HAGUE CASE LAW – LATEST DEVELOPMENTS[1]

International Criminal Tribunal for the Former Yugoslavia

(1) *The Prosecutor* v. *Milosevic (Appeals Chamber)*

On 12 November 2009, the Appeals Chamber of the International Criminal Tribunal (ICTY) for the Former Yugoslavia partially reversed the Trial Chamber's judgment of 12 December 2007 against Milosevic and reduced his sentence to 29 years' imprisonment. Milosevic is a former Bosnian Serb Army general who was Chief of Staff to Galic and succeeded him as commander of the Sarajevo-Romanija Corps (SRK) in 1994. Between 1994 and 1995 he was responsible for the siege of Sarajevo during which time he was in charge of a campaign of sniping and shelling attacks on Sarajevo which killed hundreds of people. Among other things, the SRK made use of a modified air bomb which was highly inaccurate. The Trial Chamber had sentenced Milosevic to 33 years' imprisonment, since he had held a tight chain of command during his 15 months' period of his command of the SRK and he was kept abreast of the activities of his units.

The Appeals Chamber upheld the majority of the Trial Chamber's convictions of Milosevic but replaced his conviction for planning and ordering the sniping of the civilian population with convictions under Section 7(3) of the Statute of the ICTY (failure to take measures to prevent such crimes and failure to punish the perpetrators). The Appeals Chamber also acquitted Milosevic with respect of the shelling of the Baščaršija Flea Market on 22 December 1994, of the BITAS building on 22 August 1995 and of the Markale Market on 28 August 1995. Therefore, the Appeals Chamber reduced his sentence from 33 years' to 29 years' imprisonment.

International Criminal Tribunal for Rwanda

(1) *The Prosecutor* v. *Zigiranyirazo (Appeals Chamber)*

On 16 November 2009, the Appeals Chamber of the International Criminal Tribunal for Rwanda reversed the Trial Chamber's judgment of 18 December 2008 against Zigiranyirazo and acquitted him of all charges. Zigiranyirazo

1. See: <www.icj-cij.org/>; <www.un.org/icty/>; <www.un.org/ictr/>; <www.pca-cpa.org/>; and <www.haguejusticeportal.net/>.

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was the former politician and prefect of Ruhengeri and became a businessman in 1993 after his resignation and studies in Canada. His younger sister was married to the late President Habyarimana. He had been convicted by the Trial Chamber of committing genocide and extermination as a crime against humanity by participating in a joint criminal enterprise to kill Tutsis at Kesho Hill in Gisenyi Prefecture on 8 April 1994 as well as aiding and abetting genocide at the Kiyovu roadblock. He had been sentenced to twenty years' imprisonment. According to the Appeals Chamber, there were several serious factual and legal errors in the Trial Chamber's assessment of Zigiranyirazo's alibi in relation to both massacres. Amongst others, the Trial Chamber had misapprehended the burden of proof in various cases by its failure to appreciate that Zigiranyirazo only had to establish reasonable doubt as to his presence. The Appeals Chamber acquitted Zigiranyirazo of all charges and ordered his immediate release from detention.

(2) *The Prosecutor* v. *Nshogoza (Appeals Chamber)*

On 15 March 2010, the Appeals Chamber of the International Criminal Tribunal for Rwanda dismissed Nshogoza's appeal and upheld his conviction for contempt of court of 2 July 2009. He had been sentenced to 10 months in prison. Nshogoza was a former defense investigator during the trial of Kamuhanda and, according to the Trial Chamber, he had repeatedly disclosed protected information of witnesses knowing that he violated or acted in reckless indifference to the measures taken by the court. The Appeals Chamber found no error in the Trial Chamber's assessment.

(3) *The Prosecutor* v. *Bikindi and Nchamihigo (Appeals Chamber)*

On 18 March 2010, the Appeals Chamber of the International Criminal Tribunal for Rwanda affirmed Bikindi's conviction and sentence of 15 years in prison and partially reversed the conviction of Nchamihigo and reduced his sentence from life imprisonment to 40 years' imprisonment.

The ICTR's Trial Chamber had convicted Bikindi, a former singer, composer and leader of a ballet group, on 2 December 2008, for the crime of direct and public incitement to commit genocide by exhorting to kill Tutsis in a vehicle that had a public address system on the main road between Kivumu and Kayove in late June 1994. According to the Tribunal, Bikindi had abused his power and influence as a well known and popular artist to incite genocide. The Appeals Chamber found no error in this judgment and dismissed both Bikindi's and the Prosecution's appeal.

Nchamihigo, the Deputy Prosecutor in Cyangugu prefecture in 1994, had been convicted by the Trial Chamber on 24 September 2008 for genocide, extermination, murder, and other inhumane acts as crimes against humanity. Nchamihigo was working as a defense investigator at the ICTR at the time of his arrest. The Trial Chamber had found him responsible for the death of

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more than 2,000 Tutsis and the Tribunal had noted the zeal with which he had committed his crimes. The Appeals Chamber granted six grounds of appeal by Nchamihigo and reversed various convictions for a number of massacres. However, the Appeals Chamber affirmed his conviction for genocide and extermination as a crime against humanity for instigating killings, including the killing of Karangwa, Dr. Nagafizi, and Ndayisaba's family in April 1994; for instigating the massacre in Gihundwe sector on 14 or 15 April 1994; for ordering the attack on Jean de Dieu Gakwandi as another inhuman act as a crime against humanity; and for instigating the killing of Father Boneza as genocide and murder as a crime against humanity. The Appeals Chamber reduced his sentence to 40 years' imprisonment.

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