

1999

## News From the International War Crimes Tribunals

Christine Poulon

*American University Washington College of Law*

Mair McCafferty

*American University Washington College of Law*

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/hrbrief>



Part of the [Criminal Law Commons](#), [Human Rights Law Commons](#), and the [International Law Commons](#)

---

### Recommended Citation

Poulon, Christine, and Mair McCafferty. "News From the International War Crimes Tribunals." Human Rights Brief 6, no. 2 (1999): 3-4, 17, 22-23.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Human Rights Brief by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact [kclay@wcl.american.edu](mailto:kclay@wcl.american.edu).



# NEWS FROM THE INTERNATIONAL WAR CRIMES TRIBUNALS

by Christine Poulon and Mair McCafferty\*

There has been significant activity surrounding both tribunals in the last few months. In *The Prosecutor v. Furundžija*, the ICTY found the local commander of the Croatian Defence Council Military Police guilty on two counts of violations of the laws or customs of war. The ICTY issued a new judgment in the Čelebići case which included a guilty finding based in part on "superior responsibility." The ICTY also imposed the Tribunal's first fine for contempt of court to a member of the defense team in the Blaškić case.

The trial of Clement Kayishema and Obed Ruzindana came to a close in November 1998. An unprecedented development occurred at the ICTR when former militia leader Omar Serushago pled guilty to four counts of genocide and crimes against humanity in December 1998.

## International Criminal Tribunal for the Former Yugoslavia

As of December 1998, the ICTY has publicly indicted 83 suspects, of whom nine have died and 18 have had indictments dropped. Twenty-six are in custody. The detainees include 13 Bosnian Serbs, ten Bosnian Croats, two Bosnian Moslems, and one Croat. One detainee, Zejnil Delalić, was released following his acquittal in the Čelebići case.

## Progress on Arrests and Detentions

One recently arrested suspect is the Commander of the Drina Corps of the Bosnia Serb Army. Lieutenant-Colonel General Radislav Krstić was arrested in Bosnia on December 2, 1998. He pleaded not guilty to all charges on December 7, 1998. General Krstić was arrested on the basis of an October 30, 1998, indictment which alleges that he and two anonymous co-indictees committed genocide during and after the fall of the UN safe area of Srebrenica between July 11, 1995, and November 1, 1995.

On December 21, 1998, Judge Richard May confirmed the indictments against Mladen "Tuta" Naletilić and Vinko "Stela" Martinović. Naletilić stands accused of 17 counts, including four counts of crimes against humanity, six counts of grave breaches of the Geneva Conventions, and seven counts of violations of the laws and customs of war. Martinović stands accused of 22 counts, including five counts of crimes against humanity, eight counts of grave breaches of the Geneva Conven-

tions, and nine counts of violations of the laws or customs of war.

Dron Gagović, one of the Foca indictees, was shot and killed on January 9, 1999, by NATO troops while resisting arrest.

## Status of Current Proceedings

### Bosanski Šamac

On December 11, 1998, Judge Vohrah confirmed the second amended indictment in the Bosanski Šamac case. The second amended indictment consolidates the initial indictment against Stevan Todorović and Blagoje Simić with the first amended indictment of August 25, 1998, against Milan Simić, Miroslav Tadić, and Simo Zarić. The second amended indictment also expands the time and geographical frame of the alleged crimes committed by Stevan Todorović and Blagoje Simić.

Stevan Todorović was the former police chief in Bosanski Šamac, according to the indictment against him, and used the alias "the Monster." He was initially arraigned in September 1998, and on October 28, 1998, Todorović pled not guilty to 15 charges against him. He was initially charged with 15 counts of crimes against humanity, grave breaches of the Geneva Conventions, and violations of the laws or customs of war. Todorović is charged with new counts regarding sexual assaults and beatings under the amended second indictment.

The charges against Blagoje Simić for command responsibility have been dropped in the second amended indictment. He now faces new charges, however, of crimes against humanity involving persecutions and deportations.

Stevan Todorović, Miroslav Tadić, and Simo Zarić are currently in custody at the ICTY Detention Unit. Milan Simić was provisionally released on bail for reasons of ill health because the Detention Unit did not have adequate facilities. Simić returned to Basanski Djukić, where he remains free on bail pending his trial at The Hague. Blagoje Simić is still at large.

### Goran Jelisić

Before Trial Chamber I, on October 29, 1998, Goran Jelisić, a Bosnian Serb, pled guilty to 31 of the 32 charges against him. The 32 charges against him cover 12 murders, four beatings, and plunder of private property, all of which allegedly took place in May 1992 in the Luka camp.

Jelisić pled not guilty to the final charge against him of genocide. In October 1998, however, Jelisić stated that he had voluntarily pled guilty to 12 charges of murder to "cleanse [his] soul."

The trial for the remaining charge began in early December 1998. Before the Prosecutor's opening statement, Presiding Judge Claude Jorda heard the evaluation of two Dutch psychiatrists who concluded that Jelisić was fit to stand trial.

The Defense team is expected to argue that the events in Brčko and the Luka camp was part of an anarchical situation in which there was no organization or chain of command, and which was, therefore, absent genocidal plans or intentions. The trial of Jelisić is expected to resume on January 25, 1999. At the completion of the proceeding, he will be sentenced for all charges of which he is found or pleas guilty.

### Dario Kordić and Mario Čerkez

Dario Kordić, a Bosnian Croat, was the vice president of Herceg-Bosna, the former Bosnian Croat state, according to his original indictment, issued in November 1995. The initial indictment against him was amended by the Prosecution in September 1998 to include nine new counts of war crimes and crimes against humanity, raising the number of charges against him to 22. The indictment was amended and expanded following the discovery of new evidence. On October 14, 1998, he pled not guilty to all counts.

Kordić was originally indicted in 1995 along with four other defendants, who are suspects in the events that took place in the Lasva Valley between 1991 and 1994. Two original co-indictees included General Tihomir Blaškić and prison commander Zlatko Aleksovski, whose cases were severed from Kordić's and are currently before the Tribunal separately.

The fourth person named in the original indictment is Mario Čerkez, a Bosnian Croat military commander. Čerkez remains part of the amended indictment, which charges him with 12 new counts of war crimes and crimes against humanity. He now faces a total of 22 charges, and has pleaded not guilty to the new charges. The amended indictment presents in greater detail the power and authority held by the two men, and provides an extensive account of the campaign of terror in which they allegedly participated.

continued on next page



War Crimes, continued from previous page

On November 16, 1998, Defense counsel for Kordić and Čerkez submitted a motion to dismiss the case from Trial Chamber I. This motion was based on the Prosecution's alleged violation of Rule 66(A) (i) which provides that "within thirty days of the initial appearance of the accused, copies of the supporting material which accompanied the indictment when confirmation was sought . . ." shall be made available to the Defense, by the Prosecutor. According to the Defense's motion, Prosecution lawyers acknowledged their failure to comply with this provision but stated that this was done because the Prosecution is waiting for the Trial Chamber to decide on a proposed amendment to the witness protection order. The Defense argued, however, that this failure constituted a major violation of the right to a fair trial and a clear infringement of the rights of the accused. Finally, the Defense argued that it was up to the Trial Chamber to decide whether to delay the disclosure, and not for the Prosecution to unilaterally decide not to disclose. The Trial Chamber has scheduled a closed session status conference for January 9, 1999.

#### Tihomir Blaškić

The trial of Croatian General Tihomir Blaškić continues in Trial Chamber I. Six of the 20 charges in the Blaškić indictment are grave breaches of the Geneva Conventions, which hinge on the judges' determination of the character of the conflict at the time of the alleged acts.

The Defense began presenting its case on September 7, 1998. The Defense alleged that Blaškić took actions to prevent the crimes that occurred in Bosnia's Lasva Valley. One Defense witness, Brigadier Slavko Marin, testified that the Croatian Defense Council (HVO), of which Blaškić was commander for Central Bosnia at the time in question, had no formal chain of command. The Defense also argued that Blaškić was unaware of many offenses and various factors prevented him from sending investigators to alleged crime sites. The Defense claimed that Blaškić did not issue orders that were carried out according to a military-style chain of command.

The Defense also presented Professor Djuro Degan, a professor of international law at the University of Rijeka in Croatia, who stated that the Croat-Muslim conflict of 1993 did not involve a single element of "armed conflict" as it is defined by the Geneva Conventions. Degan was issued a public warning by presiding Judge Claude Jorda for repeatedly stating during his expert testimony that the defendant was "innocent".

On December 11, 1998, the Tribunal fined Blaškić's Defense attorney, Anto Nobile, 4,000 guilders for disclosing the identity of a protected witness during the Blaškić trial. The witness had testified previously in the Aleksovski trial. The Tribunal Rules provide that "any person who . . . discloses information relating to those proceedings in knowing violation of an order of the Chamber . . . commits a contempt of the Tribunal." The Chamber held that "in knowing violation" includes not only deliberate violations, but also a deliberate abstention from checking the circumstances under which a witness has given evidence. Nobile is appealing the fine on the grounds that his actions were not intentional and that when he revealed the witness he was unaware of the protective order.

#### Zlatko Aleksovski

The trial of Zlatko Aleksovski is nearly complete. On November 6, 1998, the Prosecution filed a motion to stay the proceedings. This motion was the result of a series of motions beginning with the testimony of a witness in the trial of Tihomir Blaškić, which was admitted in Aleksovski's proceeding upon a Defense motion. To counter this evidence, the Prosecution requested the admission of rebuttal testimony from another witness. This request was denied and the Prosecution applied for leave to appeal both these decisions. The Prosecution then filed for a stay of the trial, pending the determination on the appeals, which a panel of the Appeals Chamber granted on December 18, 1998. It is not determined when the Appeal Chamber will rule on the Prosecution's appeal. Closing arguments began in Trial Chamber I on November 17, 1998.

The Defense has since requested the provisional release of Aleksovski under Rule 65. The Defense argument for release is based on the length of his detention, his medical condition, the claim that he will not represent a danger for the victims of the witnesses in the Kaonik case, and on the basis of guarantees made by the Croatian authorities. The judges held that the Defense did not prove the existence of "exceptional circumstances" that would enable the provisional release of Aleksovski in accordance with Rules of Procedure and Evidence. Aleksovski remains in the UN Detention Unit.

#### Anto Furundžija

Anto Furundžija was tried in June 1998, for failing to prevent a military subordinate from raping a woman. Trial Chamber II re-opened proceedings against Furundžija in July 1998 following the discovery that the Prosecution withheld informa-

tion about the fact that Witness A, a rape victim, was treated for post-traumatic stress disorder. On November 9, 1998, the proceedings resumed and Witness A testified again, in closed session.

The Trial Chamber agreed with the finding in the Čelebići case that rape may in some circumstances amount to torture under international law, and also expanded on the ICTR's definition of rape under international law. The expanded definition is: "The sexual penetration, however slight, either of the vagina or anus of the victim by the penis of the perpetrator, or any other object used by the perpetrator, or of the mouth of the victim by the penis of the perpetrator, where such penetration is effected by coercion or force or threat of force against the victim or by a third person."

The Trial Chamber characterized the prohibition against torture as a peremptory norm of international law, that is, one which may not be derogated from by any state. The Trial Chamber distinguished between an aider/abettor and a co-perpetrator, yet stated that "if an official interrogates a detainee while another person is inflicting severe pain or suffering, the interrogator is as guilty of torture as the person causing the severe pain or suffering, even if he does not in any way physically participate in such infliction."

On December 10, 1998, the Trial Chamber found Furundžija guilty as a co-perpetrator of the torture of Witness A and a Croatian man who was beaten and forced to watch the attacks on the woman. The Trial Chamber further held Furundžija guilty of aiding and abetting the rape and sexual attack on Witness A. The Trial Chamber defined aiding and abetting as "the *actus reus* consists of practical assistance, encouragement or moral support which has a substantial effect on the perpetration of the crime." The *mens rea* required is the "knowledge that these acts assist the commission of the offence." Furundžija was sentenced to ten years imprisonment for the first count and eight years imprisonment for the second count, both to be served concurrently minus time served for pretrial detention.

#### Čelebići Case

On November 16, 1998, Trial Chamber I pronounced judgment in the Čelebići case involving four defendants: Zdravko Mucić, Hazim Delić, Esad Landžo, and Zejnil Delalić. This judgment ends the 20 month trial, which produced 691 exhibits, called 122 witnesses, and generated over 28,000 pages of transcripts. This was the first time that the ICTY found a defen-

continued on page 17



War Crimes, continued from page 4

dant guilty under the principle of superior responsibility, the imposition of guilt based on a defendant's responsibility for the actions of individuals who commit atrocities while under the defendant's command.

Mucić, the Croat commander of the Čelebići detention camp, received one seven year sentence for each of the 11 counts, to be served concurrently. The Chamber stated that he was "clearly derelict in [his] duty [of overseeing the detention camp] and allowed those under his authority to commit the most heinous of offenses, without taking any disciplinary action."

— Delić was sentenced to 20 years imprisonment after being proclaimed guilty on 13 counts of grave breaches of the Geneva Conventions and violation of the laws or customs of war, including multiple counts of rape as torture. He was found not guilty on 22 counts, and three counts were dismissed. The Prosecution, which requested a life sentence, has filed an appeal on the Trial Chamber's finding of Delić not guilty on the command responsibility charge.

Landžo, a Bosnian Muslim guard, was sentenced to 15 years imprisonment by the Chamber. Landžo raised the defense of diminished responsibility, which the Chamber dismissed. It also dismissed the argument that Landžo was "the mere instrument of his superiors," mostly because the "nature of his crimes is suggestive of significant imagination and a perverse pleasure in the infliction of pain and suffering." The Tribunal did, however, take Landžo's "immature and fragile" mindset at that time into account. The Tribunal also considered the fact that Landžo had no training in how to "comport himself" around detainees and "the harsh environment of the armed conflict as a whole." The Defense has filed an appeal against the verdict and the sentence.

Finally, Delalić, the Muslim military officer essentially in charge of the Čelebići prison camp, was acquitted because the Chamber found there was insufficient evidence to find him criminally responsible for the atrocities that took place at the camp. The Prosecutors said that the evidence was sufficient to find him guilty and have filed a notice to appeal. The Defense responded by filing a cross-appeal to the Prosecution's appeal.

#### Dušan Tadić

The appeals hearing on the judgment and sentence of Dušan Tadić is currently set to begin January 25, 1999. Tadić was

the first person tried by the Tribunal. He was found guilty on 11 counts in May 1997 and was sentenced to 20 years imprisonment. Tadić filed an appeal against the guilty verdict and the sentencing judgment.

The Prosecution filed a cross-appeal in June 1998 against the majority decision in this case (2:1) which found that the conflict in Prijedor, the area in which Tadić's crimes took place, was of an internal rather than international character.

In November 1998, the Tribunal granted Tadić's request to withdraw his lead Defense counsel, citing loss of confidence. On November 19, 1998, the Registrar appointed William Clegg, a British attorney, as Tadić's lead counsel.

#### Vukovar Hospital

On December 3, 1998, the Prosecutor filed a formal request with the Trial Chamber for the adoption of a proposal requesting the Federal Republic of Yugoslavia to defer to the competence of the ICTY in its investigation and court proceedings involving Mile Mrkšić, Veselin Sljivancanin and Miroslav Radic. The "Vukovar Three" were at the time scheduled to testify in a military court's investigation of the Vukovar massacre. The Prosecutor's request was based on the Rules of Procedure and Evidence Sub-Rule 9(ii) which deals with any "issue . . . closely related to, or otherwise involves, significant factual or legal questions which may have implications for investigations or prosecutions before the Tribunal."

#### Omarska-Keraterm

The two indictments against the four men initially accused of crimes committed in the camps of Omarska and Keraterm were consolidated into a single indictment on December 10, 1998. Ten people remain at large on these charges. Miroslav, Kvočka, Kos and Zigić each pleaded not guilty to four counts of crimes against humanity and four counts of violations of the laws or customs of war. Mladjo Radic pleaded "not guilty" to six counts of crimes against humanity and six violations of the laws or customs of war.

#### Administrative Issues and Other Matters

On October 30, 1998, the ICTY submitted the Fifth Annual Report of the International Tribunal to the UN Security Council. In this report, the Tribunal noted that the Yugoslav government "persists in its refusal" to cooperate with the ICTY. The report urged the international community to ensure that Yugoslavia complies with its international responsibilities,

primarily in allowing the arrests of 31 indicted persons who "continue to enjoy absolute impunity" by remaining at large. The UN Security Council later passed Resolution 1207, which reiterates states' obligations to comply with the terms of SC Resolution 827 (1993) to cooperate fully with the Tribunal and its organs and also demands the surrender of the "Vukovar Three."

On October 24, 1998, the UN Security Council passed Resolution 1203 which calls for a prompt investigation of atrocities committed in Kosovo. Despite these developments, Yugoslavia declined to issue visas to ICTY Chief Prosecutor Louise Arbour and her investigative team on November 4, 1998, to investigate crimes in either Kosovo or Metohija.

At the ICTY's Tribunal President's annual address to the UN General Assembly on November 19, 1998, the ICTY's need for cooperation was repeated.

In December, President Gabrielle Kirk McDonald addressed the Ministerial Conference of the Peace Implementation Council (PIC) in Madrid about the continued problems of cooperation, citing the Republika Srpska and Yugoslavia as especially problematic for the ICTY. She announced an outreach program to help people in the region learn about the Tribunal's findings.

On November 16, 1998, three new judges were sworn in at the ICTY. Mohamed Bennouna of Morocco and Patrick Robinson of Jamaica will sit in the newly-formed Trial Chamber III. David Hunt of Australia will join Trial Chamber II. The three-year terms of the new judges will expire with the terms of office of the existing 11 judges in November of 2001.

#### International Criminal Tribunal for Rwanda

As of mid-November 1998, of the 41 public indictments, 33 suspects are detained, 31 are being held in the ICTR facility in Arusha, and two are abroad, one at the Hague and one in the United States. Eight indicted individuals are still at large.

#### Progress on Arrests and Detentions

Since the last writing, one suspect was arrested on charges pending before the ICTR. André Rwamakuba, a medical doctor and former minister of education in 1994 when the genocide took place, was arrested in Windhoek, Namibia, on October 21, 1998. He was transferred to the Arusha detention facility on October 23, 1998. He is charged with the crimes of direct and public incitement to commit

continued on page 22



War Crimes, continued from page 5

genocide, genocide, complicity in genocide, conspiracy to commit genocide, crimes against humanity, and serious violation of the Geneva Conventions.

On November 5, 1998, Emmanuel Bagambiki refused to enter a plea during his initial appearance before the Tribunal on the grounds that he was not given the lawyer of his choice. In September 1998, Bagambiki, a former Rwandan government official charged with six counts of genocide, crimes against humanity, and violations of the Geneva Conventions, was informed that the attorney he chose could not be appointed because the attorney is Canadian. Bagambiki was one of 25 prisoners who participated in an October 1998 hunger strike in protest of the Registry's decision to temporarily refrain from appointing any more French or Canadian defense attorneys due to their disproportionately large percentage among Defense counsel. The proceeding was adjourned until the dispute over his counsel is resolved.

#### Status of Current Proceedings

##### Bernard Ntuyahaga

On November 13, 1998, Bernard Ntuyahaga pled not guilty in his initial appearance before Trial Chamber I to the accusation that he helped in the killings of ten Belgian UN peacekeepers who were members of the UN Assistance Mission in Rwanda. He is accused of ordering the kidnapping of the ten soldiers, who were beaten to death at the Kigali military camp on April 7, 1994. Ntuyahaga is facing trial for one count of crimes against humanity for these murders. The Prosecution originally charged him with five counts, including genocide and violations of the Geneva Conventions, but the ICTR found that the Prosecution did not provide sufficient evidence to charge him on all five counts.

##### Omar Serushago

Omar Serushago, who is defended by Mohamed Ismail from Tanzania, pleaded guilty to four counts of genocide and crimes against humanity at his initial appearance before Trial Chamber I on December 14, 1998. Serushago pleaded not guilty to the fifth count of crime against humanity (rape) brought against him in the ICTR. Under the plea agreement, Serushago's family will receive protection. Following the plea, Deputy Prosecutor Bernard Muna moved to withdraw the fifth count of the indictment to which Serushago pled not guilty. The Trial

Chamber granted the Prosecution's request. His pre-sentencing hearing is set for January 29, 1999.

##### Georges Omar Ruggiu

Georges Omar Ruggiu, the only European charged by the ICTR, was scheduled to appear before the Court on November 16, 1998, to discuss a preliminary motion on the disclosure of evidence. He is a Belgian-Italian journalist accused of making hate radio broadcasts over the *Radio Television Libres des Mille Collines*. The radio station's propaganda is blamed for inciting the countrywide killings of ethnic Tutsi during the months of April, May, and June 1994. A trial date has not yet been set for this case.

##### The Politicians' Trial

Rwamakuba, the most recent ICTR indictee to be arrested, was scheduled to make his initial appearance before the ICTR on November 24, 1998, along with four other indictees in what is being called locally the Politicians' Trial. This initial appearance of Rwamakuba was scheduled along with that of the four other indictees: Edouard Karemera, the former minister of the interior and former vice-president of the MRND (*Mouvement Républicain National pour la Démocratie et le Développement*); Mathieu Ndirumpaste, former MRND president and former director general of the ministry for foreign affairs; Joseph Nzirorera, former president of the National Assembly and secretary-general of the MRND; and Juvenal Kejajeli, former bourgemestre of Mukingo. It was postponed by the Court on November 24, 1998. No rescheduled date was given by the Court at that time.

##### Jean-Paul Akayesu

Upon his conviction on September 2, 1998, in Trial Chamber I, Jean-Paul Akayesu dismissed his Defense attorneys for the third time and represented himself at his sentencing hearings. Following the announcement of his life sentence on October 2, 1998, he filed an appeal. The Trial Chamber confirmed that Akayesu would be assigned new attorneys for his appeal, but his request to be assigned John Philpot, a Canadian lawyer, was not granted. The ICTR gave three reasons for not appointing Philpot to represent Akayesu. First, it noted that the appeal Philpot filed for Akayesu, "contained no serious points of law," and his criticism of the court's procedures amounted to misconduct. Second, Philpot filed an appeal on behalf of Akayesu before the Registry officially appointed him to the case. This premature action has the effect of disqualifying him from representing Akayesu,

Finally, the Tribunal pointed out that there was a great imbalance in the geographic representation of defense counsel, and that it had decided to temporarily refrain from appointing any more Canadian or French lawyers for this reason.

On October 22, 1998, Akayesu began a hunger strike in protest of the ICTR's denial of his choice of counsel. On October 26, 1998, 25 other detainees joined Akayesu in his protest, opposing the temporary ban of French and Canadian defense counsel. They ended their strike on October 29, 1998, and Akayesu suspended his hunger strike on October 31, 1998. The Prosecutor is appealing the September 2, 1998, judgment requesting that the not-guilty verdict in regard to Counts 6, 8, 10, 12, and 15 be quashed, and that Akayesu be found guilty of the said counts.

##### Clement Kayishema and Obed Ruzindana

On November 17, 1998, Trial Chamber II, presided over by Judge William Hussein Sekule of Tanzania, finished hearing the combined cases of Clement Kayishema, former prefect of the Kibuye region of Rwanda, and Obed Ruzindana, a former businessman based in Kigali. Kayishema is charged with 24 counts of genocide, crimes against humanity, and violations of Article 3 Common to the Geneva Conventions and the Additional Protocol II. Ruzindana is charged with six counts, consisting of one count of genocide, three counts of crimes against humanity, and two counts of violating Article 3 Common to the Geneva Conventions and the Additional Protocol II.

In its closing statement, the Prosecution argued that Kayishema planned, ordered and committed the mass killings of about 15,000 Rwandans between April and July 1994. The Prosecution posited that this was part of a greater plan, orchestrated at the highest levels of government, and Kayishema carried out these crimes with the intent to destroy the entire Tutsi population. The Prosecution alleged that Kayishema, sometimes with Ruzindana's assistance, personally killed the victims with guns, machetes, and other weapons. The Prosecution asked for life sentences for each count of genocide or crimes against humanity, and 20 to 30 years in prison for each count of violations of the Geneva Conventions.

In closing, the Defense stated that it would not question whether the genocide had occurred, but asserted that the magnitude of the killings alone did not

continued on next page



War Crimes, continued from previous page

prove the guilt of the two accused men, particularly in the crime of genocide. Rather, the Prosecution must have proven specific intent and motive. "It is this ingredient, and not the number of people killed, which characterizes the crime of genocide." The Defense argued the Prosecution did not prove this element.

Both defendants' attorneys argued that the killings were not part of a plan, but rather the result of a spontaneous rage felt by the Hutu population following the death of the Rwandan president. This argument was based upon the idea that the mass killings were the result of a "mob psychology" that destroyed all respect for authority and caused crowds to uncontrollably murder, steal, and vent anger arbitrarily. The Defense contended that, not only were their clients not responsible for this "uncontrolled rage and national madness," but they also had to go into hiding to protect themselves. Defense counsel also accused the ICTR's mandate of being politically biased, presuming the guilt of the defendants.

The trial lasted nearly 20 months, and 80 witnesses were called: 52 for the prosecution and 28 for the defense. A decision is not expected for a few months.

#### Jean Kambanda

The former Rwandan prime minister, Jean Kambanda, who was sentenced to life imprisonment in September, fought to be represented by the attorney of his choice for his sentence appeal. Though he refused representation at the beginning of his proceedings—he pled guilty in May 1998—he was assigned an attorney to assist in the completion of his plea-bargain. For the appeal of his sentence, he asked to be represented by Johan Scheers, a Belgian attorney. The Tribunal, however, banned Scheers after he did not appear on the first day of trial for another client, Jean-Paul Akayesu, because of a financial dispute with the Tribunal. The appeal is pending the resolution of the attorney assignment.

#### Alfred Musema

On January 25, 1999, Alfred Musema's trial will be the first trial to begin at the ICTR in 1999. Trial Chamber I Presiding Judge Aspegren has declared the objective of finishing the trial in three months. Swiss authorities arrested Musema in February 1995, making him the longest-held defendant at the ICTR. He was indicted by the ICTR on July 15, 1996, and transferred to Arusha on May 20, 1997.

Musema was originally charged with genocide, crimes against humanity, and

serious violations of the Geneva Conventions. The indictment states that during the time in question, April to June 1994, he "brought to the area of Bisesero armed individuals and directed them to attack the people seeking refuge there." The indictment also states that Musema personally attacked and killed people seeking refuge in Bisesero and that there are witnesses who say they saw him shooting at civilians. In November 1998, the Trial Chamber granted a request by the Prosecution to amend Musema's indictment to include an alternative charge of complicity in genocide.

#### Theoneste Bagosora

On October 14, 1998, Judge Sekule indefinitely adjourned the trial of Theoneste Bagosora pending the outcome of a procedural appeal at The Hague. Defense counsel's attempt to fight the joinder of three other defendants' cases, Anatole Nsengyiumva and the joint trial of Gratien Kabiligi and Aloys Ntabakuze, with Bagosora's case. The Defense is arguing that the same three judges before whom Bagosora initially appeared must now try their client.

#### Laurent Semanza

On December 10, 1998, Trial Chamber II rejected the Defense motion to postpone the trial of Laurent Semanza. Defense counsel Gaetan Bourassa had sought a postponement date of September 1999 based on health problems which, he argued, have left him with little time to prepare for the trial of his client.

Semanza has pleaded not guilty to seven counts charging him with genocide, direct and public incitement to commit genocide, crimes against humanity, and violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II. The Trial Chamber set the Semanza trial to begin on February 3, 1999.

#### Administrative Issues

The ICTR announced in October 1998 that it was temporarily refraining from assigning any Canadian or French defense counsel, even those attorneys that were already on the approved list of Defense counsel. The decision was based on the desire of the Tribunal to maintain a geographic balance in the counsel it assigned. In a report released by the ICTR on October 30, 1998, the nationalities of assigned counsel are as follows: Canada and France—9 each, Cameroon—4, Kenya—3, Belgium—3, Togo and The Netherlands—2 each, and one each from Burkina Faso, Cote d'Ivoire, Madagascar, Tanzania, Tunisia, the United Kingdom, and the United States.

To protest the ICTR's suspension of Canadian and French attorney appointments, 25 of the 32 detainees at the ICTR Detention facility went on a hunger strike for four days in October 1998. They sent a letter to officials of the Tribunal and forwarded a copy to UN Secretary General Kofi Annan, protesting the discrimination against Canadian and French Defense counsel and complaining about the poor quality of Defense counsel already assigned. Agwu Ukiwe Okali, the Registrar of the ICTR, visited the detention facility in Arusha to address the concern. Mr. Okali explained modifications introduced by the Registry in the procedure for assignment of counsel. Under the modified plan, detainees would have the full list and *curriculum vitae* of all lawyers on the list approved by the Tribunal from which to choose. The current list is in excess of 100 lawyers worldwide.

In other administrative matters, on November 3, 1998, the UN General Assembly chose nine justices to serve on the ICTR. Three judges, Laity Kama of Senegal, Yacov Arrkadievich Ostrovsky of Russia, and Navanethem Pillay of South Africa, were re-elected. Six judges, Pavel Doelnec of Slovenia, Mehmet Guney of Turkey, Dyonisios Kondylis of Greece, Erik Mose of Norway, William Hussein Sekule of Tanzania, and Lloyd George Williams of Jamaica and Saint Kitts and Nevis will be new to the Tribunal. Their four-year terms will begin on May 25, 1999. The new appointments will also allow the new Trial Chamber III to be staffed upon completion of construction scheduled for May 1999. ☉

*\*Christine Poulon is a third-year J.D. candidate at the Washington College of Law. Mair McCafferty is a third-year J.D. candidate at the Washington College of Law and the Editor-in-Chief for The Human Rights Brief.*

