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ICTR in the Year 2011: Atrocity Crime Litigation Review in the Year 2011

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COMPLETION STRATEGY

¶1 As of December 7, 2011, there are five pending trial judgments and eighteen pending appeals judgments tentatively set to be completed by 2014.

¶2 This year, the Tribunal rendered judgment on the multi-party *Butare* case, the multi-party *Bizimungu* case, the multi-party *Karemera* case, the single-party *Ndahimana* case, and the single-party *Gatete* case. It also rendered appeals decisions on the single party *Renzaho* case. Also, on June 28, 2011, the ICTR referred the *Uwinkindi* case to the courts of Rwanda in a precedent-setting decision. The referral is currently under appeal and that decision will have a significant impact on the ICTR Completion Strategy.

¶3 The remaining trial work is on pace to be completed by June 2012 and appeals work should be finished by the end of 2014.

2011 JUDGMENTS

A. Trial Chamber Judgments

- 2011-09-30—Bizimungu et al. ("Government II")
- 2011-06-24—Nyiramasuhuko et al. ("Butare")
- 2011-05-17—Ndindiliyimana et al. ("Military II")
- 2011-03-31—Gatete

1. Bizimungu et al. ("Government II")—ICTR-99-50-T[1]

i) Judgment—Decided September 30, 2011

¶4 The Court delivered a verdict acquitting two defendants, Casimir Bizimungu and Jérôme Bicamumpaka, of all counts of the Indictment as follows:

¶5 Bizimungu, Casimir: Having not found any allegations proven against Bizimungu, the Chamber acquitted Casimir Bizimungu of all counts of the Indictment. The Chamber ordered the immediate release of Bizimungu and requested the Registry to make necessary arrangements.

¶6 Mugenzi, Justin: (1) Based on Mugenzi's participation in the decision to remove Butare's Tutsi Prefect Jean-Baptiste Habyalimana, the Chamber convicted Justin Mugenzi for Conspiracy to Commit Genocide, pursuant to Count 1 of the Indictment (conspiracy to commit genocide based on the Interim Government's dismissal of Jean-Baptiste Habyalimana as Butare's prefect on April 17, 1994 and on President Théodore Sindikubwabo's speech in Butare on April 19, 1994, during the installation ceremony of Sylvain Nsabimana as the region's prefect). (2) Based on Mugenzi's participation in the subsequent installation ceremony where Sindikubwabo gave an inflammatory speech inciting the killing of Tutsis, the Chamber convicted Justin Mugenzi for Direct and Public Incitement to Commit Genocide, pursuant to Counts and 5 of the Indictment (direct and public incitement to commit genocide based only on President Théodore Sindikubwabo's speech in Butare on April 19, 1994, during the installation ceremony of Sylvain Nsabimana as the region's prefect), respectively, through their participation in a joint criminal enterprise. (3) Justin Mugenzi was acquitted of all the remaining counts in the Indictment. (4) As a result of this, the Chamber handed Justin Mugenzi a 30-year sentence.

¶7 Bicamumpaka, Jérôme: Having not found any allegations against Bicamumpaka, including those not contained in this summary, the Chamber acquitted Jérôme-Clément Bicamumpaka of all counts of the Indictment. The Chamber ordered the immediate release of Bicamumpaka and requested the Registry to make necessary arrangements.

¶8 Mugiraneza, Prosper: (1) Based on Mugiraneza's participation in the decision to remove Butare's Tutsi Prefect Jean-Baptiste Habyalimana, the Chamber convicted Prosper Mugiraneza for Conspiracy to Commit Genocide, pursuant to Count 1 of the Indictment. (2) Based on Mugenzi's and Mugiraneza's participation in the subsequent installation ceremony where Sindikubwabo gave an inflammatory speech inciting the killing of Tutsis, the Chamber convicted Justin Mugenzi and Prosper Mugiraneza for Direct and Public Incitement to Commit Genocide, pursuant to Counts 4 and 5 of the Indictment, respectively, through their participation in a joint criminal enterprise. (3) Prosper Mugiraneza was acquitted of all the remaining counts in the Indictment. (4) As a result of this, the Chamber handed Prosper Mugiraneza a 30-year sentence.

a) Summary

¶9 This case involves four individuals: Casimir Bizimungu, Justin Mugenzi, Jérôme Bicamumpaka and Prosper Mugiraneza. On April 9, 1994, days after Rwandan President Juvénal Habyarimana's plane was shot down, these four were installed as ministers in the Interim Government. Bizimungu was appointed as Minister of Health, Mugenzi as Minister of Trade and Industry, Bicamumpaka as Minister of Foreign Affairs, and Mugiraneza as Minister of Civil Service. The Prosecution has argued that members of the Interim Government, including these four, were selected based on their commitment to the elimination of Tutsis. Although members

[1] ICTR, Prosecutor v. Casimir Bizimungu et al., ICTR-99-45, http://www.unictr.org/tabid/128/Default.aspx?id=78&mnid=2.

of three different political parties, all adhered to a brand of politics called Hutu-Power, which opposed the Arusha Accords and reconciliation with the Tutsi dominated Rwandan Patriotic Front or "RPF".

¶10 The Prosecution seeks convictions on numerous counts, including conspiracy to commit genocide, genocide, complicity in genocide, direct and public incitement to commit genocide, crimes against humanity, and war crimes. The Prosecution charges all the accused with direct and superior responsibility.

¶11 The Defense teams have challenged the credibility of the Prosecution's evidence. They suggest that their political positions were not anti-Tutsi and were not involved in anti-Tutsi violence prior to the genocide. Once the genocide began, the Defense teams argue that each of the accused did not have the ability to prevent killings. They point to numerous public statements made by members of the Interim Government, which called on all Rwandans to avoid division and violence. Mugiraneza has presented an alibi as it relates to attacks in Kibungo prefecture in early April 1994. Bizimungu and Bicamumpaka have presented alibis that they were outside of Rwanda for considerable periods of time, particularly in April and May 1994.

b) Legal Issues/ Reasoning

1) Legality of Arrest and Detention

¶12 The Chamber dismissed the following two arguments: (1) that pursuant to the Statute, "a person may be arrested and placed in custody by the Tribunal only if there is a duly confirmed indictment against him or her", and that this procedure was not followed in Bizimungu's case and (2) that the evidence providing the basis for Bizimungu's arrest and detention was insufficient.

2) Notification of Charges Upon Arrest

¶13 The Chamber dismissed the following two arguments: Bizimungu and Bicamumpaka were denied their right to be notified of the charges against them upon arrest. With regards to Bizimungu, the Chamber found that there had been no material prejudice that would warrant a remedy.

3) Right to Counsel

¶14 The Chamber dismissed Bicamumpaka's argument that "at no point" when Bicamumpaka was arrested or during his interrogation by Prosecution investigators on April 8 and April 13, 1999 was "he informed of his right to free assistance to duty counsel" pursuant to article 20 (4)(a) and (d) of the Statute and article 21 (A) of the Directive on the Assignment of Defense Counsel. The Chamber reasoned that the Defense had not provided any submissions applicable to the enumerated principles justifying reconsideration and further, the Defense has not articulated any prejudice that has been suffered by Bicamumpaka.

4) Initial Appearance Without Delay

¶15 The Bizimungu Defense argued that Bizimungu was denied the right to an initial appearance without delay. It submits that, following his arrest on February 11, 1999 he was only brought before a Judge of the Tribunal after a period of seven months, on September 3, 1999. The Chamber understood Bizimungu's argument to be twofold: First, although not explicitly, he appeared to allege that his right to be brought before a Judge without delay upon his transfer to

the Tribunal pursuant to Rule 40*bis* (J) was violated. Second, he alleged violations of his right, pursuant to Rule 62 (A), to be brought before a Trial Chamber or a Judge thereof without delay and formally charged.

¶16 For the first issue, in any event, even if any violation of Bizimungu's right to be brought before a Judge without delay pursuant to Rule 40*bis* (J) had occurred, the Chamber was not satisfied that Bizimungu has suffered any material prejudice that required a remedy. For the second issue, the Chamber did not consider that any violation of Rule 62 (A) resulted in material prejudice to Bizimungu that would warrant a remedy.

5) Witness Tampering

¶17 The Defense teams for each of the accused raised specific and general allegations about witness tampering. The Chamber had addressed many of the specific considerations set forth by the accused on a case-by-case basis. Moreover, the Chamber observed that none of the Defense submissions argued that they had been denied access to witnesses as a result of witness intimidation or tampering. Viewing the specific allegations of witness tampering collectively along with general arguments pertaining to them, the Chamber did not consider these submissions to demonstrate that the trial as a whole has been unfair.

6) Disclosure Violation

¶18 The Bicamumpaka Defense submitted that it could not access the exculpatory material until August 22, 2011, a position that is not disputed by the Prosecution. The Chamber concluded that the Prosecution's conduct in this matter was inexcusable and it failed to inform the defense teams of exculpatory material, in some instances, for over a year. This material was clearly relevant, highly probative, and *prima facie* exculpatory of serious allegations upon which the Prosecution sought conviction. Regardless of the root cause for the Prosecution's repeated failure to discharge one of its primary duties, this had materially prejudiced the accused in this case. Also on a final note, the Chamber wished to remind the Office of the Prosecutor that the Appeals Chamber had twice stated that "the Office of the Prosecutor has a duty to establish procedures designed to ensure that, particularly in instances where the same witnesses testify in different cases, the evidence provided by such witnesses was re-examined in light of Rule 68 to determine whether any material has to be disclosed."

2. Nyiramasuhuko et al. ("Butare")—ICTR-98-42-T[2]

i) Judgment—Decided June 24, 2011

¶19 All six defendants were charged with genocide; conspiracy to commit genocide; complicity in genocide; the crimes against humanity of extermination, murder, persecution, and other inhumane acts; and violence to life as a war crime. All but Ntahobali were also charged with direct and public incitement to commit genocide. Additionally Nyiramasuhuko and Ntahobali were charged with rape as a crime against humanity, and with outrages upon personal dignity as a war crime. The convictions and sentencing were as follows:

¶20 Nyiramasuhuko: sentenced to life in prison; found guilty of genocide; conspiracy to commit genocide; extermination, rape, and persecution as a crime against humanity; violence to life as a war crime; and outrages upon personal dignity as a war crime; found not guilty of: direct

[2] ICTR, Prosecutor v. Nyiramasuhuko et al., ICTR-97-21, http://www.unictr.org/tabid/128/Default.aspx?id=83&mnid=2.

and public incitement to commit genocide; and other inhumane acts as a crime against humanity; charges dismissed: complicity in genocide (pled in the alternative); and murder as a crime against humanity (cumulative of extermination)

¶21 Ntahobali: sentenced to life in prison; found guilty of genocide; extermination, rape, and persecution as a crime against humanity; violence to life as a war crime; and outrages against personal dignity as a war crime; found not guilty of: direct and public incitement to commit genocide; other inhumane acts as a crime against humanity; and conspiracy to commit genocide; charges dismissed: complicity in genocide (pled in the alternative); and murder as a crime against humanity (cumulative of extermination).

¶22 Nsabimana: sentenced to 25 years in prison; found guilty of genocide; extermination and persecution as a crime against humanity; and violence to life as a war crime; found not guilty of: direct and public incitement to commit genocide; other inhumane acts as a crime against humanity; and conspiracy to commit genocide; charges dismissed: complicity in genocide (pled in the alternative); and murder as a crime against humanity (cumulative of extermination).

¶23 Nteziryayo: sentenced to 30 years in prison; found guilty of direct and public incitement to commit genocide; found not guilty of: genocide; complicity in genocide; murder, extermination, persecution, and other inhumane acts as a crime against humanity; and violence to life as a war crime.

¶24 Kanyabashi: sentenced to 35 years in prison; found guilty of genocide; conspiracy to commit genocide; direct and public incitement to commit genocide; extermination and persecution as a crime against humanity; and violence to life as a war crime; found not guilty of: other inhumane acts as a crime against humanity; charges dismissed: complicity in genocide (pled in the alternative); and murder as a crime against humanity (cumulative of extermination).

¶25 Ndayambaje: sentenced to life in prison; found guilty of genocide; direct and public incitement to commit genocide; extermination and persecution as a crime against humanity; and violence to life as a war crime; found not guilty of: other inhuman acts as a crime against humanity; charges dismissed: complicity in genocide (pled in the alternative); and murder as a crime against humanity (cumulative of extermination).

¶26 All six defendants are currently appealing their judgments.

a) Summary

¶27 The six Accused were indicted for crimes taking place in the Butare *Préfet* during 1994. Among them, Pauline Nyiramasuhuko is the first woman ever indicted by the ICTR and first woman in history to be indicted and convicted of rape as a crime against humanity. The case was the ICTR's largest and longest-running ever, lasting over 10 years with 189 witnesses, 13,000 pages of documents admitted to evidence, and 125,000 court proceeding transcript pages. Decisions on all of the charges against all six defendants were handed down in a single judgment on June 24, 2011.

1) The Accused

¶28 **Pauline Nyiramasuhuko**, the former Minister of Family Affairs and Women's Development for the Interim Government of Rwanda, is the first woman ever indicted by the ICTR, the first woman convicted of genocide, and the first woman in the history of international criminal law to be indicted and convicted of rape as a crime against humanity.

¶29 **Arsene Shalom Ntahobali** is Nyiramasuhuko's son. He carried out his mother's orders and commanded his own militias, although he was a student in 1994 and did not hold a government position.

¶30 **Sylvain Nsabimana** served as *Préfet* of the Butare province from April 19 until June 17, 1994. He replaced Jean Baptiste Habyalimana, who at the time was the only *Préfet* of Tutsi descent in the country and was removed for openly opposing the massacres in Butare.

¶31 **Alphonse Nteziryayo** served as lieutenant colonel in the armed forces and was appointed *Préfet* of Butare on June 17, 1994 (successor to Nsabimana). Although it was established that Nteziryayo encouraged the Butare population to seek out and kill Tutsis, it was not established that his behavior led to any specific instances of killing.

¶32 **Joseph Kanyabashi** was the long-serving *Bourgmestre* (mayor) of Ngoma commune from 1974 through July 1994. Kanyabashi was found to bear superior responsibility in multiple attacks against Tutsi refugees, including responsibility for the participation of commune police officers.

¶33 **Élie Ndayambaje,** a former *Bourgmestre* of the Muganza commune, was reappointed to his post as *Bourgmestre* on June 18, 1994. Ndayambaje exhibited "considerable moral authority" over the population of the *Préfet*, and his presence at various attacks provided assailants tacit approval.

2) Factual Background

¶34 As violence escalated throughout the country and the Butare *Préfet*, civilians sought refuge at the Butare *Préfet* Office (BPO), and instead were subjected to abductions, rapes and murder by assailants. The Chambers described the evidence presented by survivors of the crimes at the BPO as "among the worst encountered by this Chamber," painting "a clear picture of unfathomable depravity and sadism."

¶35 The prosecution alleged that Nyiramasuhuko and Ntahobali led *Interahamwe* in these abductions, assaults and killings. It also alleged that both participated as supervisors to rapes and kidnappings, which were taking place systemically throughout Rwanda. The defense submitted alibis and claimed the Prosecution's witnesses were not credible, and that ordering rapes and killings was contrary to Nyiramasuhuko's character. Nyiramasuhuko's original indictment was amended to include the charge of rape as a crime against humanity, alleging that she supervised but did not order rapes.

¶36 The Prosecution alleged that Nsabimana was present at the BPO during the assaults, rapes, abductions and killings and did nothing to put an end to the attacks despite being asked for protection. The Defense argued that Nsabimana's responsibility should be limited to the crimes that took place when he was actually present at the BPO. Nsabimana did not dispute the incidents. The Chambers finds that as *Préfet*, Nsabimana had a legal duty to act to protect the civilians at the office, a duty which is further enforced by provisions of the Rwandan Penal Code, Rwandan domestic law, and the Geneva Conventions. Nsabimana knew of the attacks at the office, he was asked directly by Tutsis for protection, and he requisitioned armed forces to protect Tutsi civilians at the office, but not until between June 5 and 15. Nsabimana therefore had the ability to take action that would have alleviated the situation of recurring abductions, rapes, and killings, and failed to do so.

¶37 The Prosecution alleged that Nyiramasuhuko conspired to commit genocide by entering into an agreement with members of the Interim Government on or after April 9, 1994 to kill Tutsis within Butare with the intent to destroy in whole or in part the Tutsi ethnic group. Between April 9 and April 14, 1994, the Interim Government adopted directives and issued

instructions with the intention of encouraging the population to hunt down and take action against the "enemy;" terms referring to Tutsis in general. Nyiramasuhuko took part in these discussions and decisions to adopt these directives, which did in fact trigger the onslaught of killings of Tutsis. She agreed with other members of the Interim Government to remove *Préfet* Habyalimana of Butare, who opposed the killing of Tutsis, and to replace him with Nsabimana. Her presence at Nsabimana's swearing in ceremony on April 19 lent further evidence of support for the Interim Government and its directives. Thus, the Chamber found that the Prosecution's allegations could be proven beyond a reasonable doubt and Nyiramasuhuko conspired with the Interim Government to commit genocide.

¶38 The Prosecution also alleged that Ntahobali and Nsabimana participated in conspiracy with other Accused by identifying places where Tutsis would be separated from Hutus; however, the Chambers found that this was not proven beyond a reasonable doubt.

b) Legal Issues/Reasoning

¶39 Among the major issues facing the Chamber in deciding this land-mark case were: determining the credibility of alibi witness testimony, distinguishing between defendants' responsibility as a supervisor and conduct leading to specific instances of killing, and dealing with defective indictments.

1) Credibility of Alibi Witness Testimony

¶40 The Chamber first examined alibi evidence to determine if the alibis were reasonably true, then examined prosecution evidence, and then examined each specific allegation in light of the totality of evidence. The Chamber did not find any of Nyiramasuhuko's alibis raised a reasonable doubt of her presence at the Butare Préfet Office. Additionally, the Chamber did not find Ntahobali's alibis credible. After consideration of the evidence and testimony of witnesses, the Chamber found the Prosecution proved beyond a reasonable doubt that between April 19 and late June 1994 Nyiramasuhuko and Ntahobali, leading Interahamwe soldiers, went to the BPO and abducted hundreds of Tutsis whom they physically assaulted, raped and killed.

2) Supervisor Responsibility vs. Specific Conduct

¶41 The Chamber found beyond a reasonable doubt that Nteziryayo, at a meeting in Muyaga commune around mid-June, referred to Tutsis as "lice", whose "eggs" needed to be destroyed. At another meeting, Nteziryayo encouraged the population to seek out and kill all Tutsi women married to Hutu men and kill their children. Furthermore, Nteziryayo played a role in the training exercises and distribution of weapons throughout Butare. Although Nteziryayo has been indicted on three counts of incitement to commit genocide, it has not been established that his conduct contributed to any specific instances of killing.

¶42 The Prosecution alleged that Ntahobali manned the Hotel Ihuliro roadblock, which he utilized to abduct, rape and kill Tutsis, among them a Tutsi girl. The further alleged that he ordered Interahmwe to kill a Tutsi named Leopold Ruvurajabo and that he aided and abetted the killing of the Rwamukwaya family. The Prosecution also alleged that Nyiramasuhuko participated in the killings and rapes in a supervisory role. The Chambers found clear support for the allegations against Ntahobali but found that it had not been established beyond a reasonable doubt that Nyiramasuhuko was present at the time when any specific crime was perpetrated or that she was a superior to anyone who did perpetrate the crime, so she has been acquitted of this charge.

¶43 It could not be proven beyond a reasonable doubt that the presence and silence of Nyiramasuhuko, Ntahobali and Nsabimana during inflammatory speeches on April 19, 1994, during Nsabimana's swearing in ceremony, substantially contributed to the genocide of Tutsis that followed. In contrast to Nyiramasuhuko's decision to adopt directives, which did directly lead to the killings of Tutsis, their presence and silence merely showed tacit approval of the inflammatory speeches.

¶44 Nsabimana's supervisory role at the Butare *Préfet* Office was integral to the Chambers' decision to find him guilty. While he did not personally commit atrocities or violence, he failed to take necessary and available means to protect citizens of *Butare* from violence, even though these means were available to him.

¶45 Defective Indictments

¶46 Although the Chamber believed the evidence clearly established that Nyiramasuhuko played a role in ordering rapes, the Chamber considered it a serious omission on the part of the prosecution in that they failed to allege that she ordered the rapes, and only that she had responsibility as a superior of *Interahamwe*. Therefore, Nyiramasuhuko could only be charged as having superior responsibility, as opposed to actually ordering rapes, which is considered a less severe offense. The rapes were clearly charged in support of the counts of rape as a crime against humanity and outrages upon personal dignity as a war crime, and the Chamber found evidence that Nyiramasuhuko had used her influence and supervisory position to incite those under her authority to commit acts of rape, which supported these counts. Despite the defective indictment, Nyiramasuhuko is the first woman to be convicted of rape by an international tribunal.

¶47 Ntahobali's indictment was also defective in that it did not charge rape as genocide, only rape as a crime against humanity and rape as a war crime. The Chamber was of the opinion that his actions of ordering and committing violent rapes as part of a systemic network of sexual violence across the country constituted rape as genocide. However, he could only be convicted of rape as a crime against humanity because the Defense would have had insufficient notice of the charge of rape as genocide. The effect was that the rapes would not be taken into consideration when assessing the genocide charge. Rapes were clearly charged in support of the counts of rape as a crime against humanity and outrages upon personal dignity as a war crime, and the Chamber found the evidence to support these counts.

¶48 Kanyabashi was found to be guilty of inciting the population to commit genocide in his use of a megaphone throughout Butare—encouraging the commune to search for and kill Tutsis. Additionally, he played a role in training exercises and distribution of weapons throughout Butare. It was also found that Kanyabashi played a primary role in the Kabakobwa Hill and Matyzo Clinic attacks, supervising the killing of hundreds or thousands of Tutsis. While the Chamber did not find Kanyabashi directly ordered the attacks, it found he bore superior responsibility for the participation of the police officers. Regarding the Matyzo Clinic attacks, the prosecution alleged Kanyabashi ordered soldiers to open fire on refugees taking shelter at the clinic, however, the prosecution did not charge him with these deaths, but instead alleged that he was responsible as a superior. The Chamber considered this a serious omission on the part of the Prosecution**.** The majority of Chamber found, one dissenting, that Kanyabashi was responsible as a superior for these killings.

3. Ndindiliyimana et al. ("Military II")—ICTR-00-56-T[3]

i) Judgment—Decided May 17, 2011

¶49 The Military II trial included 4 defendants - Augustin Bizimungu, Augustin Ndindiliyimana, Francois-Xavier Nzuwonemeye, and Innocent Sagahutu. Bizimungu, the Chief of Staff of the Rwandan Army in 1994, and Ndindiliyimana, the Chief of Staff of the Rwandan Police, were among the most senior figures to be tried by ICTR. Bizimungu was found guilty of genocide, murder, extermination and rape as crimes against humanity, murder as violation of article 3, rape, humiliating and degrading treatment as violation of Article 3. He received a sentence of 30 years with credit for time served. Ndindiliyimana, though found guilty of genocide, murder and extermination as crimes against humanity and murder as violation of article 3, only received a sentence of time served. Nzuwonemeye and Sagahutu were both found guilty of murder as a crime against humanity and murder as a violation of article 3. Both received a sentence of 20 years with credit for time served.

a) Summary

¶50 The Court considered several mitigating factors in determining Ndindiliyimana's sentence, including his limited command over the police after April 6, 1994, his opposition to the massacres in Rwanda, and his consistent support for the Arusha Accords and peaceful resolution of the conflict. Ndindiliyimana's judgment and sentence was controversial. Some said that by finding him guilty yet setting him free immediately, the Court avoided having to justify his 11-year detention prior to judgment.

¶51 Nzuwonemeye and Sagahutu were also found to have ordered the killing of Prime Minister Agathe Uwingiliyimana. They were also held responsible for the killing of the Belgian UN soldiers protecting the prime minister, which triggered the withdrawal of the UN force stationed in Rwanda.

¶52 In May, Ndindiliyimana's Counsel said he was not sure if they were going to appeal his conviction. The Prosecution in this case filed a notice of appeal in July. There was no significant progress in the appeals case during 2011.

b) Legal Issues

1) Defects in the Indictment

¶53 In many of these cases, including *Military II*, the issue of specificity in the indictment has arisen. The ICTR held the prosecution must be specific in its charges and cannot "mold its case against the accused in the course of the trial." The Chamber further interpreted article 20(4) of the relevant Statute to mean that the prosecution must plead the precise legal qualification of the offense as well as the material facts underlying it so as not to prejudice the accused.

¶54 In the case of *Military II*, the Chambers found most of the defendants' arguments in this matter to be without merit. However, they did dismiss charges an alleged speech inciting genocide due to non-specific language. Paragraphs 30 and 31 of the Indictment allege that Bizimungu addressed his troops on two occasions stating that the enemy was the Tutsi and that if the RPF attacked Rwanda again, he did not want to see one Tutsi alive in his sector. The Chambers ruled that these allegations were "impermissible broad, ambiguous, and vague"

[3] ICTR, Prosecutor v. Ndindiliyimana et al., ICTR-00-56, http://www.unictr.org/tabid/128/Default.aspx?id=87&mnid=2.

because they were not specific enough as to the location of the speech nor did they provide any details about the troops at the speech. Accordingly, the charges were dismissed.

4. Gatete, Jean Baptiste—ICTR-00-61-T[4]

i) Judgment—Decided March 31, 2011

¶55 Jean-Baptiste Gatete was charged with genocide, complicity in genocide, conspiracy to commit genocide, extermination, murder, and rape as crimes against humanity. The Court found him guilty of genocide and extermination as a crime against humanity. The other charges were dismissed because convictions for those charges could not be entered based on the same facts used to enter convictions for genocide and extermination.

a) Summary

¶56 Prior to the genocide, he was mayor of the Murambi Commune and later became a Director within the Ministry of Women and Family Affairs. Some charges alleged that attacks he was at least partially responsible for occurred at parishes and hospitals where Tutsis had taken refuge. Gatete was sentenced to life in prison, though the Defense argued that the sentence should be reduced due to mitigating circumstances including his lengthy public service prior to the genocide during which he supposedly appointed Tutsis to positions of authority, his family situation, and his ill health. The Court gave these considerations very little weight in light of his crimes and aggravating circumstances including the number of victims, places of attacks (parishes and hospitals which have a universally recognized status as sanctuaries), his abuse of authority to ensure assailants attacked Tutsis, and the fact that he participated with "particular zeal," providing material support, issuing express orders, and assuming a lead role in the killings. The consideration of what could be considered aggravating factors was based largely on the findings of earlier cases, and the Court relied upon several witnesses in determining that these aggravating factors had been proven beyond a reasonable doubt.

b) Legal Issues

¶57 The Court also addressed several legal issues prior to handing down Gatete's judgment and sentence. The first issue was undue delay of Gatete's trial. Defense attorneys argued that the 7-year delay between Gatete's arrest and commencement of trial was too long and unjustified. Further, the Defense argued Gatete suffered prejudice because of the deprivation of his liberty, and it adversely affected trial preparation because witnesses' memories and availability had diminished. The Prosecution maintained that delay was due to the structure and resources of the Tribunal, and they also noted that they requested to transfer the trial because of limited resources, and Gatete avoided arrest, which further delayed trial. The Court found several instances of unexplained delay, but held that the Defense failed to show prejudice was suffered until the closing brief (indicating that it was minimal), the delay was not undue (citing complexity of the case, number of counts, and nature of the crimes), and prejudice was minimal if at all, so no remedy was required.

¶58 Another issue concerned the impact of protective measures for witnesses. The Defense argued that prosecution abused protective measures by having witnesses testify under pseudonyms, and the disclosure of witnesses' identities only 30 days before trial hurt their ability

[4] ICTR, Prosecutor v. Jean Baptiste Gatete, ICTR-00-61, http://www.unictr.org/tabid/128/Default.aspx?id=2&mnid=2.

to prepare defenses. In response, the Prosecution noted that the Defense had not demonstrated any prejudice, and many other groups could have advised witnesses to testify using pseudonyms. The Court agreed with the Prosecution and found that advice to use a pseudonym could have originated from several sources, and the Defense failed to show disclosure of identity 30 days before trial was not sufficient time or that the Prosecution acted improperly.

¶59 Further, the Defense argued that they suffered prejudice because 8 of the 30 trial days were conducted according to Rule 15bis, which allows the hearings to continue even in the absence of one of the Judges. The Defense maintained that because of this, the testimonies of 12 witnesses were affected, and that the assessment of those witnesses was different when viewed on video rather than during live testimony. The Defense also argued that the absence of one Judge affected the level of questioning from the Bench during trial. The Court found that the preference for live testimony was not absolute, courts take many factors into consideration in assessing credibility, and the Defense did not previously object to this, did not ask to recall any witnesses, therefore there was no merit to this claim.

¶60 Additionally, the Court addressed an issue on the Accused's right to silence. The Prosecution argued that the Chamber should draw negative inferences from Gatete's refusal to testify. However, the Defense disputed this, citing the jurisprudence of this Tribunal, the ICTY and the Rome Statute, which say that no negative inference can be drawn from the Accused's silence. The Court agreed with the Defense on this issue, noting that article 20 of the Statute guarantees the right not to testify, and the Appeals Chamber had held that any negative inference from a failure to testify is prohibited.

¶61 Gatete has appealed his conviction, but there have been no significant developments in his appeal during 2011.

c) Other Interesting Notes

¶62 Genocide Watch credited the US Rewards for Justice Program, which offers financial rewards for information leading to the arrest of international suspects, with capturing Gatete. Before his capture, he had actually been detained once in Tanzania but released a month later. The UN High Commissions for Refugees actually provided a plane to transfer him to Zaire, despite the fact that he was continuing to conspire to complete the genocide and regain power in Rwanda.

B. Appeals Chamber Judgments

¶63 2011-12-14—Bagosora and Nsengiyumva

¶64 2011-12-14—Ntawukulilyayo

¶65 2011-09-28—Munyzkazi

¶66 2011-09-28—Sateko

¶67 2011-04-11—Renzaho

1. Bagosora, Theoneste and Nsengiyumva, Anatole—ICTR-98-41-A[5]

i) Judgment—Decided December 14, 2011

¶68 Bagosora: the Appeals Chamber set aside the sentence of life imprisonment imposed by the Trial Chamber and imposed a 35-year sentence.

¶69 Nsengiyumva: the Appeals Chamber set aside the sentence of life imprisonment imposed by the Trial Chamber and imposed a 15-year sentence. In light of time served, the Chamber ordered Nsengiyumva's immediate release. In determining the impact of the Chamber's findings on sentencing, the Chamber noted that the reversal of nearly all of Nsengiyumva's convictions represented a signification reduction in his culpability and therefore required a revision of his sentencing. However, the Chamber also noted that he remained convicted of "extremely serious crimes."

a) Summary

¶70 Bagosora: served as Cabinet Director for the Rwanda Ministry of Defense from June 1992 to July 14, 1994. The Trial Chamber found Bagosora guilty of genocide, crimes against humanity, and serious violations of article 3 for ordering the murder of Augustin Maharangari and crimes committed at the Kigali area roadblocks. The Chamber found he could be held responsible as a superior for the killings of Prime Minister Agathe Uwilingiyimana and other peacekeepers, as well as for rapes committed at the Kigali area roadblocks. Bagosora was sentenced to life in prison.

¶71 Nsengiyumva: served as Commander of the Gisenyi Operational Sector from June 1993 to July 1994. The Trial Chamber found Nsengiyumva guilty of genocide, crimes against humanity, and serious violations of article 3 for ordering killings in Gisenyi town in April of 1994. The Chamber also found he aided and abetted killings in the Bisesero area of the Kibuye prefecture in June 1994. The Chamber found he could be held responsible as a superior and considered this in sentencing. Nsengiyumva was sentenced to life in prison.

b) Legal Issues

1) Nsengiyumva:

(i) Alleged Errors Relating to Fairness of Proceedings

¶72 The Appeals Chamber found that the Trial Chamber violated Nsengiyumva's right to be tried in his presence by continuing the trial over four days of medically justified absence. However, the Appeals Chamber concluded Nsengiyumva suffered no prejudice as a result and ultimately dismissed the appeal.

(ii) Alleged Errors Relating to the Indictment

¶73 The Appeals Chamber found the indictment defective in that Nsengiyumva was not charged with the crimes committed in Bisesero for which he was found responsible. The Appeals Chamber stated that, in reaching its judgment, the Trial Chamber as only permitted to convict the accused of crimes that are charged in the indictment. Therefore, the Appeals Chamber reversed Nsengiyumva's convictions based on the crimes committed at Bisesero in June 1994.

[5] ICTR, Prosecutor v. Theoneste Bagosor and Anatole Nsengiyumva, ICTR 96-7, http://www.unictr.org/tabid/128/Default.aspx?id=10&mnid=3.

(iii) Alleged Errors Regarding Evidentiary Matters

¶74 The Chamber found there was a lack of sufficient evidence to prove beyond a reasonable doubt that Nsengiyumva was involved with the killing of Alphonse Kabiligi, crimes committed at Nyundo Parish, and crimes committed at Mudende University. Therefore, the Chamber reversed his convictions based these counts.

(iv) Alleged Errors Regarding Cumulative Convictions

¶75 The Appeals Chamber found the Trial Chamber erred in entering cumulative convictions for murder and extermination as crimes against humanity for the Gisenyi town killings. Therefore, the Chamber vacated Nsengiyumva's conviction for murder as a crime against humanity.

2) Bagosora:

(i) Errors Relating to Evidentiary Matters

¶76 Because Bagosora was also convicted of crimes relating to the killing of Alphonse Kabiligi, crimes committed at Nyundo Parish, and crimes committed at Mudende University—on the basis that Nsengiyumva was under his command—the Chamber reversed Bagosora's convictions based on these counts.

¶77 The Appeals Chamber found the Trial Chamber erred in finding Bagosora responsible for failing to prevent the deaths of four peacekeepers that were killed before his visit to Camp Kigali. However, the Chamber also found that Bagosora failed to show the Trial Chamber erred in finding him responsible for failing to prevent the deaths of peacekeepers still alive at the time of his visit.

(ii) Alleged Violations of Fair Trial Rights

¶78 The Appeals Chamber found the Trial Chamber erred in failing to enforce the subpoena requiring the testimony of Marcel Gatsinzi, acting Chief of Staff of the Rwandan army between April 7 and April 9 1994, thereby depriving Bagosora of a potentially important witness and his right to present his Defense. However, the Appeals Chamber concluded this error was remedied by Gatsinzi's evidence being heard on appeal. Therefore, the violation did not amount to an error of law invalidating the Trial Judgment.

(iii) Alleged Errors Relating to the Sexual Violence Against the Prime Minister

¶79 The Appeals Chamber noted "the desecration of Prime Minister Uwilingiyimana's corpse constituted a profound assault on human dignity meriting unreserved condemnation under international law." However, one judge dissenting, the Chamber found that Bagosora was not charged with the desecration of the Prime Minister's corpse and therefore could be convicted of the same. Consequently, the Chamber reversed Bagosora's conviction for other inhumane acts as a crime against humanity with respect to this incident.

2. Ntawukulilyayo, Dominique—ICTR-05-82-A[6]

i) Judgment—Decided December 14, 2011

¶80 On appeal, the Chamber affirmed Ntawukulilyayo's conviction of aiding and abetting but reduced his sentence by five years.

a) Summary

¶81 On August 3, 2010, the Chamber convicted Ntawukulilyayo of genocide for ordering, and aiding and abetting the killing of Tutsi civilians at Kabuye Hill and the Butare prefecture in April of 1994. He was sentenced to 25 years in prison.

¶82 On appeal, the Chamber found that he was not charged with having ordered the attacks at Kabuye Hill, and the Trial Chamber therefore erred in convicting him of ordering genocide in those killings. However, the Chamber affirmed his conviction of aiding and abetting genocide in his actions of instructing refugees to relocate to Kabuye Hill and also transporting soldiers there.

¶83 The Chamber reduced his sentence to 25 years imprisonment.

3. Munyakazi, Yussuf—ICTR-97-36A-A[7]

i) Judgment—Decided September 28, 2011

¶84 On September 28, 2011, the Appeal of Chamber affirmed (1) Munyakazi's convictions for genocide and extermination as a crime against humanity, the original conviction and (2) the sentence of 25 years of imprisonment imposed on Munyakazi by the Trial Chamber to run as of this day, subject to credit being given under Rules 101(C) and 107 of the Rules for the period he had already spent in detention since his arrest on May 5, 2004.

a) Summary

¶85 Munyakazi was born in 1936 in Rwamatamu Commune, Kibuye Prefecture, Rwanda. At the time of the relevant events in 1994, he lived in Bugarama Commune, Cyangugu Prefecture, where he had become a wealthy landowner and farmer. The Trial Chamber concluded that he held *de facto* authority over the *Interahamwe* from Bugarama during attacks against Shangi and Mibilizi parishes on April 29 and 30, 1994, respectively. Based on Munyakazi's role during these attacks, the Trial Chamber convicted him of committing genocide and extermination as a crime against humanity. The Trial Chamber sentenced Munyakazi to a single term of 25 years of imprisonment.

¶86 Both Munyakazi and the Prosecution appealed. Munyakazi advanced eight grounds of appeal challenging his convictions and sentence. The Prosecution responded that Munyakazi's appeal should be dismissed in its entirety. The Prosecution presented three grounds of appeal against the Trial Judgment. It requested the Appeals Chamber convict Munyakazi for committing genocide and extermination as a crime against humanity at Nyamasheke parish; to find him responsible for genocide and extermination as a crime against humanity based on his participation in a joint criminal enterprise in connection with the massacres at Nyamasheke,

[6] ICTR, Prosecutor v. Dominique Ntawukulilyayo, ICTR-05-82, http://www.unictr.org/tabid/128/Default.aspx?id=8&mnid=2.

[7] ICTR, Prosecutor v. Yussuf Munyakazi, ICTR-97-36A, http://www.unictr.org/tabid/128/Default.aspx?id=6&mnid=2.

Shangi, and Mibilizi parishes; and to increase his sentence to life imprisonment. Munyakazi responded that the Prosecution's appeal should be dismissed.

b) Legal Issues/ Reasoning

¶87 The Appeals Chamber dismissed the following arguments put forward by Munyakazi: errors in assessing the alibi, errors relating to Munyakazi's authority, errors relating to Shangi Parish, errors relating to Mibilizi Parish, errors relating to Transportation, and errors relating to the legal elements of the crime due to lack of demonstration.

4. Setako, Ephrem—ICTR-04-81-A[8]

i) Judgment—Decided September 28, 2011

¶88 On September 28, 2011, the Appeal of Chamber affirmed: (1) Setako's conviction for genocide for ordering the April 25 and May 11 killings; (2) Setako's convictions for extermination as a crime against humanity, and for violence to life, health, and physical or mental well-being of persons (murder) as a serious violation of article 3 common to the Geneva Conventions and of Additional Protocol II for the April 25 Killings; (3) the sentence of 25 years imprisonment imposed on Setako by the Trial Chamber to run as of sentence day, subject to credit being given under Rules 101(C) and 107 of the Rules for the period Setako has already spent in detention since his arrest on February 25 2004.

a) Summary

¶89 Ephrem Setako was born on May 5, 1949 in Nkuli Commune, Ruhengeri Prefecture, Rwanda. In 1994, he held the rank of Lieutenant Colonel in the Rwandan Army and served as head of the legal affairs division of the Rwandan Ministry of Defense. The Trial Chamber convicted him of genocide under Article 6(1) of the Statute for ordering the killings of 30 to 40 Tutsis at Mukamira military camp on April 25, 1994 and the killings of nine or ten Tutsis at this camp on 11 May 1994. With regard to the killings on April 25, 1994, the Trial Chamber further entered a conviction for extermination as a crime against humanity and violence to life, health, and physical or mental well being of persons (murder) as a serious violation of article 3 common to the Geneva Conventions and of Additional Protocol II. The Trial Chamber sentenced Mr. Setako to a single term of 25 years imprisonment.

b) Legal Issues

¶90 The Appeals Chamber dismissed all Mr. Setako's arguments: violation of fair trial rights, errors in the assessment of evidence, violation of the standard and burden of proof, error in finding Mr. Setako responsible for ordering, and error in relation to the nexus between the April 25 killing and an armed conflict. The Appeals Chamber granted the Prosecution's appeals, Failure to Enter a Conviction for the May 11 Killings as a War Crime and Sentencing, but found that this did not warrant an increase in Mr. Setako's sentence.

¶91 Per "***Failure to Enter a Conviction for the May 11 Killings as a War Crime***", the Appeals Chamber noted that the Trial Chamber did not make a finding as to whether Mr. Setako incurred responsibility under Count 5 of the indictment. This failure constituted an error of law. Furthermore, the Appeals Chamber found that based on its factual findings in relation to the May

[8] ICTR, Prosecutor v. Ephrem Setako, ICTR-04-81, http://www.unictr.org/tabid/128/Default.aspx?id=98&mnid=2.

11 killings, the Trial Chamber ought to have convicted Mr. Setako under Count 5. Its failure to do so thus constituted an error of law. The Appeals Chamber therefore granted the Prosecution's first ground of appeal and convicted.

¶92 Per "***Sentencing***", the Appeals Chamber dismissed all of the Prosecution's arguments on this ground except for its assertion, that the Trial Chamber erred in taking into consideration, as an individual and mitigating factor, that the Prosecution had presented evidence during trial in relation to allegations which were withdrawn or not allowed to be added to the indictment. The Appeals Chamber noted that the Trial Chamber did not conclude that Mr. Setako's right to a fair trial had been violated by the presentation of this evidence. Given the lack of such a finding, the Appeals Chamber found that the Trial Chamber abused its discretion in considering this issue as a factor in the determination of Mr. Setako's sentence. It therefore allowed the Prosecution's third ground of appeal in part.

5. Renzaho, Tharcisse—ICTR-97-31-A[9]

i) Judgment—Decided April 1, 2011

¶93 The Appeals Chamber set aside some of Renzaho's convictions but the crimes for which Renzaho remains convicted are extremely grave. These crimes include genocide, murder as a crime against humanity, and murder as a serious violation of article 3 common to the Geneva Conventions and of Additional Protocol II. Consequently, the reversals did not impact the sentence imposed by the Trial Chamber. Thus, the Appeals Chamber affirmed Renzaho's sentence of imprisonment for the remainder of his life.

a) Summary

¶94 Renzaho was a Colonel in the *Forces Armees Rwandaises* and Prefect of Kigali-Ville Prefecture.

¶95 On July 14, 2009, Trial Chamber I of the ICTR found Renzaho guilty of genocide, murder as a crime against humanity, rape as a crime against humanity, and other serious violations of article 3 common to the Geneva Conventions.

¶96 Renzaho appealed, requesting that the Appeals Chamber overturn the Trial Judgment, acquit on all Counts of the Indictment, and order his immediate release, or alternatively, that the Appeals Chamber impose a sentence that reflected his true level of responsibility. On April 1, 2011, the Appeals Chamber of the ICTR delivered his appeals judgment.

b) Legal Issues

1) Alleged Bias of Judges

¶97 Renzaho contended that his right to a fair trial was violated because the Judges sentencing him were biased due to their participation in previous trials where Renzaho was cited for incriminating evidence.

¶98 The Appeals Chamber concluded that there was no contradiction in the Trial Chamber's findings, stating "a Judge is not disqualified from hearing two or more criminal trials arising out of the same series of events, where he is exposed to evidence relating to these events in both

[9] ICTR, Prosecutor v. Tharcisse Renzaho, ICTR-97-31-DP, http://www.unictr.org/tabid/128/Default.aspx?id=96&mnid=3.

cases." That the Trial Chamber's conclusions were unfavorable to Renzaho did not in itself demonstrate bias or a violation of the presumption of innocence.

¶99 Alleged Violations of the Right to a Fair Trial

¶100 Renzaho claimed that his trial was unfair. He submitted that the Trial Chamber erred in the application of Rule 68 of the Rules, and erred in the application of Rule 92*bis*(A) of the Rules.

¶101 The Trial Chamber found that the Prosecution violated Rule 68 by failing to provide exculpatory material to the Defense in four instances. However, the Chamber held that Renzaho was not prejudiced by this violation. Renzaho appealed this decision.

¶102 The Appeals Chamber held that a determination of prejudice is a discretionary decision and as such, the Appeals Chamber would only overturn this determination if it was found to be (1) based on an incorrect interpretation of governing law; (2) based on a patently incorrect conclusion of fact; or (3) so unfair or unreasonable as to constitute an abuse of the Trial Chamber's discretion. On these grounds, the Appeals Chamber decided that Renzaho was not prejudiced.

¶103 Renzaho contended that the Trial Chamber erred in its refusal to admit three statements, thus violating Rule 92*bis*(A). The Appeals Chamber held that such a decision was a discretionary matter and thus invoked the same rule concerning discretionary decision mentioned above. Following the same line of reasoning, the Appeals Chamber found that the Trial Chamber's decision in this matter did not prejudice Renzaho.

C. Ongoing Cases

¶104 **Ildephonse Nizeyimana,** a Captain in the Forces Armees Rwandaises, is charged with genocide, extermination as a crime against humanity, murder as a crime against humanity, rape as a crime against humanity, murder as a violation of the Geneva Conventions, and rape as a violation of the Geneva Conventions.

¶105 **Augustin Ngirabatware,** the Minister of Planning of the National Republican Movement for Democracy and Development (MRND), is charged with conspiracy to commit genocide, genocide, complicity in genocide, direct and public incitement to commit genocide, extermination as a crime against humanity, and rape as a crime against humanity.

¶106 **Callixte Nzabonimana**, the Minister of Youth and Associative Movements of the MRND, is charged with genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, extermination as a crime against humanity, and murder as a crime against humanity.

¶107 **Gregoire Ndahimana**, the burgomaster of Kivumu Commune in Kibuye prefecture, is charged with genocide, complicity in genocide, conspiracy to commit genocide, and crimes against humanity for extermination.

D. Cases on Appeal

¶108 The following cases are currently on appeal. In most of the cases below, no significant decisions were made during 2011.

¶109 **Bizimungu, Augustin:** addressed in conjunction with judgment.

¶110 **Gatete, Jean-Baptiste:** addressed in conjunction with judgment.

¶111 **Hategekimana, Idelphonse**

¶112 **Kanyabashi, Joseph:** addressed in conjunction with judgment.

¶113 **Kanyarukiga, Gaspard**

¶114 **Ndahimana, Gregoire**
¶115 **Ndayambaje, Elie:** addressed in conjunction with judgment.
¶116 **Ndindiliyimana, Augustin**: addressed in conjunction with judgment.
¶117 **Nsabimana, Sylvain:** addressed in conjunction with judgment.
¶118 **Ntabakuze, Aloys:** Lead Counsel, Peter Erlinder, has withdrawn from the case. Erlinder was arrested in 2010, accused of violating the law prohibiting "Genocide Ideology."
¶119 **Ntahobali, Arsene Shalom:** addressed in conjunction with judgment.
¶120 **Ntawukulilyayo, Dominique**
¶121 **Nteziryayo, Alphonse:** addressed in conjunction with judgment.
¶122 **Nyiramasuhuko, Pauline:** addressed in conjunction with judgment.
¶123 **Nzuwonomeye, Francois-Xavier:** addressed in conjunction with judgment.
¶124 **Sagahutu, Innocent:** addressed in conjunction with judgment.

E. Political and Administrative Highlights

1. Compensating Survivors of Sexual Violence

¶125 It is estimated that as many as seventy percent of Rwandan rape survivors are HIV positive. Currently, the ICTR does not have the power to compensate victims of rape or to provide treatment for survivors who contracted HIV as a result. However, the ICTR does have the ability to provide HIV treatment to the accused in custody. The ICTR statute does not provide any mechanism of compensation for victims, so the ICTR lacks the jurisdiction necessary to compensate or provide treatment for the survivors, a duty that is normally assigned to the national courts. Rwandese survivors are speaking up and an ICC statute now allows victims to claim reparations.

2. Case of Jean Uwinkindi Moved for Trial in Rwandan Courts

¶126 On June 28, 2011, for the first time in ICTR history, the Chambers referred the case of Jean Uwinkindi to the Rwandan National Court, despite denying an earlier request to do so on the grounds that the accused may not receive a fair trial. The accused will be held in a Tanzanian prison and a specially designated Referral Chamber will try the case.
¶127 The ICTR made the decision to refer the case based on confidence that the Rwandan Court system would uphold commitments to the standards of fair trials, international justice, and witness protection. This confidence was based on reforms that the National Court system has made in recent years. The ICTR also called for the African Commission on Human and People's Rights to monitor Uwinkindi's trial and submit monthly reports. The ICTR and UNDP have also provided equipment, such as an armored vehicle and prison officer training to the Tanzanian prison where ICTR detainees awaiting trial in the Rwandan national court system.
¶128 If the ICTR feels standards of justice are being upheld, this could provide a roadmap to facilitate the transfer of additional cases and help expedite the ICTR's completion strategy. If the ICTR is not satisfied with the Rwandan court system, it retains the power to revoke permission to try the case.

3. Canada to Deport Leon Mugesera

¶129 Leon Mugesera's 15 years of deportation trials in Canada came to an end on January 13, 2012. Mugesera is accused of inciting genocide through a 1992 speech. The Court affirmed a

2005 decision that he should be deported based on evidence that he likely committed a war crime, despite his argument that he would face political persecution and Canada would be violating the UN Convention Against Torture should they decide to expel him to Rwanda.

¶130 The Canadian Court said they had received assurances from Rwandan officials that Mugesera would not be mistreated and would be given a fair trial. The ICTR's recent decision to refer Uwinkindi's trial to the Rwandan court system, demonstrating faith that fair trial standards would be upheld, and the 2007 abolition of the death penalty in Rwanda may have played a role in the Canadian Court's decision to send Mugesera to Rwanda for trial. Mugesera will be deported on January 20, 2012.

4. French Lawyer Accuses Prosecution of Colluding With Rwandan Authorities

¶131 The Defense for former Rwandan Minister of Youth Callixte Nzabonimana accused the Prosecution of colluding with the Rwandan authorities to lure witnesses to testify against the defendant. The defendant's Lead Counsel Vincent Courcelle -Labrousse alleged before the Chamber, "the prosecution handed money to the sub-prefect of Gitarama (Central Rwanda) Immaculée Mukamasabo for the handling of witnesses in Nzabonimana case."

¶132 He referred to some documents, including a receipt, request for reimbursement and two requests showing reimbursement of 245, 000 Rwandan Franks paid to Adamou Allagouma, a prosecution investigator, for that purpose. The Counsel said analysis from the documents would show that there was a global amount handed to the Rwandan authority to be given to prosecution witnesses.

5. American Lawyer Banned From ICTR

¶133 The Appeals Chamber of the International Criminal Tribunal for Rwanda (ICTR) has banned controversial American attorney, Prof. Peter Erlinder, from appearing before the Tribunal as a Lead Counsel, for misconduct and disregarding Tribunal orders. The ruling made by the Appeals Chamber that sat at the Hague on April 21, means that Erlinder, who had earlier been served with several warnings, will be immediately replaced as Lead Counsel for genocide suspect, Aloys Ntabakuze. According to the ruling seen by The New Times, Erlinder, who has been the lead counsel for Ntabakuze, had been served with several summons to appear in his client's appeal, but he remained elusive. This prompted the Court to impose a ban on the American lawyer, who had earlier claimed that he feared travelling to Arusha for his personal security, but later cited his medical condition as the reason for not travelling. However, a panel of Judges led by Judge Patrick Robinson found Erlinder's actions amounted to contempt of court and "unprofessional conduct," because he never took the initiative to inform the Tribunal.

6. Security Council Reiterates Call to Arrest Top Genocide Fugitives

¶134 In a resolution, the United Nations Security Council reiterated its call to all States from the Great Lakes Region, in particular, to increase their efforts to bring to justice top genocide fugitives, including the alleged financier of the 1994 genocide, Felicien Kabuga. Other fugitives still on the run include Augustin Bizimana, former Minister of Defense, and Major Protais Mpiranya, who was Commander of the Presidential Guard. The Council reaffirmed the necessity of trying the persons indicted by the International Criminal Tribunal for Rwanda. According to sources at ICTR, Kabuga is said to be carrying out his commercial activities in Kenya, while

senior officials in Zimbabwe are allegedly protecting Mpiranya, whereas Bizimana may be hiding in the Democratic Republic of Congo (DRC).

7. ICTR's Acquitted Visa Case Goes to Highest French Jurisdiction

¶135 The French Interior Ministry has brought before the Council of State, France's highest administrative jurisdiction, an ongoing battle over whether Gratien Kabiligi, a former Rwandan general acquitted by the ICTR in 2008, should be granted a visa to live in France. The case underlines an ongoing headache for the ICTR and ongoing political football among UN member states over what to do with ICTR-acquitted persons. Kabiligi wants to join his wife and two daughters, who settled in France in June 2008 and were subsequently granted French citizenship.

¶136 The Ministry is asking the Council of State to cancel an August 23 order by the administrative tribunal of Nantes (western France) to reexamine "within fifteen days" its decision refusing Kabiligi a visa for the second time. The Nantes tribunal said the Interior Ministry was relying on "unsupported allegations" to refuse Kabiligi a long-term visa. Stressing the point, presiding judge Bernard Madelaine added that "the international community would not be disturbed by the fact that a State which signed the Treaty creating the ICTR should welcome on his territory a man acquitted by the very same tribunal." Instead of complying with the Nantes tribunal's ruling, the Ministry took its case to the Council of State on September 8. It wants the Nantes decision reversed on grounds that Kabiligi's presence in France may threaten public order.

8. Washington Supports Transfer of ICTR Cases to Rwanda

¶137 The American Ambassador for War Crimes, Stephen Rapp, confirmed in an interview with the Hirondelle News Agency that the United States was backing Kigali's request for cases of genocide-accused before the International Criminal Tribunal for Rwanda (ICTR) to be transferred to Rwanda's judiciary. A diplomatic cable disclosed in September by Wikileaks revealed that this issue had been under discussion between Kigali and Washington since 2009.

¶138 Until 2008, the United States, in line with ICTR judges, was "not convinced that Rwanda respected the independence of Justice." However, by the end of 2008, the ICTR was unable to reach its stated goal of winding down first-instance trials in response to a request by the UN Security Council.

¶139 Considering the ICTR too slow and too costly, Washington changed its mind regarding transfers. In a diplomatic cable dated December 1, 2009, the American Embassy in Kigali mentioned discussions between Stephen Rapp and Rwandan officials on the sidelines of a November meeting in Kigali of prosecutors of international criminal tribunals: "Rapp said that the USG [US Government] supported transferring to Rwanda for trial the cases of most, and perhaps of all trials which had not yet begun or had not yet been apprehended by the ICTR." ICTR's new deadline for finishing its first instance trials has been reset by the United Nations for December 31, 2011. According to the same cable, Rapp suggested that Rwanda should accept "judges from foreign or international courts" to integrate into its tribunals dealing with transferred accused. At the time, Rwanda seemed reluctant.

¶140 On June 28, 2011, ICTR judges decided for the first time to transfer a pending case to Rwanda. In a memorandum written to support the transfer of Pastor Jean Uwinkindi, Rwanda announced its intention to modify the law so as to include "judges from foreign or international courts" in its tribunal, thus following Rapp's suggestions.

9. Rwanda Tribunal to Free Convict Early

¶141 For the first time ever, the International Criminal Tribunal for Rwanda has granted early release to one of its convicts, Michel Bagaragaza, who has served three-quarters of an eight year sentence for complicity to commit genocide.

¶142 Under a court order issued Monday by ICTR president Judge Khalida Rachid Khan, the former head of the Rwandan Tea Authority is to be released on December 1, 2011 from the prison in Sweden where he is currently jailed. Judge Khan directed the ICTR Registry to inform the Rwandan and Swedish authorities about the order as soon as possible.

¶143 In the past, the ICTR has always refused requests for early release of its convicts. In April 2009, Italy unilaterally released Italo-Belgian ICTR convict Georges Ruggiu, in violation of the ICTR Statute. Ruggiu also pleaded guilty before the ICTR. He is the only non-Rwandan to have been tried by the Tribunal.

10. ICTR Prepares Employees as it Closes Down in 2014

¶144 The Criminal Tribunal for Rwanda (ICTR) is currently preparing its employees psychologically through counseling sessions and empowerment training programs to cope with the shock following its proposed closure in 2014. Addressing a press conference recently at the headquarters, ICTR senior official Dr. Sarah Kilemi said: "Since this closure of our businesses here in Arusha is a process, we have taken several steps to ensure our staff cope with the situation." The ICTR will officially close down its businesses in Arusha by 2014, and in the process, nearly 800 workers, including 200 Tanzanian employees, will be sent home.

11. Security Council Challenged to Find Host Countries for ICTR Acquitted Persons

¶145 The International Criminal Tribunal for Rwanda made a special appeal to the United Nations Security Council to find a lasting solution of finding host countries to accept acquitted persons who remain in safe houses under the Tribunal's protection. “The Tribunal has had no other choice but to call upon the assistance of the Security Council to find a sustainable solution to this issue," stated ICTR President, Judge Khalida Rachid Khan in a letter to the President of the Council. She explained that efforts to find host countries for the five acquitted persons proved unsuccessful due to the absence of a formal mechanism to secure the support of the member states to accept those persons in their countries.

12. UN Calls Member States to Host ICTR Acquitted Persons

¶146 The UN Security Council has called upon member States to host five persons who have been acquitted by the International Criminal Tribunal for Rwanda (ICTR) and are still waiting in safe houses under the Tribunal's protection. In Resolution 2029 (2011), the Security Council reiterated its call to States "to cooperate with and render all necessary assistance to the International Tribunal in the relocation of acquitted persons."

¶147 The Security Council took into consideration, among others, a letter dated November 26, 2011, addressed to the President of the Council by ICTR President, Judge Khalida Rachid Khan, who explained that efforts by the Tribunal to find host countries for the five acquitted persons proved unsuccessful. She stated that the challenge to such relocation was the unfortunate result of the absence of a formal mechanism to secure the support of member states to accept persons in their countries.