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Criminal Courts and Tribunals

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CRIMINAL COURTS AND TRIBUNALS

INTERNATIONAL CRIMINAL COURT

ICC HANDS DOWN ACQUITTAL IN CONGOLESE MILITARY CASE

The International Criminal Court handed down its second verdict and first acquittal in its ten-year history on December 18, 2012, in the case of Mathieu Ngudjolo. Ngudjolo, together with Germain Katanga, faced charges of war crimes and crimes against humanity with regard to acts in the Ituri region of the Democratic Republic of Congo in 2003. As of February 2013, the Trial Chamber had not issued a verdict on the charges against Katanga. In Ngudjolo's case, the panel of three judges of Trial Chamber II found that the Prosecutor had presented insufficient evidence to establish beyond a reasonable doubt Ngudjolo's responsibility for the attack on the village of Bogoro. Those who viewed Ngudjolo's trial as a sign that the international community would hold accountable those responsible for the atrocities committed in the Ituri region see his acquittal as a major setback. The outcome has also raised questions about the Office of the Prosecutor's ability to effectively collect and present evidence in a court so far removed from the crimes it tries.

The Prosecutor issued warrants for Ngudjolo's and Katanga's arrests on June 25, 2007, and submitted the Amended Charging Document in June 2008. On September 30, 2008, Pre-Trial Chamber I unanimously found sufficient evidence to establish substantial grounds to believe that Ngudjolo and Katanga had committed the crimes charged by the prosecution and so the case progressed to be heard and decided by a Trial Chamber. On November 21, 2012, Trial Chamber II severed the charges against Ngudjolo and Katanga, citing evidence that changed the legal characterization of one of the modes of liability for Katanga.

The charges against Ngudjolo, a Congolese militia leader, allege his responsibility for the attack by armed forces in Bogoro that resulted in the rape and murder of more than 200 people, including children. Female survivors of the

attack on Bogoro were held in camps as sex slaves after the attack. The Charging Document indicted Ngudjolo and Katanga under Article 25(3)(a) as principals who indirectly co-perpetrated war crimes and crimes against humanity. Article 25(3)(a) provides that a person shall be criminally responsible and liable for punishment if that person "commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible." The war crimes charges fell under Article 8(2)(b) and comprised using child soldiers, directly attacking a civilian population, willful killing, destruction of property, pillaging, sexual slavery, and rape. The crimes against humanity charges fall under Article 7(1) and include murder, rape, and sexual slavery.

The ICC's standard of proof in Article 66(3) of the Rome Statute states that "in order to convict the accused, the Court must be convinced of the guilt of the accused beyond a reasonable doubt." According to Article 66, accused persons are presumed innocent until proven guilty. In the judgment, the three-judge panel found that the prosecution failed this standard because the judges noted unreliable testimony by three crucial prosecution witnesses who could not definitively support that Ngudjolo was responsible for the attack. Despite the ruling, Presiding Judge Bruno Cotte added that Ngudjolo's acquittal "does not necessarily mean that the alleged fact did not occur," stressing that the ruling did not put into question the victims' suffering.

Since the ICC announced its judgment, many human rights groups have expressed grave concern over the Office of the Prosecutor's effectiveness in bringing human rights abusers to justice. Geraldine Mattiolo-Zeltner, International Justice Advocacy Director at Human Rights Watch, stated that, "given the judges' comments on the insufficient evidence produced during the trial, [Chief Prosecutor Fatou] Bensouda should speed up efforts to improve investigative practices and prosecutorial policy." The need to improve investigations conducted by the Office

of the Prosecutor does appear to be of concern to Bensouda, who was elected in June 2012 to the position and confirmed her commitment to the cause at the ICC Assembly of States Parties session in The Hague in November. Without effective investigation, prosecutorial practices, and policy, it will be impossible for the ICC to provide justice to victims of human rights abuses worldwide.

ICC APPEALS CHAMBER CONFIRMS JURISDICTION IN CASE AGAINST FORMER CÔTE D'IVOIRE PRESIDENT

The ICC Appeals Chamber held on December 12, 2012, that the Court has jurisdiction to try former Côte d'Ivoire President Laurent Gbagbo despite the defense's numerous challenges. Gbagbo faces charges related to events surrounding his failure to step down after losing the 2010 presidential election. The Court confirmed charges on four counts of crimes against humanity including murder, rape and other sexual violence, persecution, and other inhuman acts committed during the post-election violence in Côte d'Ivoire between December 16, 2010, and April 12, 2011. The confirmation of jurisdiction in this case strengthens the Court's ability to exercise jurisdiction in order to hold international human rights violators accountable.

Gbagbo served as president from his election in 2000 until his defeat by current President Alassane Ouattara in the long overdue elections of November 28, 2010. Gbagbo refused to accept defeat, leading to protracted violence throughout Côte d'Ivoire until April 2011, when President Ouattara finally took power with the help of French and United Nations forces. The violence by both sides led to 3,000 deaths and nearly one million displaced civilians. The ICC Prosecutor requested authorization from the Pre-Trial Chamber to initiate his own investigation into the situation in Côte d'Ivoire in June 2011. The Chamber granted his *proprio motu* investigation request in October 2011, and the Court issued the warrant for Gbagbo's arrest on November 23, 2011. Gbagbo is being charged individually as an indirect co-perpetrator of the attacks against civilian

Ouattara supporters that the prosecution argues were committed by forces acting on his behalf. After his arrest in April 2011, Gbagbo was held under house arrest in Côte d'Ivoire until his extradition to The Hague in November 2011.

The Pre-Trial Chamber categorically rejected all challenges to the Court's jurisdiction, despite the fact that Côte d'Ivoire is not a formal State Party to the Rome Statute. The Chamber based its jurisdiction on a declaration made by Côte d'Ivoire in 2003 that recognized the Court's jurisdiction for actions that occurred from 2002 to 2003 pursuant to Article 12(3) of the Rome Statute.

On August 21, 2012, Gbagbo appealed the decision to the Appeals Chamber on ten different grounds. The first two grounds dealt with the appropriateness of Côte d'Ivoire's participation as a non-State Party in the Pre-trial Chamber's review of the jurisdictional challenge. The Appeals Chamber found that the Pre-Trial Chamber had erred in not issuing a separate decision on the request for leave to file submissions, thereby not allowing Gbagbo or the Prosecutor to respond to Côte d'Ivoire's submissions. However, Gbagbo failed to demonstrate how that error materially affected the decision and the Chamber therefore rejected the first two grounds of appeal.

Grounds three through five related to the interpretation of Article 12(3) and the declarations made by Côte d'Ivoire in relation to Article 12(3). On April 18, 2003, the Minister of Foreign Affairs of Côte d'Ivoire submitted a declaration to the Court accepting the Court's jurisdiction pursuant to Article 12(3) "for the purposes of identifying, investigating and trying the perpetrators and accomplices of acts committed on Ivorian territory since [the] events of 19 September 2002." Gbagbo challenged the scope of this declaration, arguing that it only gave the Court jurisdiction over events that occurred before the declaration was made. The Appeals Chamber, looking to the text and purpose of Article 12, found that there was no temporal limit on the jurisdiction submitted to by the 2003 declaration, and that the wording suggested explicit consent to jurisdiction with respect to crimes committed after the declaration.

Grounds six through ten of Gbagbo's appeal claimed the Pre-Trial Chamber had erred in addressing his argument that

his fundamental rights had been violated to the extent that the Court should not exercise its jurisdiction over him. These claims were based on alleged violations of Gbagbo's fundamental rights from his arrest by domestic authorities on April 11, 2011, until his transfer to The Hague on November 29, 2011. The Appeals Chamber quickly denied these five grounds within the meaning of Article 82(1)(a) of the Rome Statute as not referring to a decision with respect to jurisdiction. Article 82(1)(a) gives either party the ability to appeal a decision with respect to jurisdiction or admissibility.

The significance of the Appeals Chamber confirmation of jurisdiction in this case cannot be overstated given that Côte d'Ivoire is not a Member State and that the Prosecutor initiated the investigation *proprio motu*. Of the eight situations the Court has investigated, the Prosecutor initiated two, Kenya and Côte d'Ivoire. In four of the eight situations, the State Party initiated the investigation. The United Nations Security Council initiated the two remaining situations in Darfur and Libya. *Proprio motu* investigations give the Court the ability to act independent from global politics to hold states accountable. While state sovereignty is a recognized and central right in modern world politics, the ICC's independence and corresponding ability to effectively prosecute impunity and enforce accountability requires that it be able to exercise jurisdiction in a broad array of circumstances. Despite limited state consent and non-party status of the state in question, a confirmation of the Prosecutor's ability to initiate investigations may have broad ramifications for the potential scope of future investigations.

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INTERNATIONALIZED CRIMINAL TRIBUNALS

WITH END IN SIGHT FOR RWANDAN INTERNATIONAL CRIMINAL TRIBUNAL, QUESTIONS OF JURISDICTION, PROCEDURE, AND PUBLIC PERCEPTION REMAIN

The International Criminal Tribunal for Rwanda (ICTR, the Tribunal) convicted Augustin Ntirabatware, a former government minister, of genocide, incitement

to commit genocide, and extermination and rape as crimes against humanity on December 20, 2012. Ntirabatware was sentenced to 35 years in prison for his role in orchestrating the Rwandan genocide as Planning Minister in the Hutu government. Ntirabatware was the last person facing trial before the Tribunal, and when the final cases on appeal are resolved, the ICTR will close. The Tribunal has stated that it must close by December 2014, when all further cases will be transferred to local courts in Kigali. Since its creation in 1994, the ICTR has resolved 71 cases, resulting in 92 indictments, ten acquittals, and 32 convicted Rwandans who are currently serving prison sentences in Mali and Benin. The ICTR will attempt to complete the seven outstanding appeals involving seventeen individuals before its closure next year. The first appellate decision — an acquittal in the cases of Justin Mugenzi and Prosper Mugiraneza — was handed down on February 4, 2013, and ICTR President Judge Vagn Joensen predicted that seven convicted persons will receive appellate decisions during 2013, with the remaining ten appeals to be decided in 2014. The United Nations has also stepped up its search for nine alleged perpetrators of the Rwandan genocide who remain at large.

The ICTR determined that local courts have demonstrated their ability to fairly try Jean Uwinkindi, the first indictee transferred to Kigali, justifying the transfer of the remaining indictments for trial in local courts. However, Uwinkindi's case has been stayed since his counsel challenged the constitutionality of the transfer. As this case is resolved, public opinion throughout the international community will have to act as a check on fair and humane treatment of indictees by monitoring how individuals are treated when they return to their home country. Eight individuals convicted by the ICTR, including those who have been acquitted or who have completed their sentences, have already stated that they do not want to return to Rwanda, but no other state has agreed to accept them.

Despite the availability of local courts, the ICTR has determined that if any of the three most wanted indictees are captured, they will be tried using a special international legal structure, the Mechanism for International Criminal Tribunals (MICT). One such indictee, Ntirabatware's father-in-law, Felicien Kabuga, is still at large

and wanted by the international community for genocide, crimes against humanity, and serious violations of international humanitarian law. Kabuga is a millionaire accused of funding the 1994 genocide that killed one million Tutsi people. He has a \$5 million bounty on his head, put up by the United States. Kabuga is still in hiding, allegedly in Kenya, according to ICTR prosecutor Hassan Bubacar Jallow. The two other most wanted indictees are Protais Mpiranyi, former Commander of the Rwandan Presidential Guard, and Augustin Bizimana, former Minister of Defense. While the end of its mandate is in sight, the ICTR stated last month that it will not relent in its search for the remaining indictees, and has expanded its search to other African countries outside of Kenya. As the UN increases its resources to apprehend the three most wanted indictees from Rwanda, there is a danger that public perception of their guilt necessarily follows, decreasing the chances for the indictees, assuming they are apprehended, to receive a fair trial either at the local or international level.

The MICT, established by the UN Security Council on December 22, 2010, will assume the remaining functions of the ICTR as it completes its mandate. It will manage the archives from the ICTR's tenure, continue to protect witnesses and victims, and hear all appeals filed after June 2012, including a potential appeal by the recently convicted Ndirabatware.

In the pursuit of justice, the public's perception of trials within Rwanda remains of chief importance. International criminal tribunals in general suffer a fair amount of criticism regarding whether justice is truly served by prosecuting individuals outside of the country in which war crimes were committed. Critics have also raised the question of whether prosecutions executed in an international tribunal promote or contravene efforts of transitional justice. As the ICTR closes and the execution of justice is transferred to yet another external tribunal, Rwandan citizens and the international community will be watching closely to ensure that each indictee receives a fair trial, that the State of Rwanda eventually gains control over its process of transitional justice, and that justice is served.

ACQUITTALS FOR CROATIAN GENERALS RAISE QUESTIONS ABOUT THE ICTY AND ITS LEGACY

The International Criminal Tribunal for the former Yugoslavia (ICTY, the Tribunal) raised worldwide questions about the legitimacy of internationalized criminal justice and the impartiality of the tribunal with its recent acquittals of Croatian Generals Ante Gotovina and Mladen Markac. The generals were sentenced to 24 and eighteen years, respectively, for committing crimes of murder and inhumane acts against Croatian Serbs during the war in Yugoslavia. Both men were sentenced for crimes that Croatian troops allegedly committed during Operation Storm, a large-scale operation that began on August 4, 1995, and resulted in the defeat of the Republic of the Serbian Krajina, a self-determined Serbian state.

Gotovina was a colonel general in the Croatian Army and commanded Operation Storm. Markac was the Assistant Minister of the Interior and commanded the special police in Croatia in 1995. In Gotovina's trial, the prosecution alleged that his shelling offensive killed 324 Serb civilians and soldiers, and displaced almost 90,000 Serbs from a contested territory. Gotovina and Markac appealed their convictions, arguing that they did not intend to target civilians. Judges overturned the ruling the following year, with the majority granting acquittal, due to a lack of evidence that the generals intended to target civilians, based on a totality of the circumstances. Gotovina and Markac returned to Croatia to a hero's welcome, where they were met in Zagreb's main square by tens of thousands of people singing nationalist songs and waving flags.

The Appeals Chamber rendered the acquittals when, upon review of the trial court's decision, it found a number of mistakes in the verdicts. ICTY Chief Prosecutor Serge Brammertz pointed out that the acquittals were issued after the appeals judges "assess[ed] the evidence on the record in its totality and [gave] appropriate deference to a trial chamber's factual findings." Many critics of the Gotovina and Markac acquittals cite the dissenting opinions of Judges Fausto Pocar and Carmel Agius. These dissents, however, do not have widespread legal traction because of their harsh tone and misapplication of the legal standard applied in support of the

conviction of engaging in a joint criminal enterprise.

In December 2012, university students, joined by Minister of Justice Nikola Selakovic, crowded around the Serbian Parliament to protest the recent acquittals of the Croatian Generals, asking for an extraordinary parliament session to adopt a resolution ensuring fair conclusions for the remaining cases before the Tribunal. In a June 2012 debate at the UN Security Council, members maintained an East-West split on opinions about ICTY rulings. While the United States, Germany, and Great Britain wished to respect the verdicts acquitting Gotovina and Markac, Russia asserted that the decisions were unfair, and China reiterated the importance of maintaining impartiality in internationalized judicial proceedings. At the Security Council hearing, Serbian First Deputy Prime Minister Aleksandar Vucic condemned the acquittals, pointing out that no Croatian indictees have been convicted for war crimes committed against the Serbs, nor has any top Croatian or Bosnian official been charged, despite common belief that all parties committed crimes during the conflict beginning on June 25, 1991, throughout the former Yugoslavia.

Croatian Ambassador to the United Nations Ranko Villovic, however, stated that although Croatians may be frustrated that individuals who committed war crimes are not being held to the same account as the criminal organization of the Croatian authorities, they are not justified in questioning the validity of the verdicts. Many Serbs do not feel the ICTY is serving justice, and this feeling may increase the divisive ethnic divide between the Serbs, Croats, and Bosniaks, and intensify feelings of victimization, vindication, and persecution. Brammertz claimed that those affected by Operation Storm feel that the international community has not recognized their suffering. According to Brammertz, because justice is being served one-sidedly, this process, which should be characterized by transition and healing, will more likely serve as ammunition for future conflicts.

When the ICTY's mandate ends in the coming year, its legacy will leave the international community with a number of difficult questions: What has been the purpose of the ICTY? Whose justice has it served? Can internationalized criminal

tribunals truly contribute to the transitional justice process? How will the lessons learned from this tribunal inform future tribunals or alternative methods of post-conflict criminal justice? In Syria, although protracted conflict is ongoing, civil society groups and the international

community are already discussing the merits and methods of a Syrian ad hoc tribunal. A tribunal, whether administered through the Arab League or through the United Nations, like the ICTY, would raise the same questions for Syria and other nations facing future periods of transitional justice,

including jurisdiction for international criminal prosecution.

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JUDGMENT SUMMARIES: INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

THE PROSECUTOR V. ILDEPHONSE HATEGEKIMANA, APPEALS JUDGMENT, CASE NO. ICTR-00-55-A

On May 8, 2012, the Appeals Chamber of the International Criminal Tribunal for Rwanda (ICTR) issued its judgment in the case against Ildephonse Hategekimana, dismissing each of the Defense's seven grounds of appeal. Hategekimana, a lieutenant in the Rwandan army who commanded soldiers at the Ngoma Military Camp in the Butare Prefecture during the 1994 genocide in Rwanda, was initially convicted on December 6, 2010, on several counts of genocide and crimes against humanity and sentenced to life imprisonment. The Appeals Chamber affirmed each of his convictions and his term of imprisonment.

Hategekimana's first ground for appeal alleged that the Trial Chamber violated his right to a fair trial. This challenge involved a number of claims, including a charge that his presumption of innocence was violated when the Tribunal chose to display, in the building where Hategekimana was being tried, a drawing by a twelve-year-old who was one of the winners of an "Essays and Drawings" contest held by the ICTR. This particular drawing depicted a judge pointing his finger at a defendant and saying the words: "You Hategekimana... tell what you have done in genocide. You, Hategekimana you will go in prison 30 years." The defendant in the picture is saying: "I have killed 77 people." Hategekimana argued that displaying this picture in the corridor outside his trial room may have influenced the Trial Chamber judges. He also pointed out that one of the Legal Officers that contributed to drafting the judgment against him was on the jury that judged the "Essays and

Drawings" competition. In response, the Appeals Chamber held that, although it was "highly improper" to display the drawing, Hategekimana failed to establish that the drawing would itself be sufficient to create an appearance of bias in the mind of a reasonable observer who had been properly informed of the circumstances. In reaching this conclusion, the Appeals Chamber gave particular weight to the fact that when Hategekimana complained about the picture prior to the public reading of the judgment against him, the Trial Chamber immediately ordered the drawing removed. The Appeals Chamber also rejected Hategekimana's claim with regard to the Legal Officer, noting that the charge was "based on the erroneous premise that legal officers play a controlling role in judicial decision-making." The Appeals Chamber similarly dismissed the accused's other claims that his fair trial rights were violated, including allegations that the Trial Chamber breached his right to be tried in his presence when it permitted Hategekimana's Defense counsel to deliver closing arguments in the absence of his client after Hategekimana refused to appear in court, and that the Chamber "assumed the role of Prosecutor or witness" by posing questions to witnesses from the bench.

In addition to challenging his conviction on grounds relating to alleged violations of his fair trial rights, Hategekimana sought to overturn a number of the Trial Chamber's findings on the ground that the Chamber inappropriately evaluated the evidence against him. In particular, Hategekimana challenged the fact that the Trial Chamber relied on hearsay and circumstantial evidence to convict him on several counts. The Appeals Chamber dismissed these claims, and stated that "... as a matter of law, it is permissible to base a conviction on circumstantial or hearsay evidence," and determined that the lower court had exercised sufficient caution

in reviewing the relevant evidence to produce a conviction. The Appeals Chamber also dismissed several attempts by the Defense to discredit witness testimony concerning the involvement of Hategekimana and his men in the alleged crimes, such as claims that questioned the witnesses' ability to distinguish between Hategekimana's soldiers and militant groups such as the *Interahamwe*, and witness testimony regarding the defendant's presence at the scene of the crimes. In rejecting these grounds of appeal, the Appeals Chamber cited to the significant deference allotted to the Trial Chamber as the trier of fact to determine the reliability of and appropriate weight to be given to witness testimony.

Hategekimana's final ground of appeal related to his life sentence, which he claimed was inappropriate because the Trial Chamber erroneously assessed the gravity of his crimes and the aggravating circumstances, while disregarding a number of mitigating circumstances put forward by the Defense. The Appeals Chamber began by disagreeing that the lower court incorrectly assessed the gravity of Hategekimana's crimes, finding that the Trial Chamber aptly compared his crimes to those of other accused appearing before the Tribunal in the past, while also taking note of the "inherent limitations" of comparing cases and "specifically assess[ing] the individual nature" of Hategekimana's case. With regard to aggravating factors, the Appeals Chamber agreed with the accused that the Trial Chamber inappropriately characterized Hategekimana as being "in charge of peace and security" in the Ngoma region and erred in concluding that he was on the Prefecture Security Council, both of which were factors found to aggravate his crimes. However, given the presence of other aggravating factors and the gravity of the accused's crimes, the Appeals Chamber did not feel that these errors had any impact on the "overall

assessment” of Hategekimana’s sentence. Finally, the Appeals Chamber determined that the Defense failed to demonstrate any “discernable error” with regard to the Trial Chamber’s assessment of mitigating circumstances.

William Xu, a J.D. candidate at the American University Washington College of Law, wrote this summary for the Human Rights Brief. Katherine Cleary Thompson, Assistant Director of the War Crimes Research Office, edited this summary for the Human Rights Brief.

THE PROSECUTOR V. KAREMERA AND NGIRUMPATSE, CASE NO. ICTR-98-44-T

On February 2, 2012, Trial Chamber III of the International Criminal Tribunal for Rwanda (ICTR) issued its judgment in the case against Edouard Karemera and Matthieu Ndirumapatse, often referred to as the “Government I” case. The accused were convicted of direct and public incitement to commit genocide, genocide, the crimes against humanity of rape and extermination, and serious violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II. The Chamber also found both accused guilty of conspiracy to commit genocide but did not enter a conviction for that count, finding it would be cumulative to convict for that charge as well as genocide. Karemera and Ndirumapatse were both sentenced to life in prison. Initially, the case included two additional accused, Joseph Nzirorera and André Rwamakuba. However, proceedings against Nzirorera were terminated because of his death and the charges against Rwamakuba were severed into a separate case.

Both Karemera and Ndirumapatse played critical roles in the *Mouvement Révolutionnaire National pour le Développement* (MRND), the ruling party of Rwanda from 1975 to 1994, and the Interim Government of Rwanda. Specifically, Karemera served as both the National Secretary and the First Vice President of the MRND and was a member of the party’s Executive Bureau. Following the assassination of President Habyarimana, he became the Minister of the Interior and Communal Development for the Interim Government. Ndirumapatse also served at one point as the National

Secretary of the MRND, as well as the National Party Chairman and Chairman of the MRND Executive Bureau. In addition, the Chamber determined that Ndirumapatse supported the creation of the youth wing of the MRND, the *Interahamwe*, and was the individual in Rwanda with the most *de facto* power, influence, and authority over the *Interahamwe* during the genocide.

One notable aspect of this judgment is that the Trial Chamber found Karemera and Ndirumapatse guilty of genocide and the crime against humanity of rape based on acts of rape and other sexual assaults committed by members of the *Interahamwe*, employing the joint criminal enterprise (JCE) theory of liability. The Prosecution had pleaded these acts under two different theories of JCE liability, the “basic” form of JCE and the “extended” form. Under both theories, the Prosecution must prove: (i) a plurality of persons, (ii) the existence of a common purpose that amounts to or involves the commission of a crime under the Tribunal’s statute, and (iii) a contribution on the part of the accused to the execution of the common criminal purpose. The theories differ in terms of the required *mens rea*. For the basic form of JCE, the Prosecution must establish that each member of the JCE acted with intent to commit the charged crime. Under the extended form of JCE, by contrast, the Prosecution must only establish that it was natural and foreseeable that the charged crime would be committed in the course of pursuing the enterprise’s common purpose and that the accused willingly assumed the risk that the crime would be committed. In the present case, the Trial Chamber determined that the accused participated in a JCE, the common purpose of which was the destruction of the Tutsi population in Rwanda, and that each accused contributed to the execution of the common plan. Furthermore, while the Chamber found insufficient evidence that the accused intended for acts of rape and sexual violence to occur as part of the common plan, it concluded that during a genocidal campaign, a natural and foreseeable consequence of that campaign will be that soldiers and militias who participate in the destruction of the targeted group will resort to rapes and sexual assaults unless restricted

by their superiors. Thus, the rape and sexual assault of Tutsi women and girls by soldiers, gendarmes, and militiamen, including the MRND *Interahamwe*, was a natural and foreseeable consequence of the JCE to destroy the Tutsis. The Chamber was thus convinced beyond a reasonable doubt that Karemera and Ndirumapatse were aware that widespread rapes and sexual assaults on Tutsi women were foreseeable consequences of the JCE to pursue the destruction of the Tutsi population in Rwanda. Finally, they willingly took the risk that Tutsi women and girls would be raped and sexually assaulted, as evidenced by the fact that they continued to participate in the JCE despite the widespread occurrence of rapes and sexual assaults on Tutsi women and girls.

Another interesting aspect of the Chamber’s judgment is its findings regarding the crime of direct and public incitement to genocide. As the ICTR has held in prior cases, a person may be guilty of direct and public incitement to genocide regardless of whether the incitement leads to the commission of any genocidal acts; it is sufficient that the audience understood the incitement as a call to genocide and the accused acted with the requisite intent. Here, the Chamber determined that acts amounting to direct and public incitement to genocide were carried out in furtherance of the JCE to which the accused belonged on two separate occasions. First, it cited a meeting that took place on May 3, 1994, at the Kibuye prefectural office, which was attended by several high-ranking members of the Interim Government, including Prime Minister Kambanda and the two accused, and which was broadcast over the radio. At the meeting, which took place shortly after a massacre of more than 2,000 Tutsis in Kibuye, both Kambanda and Karemera praised the work of the *Interahamwe* and called for the population to continue fighting the enemy. The Chamber determined that, through their speeches and due to their failure to condemn the recent massacre of Tutsis, Karemera and others intended to incite the population to continue killing Tutsis for the purpose of destroying the ethnic group. Thus, the accused both committed direct and public incitement to genocide at the meeting:

Karemera directly in his role as speaker and Ngirumpatse under a theory of JCE liability. The second occasion cited by the Chamber was a May 16, 1994, meeting, which was also held in Kibuye and also broadcast over the radio. At this meeting, Interim President Sindikubwabo thanked the army and the people of Kibuye for “restoring” peace, despite the recent massacre of Tutsis described directly above. Given the context of the recent massacre, the Chamber again found that the speech was understood by the audience as a

call to genocide and, because President Sindikubwabo was a member of the JCE to which the accused belonged, both Karemera and Ngirumpatse were convicted of direct and public incitement to genocide based on JCE liability on the basis of the speech delivered at the May 16 meeting.

Finally, in determining that the accused should be sentenced to life imprisonment, the Chamber cited the gravity of the accused’s crimes, their positions of authority in the Interim Government, and

the fact that there were no mitigating circumstances significant enough to justify mitigation of the sentence.

Alli Assiter, a J.D. candidate at the American University Washington College of Law, wrote this judgment summary for the Human Rights Brief. Chante Lasco, Jurisprudence Collections Coordinator at the War Crimes Research Office, and Katherine Clearly Thompson, Assistant Director of the War Crimes Research Office, edited this summary for the Human Rights Brief.

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