

**ANNOTATED LEADING CASES OF  
INTERNATIONAL CRIMINAL TRIBUNALS**

**VOLUME VI:  
THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR RWANDA 2000-2001**

**André KLIP and Göran SLUITER (eds.)**

Intersentia  
Antwerp – Oxford – New York

*Distribution for the UK:*

Hart Publishing  
Salter's Boat Yard  
Folly Bridge  
Abingdon Road  
Oxford OX1 4LB  
UK  
Tel: + 44 1865 24 55 33  
Fax: + 44 1865 79 48 82

*Distribution for North America:*

Transnational Publishers  
410 Saw Mill River Road  
Ardsley  
New York 10502-2615  
USA  
Tel: + 1 914 693 5100  
Fax: + 1 914 693 4430

*Distribution for Switzerland and Germany:*

Schulthess Verlag  
Zwingliplatz 2  
CH-8022 Zürich  
Switzerland  
Tel: + 41 1 251 93 36  
Fax: + 41 1 261 63 94

*Distribution for other countries:*

Intersentia Publishers  
Churchillaan 108  
2900 Schoten  
Belgium  
Tel: + 32 3 680 15 50  
Fax: + 32 3 658 71 21

Please cite as: Judgement, *Prosecutor v. Musema*, Case No. ICTR-96-13-T, T. Ch. I, 27 January 2000, Klip/Sluiter ALC-VI-475

Annotated Leading Cases of International Criminal Tribunals  
André Klip and Göran Sluiter (eds.)  
Cover illustration: Eline Moeremans

© 2003 Intersentia  
Antwerp – Oxford – New York  
[http:// www.intersentia.com](http://www.intersentia.com)

ISBN 90-5095-319-0  
D/2003/7849/48  
NUR 828

No part of this book may be reproduced in any form, by print, photoprint, microfilm or any other means, without written permission from the publisher.

## TABLE OF CONTENTS

<b>Table of Contents</b> .....	5
<b>Preface</b> .....	11
 <b>Part 1/ Preliminary Matters</b>	
<b>1. Indictment</b>	
Decision on the Defence Motions Objecting to the Jurisdiction of the Trial Chamber on the Amended Indictment, <i>Prosecutor v. Nsengiyumva</i> , Case No. ICTR-96-12-I, T. Ch. III, 13 April 2000 .....	13
Decision on the Defence Motions Objecting to a Lack of Jurisdiction and Seeking to Declare the Indictment Void Ab Initio, <i>Prosecutor v. Kabiligi and Ntabakuze</i> , Case No. ICTR-96-34-I, T. Ch. III, 13 April 2000 .....	19
Decision on Prosecutor's Request for Leave to File an Amended Indictment, <i>Prosecutor v. Niyitegeka</i> , Case No. ICTR-96-14-I, T. Ch. II, 21 June 2000 .....	27
Decision on Defence Motion on Matters Arising from Trial Chamber Decisions and Preliminary Motion Based on Defects in the Form of the Indictment and Lack of Jurisdiction, <i>Prosecutor v. Niyitegeka</i> , Case No. ICTR-96-14-T, T. Ch. II, 20 November 2000 .....	39
Commentary <i>Daniel Ntanda Nsereko</i> .....	49
 <b>2. Joinder of Cases</b>	
Decision on the Prosecutor's Motion for Joinder, <i>Prosecutor v. Bagosora, Kabiligi, Ntabakuze and Nsengiyumva</i> , Cases No. ICTR-96-7, ICTR-97-34, ICTR-97-30, ICTR-96-12, T. Ch. III, 29 June 2000 .....	59
Decision on the Prosecutor's Motion for Joinder of Accused and on the Prosecutor's Motion for Severance of the Accused, <i>Prosecutor v. Ngirumpatse, Nzirorera and Kajelijeli</i> , Case No. ICTR-98-44-I, T. Ch. II, 29 June 2000 .....	77
Decision on the Defence Motion in Opposition to Joinder and Motion for Severance and Separate Trial Filed by the Accused Juvenal Kajelijeli, <i>Prosecutor v. Bizimana, Karemera, Nzabonimana, Rwamakuba, Kabuga, Ngirumpatse, Nzirorera and Kajelijeli</i> , Case No. ICTR-98-44-T, T. Ch. II, 6 July 2000 .....	85
Decision on the Prosecutor's Motion for Joinder, <i>Prosecutor v. Bizimungu, Mugenzi, Bicamumpaka and Mugiraneza</i> , Case No. ICTR-99-50-T, <i>Prosecutor v. Karemera and Rwamakuba</i> , Case No. ICTR-98-44-T, <i>Prosecutor v. Kamuhanda</i> , Case No. ICTR-98-54-T, <i>Prosecutor v. Niyitegeka</i> , Case No. ICTR-96-14-T, T. Ch. II, 6 July 2000 .....	93
Decision on the Defence Motion seeking a Separate Trial for the Accused Sylvain Nsabimana, <i>Prosecutor v. Nsabimana, Nteziryayo, Nyiramasuhuko, Ntahobali, Kanyabashi and Ndayambaje</i> , Case No. ICTR-97-29A-T, T. Ch. II, 8 September 2000 .....	105
Decision on the Prosecutor's Motion for Judicial Notice and Presumptions of Facts Pursuant to Rules 94 and 54, <i>Prosecutor v. Semanza</i> , Case No. ICTR-97-20-I, T. Ch. III, 3 November 2000 ..	113
	5

Decision on the Prosecutor's Motion to Join the Indictments ICTR-96-10-I and ICTR-96-17-T, <i>Prosecutor v. E. Ntakirutimana, G. Ntakirutimana and Sikubwaho</i> , Cases No. ICTR-96-10-I and ICTR-96-17-T, T. Ch. I, 22 February 2001 .....	127
Commentary <i>Greg Lombardi</i> .....	134
 <b>Part 2/Procedural Matters</b>	
<b>3. Habeas Corpus</b>	
Decision on the Defence Motion Concerning the Arbitrary Arrest and Illegal Detention of the Accused and on the Defence Notice of Urgent Motion to Expand and Supplement the Record of 8 December 1999 Hearing, <i>Prosecutor v. Kajelijeli</i> , Case No. ICTR-98-44-I, T. Ch. II, 8 May 2000 .....	143
Decision on the Defence Extremely Urgent Motion on Habeas Corpus and for Stoppage of Proceedings, <i>Prosecutor v. Kanyabashi</i> , Case No. ICTR-96-15-I, T. Ch. II, 23 May 2000 .....	153
Decision, <i>Semanza v. Prosecutor</i> , Case No. ICTR-97-23-A, A. Ch., 31 May 2000 .....	167
Declaration of Judge Lal Chand Vohrah .....	191
Declaration of Judge Rafael Nieto-Navia .....	194
Separate Opinion of Judge Shahabuddeen .....	195
Decision on the Defence Motion Concerning the Illegal Arrest and Illegal Detention of the Accused, <i>Prosecutor v. Rwamakuba and others</i> , Case No. ICTR-98-44-T, T. Ch. II, 12 December 2000 .....	207
Commentary <i>Geert-Jan Knoops</i> .....	216
Decision (Prosecutor's Request for Review or Reconsideration), <i>Barayagwiza v. Prosecutor</i> , Case No. ICTR-97-19-AR72, A. Ch., 31 March 2000 .....	223
Declaration of Judge Lal Chand Vohrah .....	238
Declaration of Judge Rafael Nieto-Navia .....	239
Separate Opinion of Judge Shahabuddeen .....	245
Commentary <i>William Schabas</i> .....	261
 <b>4. Right to Counsel</b>	
Decision on Review in Terms of Article 19(E) of the Directive on Assignment of Defence Counsel, <i>Prosecutor v. Barayagwiza</i> , Case No. ICTR-97-19-I, President ICTR, 19 January 2000 ..	267
Decision (Request for Withdrawal of Defence Counsel), <i>Barayagwiza v. Prosecutor</i> , Case No. ICTR-97-19-AR72, A. Ch., 31 January 2000 .....	269
President's Review of the Decision of the Registrar in Terms of Article 12 of the Directive on the Assignment of Defence Counsel, <i>Rutaganda v. Prosecutor</i> , Case No. ICTR-96-3-A, President ICTR, 7 July 2000 .....	273
Decision on Registry's Request for Reconsideration of Ruling dated 7 July 2000, <i>Rutaganda v. Prosecutor</i> , Case No. ICTR-96-3-A, President ICTR, 13 July 2000 .....	277

Decision on Defence Counsel Motion to Withdraw, <i>Prosecutor v. Barayagwiza</i> , Case No. ICTR-97-19-T, T. Ch. I, 2 November 2000 .....	279
Concurring and Separate Opinion of Judge Gunawardana .....	284
Decision on the Accused's Request for Withdrawal of his Counsel, <i>Prosecutor v. Ngeze</i> , Case No. ICTR-97-27-I, T. Ch. I, 29 March 2001 .....	287
Separate and Dissenting Opinion of Judge Gunawardana on the Accused's Request for Withdrawal of his Counsel, 28 March 2001 .....	292
Commentary <i>Taru Spronken</i> .....	296
 <b>5. Witnesses and Admission of Evidence</b>	
Decision on the Prosecutor's Motion for Orders for Protective Measures for Victims and Witnesses, <i>Prosecutor v. Bagambiki and Imanishimwe</i> , Cases No. ICTR-97-36-I and 36-T, T. Ch. III, 3 March 2000 .....	303
Decision on the Prosecutor's Motion for Orders for Protective Measures for Victims and Witnesses, <i>Prosecutor v. Muhimana</i> , Case No. ICTR-95-1B-I, T. Ch. III, 9 March 2000 .....	309
Decision on the Defence's Request for Measures of Investigation with Regard to Certain Prosecution Witnesses, <i>Prosecutor v. Nahimana</i> , Case No. ICTR-96-11-T, T. Ch. I, 7 November 2000 .....	313
Decision on Pauline Nyiramasuhuko's Motion for Protective Measures for Defence Witnesses and Their Family Members, <i>Prosecutor v. Nyiramasuhuko and Ntahobali</i> , Case No. ICTR-97-21-T, T. Ch. II, 20 March 2001 .....	315
Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses, <i>Prosecutor v. Nyiramasuhuko and Ntahobali</i> , Case No. ICTR-97-21-T, T. Ch. II, 27 March 2001 ..	321
Decision on Arsène Shalom Ntahobali's Motion for Protective Measures for Defence Witnesses, <i>Prosecutor v. Nyiramasuhuko and Ntahobali</i> , Case No. ICTR-97-21-T, T. Ch. II, 3 April 2001 ...	329
Decision on the Defence Motion for Exclusion of Evidence on the Basis of Violations of the Rules of Evidence, <i>Res Gestae</i> , Hearsay and Violations of the Statute and Rules of the Tribunal, <i>Prosecutor v. Semanza</i> , Case No. ICTR-97-20-I, T. Ch. III, 23 August 2000 .....	335
Commentary <i>Hans Nijboer</i> .....	338
 <b>6. Disclosure</b>	
Decision on the Request of the Defence for an Order for Service of a United Nations Memorandum, Prepared by Michael Hourigan, Former ICTR Investigator, <i>Prosecutor v. Bagilishema</i> , Case No. ICTR-95-1A-T, T. Ch. I, 8 June 2000 .....	343
Separate and Dissenting Opinion of Judge Mehmet Güney .....	348
Decision on the Defence Motion for Disclosure of Evidence, <i>Prosecutor v. Nyiramasuhuko and Ntahobali</i> , Case No. ICTR-97-21-T, T. Ch. II, 8 September 2000 .....	351
Separate and Dissenting Opinion of Judge Güney to the Decision on the Defence Motion for Disclosure of Evidence .....	354

Decision on Semanza's Motion for Subpoenas, Depositions, and Disclosure, <i>Prosecutor v. Semanza</i> , Case No. ICTR-97-20-I, T. Ch. III, 20 October 2000 .....	357
Decision on Defence Motion for Disclosure of Evidence, <i>Prosecutor v. Nyiramasuhuko and Ntahobali</i> , Case No. ICTR-97-21-T, T. Ch. II, 1 November 2000 .....	365
Commentary <i>Bruce Zagaris</i> .....	375
 <b>7. Right to and Scope of Appeal</b>	
Decision Rejecting Notice of Appeal, <i>Kanyabashi v. Prosecutor</i> , Case No. ICTR-96-15-A, A. Ch., 21 January 2000 .....	381
Order, <i>Kajelijeli v. Prosecutor</i> , Case No. ICTR-98-44-AR72, A. Ch., 10 August 2000 .....	389
Decision on the Interlocutory Appeals, <i>Ngeze and Nahimana v. Prosecutor</i> , Cases No. ICTR-97-27AR72 and 96-11-AR72, A. Ch., 5 September 2000 .....	391
Joint Separate Opinion of Judge Lal Chand Vohrah and Judge Rafael Nieto-Navia .....	395
Separate Opinion of Judge Shahabuddeen .....	401
Commentary <i>Stacy Cummings</i> .....	411
 <b>8. Relations to National Jurisdictions</b>	
Decision on the Defence Motion for Additional Protective Measures for Defence Witnesses, <i>Prosecutor v. Ntagerura</i> , Case No. ICTR-96-10-I, T. Ch. III, 4 February 2000 .....	417
Separate Opinion of Judge Yakov Ostrovsky .....	421
Decision on the Defence Motion Challenging the Legality of the Arrest and Detention of the Accused and Requesting the Return of Personal Items Seized, <i>Prosecutor v. Nzirorera</i> , Case No. ICTR-98-44-T, T. Ch. II, 7 September 2000 .....	423
Decision on the Defence Motion for Exclusion of Evidence and Restitution of Property Seized, <i>Prosecutor v. Nyiramasuhuko</i> , Case No. ICTR-97-21-T, T. Ch. II, 12 October 2000 .....	431
Commentary <i>Mitsue Inazumi</i> .....	437
 <b>9. Contempt of Court</b>	
Decision on the Defence Motion for the Interpretation of Rules 89(A), (B), (C), (D), and 90(F) and (G) of the Rules of Procedure and Evidence and for the Recall of a Witness, <i>Prosecutor v. Semanza</i> , Case No. ICTR-97-20-I, T. Ch. III, 1 December 2000 .....	445
Decision on Two Defence Motions pursuant to, <i>inter alia</i> , Rule 5 of the Rules and the Prosecutor's Motion for Extension of Time to File the Modified Amended Indictment pursuant to the Trial Chamber II Order of 20 November 2000 – Warning to the Prosecutor's Counsel Pursuant to Rule 46 (A), <i>Prosecutor v. Niyitegeka</i> , Case No. ICTR-96-14-T, T. Ch. II, 27 February 2001 .....	449
Commentary <i>Chrisje Brants</i> .....	458

**Part 3/ Judgement and Sentencing****10. Judgements**

Judgement and Sentence, <i>Prosecutor v. Musema</i> , Case No. ICTR-96-13-T, T. Ch. I, 27 January 2000 .....	469
Separate Opinion of Judge Aspegren .....	602
Separate Opinion of Judge Pillay .....	608
Commentary <i>Ruth Kok</i> .....	614
Judgment, <i>Serughago v. Prosecutor</i> , Case No. ICTR-98-39-A, A. Ch., 14 February 2000 .....	625
Reasons for Judgment, <i>Serushago v. Prosecutor</i> , Case No. ICTR-98-39-A, A. Ch., 6 April 2000 ..	627
Commentary <i>Kai Ambos</i> .....	635
Judgement and Sentence, <i>Prosecutor v. Ruggiu</i> , Case No. ICTR-97-32-I, T. Ch. I, 1 June 2000 ...	637
Commentary <i>Michèle Buteau</i> .....	651
Judgement, <i>Kambanda v. Prosecutor</i> , Case No. ICTR-97-23-A, A. Ch., 19 October 2000 .....	659
Commentary <i>Jan Christoph Nemitz</i> .....	681
<b>Index</b> .....	687
<b>Contributors and Editors</b> .....	691

## PREFACE

This is the sixth volume in the series “Annotated Leading Cases of International Criminal Tribunals” and contains the most important decisions of the International Criminal Tribunal for Rwanda (ICTR) over a defined period of time. It is the second volume in the series containing decisions of the ICTR, since the publication of Volume II. The reason for the discrepancy between ICTY-volumes and ICTR-volumes lies quite simply in the difference in productivity. The ICTY has a far greater output, in terms of numbers of decisions and judgements. This has to do, in part, with the fact that the ICTY has been operational longer than the ICTR and enjoys a greater capacity, in terms of the number of judges, prosecutors and other indispensable staff.

This volume appears in the year that the ICTR and the ICTY are working towards an ‘exit strategy’. This means that investigations, prosecutions and trials have to be finalised within a foreseeable period of time. Whether the ICTR will succeed in that task without jeopardising the quality of the administration of justice remains to be seen. At the time of publication of the present Volume a significant number of trials still remain to be held and it is unlikely that they can be finished within a relatively short period of time (let us say 5 to 7 years). The recently elected *ad litem*-judges constitute in this respect a more than welcome contribution to the resources of the ICTR and may assist in fulfilling the Tribunal’s mandate more expeditiously. However, a few additional judges may not be expected to perform miracles.

The period covered by this volume is from 1 January 2000 until 1 May 2001. In this period, the ICTR has issued a variety of decisions, including four judgements, two of them at the appellate level. This illustrates that, as the work of the Tribunal is progressing, more and more cases reach and are dealt with at the appellate level.

The present volume is in its approach and structure similar to the previous five volumes. Thus, the book contains the full text of all the decisions and judgements, including separate, concurring and dissenting opinions, as well as annexes to the decisions. As in the previous volumes, the editors have ensured that the decisions are fully identical to the *written* original text as issued by the ICTR Press and Information Office and which bears the signature of the Judges. We are aware that more and more decisions are available on the internet. However, only the written decisions bearing the signatures of the Judges can be considered authoritative versions. In the course of our editorial work on this volume and the previous volumes, we have discovered inconsistencies between the written original version of the decision and the internet version. Much of our editorial efforts consist in making the texts in this series identical to the written original version.

We could only include the full text of the decisions in this volume by reducing their original format. Still, we wanted the reader to be able to identify the page number of the original text, which is throughout the text put in brackets [ ]. We are again very happy that a number of scholars in the field of international criminal law were prepared to write interesting and stimulating commentaries to the decisions.

A few words regarding the selection of decisions may give the user insight into our working method. In principle we select all final judgements. In addition to that we publish decisions taken in any stage of the procedure which are important for other reasons: because they deal with a specific legal question, because they are representative for a specific type of decision or because they enter new legal waters. Of course we cannot publish all decisions. As a result we may not publish decisions in which issues have been decided in a way similar or identical to a decision that has already been selected.

The decisions are presented over different parts and under different headings.

Part I deals with preliminary matters, arising prior to the commencement of the trial. As in previous volumes, this part contains a number of decisions on jurisdiction of the Tribunal and decisions relating to the form of the indictment, which can be considered “usual” pre-trial matters.

A matter of particular interest for the Rwanda Tribunal concerns the joinder of cases, and in reaction thereto, the severance of cases. The efforts by the Prosecutor to expedite proceedings by joining certain



cases are reflected in a number of interesting decisions, also from the perspective of the rights of the accused.

Part 2 is entitled procedural matters and deals with a variety of issues. Under the heading “habeas corpus” we have included five decisions, all of which deal with alleged situations of arbitrary arrest and detention. The importance of this matter and the number of decisions justify two commentaries on this section.

Under the next heading, “right to counsel”, we have grouped decisions relating to the right to counsel. These decisions also address the question to what extent the accused is entitled to defend him or herself in person, a matter which is currently also of importance for the ICTY.

The third heading of part 2 contains a number of decisions relating to witnesses and the admission of evidence. They deal in part with the question in which forms testimonial evidence may be admitted. They also deal with the protection of witnesses, which is almost a routine matter for the ad hoc Tribunals, but which continues to raise pertinent legal issues from the perspective of the rights of the accused.

Heading 6 contains another procedural aspect of the trial: the question of internal and external disclosure of evidence.

Heading 7 is not new to the ICTR, containing decisions related to the right to and scope of appeal. However, given a number of separate opinions the matter is still not settled.

Heading 8 deals with decisions concerned in one way or another with the relations to national jurisdictions. These decisions do not directly concern State cooperation with the ICTR but rather the division of tasks and responsibilities between the ICTR and the national level.

Heading 9 is entitled contempt of court. Although no conviction for contempt can be found in these decisions, both decisions concern situations where the conduct of counsel was regarded as inappropriate.

Part 3, containing a number of judgements, covers by far most of this volume. As mentioned above, judgements are by definition included in this series, because of their importance, both from a factual and legal perspective.

Under heading 10 we have incorporated judgements from the Trial Chamber in the Musema case and the Ruggiu case and judgements from the Appeals Chamber in the Serushago case and the Kambanda case. These latter two judgements represent completion of the last two cases.

The productivity of the *ad hoc* Tribunals makes it difficult to keep up with them, in terms of publication of their most important decisions. We are therefore currently working simultaneously on publication of volumes seven and eight, containing important ICTY decisions, due to appear in 2004. We are also preparing future publication of decisions of the Special Court for Sierra Leone and the Special Panels of East Timor.

We owe many acknowledgements to many persons without whom we could not have completed this sixth volume. These include our publisher Intersentia, in particular Hans Kluwer and Isabelle van Dongen, our student assistant Marloes Kleijn Hesselink, who assisted with the corrections of the text and the Netherlands School of Human Rights Research that greatly facilitated our work. Suzanne Chenault of the ICTR Chambers has been so kind as to send us regularly the hard copies of ICTR decisions. Steven Freeland from the University of Western Sydney, Australia, offered tremendous help by correcting our English. We also wish to thank the ICTR Press and Information Office for providing us with most welcome assistance. Last but not least, we wish to thank the distinguished authors for their commentaries to the decisions.

We hope that this volume will contribute to the further dissemination of the important work of the ICTR and that it will provide access to its decisions to practitioners, academics and students.

André Klip and Göran Sluiter  
Maastricht/Utrecht, August 2003