# Cour Pénale Internationale





Original: English

No.: ICC-01/04

Date: 3 March 2006

# THE APPEALS CHAMBER

Before: Judge Navanethem Pillay, Presiding Judge

Judge Philippe Kirsch Judge Georghios M. Pikis Judge Sang-Hyun Song Judge Erkki Kourula

Registrar: Mr Bruno Cathala

# SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Under Seal Ex Parte, Prosecution Only

Copies or Internet links to Authorities relied upon in Prosecutor's Document in Support of the Appeal

# The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor Ms Fatou Bensouda, Deputy Prosecutor Mr Fabricio Guariglia, Senior Appeals Counsel Mr Ekkehard Withopf, Senior Trial Lawyer

- 1. Pursuant to Regulation 23 (3), the Prosecution files Copies or Internet links to Authorities relied upon in the Prosecutor's Document in Support of the Appeal, filed on 3 March 2006.
- 2. Where possible, internet links to the Authorities have been provided. If an internet link has not been provided, then a copy of the relevant authority is attached in the order in which it appears in the list.

#### A. JURISPRUDENCE

### (a) ICTY

- *Prosecutor v Blaskic*, IT-95-14-A, Judgement, 29 July 2004 http://www.un.org/icty/blaskic/appeal/judgement/bla-aj040729e.pdf
- Prosecutor v Delalic et al, IT-96-21-A, Judgement, 20 February 2001 <a href="http://www.un.org/icty/celebici/appeal/judgement/cel-aj010220.pdf">http://www.un.org/icty/celebici/appeal/judgement/cel-aj010220.pdf</a>
- Prosecutor v Deronjic, IT-02-61-S, Order on Admission in to Evidence of Psychological Report, 19 December 2003 http://www.un.org/icty/deronjic/trialc/order-e/031219.htm
- Prosecutor v Halilovic, IT-01-48-AR73.2, Decision on Interlocutory Appeal Concerning Admission of Record of Interview of the Accused From the Bar Table, 19 August 2005 <a href="http://www.un.org/icty/halilovic/appeal/decision-e/050819.htm">http://www.un.org/icty/halilovic/appeal/decision-e/050819.htm</a>
- Prosecutor v Jankovic, IT-96-23/2-AR11bis.2, Decision on Rule 11bis Referral, 15 November 2005 http://www.un.org/icty/stankovic/appeal/decision-e/051115.htm
- Prosecutor v Jelisic, IT-95-10-A, Judgment, 5 July 2001 http://www.un.org/icty/jelisic/appeal/judgement/jel-aj010705.pdf
- *Prosecutor v Krnojelac*, IT-97-25-A, Judgement, 17 September 2003 <a href="http://www.un.org/icty/krnojelac/appeal/judgement/krn-aj030917e.pdf">http://www.un.org/icty/krnojelac/appeal/judgement/krn-aj030917e.pdf</a>
- Prosecutor v Kupreskic et al, IT-96-16-A, Appeal Judgement, 23 October 2001 <a href="http://www.un.org/icty/kupreskic/appeal/judgement/kup-aj011023e.pdf">http://www.un.org/icty/kupreskic/appeal/judgement/kup-aj011023e.pdf</a>
- Prosecutor v Milosevic, IT-99-37-AR73, IT-01-50-AR73 & IT-01-51-AR73, Reasons for Decision on Prosecution Interlocutory Appeal From Refusal to Order Joinder, 18 April 2002
   http://www.un.org/icty/milosevic/appeal/decision-e/020418.htm
- *Prosecutor v Milosevic*, IT-02-54-T, Further Order on Future Conduct of Trial Relating to Severance of One or More Indictments, 21 July 2004

### http://www.un.org/icty/milosevic/trialc/order-e/040721.htm

- Milosevic v Prosecutor, IT-02-54-AR73.7, Decision on Interlocutory Appeal of the trial Chamber's Decision on the Assignment of Defence Counsel, 1 November 2004 <a href="http://www.un.org/icty/milosevic/appeal/decision-e/041101.htm">http://www.un.org/icty/milosevic/appeal/decision-e/041101.htm</a>
- Prosecutor v Milosevic, IT-98-29/1-PT, Decision on Referral of Case Pursuant to Rule 11bis, 8 July 2005
  <a href="http://www.un.org/icty/milosevic-d/trialc/decision-e/050708.htm">http://www.un.org/icty/milosevic-d/trialc/decision-e/050708.htm</a>
- Prosecutor v Mrksic et al. IT-95-13/1-PT, Decision on Prosecutor's Motion to Withdraw Motion and Request for Referral of Indictment under Rule 11bis, 30 June 2005 <a href="http://www.un.org/icty/mrksic/trialc/decision-e/050630.htm">http://www.un.org/icty/mrksic/trialc/decision-e/050630.htm</a>
- Prosecutor v Sainovic and Ojdanic, IT-99-37-AR65, Decision on Provisional Release, 30 October 2002
  <a href="http://www.un.org/icty/milutinovic/appeal/decision-e/sai-021030.htm">http://www.un.org/icty/milutinovic/appeal/decision-e/sai-021030.htm</a>
- Prosecutor v Stankovic, IT 96-23/2-PT, Decision on Referral of Case under Rule 11bis, 17 May 2005
  <a href="http://www.un.org/icty/stankovic/trialc/decision-e/050517.htm">http://www.un.org/icty/stankovic/trialc/decision-e/050517.htm</a>
- *Prosecutor v Tadic*, IT-94-1-A, Separate Opinion of Judge Shahabuddeen, 15 July 1999 http://www.un.org/icty/tadic/appeal/judgement/tad-aj990715e.pdf

#### (b) ICTR

- The Prosecutor v Karemera, ICTR-98-44-AR73, Decision on Prosecutor's Interlocutory Appeal Against Trial Chamber III Decision of 8 October 2003 Denying Leave to File an Amended Indictment, 19 December 2003 http://65.18.216.88/ENGLISH/cases/Karemera/decisions/191203.htm
- The Prosecutor v Karemera, ICTR-98-44-A15bis, Decision in the Matter of Proceedings Under Rule 15bis (D), 21 June 2004 <a href="http://65.18.216.88/ENGLISH/cases/Karemera/decisions/040621.htm">http://65.18.216.88/ENGLISH/cases/Karemera/decisions/040621.htm</a>
- *Musema v The Prosecutor*, ICTR-96-13-A, Judgement, 16 November 2001 http://65.18.216.88/ENGLISH/cases/Musema/judgement/Arret/index.htm
- The Prosecutor v Nyiramasuhuko et al, ICTR-98-42-T, Further Scheduling Order in the Matter of Proceedings Under Rule 15bis (D), 2 July 2003 http://65.18.216.88/ENGLISH/cases/Nyira/decisions/020703.htm
- Rutaganda v The Prosecutor, ICTR-96-3-A, Judgement, 26 May 2003 http://65.18.216.88/ENGLISH/cases/Rutaganda/decisions/030526%20Index.htm
- *The Prosecutor v Ruggiu*, ICTR-97-32-I, Judgement and Sentence, 1 June 2000 http://65.18.216.88/ENGLISH/cases/Ruggiu/judgement/rug010600.htm

### (c) SCSL

Fofona v Prosecutor, SCSL-04-14-AR65, Appeal against Decision refusing Bail, 11 March 2005 http://www.sc-sl.org/Documents/SCSL-04-14-T-371.pdf

Sesay v Prosecutor, SCSL-04-15-AR65, Decision on Appeal against Refusal of Bail, 14 December 2004 http://www.sc-sl.org/Documents/SCSL-04-15-AR65-297.pdf

### (d) ECtHR

Constantinescu v Romania (Application no. 28871/95), Judgement, 27 June 2000 <a href="http://cmiskp.echr.coe.int////tkp197/viewhbkm.asp?action=open&table=1132746FF1FE">http://cmiskp.echr.coe.int////tkp197/viewhbkm.asp?action=open&table=1132746FF1FE</a> <a href="http://cmiskp.echr.coe.int////tkp197/viewhbkm.asp?action=open&table=1132746FF1FE">2A468ACCBCD1763D4D8149&key=13277&sessionId=6013747&skin=hudoc-en&attachment=true</a>

## (e) Domestic courts

Spain, Judgment of Constitutional Tribunal, STC 66/1997, 7 April 1997
<a href="http://www.boe.es/g/es/bases\_datos\_tc/doc.php?coleccion=tc&id=SENTENCIA-1997-0066">http://www.boe.es/g/es/bases\_datos\_tc/doc.php?coleccion=tc&id=SENTENCIA-1997-0066</a>

United Kingdom, *Director of Public Prosecutions v Cosier*, High Court of Justice Queen's Bench Division (England and Wales), CO/4180/99, 5 April 2000.

United States of America, Southern Arizona Freight Lines v Jackson, 63 P. 2d 193 (1936) (Supreme Court of Arizona).

### **B.** LEGISLATION

# (a) International

The Statute of the International Criminal Tribunal for the Former Yugoslavia http://www.un.org/icty/legaldoc-e/index.htm

The Statute of the International Criminal Tribunal for Rwanda http://65.18.216.88/ENGLISH/basicdocs/statute.html

The Statute of the Special Court for Sierra Leone <a href="http://www.sc-sl.org/scsl-statute.html">http://www.sc-sl.org/scsl-statute.html</a>

Vienna Convention on the Law of Treaties (1969) (1155 U.N.T.S. 331) http://untreaty.un.org/ilc/texts/instruments/english/conventions/1 1 1969.pdf

### (b) Domestic

- Belge, Circulaire n° COL 12/98 du Collège des Procureurs généraux près les Cours d'appel, 1 Octobre 1998, para 2.1.1 <a href="http://www.poldoc.be/dailydoc/document/col/1998/col9812f.pdf">http://www.poldoc.be/dailydoc/document/col/1998/col9812f.pdf</a>)
- Cambodia, Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia <a href="http://www.cambodia.gov.kh/krt/pdfs/KR%20Law%20as%20promulgated%20(Eng%20trans%206%20Sept%202001).pdf">http://www.cambodia.gov.kh/krt/pdfs/KR%20Law%20as%20promulgated%20(Eng%20trans%206%20Sept%202001).pdf</a>
- Chile, Criminal Procedure Code (Law No. 19.696) (12 October 2000), Art. 170 <a href="http://www.defensoriapenal.cl/archivos/1132775062.pdf">http://www.defensoriapenal.cl/archivos/1132775062.pdf</a>.
- Finland, Code of Criminal Procedure, (689/1997), section 7 http://www.finlex.fi/en/laki/kaannokset/1997/en19970689.pdf
- Germany, Code of Criminal Procedure (StPO), § 33
  <a href="http://bundesrecht.juris.de/bundesrecht/stpo/gesamt.pdf">http://bundesrecht.juris.de/bundesrecht/stpo/gesamt.pdf</a>
  (English translation attached)
- Japan, Code of Criminal Procedure, Art. 248 cited in Tachi, *Community Involvement in the Prosecution of Crimes*, below.
- Poland, Code of Criminal Procedure (6 June 1997) Article 17(3) <a href="http://www.era.int/domains/corpus-juris/public\_pdf/polish\_ccp.pdf">http://www.era.int/domains/corpus-juris/public\_pdf/polish\_ccp.pdf</a>
- Rwanda, Organic Law No. 08/96 of August 30,1996 on the Organization of Prosecutions for Offences constituting the Crime of Genocide or Crimes against Humanity committed since October 1, 1990 <a href="http://www.preventgenocide.org/law/domestic/rwanda.htm">http://www.preventgenocide.org/law/domestic/rwanda.htm</a>
- U.S. Department of Justice, *Principles of Federal Prosecution*, para. 9.27.230(A)(2) http://www.usdoj.gov/usao/eousa/foia reading room/usam/title9/27mcrm.htm

#### C. ICC DOCUMENTS

Paper on some policy issues before the Office of the Prosecutor (September 2003) <a href="http://www.icc-cpi.int/library/organs/otp/030905\_Policy\_Paper.pdf">http://www.icc-cpi.int/library/organs/otp/030905\_Policy\_Paper.pdf</a>

#### D. ICC PREPARATORY DOCUMENTS

ILC Draft Statute (*Report of the International Law Commission on the Work of its Forty-Sixth Session* (UN Doc. A/49/355) (1 September 1994) <a href="http://daccessdds.un.org/doc/UNDOC/GEN/N94/349/89/IMG/N9434989.pdf">http://daccessdds.un.org/doc/UNDOC/GEN/N94/349/89/IMG/N9434989.pdf</a>?OpenEle ment

- Statement, Ms. Hodark (Croatia), Summary of the 5<sup>th</sup> plenary meeting, 17 June 1998 (UN Doc.A/CONF.183/SR/5) at paragraph 44 <a href="http://daccessdds.un.org/doc/UNDOC/GEN/V98/575/00/PDF/V9857500.pdf?OpenElement">http://daccessdds.un.org/doc/UNDOC/GEN/V98/575/00/PDF/V9857500.pdf?OpenElement</a>
- Report of Working Group 3 on Complementarity and Trigger Mechanisms, Committee on the Establishment of an International Criminal Court (August 4-15, 1997)
  <a href="http://www.iccnow.org/romearchive/documentsreports/4PrepCmt/4PrepCmtWorkGrp3Summary.pdf">http://www.iccnow.org/romearchive/documentsreports/4PrepCmt/4PrepCmtWorkGrp3Summary.pdf</a>.
- War crimes: proposal submitted by United States (UN Doc A/AC.249/1997/WG.1/ DP.1 (14 February 1997)
- Preparatory Commission for the International Criminal Court, Elements of Crimes: Proposal by USA (PCNICC/1999/DP.4)
  <a href="http://daccessdds.un.org/doc/UNDOC/GEN/N99/028/34/IMG/N9902834.pdf">http://daccessdds.un.org/doc/UNDOC/GEN/N99/028/34/IMG/N9902834.pdf</a>?OpenElement

#### E. UN DOCUMENTS

- Report of Group of Experts for Cambodia, annexed to Identical letters dated 15 March 1999 from the Secretary General to the President of the General Assembly and the President of the Security Council (UN Doc. A/53/850-S/1999/231)

  <a href="http://daccessdds.un.org/doc/UNDOC/GEN/N99/059/72/PDF/N9905972.pdf?OpenElement">http://daccessdds.un.org/doc/UNDOC/GEN/N99/059/72/PDF/N9905972.pdf?OpenElement</a>
- Letter dated 12 January 2001 from the Secretary General addressed to the President of the Security Council (UN Doc. S/2001/40)

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- Letter dated 31 January 2001 from the President of the Security Council addressed to the Secretary General (UN Doc. S/2001/95)

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- Report on the Judicial Status of the International Criminal Tribunal for the Former Yugoslavia and the Prospects for Referring Certain Cases to National Courts, June 2002, paras. 1-9, annexed to Letter dated 17 June 2002 from the Secretary General addressed to the President of the Security Council, 19 June 2002 (UN Doc. S/2002/678) <a href="http://daccessdds.un.org/doc/UNDOC/GEN/N02/434/47/IMG/N0243447.pdf">http://daccessdds.un.org/doc/UNDOC/GEN/N02/434/47/IMG/N0243447.pdf</a>?OpenEle ment
- Completion Strategy of the International Criminal Tribunal for Rwanda, annexed to Letter dated 30 April 2004 from the President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the

Territory of Neighbouring States between 1 January and 31 December 1994 addressed to the President of the Security Council (UN Doc. S/2004/341) <a href="http://daccessdds.un.org/doc/UNDOC/GEN/N04/334/52/PDF/N0433452.pdf?OpenElement">http://daccessdds.un.org/doc/UNDOC/GEN/N04/334/52/PDF/N0433452.pdf?OpenElement</a>

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