States which have agreed to receive persons convicted by the Tribunal. So far the Tribunal has concluded such agreements with Benin, Mali and Swaziland.

Alfred Musema, now aged 52, was formerly director of the Gisovu Tea Factory in Kibuye Prefecture during the 1994 genocide on Rwanda. On January 27 2000, he was convicted of genocide and crimes against humanity and sentenced to life imprisonment.

## Le grand départ

*Au moment où il accède à la présidence du Conseil de sécurité des Nations Unies, le Mali s'apprête à accueillir les premiers condamnés du Tribunal pénal international pour le Rwanda, grâce à un soutien financier du Tribunal qui a permis la mise aux normes internationales d'un certain nombre de cellules.*

Le Mali est le premier pays à signer un accord de coopération avec le Tribunal pénal international pour le Rwanda en vue de l'incarcération des condamnés. Il sera aussi le premier pays à accueillir les premiers condamnés en provenance d'Arusha. Ils seront six au total à faire le grand voyage. Tous ont épuisé leur recours en appel, et leur condamnation est définitive.

C'est l'aboutissement de leur pourvoi devant la Chambre d'appel qui permet aujourd'hui le départ de l'ancien premier ministre, Jean Kambanda, de Jean-Paul Akayesu, ancien bourgmestre de Taba, tous deux condamnés à l'emprisonnement à vie et de quatre de leurs compagnons vers un pays que bon nombre d'entre eux ne saurait situer sur une carte de l'Afrique.

Situé aux confins du Sahara, le Mali est un vaste pays sahélien traverse d'Est en Ouest par le Dioliba (fleuve Niger) qui arrose sa partie méridionale. Les dunes de son relief à peine accidenté contrastent singulièrement avec les vertes collines du Rwanda. À leur arrivée à l'aéroport de Bamako très certainement que Jean Kanbamda et ses compagnons vont croiser l'ancien maire de Gikoro, Paul Bisengimana qui venait d'être arrêté quelques jours auparavant sur le territoire malien et, qui, va s'envoler quant à lui pour Arusha.

D'après le Statut du Tribunal, les condamnés doivent purger leur peine d'emprisonnement dans un des pays ayant fait savoir au Conseil de sécurité leur intention de les accueillir. Ces pays, à l'heure actuelle, sont au nombre de trois, tous du continent africain à s'être manifestés. Le Mali en premier lieu dont la signature de l'accord de coopération remonte au 12 février 1999, suivi quelques mois plus tard du Bénin et du Swaziland un an après. Actuellement des négociations très avancées sont cours avec deux pays africains.

C'est pour des raisons socioculturelles et pour bien prévenir les vellétés pour certains de recommencer et éradiquer la culture de l'impunité sur le continent, que



le Tribunal privilégie les pays africains pour l'exécution des peines d'emprisonnement. C'est sur le continent africain qu'ont été commis les crimes et dans l'esprit de la communauté internationale c'est là qu'en priorité les prisonniers doivent être incarcérés.

Néanmoins quelques pays européens seraient disposés à recevoir des condamnés mais à des conditions qui, pour certaines, paraissent insurmontables. Pour les uns, le condamné doit être ressortissant de ce pays, ou au moins en posséder la nationalité. Pour les autres, le fait que le condamné ait des attaches solides dans le pays serait suffisant. Pour le moment dans le cadre de l'exécution des peines, aucun accord formel n'a encore été signé avec un pays en dehors du continent. Cependant beaucoup de pays européens ont adapté leur législation en vue de permettre cette coopération.

Heureusement la coopération avec les Etats ne commence, ni ne s'arrête là. Qu'ils soient d'Afrique ou d'ailleurs beaucoup d'autres Etats ont contribué à l'arrestation et au transfert de personnes recherchées par le Tribunal. Ils ont aussi facilité le déplacement de témoins qui dans la plupart des cas n'avaient pas de documents de voyage. Si l'état de coopération avec les Etats était le baromètre par lequel on mesure l'état de santé du Tribunal, en ce cas, on pourrait dire que le Tribunal se porte bien et bien qu'insuffisant le soutien de la communauté internationale ne lui fait pas totalement défaut.

## Tribunal Hosts Moot Court

On November 24, the Tribunal played host to a rather unusual event: Not only was one of its courtrooms working at the weekend and the public gallery packed, but the parties doing battle were two talented finalist teams of East African students competing in a Moot Court competition, organized by the International Committee of the Red Cross (ICRC). The proud winners were Collins Odongo, Bonnie Okumu and Elisha Ongoya from Nairobi University.

"You belong to the generation we are looking at," ICTR Vice-President and chairman of the adjudicating Bench Erik Møse told the finalists. "I think you belong to part of the great human rights movement, the great International Humanitarian Law movement. It is people like you who contribute to progress."

The scene of the alleged crimes was not Rwanda in 1994 but the fictitious troubled state of Parabulem in 2002. A panel of six ICTR and ICRC lawyers and experts were cast in the role of a commission conducting hearings into whether to recommend extradition of an exiled ex-president for an alleged massacre of civilians by his security forces.

From the United States International University in Nairobi, three finalist students in International

Relations argued for extradition, while the Nairobi University team successfully argued against.

The ICRC hopes to extend this programme, designed to boost students' knowledge of International Humanitarian Law.

## Le TPIR soutient la formation des journalistes Africains

De hautes personnalités du Tribunal pénal international pour le Rwanda (TPIR), dont le greffier Adama Dieng et le vice-président Erik Møse, ont apporté leur soutien en tant qu'intervenants lors du dernier séminaire de formation pour journalistes africains organisé par la Fondation Hirondelle du 29 octobre au 9 novembre à Arusha.

Ce séminaire en français a traité surtout le droit et la justice internationale, le fonctionnement du TPIR, et la chronique judiciaire.

"Ca me permettra d'écrire des articles en rapport avec le droit, de faire des articles sur les procès," a dit un des participants à la fin du séminaire. "J'ai appris beaucoup de choses," a commenté un autre, "notamment sur le déroulement d'un procès au TPIR, la différenciation des concepts génocide/crimes contre l'humanité/crimes de guerre."

Dix journalistes du Rwanda, du Burundi et de la République Démocratique du Congo ont participé à ce séminaire. Les participants venaient de la presse écrite et de la radio. Le séminaire était animé par l'ancien procureur de Kigali François-Xavier Nsanzuwera, le rédacteur en chef de la Fondation Hirondelle Philippe Dahinden, la journaliste de radio et formatrice Janet Anderson, et la directrice du projet Hirondelle à Arusha Julia Crawford.

La formation combinait des cours de théorie et des exercices pratiques, ainsi que des visites au TPIR pour suivre des audiences. Les participants ont beaucoup apprécié l'opportunité qui leur a été offerte de voir le Tribunal à l'oeuvre et de mieux comprendre son fonctionnement.

Ce séminaire de formation pour journalistes africains est le cinquième organisé par la Fondation Hirondelle à Arusha, et le troisième en langue française. Hirondelle compte poursuivre ce programme de formation, en français et en anglais.

La Fondation Hirondelle est une ONG suisse qui travaille avec des journalistes locaux pour diffuser des informations utiles et impartiales aux populations victimes de conflits. L'agence Hirondelle à Arusha compte sept journalistes qui couvrent les procès du TPIR en français, anglais, kiswahili et kinyarwanda (la langue rwandaise).



## Road map to the International Criminal Court

On September 11, 2001, there were 37 ratifications of the Rome Statute of the International Criminal Court [ICC]. Since then, we have witnessed nearly a ratification per week, bringing us to 48 ratifications to date. The ICC Statute will enter into force 30 days after the sixtieth instrument of ratification is deposited with the United Nations. All predictions seem to point to entry into force of the treaty in early 2002.

We have come a long way since the Hague Conventions of 1899 and 1907 on the laws and customs of war and the later "general" prohibition of the use of force introduced in article 2(4) of the United Nations Charter, which addressed the responsibility of *states* in bringing "untold suffering to mankind". The regulation of the acts of states was taken a step further with the 1948 Genocide Convention and 1949 Geneva Conventions which established the foundations of *individual* criminal responsibility.

These conventions envisaged an effective enforcement mechanism. The entrenchment of the cold war prevented further development of individual criminal responsibility, and the International Law Commission's early plans for such a project were shelved.

In 1994 the International Law Commission, encouraged by the change of climate following the end of the cold war and spurred by the creation of the two *ad hoc* Tribunals, was called upon to revisit the project. With national courts more frequently exercising universal jurisdiction, the momentum demanding individual criminal responsibility for crimes against humanity has grown from strength to strength. The Rome Conference adopted the Statute of the International Criminal Court on 17 July 1998 with 120 votes in favour, 7 against and 20 abstentions.

The International Criminal Court will exercise jurisdiction over genocide, war crimes and crimes against humanity committed after entry into force of the Treaty. The definition of these crimes has evolved in certain respects since the establishment of the *ad hoc* Tribunals. The Rome Statute also includes civil law elements, such as *locus standi* for victims with the Registry assigned responsibility for facilitating their participation in the proceedings.

Resolution F of the Final Act of the Rome Conference established a Preparatory Commission [PrepCom] for the establishment of the Court. The ICC PrepCom met for its first session from 16 to 26 February 1999, when it adopted its bureau and designated a number of working groups to consider the texts listed in Resolution F.

The PrepCom has adopted most of these texts. On 30 June 2000, the fifth PrepCom, adopted the draft Rules of Procedure and Evidence, as well as the draft

Elements of Crimes. On 5 October 2001, the eighth PrepCom, adopted four further draft texts, namely, the draft Relationship Agreement between the ICC and the UN, the draft Financial Rules and Regulations, the draft Agreement on the Privileges and Immunities of the Court, and the draft Rules of Procedure of the Assembly of States Parties. Working Groups on the Crime of Aggression, the Headquarters Agreement and the First Year Budget are still in progress.

At this last session, a Road Map document<sup>1</sup> was adopted by the PrepCom, identifying the steps to be fulfilled in view of the imminent entry into force of the treaty. The Road Map focuses on the three areas: the operation of the Assembly of States Parties, the drafting of internal rules (human resources, budgetary and operational), and coordination with the Host Country. In view of the operations of the Assembly of States Parties, two new working groups were created. The Working Group on the Assembly of States Parties – Preparatory Documents (ASP-PD), is to compile the necessary documents for the first meetings of the Assembly of States Parties, meeting agendas, rules, nomination and election procedures for judges and the prosecutor, and the Working Group on Financial Issues, will deal with imminent financial issues, such as remuneration of judges, the Prosecutor, and the Registrar, and the victims trust fund.

With regard to the preparation of internal documents, three focal points were appointed for the drafting of internal rules on human resources, budgetary matters and operational issues. Finally, a subcommittee was created to act as the interlocutor between the Preparatory Commission and the Host Country.

The Netherlands will be hosting the International Criminal Court, as iterated in article 3 of the statute, though it may also sit elsewhere. The imminent entry into force of the statute brought the Foreign Minister of the Netherlands, Mr. Jozias van Aartsen, to New York to address the PrepCom on 25 October 2001. He detailed the national preparations underway regarding the temporary premises of the ICC and future site of the ICC.

The Registrars of the two Tribunals also addressed the PrepCom at this last session. Mr. Dieng, Registrar of the International Criminal Tribunal for Rwanda, delivered a speech emphasising the expectations that the international community will have on the perform and deliver from day one. In this regard, the ICC should benefit from as much early planning as possible, as it will be difficult to put in place operating systems when the Court is already up and running. The ICC

<sup>1</sup> PCNICC/2001/L.2: Road-map leading to the early establishment of the International Criminal Court



will need to have in place basic systems such as staff rules, DSA scales, procurement rules, computer systems, archiving systems and many more, if it is to provide even the most preliminary functions as a global public service. The intervention provided valuable operational input on numerous areas under discussion, from witness protection to legal aid for the Court's

future accused.

The sixth committee of the General Assembly (legal affairs) has proposed two further PrepComs in 2002. The proposed dates are from 8 to 19 April 2002 for the ninth session and from 1 to 12 July 2002 for the tenth session.

### Signatures and Ratifications in Africa

10 Ratifications: Botswana, Central African Republic, Gabon, Ghana, Lesotho, Mali, Nigeria, Senegal, Sierra Leone, and South Africa.

42 Signatures: The above ten plus Algeria, Angola, Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, Chad, Congo, Côte d'Ivoire, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Gambia, Guinea, Guinea-Bissau, Kenya, Liberia, Madagascar, Malawi, Morocco, Mozambique, Namibia, Niger, Sao Tome & Principe, Seychelles, Sudan, Uganda, United Republic of Tanzania, Zambia, Zimbabwe.

States likely to ratify in the near future:

Angola and Benin: parliamentary approval complete, allowing for Head of State approval.

Madagascar and Uganda: draft ratification bills proposed to the relevant government ministries and/or parliament for review.

Tanzania: AG currently reviewing draft ratification paper.

Zimbabwe: advanced stages of preparation of the draft bill for parliamentary review.

Burkina Faso, Djibouti, Egypt, Mauritius, and Mozambique: commitments made to early ratification, but a draft ratification bills not yet completed.

States, which have not signed:

Equatorial Guinea, Ethiopia, Mauritania, Rwanda, Somalia, Swaziland, Togo and Tunisia.

### New Composition of ICTR Appeals Chamber

On Friday 23 November Judge Claude Jorda, Presiding Judge of the ICTR Appeals Chamber and President of the International Criminal Tribunal for the Former Yugoslavia (ICTY) announced the revised composition of the Appeals Chamber common to both Tribunals and of the Trial Chambers of ICTY. The changes were necessitated by the election of six new permanent judges to the ICTY by the General Assembly of the United Nations on 14 March 2001. The new judges were sworn in on 22 November 2001 and at an extraordinary plenary session held the following day Judge Jorda was re-elected President of the ICTY.

The revised composition of the ICTR Appeals Chamber is:

Judge Claude Jorda (France), Presiding;  
 Judge Mohammed Shahabuddeen (Guyana);  
 Judge David Hunt (Australia);  
 Judge Mehmet Güney (Turkey);  
 Judge Asoka de Zoysa Gunawardana (Sri Lanka);  
 Judge Fausto Pocar (Italy) and  
 Judge Theodor Meron (United States of America).



## Commentaire et analyse de jurisprudence Focus on recent Tribunal Decisions

### *Alfred Musema v The Prosecutor* (Case No. ICTR-96-13-A) Appeals Chamber

Judge Claude Jorda, presiding, Judge Lal Chand Vohrah, Judge Mohammed Shahabuddeen, Judge Rafaël Nieto-Naiva and Judge Fausto Pocar. Judgement delivered on 16 November 2001

#### Cumulative convictions

Musema's sixth ground of appeal related to the issue of whether multiple convictions on the basis of the same set of facts are permissible. For the Appellant, the Trial Chamber had committed an error by finding him guilty of both Genocide, pursuant to Article 2(3)(a) of the Statute and extermination as a Crime against Humanity, pursuant to Article 3(b) of the Statute, on the basis of the same facts. The Appellant requested the Appeals Chamber to quash the latter conviction. The Prosecutor argued that both the practice of the ICTR and the International Criminal Tribunal for the former Yugoslavia (ICTY), and the approach of national jurisdictions provide support for the position that extermination as a Crime against Humanity and killing constitutive of Genocide are distinct crimes. As such, for the Prosecutor the law permits multiple charging and conviction for these crimes on the basis of the same conduct.

Even though this was the first time the ICTR Appeals Chamber had expressed itself on this question, it had already been extensively considered in previous judgements of the ICTR and ICTY Trial Chambers. More recently, the ICTY Appeals Chamber in *Celibici*, defined the criteria to be applied when determining whether to pronounce or uphold multiple convictions on the basis of the same facts. It ruled that "reasons of fairness to the accused and the consideration that only distinct crimes may justify multiple convictions, lead to the conclusion that multiple criminal convictions entered under different statutory provisions but based on the same conduct are permissible only if each statutory provision involved has a materially distinct element not contained in the other. An element is materially distinct from another if it requires proof of a fact not required by another".<sup>1</sup> Consequently, the Chamber found that multiple convictions for the same conduct pursuant to Article 2 (Grave Breaches of the Geneva Conventions 1949) and Article 3 (Violations of the Laws and Customs of War) of the ICTY Statute

were not permissible for lack of materially distinct elements.

The same Chamber in *Jelusic* subsequently found that cumulative convictions for the same conduct under Article 3 and Article 5 (Crimes against Humanity) was permissible as "each Article has an element requiring proof of a fact not required by the other". Article 3 requires a nexus between the acts of the accused and the armed conflict, which is not required by Article 5, and Article 5 requires proof that the act occurred as part of a widespread or systematic attack against a civilian population, which is an element not required by Article 3.<sup>2</sup>

In *Musema*, the Appeals Chamber adopted the reasoning in the above ICTY jurisprudence and noted that the 'test' had to be applied also to the *chapeau* of each Article, and not only to the elements of the underlying offences. The question then was whether a materially distinct element distinguished Genocide (Article 2) from extermination as a Crime against Humanity (Article 3). If so the multiple convictions would be permissible.

In the opinion of the Chamber, Genocide, unlike Crimes against humanity, requires proof of "the intent to destroy, in whole or in part, a national, ethnic, racial or religious group". Whereas extermination as a crime against humanity requires proof that the crime was committed "as part of a widespread or systematic attack against any civilian population". Consequently, given these distinct material elements, the Chamber found that the double conviction of genocide and extermination as a crime against humanity on the basis of the same set of facts was permissible.

For the full discussion by the Appeals Chamber of the question of cumulative convictions and the other grounds of appeal, reference should be made to the text of the judgement presently available on the Tribunal's website.

<sup>1</sup> *Celibici*, ICTY Appeals Chamber Judgement of 20 February 2001, para. 412.

<sup>2</sup> *Jelusic*, ICTY Appeals Chamber Judgement of 5 July 2001, para. 82



***Le Procureur c. Mika Muhimana***  
(ICTR-95-1-B-I)  
Chambre de première instance I

Juge unique, Andrézia Vaz. « Décision relative à la Requête de la Défense aux fins de traduction des documents de l'Accusation et des actes de procédure en kinyarwanda, langue de l'Accusé, et en français, langue de son Conseil », 6 novembre 2001

**Références et sources de droit citées**

**Tribunaux pénaux internationaux :**

Tribunal pénal international pour le Rwanda (« TPIR » ou « Tribunal »), Affaire *Le Procureur c. Sylvain Nsabimana* No. ICTR-97-29-T, « Décision relative à la Requête de la Défense aux fins de circonscrire les dépositions éventuelles à communiquer à la Défense et aux fins d'exclure certains témoignages déjà communiqués par le Procureur », 11 février 2000 ; TPIR, Chambre d'appel, Affaire *Jean-Paul Akayesu c. le Procureur* No. ICTR-96-4-A, « Ordonnance (Requête aux fins de traduction des mémoires de l'Appelant) », 29 mars 2001 ;

Tribunal pénal international pour l'ex-Yougoslavie (« TPIY »), Affaire *Le Procureur c. Zejnil Delalic et consorts* No. IT-96-21, « Order on Defence Applications for Amendment of the Directive on Assignment of Defence Counsel, Forwarding the Documents in the Language of the Accused and Confirmation of the Status of Witnesses for the Defence », 31 mai 1996 ;

TPIY, Affaire *Le Procureur c. Zejnil Delalic et consorts* No. IT-96-21, Décision relative à la Requête de la Défense aux fins de transmission des documents dans la langue de l'Accusé », 25 septembre 1996 (la « Décision Delalic » ou la « jurisprudence Delalic ») ;

TPIY, Affaire *Le Procureur c. Simo Zaric alias Solaja* No. IT-95-9, « Décision relative à la Requête de la Défense aux fins d'autoriser le Conseil de la Défense à utiliser sa langue maternelle lors du procès », 21 mai 1998.

**Autres :**

Convention Européenne des Droits de l'Homme, Article 6 3 e) ;

Cour Européenne des Droits de l'Homme (la « CrEDH »), Arrêt Luedicke, Belkacem et Koç c. Allemagne du 28 novembre 1978, série A, n° 29 ;

CrEDH, Arrêt Kamasinski c. Autriche du 19 décembre 1989, série A, n° 168 ;

Cour Pénale Internationale, Article 67.1.f) du Statut et Règle 101 du Règlement de procédure et de preuve.

**1. Introduction, points généraux :**

La Chambre de première instance I était saisie d'une requête à portée générale visant à la traduction de tous les documents au dossier de l'Accusé, (1) dans la langue de l'Accusé, le kinyarwanda, et (2) dans la langue de son Conseil, le français.

La Décision, rendue le 6 novembre 2001 par Mme le Juge Andrézia Vaz au titre de la Chambre de première instance I (la « Chambre »), rappelle ou définit des principes qui, bien qu'énoncés « [au regard de] la présente espèce »<sup>1</sup>, pourront servir, tant pour le Greffier que pour les Chambres de première instance, au règlement de litiges à venir portant sur des questions de traduction de documents, notamment dans la langue de l'Accusé.

Les Chambres de première instance sont rarement saisies de telles requêtes, notamment parce que les questions de traduction ressortent de la compétence du Greffier<sup>2</sup>. Ayant considéré qu'en l'espèce, la Défense et ce dernier n'avaient pas pu résoudre par eux-mêmes le contentieux dont elle était saisie<sup>3</sup>, la Chambre, en

choisissant d'intervenir, souligne qu'elle « s'est efforcée d'opérer un équilibre entre le droit général de toute personne accusée à un procès équitable (...) et des considérations d'économie judiciaire liées à l'organisation du Tribunal et à celle des services de traduction »<sup>4</sup>, tout en rappelant que ces considérations sont liées. De fait, les secondes risquent d'entraîner un ralentissement de la procédure, ralentissement qui porterait atteinte au droit de l'Accusé à être jugé sans retard excessif<sup>5</sup> et, par conséquent, à son droit à un procès équitable<sup>6</sup>.

**2. Principes posés pour les besoins de l'espèce : traduction des documents en kinyarwanda à l'intention de l'Accusé**

La Chambre note tout d'abord « qu'il n'est contesté ni par le Procureur ni par le Greffier que l'Accusé ne s'exprime correctement qu'en kinyarwanda et ne comprend correctement que cette langue »<sup>7</sup>.

Quant au droit applicable, la Chambre, s'appuyant sur la jurisprudence de la CrEDH<sup>8</sup>, énonce que « le droit des accusés à se faire assister gratuitement d'un

<sup>1</sup> Décision, § 12.

<sup>2</sup> En vertu des Articles 16 1) du Statut et 3 E) et 33 A) du Règlement de procédure et de preuve (le « Règlement »). Voir Décision, § 10.

<sup>3</sup> Voir Décision, § 10.

<sup>4</sup> Décision, § 12.

<sup>5</sup> Article 20 4) c) du Statut.

<sup>6</sup> Article 20 du Statut, de manière générale et, plus spécifiquement, Article 20 2) du Statut.

<sup>7</sup> Décision, § 15.

<sup>8</sup> Voir encadré.



interprète s'ils ne comprennent pas ou ne parlent pas la langue employée à l'audience (Article 20.4.f) du Statut couvre, non seulement les procédures orales, mais encore, dans une mesure qui sera déterminée par après pour les besoins de la présente espèce, certains documents versés à son dossier »<sup>9</sup>.

La Chambre rejette donc, conformément à la jurisprudence de la Cour Européenne comme du TPIY, l'argument de la Défense selon lequel le droit international consacrerait le droit des Accusés ne comprenant pas ou ne parlant pas la ou les langues employées à l'audience et dans les procédures écrites à obtenir traduction, dans leur langue, de tous les documents versés à leur dossier<sup>10</sup>.

La Chambre rappelle ou précise ensuite les contours du droit des accusés ne parlant pas ou ne comprenant pas les langues de travail du Tribunal à obtenir traduction de documents versés à leur dossier dans leur langue. En l'occurrence, la traduction de documents dans la langue de l'Accusé n'est obligatoire qu'au regard des éléments qui seront présentés au procès, à savoir, les pièces à conviction, et, par exception<sup>11</sup>, les éléments justificatifs joints à l'Acte d'accusation. La Chambre y ajoute les « déclarations préalables des témoins que le Procureur est tenu de communiquer à l'Accusé en vertu de l'Article 66 A) ii) du Règlement, pour autant que ce dernier entende effectivement les appeler à la barre, et même si ces pièces ne devaient pas être soumises à l'examen de la Chambre de première instance lors du procès »<sup>12</sup> et les décisions et ordonnances du Tribunal en l'espèce<sup>13</sup>.

Par contre, la Chambre rappelle que la traduction de documents dans la langue de l'Accusé n'est pas obligatoire pour « les requêtes et soumissions diverses, les compte-rendus des audiences, memoranda, correspondances et autres documents semblables,

puisque ces éléments « n'entrent pas dans les paramètres des éléments de preuve sur lesquels la Chambre de première instance fondera sa décision sur les accusations portées contre [eux] » (Décision Delalić, § 10) »<sup>14</sup>. Cependant, la Chambre se félicite de ce que le Greffier déclare vouloir traduire certaines requêtes et soumissions diverses du Procureur sous réserve de la nécessité de la traduction demandée, tout en soulignant, d'une part que cela ne peut que dépendre des ressources disponibles, et d'autre part, que, « en accord avec la jurisprudence de la Cour Européenne [...], si, faute de temps ou de ressources, il [...] était difficile [pour le Greffier] de traduire par écrit certains documents vers le kinyarwanda, notamment parmi [les éléments qu'il n'est pas obligé de traduire dans la langue de l'Accusé], il pourrait encore faire procéder à l'interprétation orale des documents en question [...] afin que l'Accusé en saisisse la teneur générale »<sup>15</sup>.

### 3. Principes posés pour les besoins de l'espèce : traduction des documents en français

S'appuyant sur une jurisprudence de la Chambre d'appel du Tribunal, la Chambre ordonne que soient en toute hypothèse traduits, non seulement en français mais « dans la langue dans laquelle ils n'ont pas été déposés »<sup>16</sup>, (1) les éléments de preuve que les parties présenteront au procès et seulement ces pièces-là, puisqu'elles « sont (...) indispensables à [la] préparation [des parties], comme à la Chambre dans sa délibération sur les allégations à l'encontre de l'Accusé »<sup>17</sup>, (2) l'ensemble des arguments des parties (requêtes, réponses, dupliques)<sup>18</sup>, ainsi que, (3) les décisions et ordonnances de la Chambre<sup>19</sup>. Enfin, la Chambre précise que le point de départ des délais pour les réponses, dupliques et autres soumissions des parties courront de la date du dépôt de la traduction, par le Greffe, des soumissions de l'autre partie<sup>20</sup>.

<sup>9</sup> Décision, § 16.

<sup>10</sup> Voir Décision, §§ 18-21.

<sup>11</sup> Car ils ne seront pas nécessairement présentés par le Procureur lors du procès.

<sup>12</sup> Décision, § 23.

<sup>13</sup> Décision, § 29.

<sup>14</sup> Décision, § 26, note comprise.

<sup>15</sup> Décision, § 30.

<sup>16</sup> Décision, § 33.

<sup>17</sup> Décision, § 33 a).

<sup>18</sup> Décision, § 33 b).

<sup>19</sup> Décision, § 33 d).

<sup>20</sup> Décision, § 33 c).



## Trials in Progress

### Procès en cours

(as at 30 November 2001)

For up-to-date information on the progress of trials, please consult the Judicial Calendar and the Status of Detainees on the Tribunal's website: [www.ictr.org](http://www.ictr.org)

#### **“Cyangugu Case”** (*Bagambiki, Imanishimwe, Ntagerura*)

Trial Chamber III, Judges Williams (presiding), Ostrovsky and Dolenc.

Trial opened 18 September 2000; Prosecution case closed on 21 November after 73 days of hearings during which 40 witnesses were heard. Defence case will open on 4 March 2002.

#### **“The Media Case”**, (*Barayagwiza, Nahimana and Ngeze*)

Trial Chamber I, Judges Pillay (presiding), Møse and Gunawardana.

Trial opened 23 October 2000, resumed on 13 November 2001. By November 30, 108 days of hearings covering 37 prosecution witnesses. The case will continue until 13 December and resume on 18 February 2002.

#### **Semanza**

Trial Chamber III, Judges Ostrovsky (presiding), Williams and Dolenc.

Trial opened 16 October 2000. On 28 November the case was adjourned after 53 days of hearings. 23 defence witnesses have been heard. Trial will resume on 21 January 2002, when two expert witnesses and Semanza himself will testify.

#### **Kajelijeli**

Trial Chamber II, Judges Sekule (presiding), Maqutu and Ramaroson.

Trial opened 13 March 2001, restarted 2 July 2001. Adjourned on 5 October 2001 after 18 days of hearings. Re-opened on 26 November 2001. 21 days of hearings. 10 prosecution witnesses heard. Case will continue until 13 December 2001.

#### **Kamuhanda**

Trial Chamber II, Judges Sekule (presiding), Maqutu and Ramaroson.

Trial opened 17 April 2001 and restarted 3 September 2001. 14 days of hearings. Adjourned on 25 September 2001 until 28 January 2002

#### **“Butare Case”**, (*Nyiramasuhuko, Ntahobali, Nteziryayo, Nsabimana, Ndayambaje and Kanyabashi*)

Trial Chamber II, Judges Sekule (presiding), Maqutu and Ramaroson.

Trial opened 12 June 2001, Adjourned on 22 November 2001 after 31 days of hearings. Case to continue on 4 March 2002.

#### **“Ntakirutimana Case”**, (*Elizabeth Ntakirutimana and Gérard Ntakirutimana*)

Trial Chamber I, Judges Møse (presiding), Pillay and Vaz.

Trial opened 18 September 2001, Prosecution case closed on 2 November 2001 after 27 days of hearings during which 19 prosecution witnesses, including two investigators and one expert witness were heard. Trial adjourned to Monday, 14 January, when Defence case will open.

## Initial Appearances and New Indictments

Three accused have recently made their initial appearances:

#### **Protais Zigiranyirazo, 10 October 2001**

The accused, also known as "Mr. Z", is alleged to have been a member of the Akazu: the elite circle of influential people who surrounded the late President of Rwanda, Juvénal Habyarimana. He is alleged to have planned killings before April 1994 and from April 1994 to have set up roadblocks at which civilians were killed and to have ordered attacks against civilians in Gisenyi prefecture.

The accused was arrested in Belgium after a request was made to the government and he is charged under Article 6(1) of the Tribunal's Statute with extermination, or in the alternative, murder as crimes against humanity.

At his initial hearing the accused pleaded not guilty to either count.

#### **Emmanuel Ndindabahizi, 19 October 2001**

The accused was the Minister of Finance in the Interim Government. He is alleged to have both planned and directly participated in massacres that occurred throughout the country though his involvement is alleged to have been heaviest in the massacres occurring in Kibuye, his home prefecture.

The accused was arrested under warrant and has been charged concurrently on five counts: pursuant to Articles 6(1) and (3) with genocide; pursuant to Article 6(1) with direct and public incitement to commit genocide; pursuant to Articles 6(1) and (3) with extermination, murder and rape as crimes against humanity.

At his initial hearing the accused pleaded not guilty to all counts.

**Francois Karera, 22 October 2001**

The accused was the prefet of Kigali-Rural prefecture from April to July 1994. He is alleged to have planned and led attacks on Tutsi in his prefecture, particularly in Bugesera sous-prefecture and Ntarama secteur.

The accused was arrested in Nairobi under a warrant and he is charged pursuant to Articles 6(1) and (3) with

genocide or in the alternative complicity in genocide and with extermination, or in the alternative, murder as crimes against humanity.

At his initial hearing the accused pleaded not guilty to all counts.

## Digest of ICTR Decisions, Judgements and Orders Chronique de décisions, jugements et ordonnances du TPIR

**Important Note:** This digest is compiled to assist persons interested in the work of the Tribunal to find decisions and other materials of interest to them. The summaries are provided for information only and have no legal status. They are not binding on the Tribunal and any opinions expressed do not necessarily reflect those of the Chambers, the Prosecutor or the Registry. The full texts of all decisions summarised under this heading are available on the Tribunal's Website [www.ictor.org](http://www.ictor.org) or on request from the Press and Public Affairs Unit ([ictor-press@un.org](mailto:ictor-press@un.org)).

**Subject: Décision relative à la Requête de la Défense aux fins de mise en liberté de l'Accusé**

Case:	Nchamihigo
Case No:	ICTR-2001-63-I
Chamber:	Trial Chamber I
Date of Decision:	8 October 2001

**Legal Basis:** Rules 40 bis, 72 and 73 RPP

Keywords: ex parte nature of proceedings under Rule 40 bis, right to challenge the legality of one's detention, prima facie, body of material under Rule 40 bis (B)(ii), res judicata

### Summary

1. The Defence Motion filed by Duty Counsel for Accused Nchamihigo is dismissed in its totality. The Defence was challenging the procedure followed under Rule 40 bis of the Rules, contending that, as a consequence, the Accused was being illegally detained by the Tribunal, and as a relief asked for the Accused's immediate release.

The Defence relied on the following grounds:

- 1.1 Irregularity of the Order for arrest, transfer and detention of the Accused rendered on 21 May 2001, in light of:
  - 1.1.1 The non-admissibility of the affidavit by Mr. Walpen (OTP Chief of Prosecutions) submitted to substantiate the request for arrest, transfer and detention, since it was not made before a Commissioner for Oaths or Magistrate;

*Dismissed: Rule 40 bis (B)(ii) does not set out specific modalities for the "body of material which tends to show that the suspect may have committed a crime over which the Tribunal has jurisdiction".*

- 1.1.2 The insufficiency of the said statement as such and on the merits (lack of witness statements and testimonies, absence of cross-examination by the Defence)

*Dismissed: the Judge ascertained that the elements submitted were sufficient under Rule 40 bis of the Rules and further based his decision on elements submitted orally at the ex parte hearing; the Defence cannot challenge the ex parte nature of the proceedings under Rule 40 bis; when a request under Rule 40 bis is made the individual concerned is not yet a party to proceedings; in any event, assessment of the body of material submitted by the Prosecutor is made prima facie.*

- 1.2 By the time the Accused's Initial Appearance took place on 29 June 2001, the Accused had been illegally detained from 25 June 2001 onwards (the Accused was transferred to the Tribunal on 25 May 2001) since the Prosecutor had not requested an extension of the then-suspect provisional detention under Rule 40 bis (F).

*Dismissed: the Accused's Indictment was confirmed on 23 June 2001, prior to the end of the 30-day deadline under Rule 40 bis (C); the same day a new warrant of arrest was issued pursuant, notably, to Rule 54 of the Rules, the suspect had become an accused, and Rule 40 bis, including its subparagraph (F), did not apply anymore.*



- 2 The Prosecutor objected to the Defence Motion on the following grounds:
- 2.1 The proceedings under Rule 40 bis being ex parte, the Defence did not have the right to challenge the Order rendered.

*Dismissed: although the request under Rule 40 bis is reviewed ex parte, the TC relies on the Barayagwiza Decision of 3 November 1999 to state that the fundamental right of an individual to challenge the legality of his/her detention is, consistent with international legal standards, "well-established by the Statute and the Rules".*

- 2.2 The motion does not fall under Rule 72 of the Rules.

*Dismissed: even though it is excluded by Rule 72(H) of the Rules from the category of preliminary motions, it is a motion falling within the ambit of Rule 73 of the Rules, which the parties may file at any time during the proceedings.*

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**Subject: Decision on the Defence Motion Pursuant to Rule 73 of the Rules of Procedure and Evidence to Seek Cooperation from the Ministry of Foreign Affairs of France**

Case:	Semanza
Case No:	ICTR-97-20-T
Chamber:	Trial Chamber III
Date of Decision:	10 October 2001

In the underlying Motion the Defence requested the Chamber to issue an order to seek the cooperation and leave from the Government of France to call two French civil servants as expert witnesses in the Semanza trial.

The Prosecutor opposed the request.

The Chamber **denied** the Motion because it was not convinced of the necessity of having the two civil servants serve as experts in this case. The Chamber was careful to point out however that its *decision was made solely with a view of answering the Defence request for State cooperation* and that it was not intended to impede the right of the accused to present witnesses on his behalf or to prejudge in any way the value of any testimony the said expert witnesses may give in this case.

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**Subject: Decision on Juvénal Kajelijeli's Motion Requesting the Recalling of Prosecution Witness GAO**

Case:	Kajelijeli
Case No:	ICTR-98-44A-T
Chamber:	Trial Chamber II
Date of Decision:	2 November 2001

By this the Defense for Kajelijeli was granted leave to recall a Detained witness in order to further cross examine him on the alleged discrepancies between his statements made before the Rwandan Authorities and his testimony before the Tribunal. The said statements were obtained from Rwanda by the Defense.

In the same Decision, the Chamber considered that the Prosecutor bore the responsibility to find and obtain statements made by 3 other detained witnesses she intends to use in the case against Kajelijeli and to furnish them to the Defense. The Chamber came to this conclusion because it noted that in preparation for the trial, the Prosecutor would have been expected to find out and obtain all prior statements that detained witnesses might have made in other similar investigations and judicial proceedings, in so far as they could be relevant. These statements would be disclosed to the Defense pursuant to Rule 66(A)(ii).

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**Sujet: Décision relative à la Requête de la Défense aux fins de traduction des documents de l'Accusation et des actes de procédure en kinyarwanda, langue de l'Accusé, et en français, langue de son Conseil**

*Articles 20 et 31 du Statut et 3, 19, 31, 33 B), 54, 66 A) et 73 du Règlement*

Case:	Muhimana
Case No:	ICTR-95-1-B-I
Chamber:	Trial Chamber I
Date of Decision:	Decision Traduction Muhimana 6 novembre 2001

*(Pour une analyse plus approfondie de cette décision, voir la page 7 ci-dessus)*

Saisie par la Défense d'une requête générale en traduction dans la langue de l'Accusé et dans la langue de son conseil (respectivement, en kinyarwanda et en anglais), de tous les documents de procédure, la Chambre:



a) Note d'abord qu'il n'est pas contesté que l'Accusé ne parle ni ne comprend correctement le français ou l'anglais;

b) S'appuyant sur la jurisprudence de la CrEDH, ajoute aux principes établis par la Decision *Delalic* que « le droit des accusés à se faire assister gratuitement d'un interprète s'ils ne comprennent pas ou ne parlent pas la langue employée à l'audience (Article 20.4.f du Statut) couvre, non seulement les procédures orales, mais encore, dans une mesure qui sera déterminée par après pour les besoins de la présente espèce, certains documents versés à son dossier »;

c) Enonce quant à la traduction en kinyarwanda, que:

- i) Est obligatoire, pour les pièces a conviction du Procureur ;
- ii) N'est pas obligatoire, pour les pièces qui font l'objet de communication entre les parties, mais ne seront pas forcément présentées au procès;
- iii) N'est pas obligatoire pour les requêtes, soumissions des parties ; pour autant la Chambre se félicite de ce que le Greffe déclare vouloir les traduire, surtout au regard des requêtes importantes par rapport à l'instance ou aux droits fondamentaux de l'accusé;
- iv) N'est pas obligatoire, pour tous les autres actes versés au dossier de l'Accusé (memoranda, correspondances, etc.).

d) Ordonne que soient traduits, dans la langue de travail dans laquelle ils n'ont pas été déposés :

- i) l'ensemble des arguments des parties (requêtes, réponses, duplicques) ;
- ii) les éléments de preuve que les parties présenteront au procès et seulement ces pièces-là, qui « sont (...) indispensables à [la] préparation [des parties], comme à la Chambre dans sa délibération sur les allégations à l'encontre de l'Accusé »;
- iii) les décisions et ordonnances rendues par la Chambre dans le dossier, si elles n'ont été déposées que dans une des langues de travail du Tribunal.

e) Décide, enfin, que les délais pour réponse aux arguments de l'autre partie courront à compter de la date du dépôt de la traduction dans la langue de travail du tribunal par le Greffe.

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**Subject: Decision on Defence Motions by Nyiramasuhuko, Ndayambaje and Kanyabashi on, Inter Alia, Full Disclosure of Unredacted Prosecution Witness Statements**

<i>Case:</i>	<i>Nyiramasuhuko, Ndayambaje, Kanayabashi</i>
<i>Case No:</i>	ICTR-97-21-T, ICTR-96-8-T, ICTR-96-15-T
<i>Chamber:</i>	Trial Chamber II
<i>Date of Decision:</i>	13 November 2001

The Chamber was seized of three Motions seeking to full disclosure of unredacted statements of witnesses whom the Prosecutor intends to call to testify at trial. In light of the Chamber's harmonisation Order for all Accused in the "Butare cases" dated 8 June 2001, disclosure of unredacted statements was to be made 30 days prior to trial provided witness protection measures were implemented.

Here are two extracts of the Chamber's deliberations in the Decision:

1. Having weighed the statutory rights of the Accused to prepare their defence in sufficient time prior to trial on balance with the orders for protective measures, which are granted in exceptional circumstances, the Chamber finds the explanation for lack of timely disclosure to be unacceptable and therefore grants the Defence Motions for full disclosure of Prosecution witness statements as specified in the present Decision. In that respect the Chamber recalls its Orders of 8 June 2001:
2. In view of the extended delay and the practical logistics in implementing protective measures for the remaining Prosecution witnesses in the "Butare cases", the Chamber orders that protective measures for all remaining witnesses be established as soon as possible and, at the latest, by 29 January 2002 and further orders that the Prosecutor fully disclose all remaining witness statements to the Defence by Thursday, 31 January 2002.

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**Subject: Decision on the Defence Motions Seeking Documents Relating to Detained Witnesses or Leave of the Chamber to Contact Protected Detained Witnesses**

<i>Case:</i>	<i>Ndayambaje, Nsabimana (Butare)</i>
<i>Case No:</i>	ICTR-96-8-T, ICTR-97-29A-T
<i>Chamber:</i>	Trial Chamber II
<i>Date of Decision:</i>	15 November 2001

The Defence requested either that (1) the Prosecutor furnishes investigative outlines of the judicial status of the detained witnesses as well as all prior statements given by the said witnesses to be called to testify at trial or (2), in the alternative, leave to meet with the protected detained witnesses currently transferred to the UNDF in order to fully appraise their judicial status in Rwanda and to secure documents in relation to their judicial proceedings, information that only these witnesses are in a position to accurately divulge.

The Prosecutor submitted that she had already disclosed to the Defence all available information and documents pertaining to the witnesses that she intends to call at trial except for those documents pertaining to six detained witnesses (FAB, FAO, FAQ, FAS, QBX and QBY) who are (1) not yet protected by the Witness and Victims Support Section (WVSS) and/or (2) whose statements have not yet been translated. In any event, if these witnesses are not yet protected, then their statements cannot be disclosed without redaction, which can be effective only after their translation.

Nonetheless, the Chamber reiterated the Prosecutor's obligation pursuant to Rule 66(A)(ii) of the Rules to disclose all prior statements obtained by her of witnesses whom she intends to call to testify at trial. In the instant case, the Chamber also emphasises the Prosecutor's obligation to take all necessary action to facilitate the translation and, if applicable, the redaction of statements in her custody or control, to expedite disclosure to all six Accused in the "Butare Cases". Moreover, and in conformity with the Chamber's Decision on full disclosure of unredacted Prosecution witness statements dated 13 November 2001 (reiterating disclosure principles established in its Decision of 8 June 2001) the Chamber orders, *mutatis mutandis*, that full disclosure of witness statements, including those obtained from the Rwandan authorities, be completed, at the latest, by Thursday, 31 January 2002, after protective measures for concerned witnesses are implemented as soon as possible and, at the latest, by 29 January 2002.

The Chamber further recalled its ruling in the "Decision on Juvénal Kajelijeli's Motion Requesting the Recalling of Prosecution Witness GAO", Case No. ICTR-98-44A-T of 2 November 2001 (pertaining to statements from detained witnesses): "[I]n the interests of justice, the Chamber finds that the Prosecutor bears the responsibility of obtaining the said statements from

the Rwandan Authorities and of providing them to the Defence, pursuant to Rule 66(A)(ii) of the Rules" (par. 20 of the Decision). The Chamber reiterates its ruling in the aforementioned Decision and requires, *proprio motu*, the Prosecutor to make all efforts to obtain, to the extent possible, the prior statements made before the Rwandan authorities of all detained witnesses and to disclose them to the Defence.

**Subject: Decision on the Prosecutor's motion for judicial notice of adjudicated facts**

<i>Case:</i>	<i>Elizaphan Ntakirutimana and Gérard Ntakirutimana</i>
<i>Case No:</i>	ICTR-96-10-T and ICTR-96-17-T
<i>Chamber:</i>	Trial Chamber I
<i>Date of Decision:</i>	22 November 2001

The parties had agreed on four alleged adjudicated facts during a parallel admissions' process. The Chamber found no need to take judicial notice of these items.

They included ethnicity, the shooting down of the President's airplane in 1994, and that Rwanda was bound by the Genocide Convention and the Geneva Conventions and Protocols.

In relation to the remaining twelve facts or groups of facts, the Chamber stated that the term "adjudicated fact" does not refer to judgements based on guilty pleas or admissions by an accused in other proceedings of the Tribunal. Moreover, only facts in a judgement that is not subject to appeal can be considered "adjudicated". Furthermore, proposed adjudicated facts must "relate" to the matters at issue. Finally, under Rule 94(B), judicial notice is at the discretion of the Chamber. In striking the balance between judicial economy and the right of an accused to a fair trial, the Chamber would avoid taking judicial notice of alleged adjudicated facts that are the subject of reasonable dispute, and of legal characterisations or legal conclusions based on the interpretation of facts.

The Prosecution had closed its case after 27 trial days. A similar period was stipulated for the Defence. Consequently, at that stage of proceedings, the Chamber was not inclined to view judicial notice as significantly influencing judicial economy. On the basis of the above-mentioned principles, the Chamber denied the motion. The alleged adjudicated facts included the total number of persons killed in Rwanda in 1994, the existence of a genocidal plan to eliminate the Tutsi ethnic group, and certain matters relating to war crimes. The Chamber did not exclude the possibility that some of the alleged adjudicated facts could be judicially noticed in a different context.



**JUDICIAL DECISIONS OF ICTR ADOPTED BETWEEN 1 OCTOBER 2001 AND 30 NOVEMBER 2001  
DECISIONS JUDICIAIRES DU TPIR ADOPTÉES ENTRÉE 1 OCTOBRE ET 30 NOVEMBRE 2001**

<b>Date</b>	<b>Case Name (s)</b>	<b>Document Number</b>	<b>Chamber</b>	<b>Document Title</b>
01/10/2001	<i>Bagilishema</i>	ICTR-95-1A-0510	AC	Decision (Demande de report de Delais)
02/10/2001	<i>Musema</i>	ICTR-96-13-0402	President	The President's Authorisation to the AC to Hold the Hearings Away From the Seat of the Tribunal
03/10/2001	<i>Ndindabahizi</i>	ICTR-01-71-0010	TCIII	Decision on the Ex-Parte Application of the Prosecutor for leave to amend the Indictment Pursuant to Rule 50 and Review and Confirmation of Amended Indictment and Related Documents
03/10/2001	<i>Nzirorera</i>	ICTR-98-44-0525	TCII	Decision on Nzirorera's Motion for Withdrawal of Counsel
03/10/2001	<i>Nzirorera</i>	ICTR-98-44-0526	TCII	Separate and Dissenting Opinion of Judge W. C. Matanzima Maqutu on the Request of Accused for Change of Assigned Counsel
03/10/2001	<i>Nzirorera Rwamakuba, Ngirumpatse, Karemera</i>	ICTR-98-44-0537	TCII	Decision sur la requête de Nzirorera en retrait de Conseils commis d'office.
05/10/2001	<i>Semanza</i>	ICTR-97-20-0570	TCIII	Decision on the Defence Motion for TC III to Declare Itself Competent to Hear and Determine Defence Motion for Review of the Judgement of the AC Dated 31 May 2000 Pursuant to Article 25 of the Statute, Rules 120 and 121
05/10/2001	<i>Bagosora, Kabiligi, Ntabakuze, Nsengiyumva</i>	ICTR-98-41-0193	TCIII	Decision on Bagosora's Motion for Disclosure of Evidence and on the Prosecutor's Urgent Motion for Direction and Extention of Time in the Matter of the Scheduling Order Regarding Bagosora's Motion
08/10/2001	<i>Ndindiliyimana, Sagahutu, Nzuwonemeye</i>	ICTR-00-56-0091	TCII	Decision de retrait de la Commission d'office de Maitre Francois-Xavier Charvet, Conseil de M. Francois-Xavier Nzuwonemeye
10/10/2001	<i>Semanza</i>	ICTR-97-20-0575	TCIII	Decision on the Defence Motion Pursuant to Rule 73 of the Rules of Procedure and Evidence to Seek Cooperation from the Ministry of Foreign Affairs of France and Leave to Call Before the ICTR Expert Witnesses Dominique Lecomte and Walter
19/10/2001	<i>Bagilishema</i>	ICTR-95-1A-0514	AC	Ordonnance
19/10/2001	<i>Kajelijeli</i>	ICTR-98-44A-0085	AC	Ordonnance (Composition de la Chambre d'appel)
26/10/2001	<i>Bagilishema</i>	ICTR-95-1A-0515	AC	Decision (Requête tendant à voir déclarer irrecevable l'acte d'appel du Procureur)
29/10/2001	<i>Nahimana, Ngeze, Barayagwiza</i>	ICTR-99-52-0653	TCI	Decision on the Defence's Application for the Prosecution to Disclose Exculpatory Material Contained in the 17 Transcripts of Interviews with Witness X.
02/11/2001	<i>Kajelijeli</i>	ICTR-98-44A-0086	TCII	Decision on Juvenal Kajelijeli's Motion Requesting the Recalling of Prosecution Witness GAO
05/11/2001	<i>Elizaphan &amp; Gerard Ntakirutimana</i>	ICTR-96-10-0363	TCI	Decision on the Motion of the Defence to Strike the Testimony of Witness YY
06/11/2001	<i>Muhimana</i>	ICTR-95-1B-0081	TCI	Decision relative à la requête de la Defence aux fins de traduction des documents de l'accusation et des actes de procédure en Kinyarwanda, langue de l'accusé, et en Français, langue de son Conseil.
09/11/2001	<i>Nzirorera</i>	ICTR-98-44-0535	TCII	Decision on Nzirorera's Motion for Request for Ractification and Clarification of the Decision of 3 October 2001
12/11/2001	<i>Nyiramasuhuko, Ntahobali, Nsabimana, Kanyabashi, Nteziryayo, Ndayambaje</i>	ICTR-98-42-0266	TCII	Decision on the Prosecutor's Motion to Add and Transfer Detained Witness QBX



Date	Case Name (s)	Document Number	Chamber	Document Title
13/11/2001	<i>Nyiramasuhuko, Ntahobali, Nsabimana, Kanyabashi, Nteziryayo, Ndayambaje</i>	ICTR-98-42-0268	TCII	Decision on Defence Motions by Nyiramasuhuko, Ndayambaje, and Kanyabashi on Inter Alia Full Disclosure of Unredacted Prosecution Witness Statements
21/11/2001	<i>Nahimana, Ngeze, Barayagwiza</i>	ICTR-99-52-0671	TCI	Decision on the Prosecutor's Request for Extension of time in which to File and Disclose Reports of Expert Witnesses
22/11/2001	<i>Elizaphan &amp; Gerard Ntakirutimana</i>	ICTR-96-10-0364	TCI	Decision on the Prosecutor's Motion for Judicial Notice of Adjudicated Facts.
27/11/2001	<i>Nyiramasuhuko</i>	ICTR-97-21-0436	TCII	Decision on Nyiramasuhuko's Motion to Inspect Certain Exhibits Under Seal on the Prosecutor's Exhibit List.

### ICTR Website Access to Judicial Records

The decisions listed above, along with all unclassified judicial records of the Tribunal will soon be accessible to the public in electronic format. This will be achieved through a link on the ICTR website to the ICTR's electronic Judicial Records Database, TRIM.

This initiative will allow anybody with Internet access and Internet Explorer 5 installed on their computer to conduct searches of the database to locate records and view them.

It will be possible to search for records by keywords in the title, the date they were created (for example, the date a decision was made by a Trial Chamber), or by the Record Number (as provided in the list above).

Once a record meeting the entered search criteria has been located it will then be possible to view further details about the record, to view the record itself and to download it.

On-line help material will also be available.

The ICTR has invested considerable resources into realizing this initiative, however the first version to be released will have scope for improvements. The focus has been on providing access as soon as possible to remote users. Once this access becomes available there will be enhancements made to the system over time based on feedback from users as well as planned developments.

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