

2003

## Updates from the International Criminal Courts

Sarah Hymowitz

*American University Washington College of Law*

Abby Richardson

*American University Washington College of Law*

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### Recommended Citation

Hymowitz, Sarah, and Abby Richardson. "Updates from the International Criminal Courts." *Human Rights Brief* 11, no. 1 (2003): 40-41.

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## UPDATES FROM THE INTERNATIONAL CRIMINAL COURTS

### INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

#### THE PROSECUTOR V. MILORAD KRNOJELAC, CASE NO. IT-97- 25-I

After hearing the dispositions of both parties, the Appeals Chamber for the International Criminal Tribunal for the former Yugoslavia (ICTY) entered a judgment increasing the sentence of Milorad Krnojelac from seven to fifteen years.

Milorad Krnojelac was the commander of the Foca Kazneno-Popravni (KP Dom), one of largest prisons in the former Yugoslavia. During the Serbian occupation of Foca city, where KP Dom is located, the military police rounded up hundreds of Muslims and other non-Serbs and illegally detained them. From 1992-1994, with Krnojelac at the helm, the KP Dom prison was home to acts of torture, beatings, countless killings, forced labor, inhumane conditions, and racial, political, and religious persecution. Additionally, Krnojelac assisted in the deportation and expulsion of the majority of Muslim and non-Serb males from the Foca municipality.

Due to these acts and his role as commander of the KP Dom, on June 6, 1997, Krnojelac was indicted for crimes against humanity, grave breaches of the Geneva Conventions, and violations of the laws or customs of war. On March 15, 2002, the Trial Chamber found Krnojelac guilty of crimes against humanity, specifically persecution and inhumane acts, and guilty of a violation of the laws and customs of war, particularly cruel treatment. The Trial Chamber acquitted Krnojelac of six counts, including the crimes against humanity of torture, murder, imprisonment, and inhumane acts, as well as of certain violations of the laws or customs of war. Both Krnojelac and the Prosecutor appealed this decision.

#### Appeal of Krnojelac

Krnojelac presented six grounds for appeal including an appeal of the sentence. The Appeals Chamber dismissed as unlawful three of these grounds, which alleged errors of fact due to a failure to meet the burden of proof. Krnojelac's second ground of appeal alleged that the Trial Chamber made an error of law when it found him guilty of aiding and abetting through his role in persecution via the imprisonment of non-

Serb civilian detainees and the living conditions then imposed upon them. The Appeals Chamber, finding the Trial Chamber applied the correct criterion in evaluating the elements of this crime, rejected this ground of appeal. After reviewing Krnojelac's other grounds for appeal, the Appeals Chamber found him guilty as a superior for inhumane acts and cruel treatment for the beatings that took place at KP Dom.

#### Appeal of the Prosecutor

The Prosecutor presented seven grounds for appeal. First, the Prosecutor asserted that the Trial Chamber erred as a matter of law in its definition of the legal responsibility arising from participation in a joint criminal enterprise. According to the Prosecutor, had the definition of joint criminal enterprise been applied correctly, Krnojelac would have been found guilty as a co-perpetrator and not as an aider or abettor for the crimes of persecution (imprisonment and inhumane acts) and cruel treatment (living conditions). The Appeal Chamber agreed and reversed the relevant parts of the Trial Chamber judgment, finding Krnojelac guilty as a co-perpetrator in persecution and cruel treatment.

The Appeals Chamber rejected the Prosecutor's second ground for appeal, which alleged that the Trial Chamber erred in its interpretation of the law when it required that the Indictment refer to an "extended form" of joint criminal enterprise.

On the third ground for appeal, the Appeals Chamber found that the Trial Chamber erred in concluding that Krnojelac did not know or have reason to know that his subordinates were torturing the detainees. Due to this error, the Trial Chamber refused to hold Krnojelac responsible under Article 7(3) of the Statute of the ICTY, which requires personal knowledge of torture for a conviction. The Appeals Chamber reversed, stating that the evidence clearly established Krnojelac's knowledge of the torture of the detainees and therefore he was liable under Article 7(3). In a related appeal, the Appeals Chamber also found that Krnojelac had sufficient information to put him on notice that his subordinates were involved in the murder of detainees at the KP Dom, reversing the Trial Chamber verdict. The Appeals Chamber noted that for both charges the evidence proved Krnojelac was aware of the widespread beatings

and frequent interrogations taking place at KP Dom. The Appeals Chamber stated that "he had witnessed beatings, was aware of suspicious disappearances, and had seen the bullet impacts in the walls."

The Appeals Chamber also found that the Trial Chamber erred when it determined that the beatings constituting inhumane acts were not perpetrated on discriminatory grounds. This had precluded the Trial Chamber from holding Krnojelac responsible for the crime of persecution. The Appeals Chamber noted that Krnojelac knew about the unlawful detention of non-Serbs at KP Dom when he accepted the role of commander. Further, the Appeals Chamber held he was specifically aware of the mistreatment that occurred during his time as prison warden. This behavior satisfied the central elements of the ICTY definition of persecution—the deprivation of fundamental rights on discriminatory grounds.

Again finding an error in the Trial Chamber's analysis of persecution, the Appeals Chamber reversed the decision regarding the charge of forced labor, finding Krnojelac guilty as a co-perpetrator in a joint criminal enterprise of exploiting non-Serb detainees through forced labor. Finally, the Appeals Chamber found that it was unreasonable for the Trial Chamber to conclude that there was no evidence that the transfer of thirty-five detainees to Montenegro as well as other displacements, had been carried out on the requisite discriminatory grounds. Finding that there was sufficient evidence to establish persecution, the Appeals Chamber found Krnojelac responsible as a co-perpetrator.

#### Conclusion

As noted above, the Appeals Chamber overturned many of the Trial Chamber's findings, and its opinion often chastised the Trial Chamber for a misapplication of the law or an incorrect analysis of the facts. As it expanded Krnojelac's liability, the Court signaled a willingness to expand the boundaries of the crime of persecution to include a greater range of acts. It also clearly defined the minimum levels of participation to constitute persecution. Because the Appeals Chamber establishes precedent for both the ICTY and ICTR, this decision may have far-ranging implications for the charge of persecution at both tribunals.

INTERNATIONAL CRIMINAL TRIBUNAL  
FOR RWANDA (ICTR)

**PROSECUTOR V. LAURENT SEMANZA,  
CASE NO. ICTR-97-20-T**

On May 15, 2003, Trial Chamber III of the ICTR delivered its judgment in the case of *Prosecutor v. Laurent Semanza*. The (third) amended indictment charged Semanza with genocide, direct and public incitement to commit genocide, complicity in genocide, crimes against humanity in the form of extermination, persecution, rape, murder, torture, and serious violations of Common Article 3 of the Geneva Conventions and Protocol.

Semanza was charged with both individual and superior criminal responsibility, pursuant to Articles 2(3) and 6(1), and for ordering under Article 6(3) of the ICTR Statute. He was convicted of complicity in genocide; aiding and abetting extermination as a crime against humanity; rape, torture, and murder as crimes against humanity; as well as an individual act of murder. The Trial Chamber sentenced Semanza to twenty-four years and six months imprisonment.

**Analysis**

Between April 1, 1994 and July 31, 1994, the period during which the violations of international humanitarian law referred to in the indictment occurred, there were widespread attacks against the ethnic Tutsis in Rwanda. Laurent Semanza served in the transitional parliament during this time. The court found that he did not have de jure authority over militiamen and that he did not exercise de facto authority based upon his influence in the community. In order to show a superior-subordinate relationship, evidence of a formal or informal hierarchical relationship involving an accused's effective control over the direct perpetrators must be introduced. A simple showing of an accused's influence in the community is not sufficient to establish a superior-subordinate relationship. Thus, the Trial Chamber held that Semanza could not be responsible for the crimes charged in the Indictment under ordering.

Semanza was convicted of complicity in genocide (Count 3) and of aiding and abetting extermination as a crime against humanity (Count 5). The Chamber found that in addition to having knowledge of the genocidal intent of the principal perpetrators at the various massacre sites, Semanza possessed an independent intent to destroy the Tutsi ethnic group. Semanza's specific intent to aid and abet in the commission of genocide was inferred by the Chamber through his actions and words. By his actions of bringing

soldiers, as well as Interahamwe ("those who work together"), a faction of Rwandan rebels, to massacre sites to assist in the killings, Semanza was deemed criminally responsible for complicity in genocide and for aiding and abetting the principal perpetrators who killed members of the Tutsi ethnic group.

The Chamber also found Semanza guilty of rape, torture, and murder as crimes against humanity. The rape conviction is premised on the defendant's instigation of a crowd to rape Tutsi women before killing them. The Trial Chamber determined that Semanza's instigation in the rape of the Tutsi women due to their ethnicity was also sufficient as an act to constitute the crime of torture. The analysis stated that because he was encouraging a crowd to inflict severe physical or mental pain or suffering for discriminatory purposes, the one act met the elements of both crimes. Semanza was found not guilty of persecution, as the Trial Chamber interpreted the ICTR Statute to prohibit this crime from being based on ethnic discrimination. Semanza was convicted of a separate count of murder as a crime against humanity based on his instigation of a group of Interahamwe resulting in six deaths.

Counts 7, 9, and 13 charged Semanza with serious violations of Common Article 3 and the Additional Protocol under Article 4 of the ICTR Statute. In order to meet the burden of proof, the Prosecutor proved beyond a reasonable doubt that: (1) a non-international armed conflict existed on the territory of the concerned state; (2) that the victims were not taking part in the hostilities at the time of the alleged violation; and (3) that a nexus existed between the accused's alleged crimes and the non-international armed conflict.

The Trial Chamber found Semanza not-guilty of outrages upon personal dignity, in particular in the form of humiliating and degrading treatment, rape, forced prostitution, and any form of indecent assault because the Prosecutor failed to introduce sufficient evidence of the alleged acts of rape and sexual violence. No conviction was entered for Count 13, violence to life, health and physical well-being of persons, specifically murder, as well as cruel treatment such as torture, mutilation or any form of corporal punishment.

**Sentence and Appeal**

Semanza was sentenced to twenty-four years and six months imprisonment, the initial 25 years being reduced by 5 months to compensate for violations of his right to be promptly informed of the charges against him during his

pre-trial detention. Therefore, as of May 15, 2003, there remain seventeen years, four months, and eleven days to be served. On May 29, 2003, Laurent Semanza filed a motion in which he was seeking an extension to file his Notice of Appeal of the judgment entered against him.

**Conclusion**

The Trial Chamber decided not to expand the bounds of the charge of persecution to encompass Semanza's acts against an ethnic group. Importantly though, the decision is a strong statement against torture, the Chamber did find that Semanza's acts of incitement to rape were sufficient to constitute both the crimes of both rape and torture. Generally, this conviction represents a step towards the ICTR's goal of preventing impunity. By convicting superior officers and those seen as officials in their community, the Tribunal goes beyond the primary actors and expands the reach of justice. *HRB*

*Sarah Hymowitz, a J.D. candidate at the Washington College of Law, covers the ICTY for the Human Rights Brief. Reza Laszlo also contributed to this report.*

*Abby Richardson, a J.D. candidate at the Washington College of Law, covers the ICTR for the Human Rights Brief.*