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Trial Of “The Butare Four” In Belgium

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**CASE WESTERN RESERVE
SCHOOL OF LAW
INTERNATIONAL WAR CRIMES PROJECT**

**MEMORANDUM FOR THE
OFFICE OF THE PROSECUTOR
OF THE ICTR**

ISSUE 24: TRIAL OF “THE BUTARE FOUR” IN BELGIUM

**PREPARED BY JESSICA A. HARRAH
SPRING 2003**

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I. Introduction and Summary of Conclusions

A. Issues

This memorandum addresses the Trial of the Butare Four that was held in Belgium in 2001. Belgium's conviction of the four Rwandans for war crimes was the first time that a third party State convicted persons of war crimes not directly affecting the prosecuting State. In addition to providing background information this paper will address 3 major issues. The first part of this memo addresses the background of the ICTR and the history between Belgium and Rwanda. The second part of the memo investigates the evolution of Belgium's law on universal jurisdiction. The Third part of the memo includes a discussion of background of the investigation of the Butare four and the trial that occurred in the Court of Assizes in Belgium. The final part of this paper presents the significance of the trial of the Butare Four, both to the ICTR and to the International Community as a whole.

B. Summary of Conclusions

(1) Belgium should be an ally in the fight for justice in Rwanda.

When the ICTR statute was drafted, it anticipated the large volume of cases that the ICTR would be expected to handle. As a result, a provision concerning concurrent jurisdiction was included. The ICTR should cooperate and welcome prosecutions of minor Rwandan war criminals in other States, in order to bring justice to the Rwandan victims.

(2) The ICTR should retain jurisdiction over "major players" in Genocide.

It is important that ICTR retain jurisdiction over the figureheads and the leaders in the Rwandan Genocide. This is important for several reasons. First, it is important to keep the trial close to Rwanda both geographically and culturally for symbolic reasons. Second, it is important to develop a consistent and credible historical record. Finally, it is important for the

ICTR to create a precedent within its own court, so that the treatment and penalties for figureheads are consistent. This will lend credibility to the process and encourage faith in the judgments rendered by the ICTR.

(3) The ICTR should take into account the criticism Belgium's law has received.

Belgium has a history as a colonial power in Rwanda. As a result their trial of the Butare Four has been criticized on several levels. Critics have stated that as a colony power Belgium had a direct role in creating the unrest that led to the 1994 Genocide. The trial has also been criticized as simply another form of Belgium's colonization of Rwanda. In addition, the Belgian law on universal jurisdiction has been criticized as being too broad. The law is seen by some critics as making the Belgians the judge and jury of the entire world. This is especially problematic because of the differences in procedure and court rules between the ICTR and Belgian Courts. While these criticisms may not affect the ICTR directly, they are something to be considered by the ICTR, when it comes to cooperating or working with Belgium in future prosecutions against Rwandans in Belgium.

(4) ICTR's failure To Indict Alphonse Higaniro

The fact that Alphonse Higaniro was convicted in Belgium after the ICTR had failed to indict him is an indication of the issues that could begin to affect the credibility of the ICTR if other trials take place under a universal jurisdiction law. Because the procedure and evidence rules of Belgium are based on the more cooperative style of European courts and the ICTR rules are based more on the Anglo-Saxon rules makes it likely that this could happen again. Since, Higaniro was at least potentially a figurehead in the Rwandan Genocide, the fact that he was convicted in a court other than the ICTR could serve to undermine the credibility of the ICTR.

II. Factual Background on the ICTR

The international criminal Tribunal for Rwanda (ICTR) was established by the Security Council of the United Nations to prosecute persons responsible for genocide and other serious violation of international humanitarian law committed in the territory of Rwanda between January 1, 1994 and December 31, 1994.¹ When the trial of the Butare Four occurred in April of 2001, the ICTR had convicted eight people of war crimes. Nine more were on trial, these individuals included several high-ranking government officials alleged to be ringleaders in the genocide.² In Rwanda, 4,500 people have been tried, with close to 100 executed. More than 100,000 people await trial there.³

III. Historical Background of Belgium's Interaction with Rwanda

In 1892, the Germans colonized the area that is now Rwanda. When the Germans were defeated in WWI, Belgium took over control of the colonies. At that time, three ethnic groups populated the region: the Twa, the Hutu, the Tutsi. The Hutu and Tutsi were similar in several ways. They shared the same culture, religion, language and king. However, the Tutsi typically had lighter skin, thinner lips and straight noses, which made the Belgian's believe they were more closely related to the Europeans. For this reason, the Belgians educated the Tutsi and gave them positions in the colonial governments. As a result, "by the end of the 1950's, the pseudo-ethnic division between Hutus and Tutsis became a real division under the policies and programs of the Belgian colonial rulers." The favoritism the colonists showed to the Tutsi exacerbated whatever tension may have existed originally between the indigenous tribal groups.⁴ However,

¹ See generally Virginia Morris & Michael P.Scharf, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (1998). [Reproduced in the accompanying notebook at Tab 1.]

² *Rwandans on Trial*, N.Y. TIMES, May 1, 2001, at A22 [Reproduced in the accompanying notebook at Tab 16.]

³ *Id.*

⁴ Evo Popoff, Note, *Inconsistency and Impunity in International Human Rights Law: Can The International Criminal Court Solve the Problems Raised By the Rwanda and Augusto Pinochet Cases*, 33 GEO. WASH. INT'L. REV. 363 (2001). [Reproduced in the accompanying notebook at Tab 6.]

starting in the 1950's after decades of supporting Tutsi rule, Belgian policies began to gradually shift to support majority Hutu rule. This tension and shift of colonial support culminated in 1961 with the Hutu-led, Belgian-assisted coup that formally abolished the monarchy. The result was the proclamation of a de facto republican regime under Hutu rule. Belgium granted Rwanda its independence in 1962.⁵ Belgium, however, had left a legacy of racial tension.

III. Belgium's Exercise of Universal Jurisdiction

Over the last fifty years Belgium's exercise of universal jurisdiction has undergone a significant evolution. In 1949 Belgium ratified the 1949 Geneva conventions, which granted universal jurisdiction over crimes against humanity; however, no implementing legislation was passed by the Belgium legislature.⁶ For the next forty-five years Belgium had no legislation giving it the right to assert universal jurisdiction over crimes against humanity, set forth in the Geneva Conventions.⁷ However, in 1993 Belgium enacted a law which provided for punishment for grave breaches of the Geneva Conventions of 1949 and The Additional Protocols I and II.⁸ By implementing the Geneva Conventions into domestic law, Belgium assumed the responsibility of prosecuting or extraditing persons committing crimes during international conflicts.⁹

A. Universal Jurisdiction Over Geneva Conventions: 1993 Law

The 1993 Act changed the way Belgium handled the issue of universal jurisdiction. The 1993 Act gave Belgium universal jurisdiction over "willful killing, torture or inhuman treatment,

⁵Michael J. Kelly, *Can Sovereigns Be Brought to Justice? The Crime of Genocide's Evolution and the Meaning of the Milosevic Trial*, 76 ST. JOHN'S L. REV. 257, (2002). [Reproduced in accompanying notebook at Tab 11.]

⁶Moncia Hans. *Comment, Providing for Uniformity in the Exercise of Universal Jurisdiction: Can Either the Princeton Principles on Universal Jurisdiction or an International Criminal Court Accomplish This Goal*, 15 TRANSNAT'L LAW. 357 (1987). [Reproduced in accompanying notebook at Tab 12.]

⁷*Id.*

⁸*Id.*

⁹*Id.*

including biological experiments, willfully causing great suffering or serious injury to body or health, and extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly.”¹⁰ The legislature recognized that most armed conflicts today are internal in nature and so included internal armed conflicts in the legislation as well as international armed conflicts.¹¹ While this statute grants jurisdiction over non-nationals for grave breaches of the Geneva Convention, it does not require the prosecution of the violations. Belgium is under no statutory obligation to prosecute every person who violates the Geneva Conventions and their Protocols, but has the legal ability to do so.

B. Universal Jurisdiction Extended to Genocide and Crimes Against Humanity: 1999 Law

On February 10th 1999, Belgium amended its 1993 universal jurisdiction law and adopted an expanded domestic law.¹² The 1999 law expanded the 1993 law to include genocide, crimes against humanity, and war crimes.¹³ This act also extends to perpetrators who are not present in Belgium at the time charges are filed or the investigation is conducted.¹⁴ Further, the 1999 legislation eliminates immunity for state officials.¹⁵ The purpose of this amendment was to prevent the future commission of grave breaches of international humanitarian law.¹⁶ This amendment was passed in part because of the shock over the genocide in Rwanda, in which ten Belgian UN peace keepers and several dozen Belgian Citizens were killed and the worry that Belgium may become a safe haven for those who perpetrated the genocide.¹⁷

¹⁰ *Id.* [Reproduced in the accompanying notebook at Tab 12.]

¹¹ Roemer Lemaitre, *Belgium Rules the World: Universal Jurisdiction over Human Rights Atrocities*, at [Http://law.kuleuven.ac.be/jura/37n2/lemaitre.htm](http://law.kuleuven.ac.be/jura/37n2/lemaitre.htm). [Reproduced in the accompanying notebook at Tab 31.]

¹² Hans, *supra* note 6, at 358. [Reproduced in the accompanying notebook at Tab 12.]

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Lemaitre, *supra* note 11. [Reproduced in the accompanying notebook at Tab 31.]

IV. Trial Of the Butare Four

A. Background of Investigation

As early as July 1994, several complaints were filed with the Belgian judicial authorities over the Rwandan Genocide.¹⁸ The first investigations against Rwandans began on April 8th, 1994.¹⁹ This was the day after the assignation of ten Belgian Blue helmets who had been participating in the United Nations Assistance Mission for Rwanda. Within a few months the Belgian legal system would record over 150 complaints, most of these complaints were filed by the victims directly before an investigating judge.²⁰ In Belgium's justice system, each case has a presiding judge, who makes rulings of law; a prosecutor; and an investigating judge, who collects evidence and then testifies at the trial.²¹ In 1995 some files ended up on the desk of Damien Vandermeersch, who would eventually become the investigating judge for the trial of the Butare Four.²²

The fact that the trial of the Butare Four actually occurred is due in large part to the persistence of Mr. Vandermeersch. Over the course of the next four years he completed two rogatory commissions in Rwanda and one at the ICTR in Arusha.²³ It was his testimony during the trial of the Butare Four that helped to bring the atrocities that occurred in Rwanda to life in a courtroom in Belgium.

¹⁸ *Id.* [Reproduced in the accompanying notebook at Tab 31.]

¹⁹ Judicial Diplomacy, Chronicles and Report on International Criminal Justice, *Comments on Trial of the Butare Four* (May 6, 2001) available at: <http://www.diplomatiejudiciaire.com/UK/Higaniro8.htm> through <http://www.diplomatiejudiciaire.com/UK/Higaniro17.htm>. [Reproduced in the accompanying notebook at Tab 25.]

²⁰ Sukdev Chhatbar, *Belgium Reaffirms Support for International Criminal Tribunal*, (January 29, 2002), available at <http://www.allafrica.com>. [Reproduced in the accompanying notebook at Tab 34.]

²¹ Paul Baverman, Brussels sprouts: Belgium's Exercise of "universal Jurisdiction" is a little bit hypocritical and a lot nonsensical, *American Lawyer*, AMERICAN LAWYER v24 i3 p65, (2002). [Reproduced in the accompanying notebook at Tab 13.]

²² *Id.*

²³ Comments on Trial of Butare 4 *supra* note 19. [Reproduced in the accompanying notebook at Tab 25.]

B. Background of Trial

The eight-week long trial was presided over by Judge Luc Maes.²⁴ The trial was conducted in the Brussels Court of Assizes.²⁵ It is the first time in the history of international law that a civilian jury in a domestic court judged crimes against humanity committed elsewhere.²⁶ There was some concern over whether or not a jury of twelve ordinary citizens would be able to understand enough about the complicated, unfamiliar, horrific, events they were asked to judge.²⁷ The prosecution had not obtained an arrest warrant against the accused and so they remained free during the trial.²⁸ The decision to try the four defendants' together was made with judicial economy in mind.²⁹ The trial also included civil charges in which victims claimed damages.³⁰

V. Background of Defendants

The Four defendants in the trial of the Butare Four were very different. The defendants were two nuns, a factory owner and a professor. Each of these individuals was indicted for allegedly have committed atrocities in the prefecture of Butare in Rwanda during the Rwandan genocide.

²⁴ *Belgian Jury To Decide Trial of Rwanda Nuns*, XINHUA GENERAL NEWS SERVICE., June 7, 2001.

[Reproduced in the accompanying notebook at Tab 2.]

²⁵ Julie Carabillo, *The Exercise of Universal Jurisdiction by Belgium Over ICTR Targets*, available at <http://www.nesl.edu/center/wcmemos/2001/carabillo.pdf>

[Reproduced in the accompanying notebook at Tab 28.]

²⁶ Peter Ford, *Belgium Pursues Justice Without Borders*, CHRISTIAN SCIENCE MONITOR, June 11, 2001, [Reproduced in the accompanying notebook at Tab 14.]

²⁷ *Id.* (The Jury included a hairdresser, a truck driver, a university teacher, and a journalist).

²⁸ Comments on Trial of Butare Four *supra* at note 19.[Reproduced in the accompanying notebook at Tab 25.]

²⁹ *Id.*

³⁰ *Id.*

A. Consolata Mukangano (“Sister Gertrude”)

(1) Background Information

Consolata Mukangano (“Sister Gertrude”) was born on August 15, 1958 in Gitarama. At the age of 19, Sister Gertrude entered the Sovu Convent. She took her vows in 1984. In July 1993, she became Mother Superior of the Sovu Convent.

(2) Charges

Sister Gertrude is accused of forcing Tutsis to leave the Sovo Covenant when she knew that armed Hutu militia was gathered outside.³¹ Thousands of the Tutsis who had sought sanctuary were allegedly driven out and killed once outside.³² Many of these Tutsis were women and children who had been driven from the hills when the fighting began.³³ She is also accused of contacting officials days later to ask them to remove the remaining 30 Tutsi.³⁴

Sister Gertrude was accused of “having either gave the order, whether or not this took effect, to commit crimes of international law; or volunteered or offered to commit crimes of international law or accepted a similar proposition or offer; or incited others to commit crimes of international law, whether or not this incitement took effect; or participated (...) in crimes of international law, whether or not this participation took effect; or failed to act within the limits of her ability to act when she was aware of orders given with regard to committing crimes of international law or of crimes that were being carried out when she could have prevented them

³¹ Linda Keller, *Belgian Jury to Decide Case Concerning Rwandan Genocide*, The American Society of International Law (2001), available at <http://www.asil.org/insights/insigh72.htm> [Reproduced in the accompanying notebook at Tab 29.]

³² It is estimated that up to 7,000 Tutsis died after seeking shelter in the Sovu Convent. *see* Xinhua General News Service *supra* at note 24. [Reproduced in the accompanying notebook at Tab 2.] It is estimated that up to 7,000 Tutsis died after seeking shelter in the Sovu Convent.

³³ Marlise Simons, *An Awful Task: Assessing 4 Roles in Death of Thousands in Rwanda*, NEW YORK TIMES, April 30, 2001. [Reproduced in the accompanying notebook at Tab 9.]

³⁴ Keller *supra* at note 31.[Reproduced in the accompanying notebook at Tab 29.]

from continuing or stopped them; or attempted (...) to commit a crime of international law." ³⁵

According to her indictment these crimes took place between April 17, 1994 and May 7th 1994 in prefecture of Butare in Rwanda."³⁶

(3) Defense

Sister Gertrude denies any collaboration, claiming she was a terrified by-stander with no control over the situation. ³⁷ In addition, much of the testimony against Sister Gertrude, came from, Emmanuel Rekeraho, who had been the chief of the Butare Militia at the time of the genocide. However, he was not there to testify in person because he had already been convicted of participating in the Genocide in Rwanda, and had been sentenced to death. Mr. Vandermeersch had collected the testimony through his investigation at the ICTR. Both of the Nuns' attorneys argued that it was unfair to their client to have such an important witness be unavailable to testify in front of the jury. ³⁸ They also argued that that the prosecutor did not do everything within his power to have Emmanuel Rekeraho present as a witness. However, the prosecutor simply replied by saying that it was not possible to have Rekeraho there because no convention on mutual judicial aid exists between Rwanda and Belgium. ³⁹

During the trial, an expert psychiatrist testified that Sister Gertrude was psychologically fragile, a condition which had become evident during her theology studies in Belgium. There

³⁵ Judicial Diplomacy, Chronicles and Reports on International Justice, *Consolata Mukangango, Mother Superior at the Sovu Convent* (2001), available at <http://www.diplomatiejudiciaire.com/UK/Mukangango.htm> [Reproduced in the accompanying notebook at Tab 26.]

³⁶*Id.* (In particular her indictment stated that "on several occasions, in particular on April 22, 1994, April 25, 1994 and May 6, 1994, Consolata Mukangango deliberately, with the intention of killing, in a premeditated fashion, murdered Déo Gatete and Placide Sept; deliberately, with the intention of killing and in a premeditated fashion, murdered Chantal Musabyemariya and Arnaud Crispin Butera; deliberately, with the intention of killing and in a premeditated fashion, murdered a number of unspecified persons whose identity has not been established to this day.

³⁷ *Id.* The prosecutor stated that he finds it hard to believe that the nuns were no collaborators, "given that none were killed and the convent was never damaged.")

³⁸ Comments on Trial of Butare Four *supra* at note 19. [Reproduced in the accompanying notebook at Tab 25.]

³⁹ *Id.*

was some testimony to the fact that in her fragile psychological state, the genocidal propaganda may have worked to the point where she denied the humanity of the Tutsis.⁴⁰

B. Julienne Mukabutera (“Sister Maria”)

(1) Background Information

Sister Julienne Mukabutera (“Sister Maria”) was born on Jun 22, 1964 at Sovu. She entered the Sovu convent (Butare prefecture), in 1996.

(2) Charges

Sister Maria is also accused of forcing the Tutsis to leave the Sovu convent compound when she knew that the armed Hutu militia was gathered outside.⁴¹ In addition, she is accused of supplying gasoline to the militia to burn the Tutsis who refused to leave the building in which they sought shelter.⁴²

Sister Maria is accused of committing, in the Butare prefecture of Rwanda, serious offences, qualified as crimes of international law, by action or omission, against persons and goods protected by the Geneva Conventions and the additional protocols to the Conventions. She allegedly "either gave the order, whether or not this took effect, to commit crimes of international law; or volunteered or offered to commit crimes of international law or accepted a similar proposition or offer; or incited others to commit crimes of international law, whether or not this incitement took effect; or participated (...) in crimes of international law, whether or not this participation took effect; or failed to act within the limits of her ability to act when she was aware of orders given with regard to committing crimes of international law or of crimes that were being carried out when she could have prevented them from continuing or stopped them; or

⁴⁰ *Id.* [Reproduced in the accompanying notebook at Tab 25.]

⁴¹ *Id.*

⁴² *Judicial Diplomacy, Chronicles and Reports on International Justice, Julienne Mukabutera, Nun at the Sovu Convent, available at : <http://www.diplomatiejudiciaire.com/UK/mukabutera.htm> [Reproduced in the accompanying notebook at Tab 25.]*

attempted (...) to commit a crime of international law." According to her indictment, issued February 12, 2001, the crimes were committed between April 17, 1994 and May 7, 1994 in Butare prefecture, Rwanda.⁴³

(3) Defense

Sister Maria denies any collaboration with the militia, claiming she was a terrified bystander with no control over the situation.⁴⁴ According to the defense, Sister Maria was "still unaware of what happened at the time of the events." She continued to suffer from post-traumatic stress syndrome. According to the testimony of psychiatrist Alain Dellatre, this was one reason that she followed the orders of the militiamen.⁴⁵

C. Vincent Ntezimana

(1) Background Information

Vincent Ntezimana was born in September 1961, in Murambi. In 1984, he obtained a degree in physics, after studying at the Catholic University of Lovain in Belgium. From 1984 to 1987 he was an assistant professor at the University of Butare. In 1987, he returned to the university in Lovain and in 1993 he received his PhD in Physics. He was a lecturer at the University of Butare from 1993 through May of 1994.⁴⁶

⁴³ *Id.* In particular her indictment stated that "On several occasions, in particular on April 22, 1994, April 25, 1994 and May 6, 1994, Julienne Mukabutera deliberately, with the intention of killing and in premeditated fashion, murdered Déo Gatete and Placide Sept. Deliberately, with the intention of killing and in a premeditated fashion, murdered Chantal Musabyemariya and Arnaud Crispin Butera. Deliberately, with the intention of killing and in a premeditated fashion, murdered a number of unspecified persons whose identity has not been established to this day." [Reproduced in the accompanying notebook at Tab 25.]

⁴⁴ *Id.* According to African Rights, a non-governmental organization, the leader of the local militia has admitted his part in the genocide and state the nuns provided vehicles, information and support in killing the Tutsis. He stated that "[t]hose two nuns collaborated with us in everything we did. They shared our hatred for the Tutsi, I did not do anything without first discussing it with Kisito and Gertrude. They handed over innocent people, without be threatened in any way, and with us having to use force."

⁴⁵ *Id.*

⁴⁶ Judicial Diplomacy, Chronicles and Reports on International Justice, *Vincent Ntezimana, University Professor*, available at <http://www.diplomatiejudiciaire.com/UK/NtezimanaUK.htm> [Reproduced in the accompanying notebook at Tab 27.]

(2) Charges

Vincent Ntezimana is accused of drawing up a list of Tutsi colleagues to be killed under the pretext of setting up an evacuation of Tutsis. He is charged with responsibility for the death of several Tutsis including a fellow professor and his wife. He is accused of taking part in the killings of Butare. Finally, he is allegedly the author of a manifesto of the genocidaires. "Appeal to the Conscience of Bahutus," that calls for the extermination of the Tutsi.⁴⁷

Ntezimana was accused of allegedly, "either gave the order, whether or not this took effect, to commit crimes of international law; or volunteered or offered to commit crimes of international law or accepted a similar proposition or offer; or incited others to commit crimes of international law, whether or not this incitement took effect; or participated (...) in crimes of international law, whether or not this participation took effect; or failed to act within the limits of his ability to act when he was aware of orders given with regard to committing crimes of international law or of crimes that were being carried out when he could have prevented them from continuing or stopped them; or attempted (...) to commit a crime of international law."⁴⁸ His indictment states that the crimes were committed between April 6 and May 27, 1994 in the prefecture of Butare, Rwanda.⁴⁹

(3) Defense

⁴⁷ *Id.* [Reproduced in the accompanying notebook at Tab 27.]

⁴⁸ *Id.*

⁴⁹ *Id.* Vincent Ntezimana is alleged to have "deliberately, with the intention of killing and with premeditation, committed the murder of Karenzi Pierre-Klaver." "Deliberately, with the intention of killing and with premeditation, committed the murder of Mukamusoni Alphonsine." · "Deliberately, with the intention of killing and with premeditation, committed the murder of each of the children of the couple Karenzi-Mukamusoni, that is, Solange, Malik and Mulunga." "Deliberately, with the intention of killing and with premeditation, committed the murder of Karekezi Marie-Claire." "Deliberately, with the intention of killing and with premeditation, committed the murder of a young man whose identity has not been established to this day." "Deliberately, with the intention of killing and with premeditation, committed the murder of an injured young girl whose identity has not been established to this day." "Deliberately, with the intention of killing and with premeditation, committed the murder of Nicole Nduwumwe" "Deliberately, with the intention of killing and with premeditation, committed the murder of an unspecified number of persons whose identity has not been established to this day."

Ntezimana denied that he wrote or disseminated the tract. He pointed to the poverty of in the language of the tract as proof that he was not the author.⁵⁰ While he admitted to making a list of his colleagues, he denied that he knew that the list he had made would be used to target Tutsis. He admitted that he let a thug murder a young girl who was living at his house, but claimed that he was too scared to stop the killing.⁵¹

D. Alphonse Higaniro

(1) Background Information

Alphonse Higaniro was born in 1949 in Gaseke.⁵² He was educated at the Catholic University of Louvain in Belgium.⁵³ Upon returning to Rwanda, he was a professor of mathematics.⁵⁴ He later went on to hold several governmental posts including Minister of Transport and Communication. In 1992, he became the General Manager of Sorwal (“Rwandan Match Company”).⁵⁵

(2) Charges

On March 2, 1995 the Higaniro case was opened on orders from the Minister of Justice. On May 15, 1996 the ICTR prosecutor requested that the Higaniro case be handed over to its jurisdiction. On August 8, 1996 the ICTR Judge did not confirm the indictment against Alphonse Higaniro. On August 13, 1996 the Court of Cassation decided to hand over the Higaniro case to the Brussels examining Judge.⁵⁶

⁵⁰ Comment on the Trial of Butare Four *supra* at note 19. [Reproduced in the accompanying notebook at Tab 25.]

⁵¹ *Id.*

⁵² Judicial Diplomacy, Chronicles and reports on International Criminal Justice, Alphonse Higaniro, *Factory Director of Butare (2001)*, available at <http://www.diplomatiejudiciaire.com/Higaniro/Higaniro.html> [Reproduced in the accompanying notebook at Tab 24.]

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* [Reproduced in the accompanying notebook at Tab 24.]

Higaniro was accused of owning a factory that was a breeding ground for extremist milita. He is accused of encouraging his employees to “work” and achieve “cleansing.”⁵⁷ He is also accused of ordering the killing of Tutsis, including one family whose house blocked the view from his lakeside villa.⁵⁸

Higaniro was accused of committing, in Butare the prefecture of Rwanda, serious offenses, qualified as crimes of international law, by action or omission, against persons and goods protected by the Geneva Conventions and the additional protocols to the Conventions. He was charged with having “either gave the order, whether or not this took effect, to commit crimes of international law; or volunteered or offered to commit crimes of international law or accepted similar proposition or offer; or incited others to commit crimes of international law, whether or not this incitement took effect or participated (...) in crimes of internal law, whether or not this participation took effect; or failed to act within the limits of his ability to act when he was aware of orders given with regard to committing crimes of international law or of crimes that were being carried out when he could have prevented them from continuing or stopped them; or attempted (...) to commit a crime of international law. According to his indictment, the crimes were committed in the prefecture of Butare in Rwanda and in the Surrounding area between August 15, 1993 and July 4, 1994.”⁵⁹

⁵⁷ *Id.* At the trial a letter was produced that Higaniro had written to his technical director, stating “for the sake of security in Butare, it is necessary to continue and finish the cleansing.” During the trial he explained this by saying that he was referring to cleaning up the damage, which was the result of a landslide. This was however, contradicted by several factory workers who said that the letter had been written after the cleaning of the landslide had been completed. [Reproduced in the accompanying notebook at Tab 24.]

⁵⁸ *Id.*

⁵⁹ *Id.* The indictment of Alphonse Higaniro states: "Deliberately, with the intention of killing and with premeditation, committed the murder of Pierre-Klaver Karenzi; "Deliberately, with the intention of killing and with premeditation, committed the murder of Alphonsine Mukamusoni; "Deliberately, with the intention of killing and with premeditation, committed the murder of each of the children of the couple Karenzi-Mukamusoni, Solange, Malik, Mulanga as well as the two nephews of Pierre-Klaver Karenzi, Thierry and Emeri Kanyabugoyi and Séraphina. "Deliberately, with the intention of killing and with premeditation, committed the murder of an unspecified number of persons whose identity has not been established to this day. In the prefecture of Butare, in Rwanda, at Butare, between April 6 and May 27, 1994 : "Deliberately, with the intention of killing and with

(3) Defense

Higaniro denies all charges. He admits he wrote a letter to president Habyarimana referring to the Arusha peace accords with the Tutsi opposition in 1993 as a “civilian coup d’etat.” But claims the letter proves he was not involved in politics or a Habyarimana supporter. He also claimed that any reference to cleansing was made as a result of a landslide that had interfered with the factory.

VI. Legal Basis of the Charges

A. Charged under Geneva Convention

The defendants were charged with violations of humanitarian law under the Geneva Conventions. Genocide was not a charge because it was not a crime under Belgian law in 1994, when the events allegedly took place.⁶⁰ There is a clear legal basis for the assertion of universal jurisdiction over violations of the Geneva Conventions.⁶¹ However, there is no clearly applicable Belgian legislative basis for exercising jurisdiction over extraterritorial crimes against humanity.⁶² This is because the crimes were committed before the 1999 amendment, which extended coverage to crimes against humanity.⁶³

premeditation, committed the murder of a young man whose identity has not been established to this day."
"Deliberately, with the intention of killing and with premeditation, committed the murder of an injured girl whose identity has not been established to this day." In the prefecture of Gisenyi, in Rwanda, between April 5 and 9, 1994 :
"Deliberately, with the intention of killing and with premeditation, committed the murder of Benoît Rwamanywa, of his wife Constance Niwemukobwa and their children, Olive Rwamanywa and Aline Dusabe. To have deliberately attempted, with the intention of killing and with premeditation, to commit the murder of Olivier Rwamanywa, Sylvie Niwemukobwa, Louise Uwera and Yvette Umwari.

⁶⁰ Keller supra at note 31 . [Reproduced in the accompanying notebook at Tab 29.]

⁶¹ *Id.*

⁶² *Id.* [Reproduced in the accompanying notebook at Tab 29.]

⁶³ *Id.*

C. Charged under Belgian Penal Code

Under the 1993 law covering grave breaches of the Geneva Conventions and Additional Protocols I and II, Belgian courts have jurisdiction over such offense regardless of where the offenses are committed, by whom or against whom. However, these conventions are inapplicable to conflicts “not of an international character.”⁶⁴ The 1994 mass killings in Rwanda were the result of a civil war and so were not of an international character. There is however, Article 3 common to all four conventions is relevant to internal armed conflicts.⁶⁵ Under Common Article 3, all parties are required to treat noncombatants humanely, without discrimination, and prohibits violence against such persons including murder, mutilation and cruel or degrading treatment.⁶⁶ Additional Protocols I and II expand Common Article 3 to cover armed conflict including wars of national liberation and other internal conflicts.⁶⁷ So, under their 1993 law Belgium has jurisdiction over violations of humanitarian law under the Geneva Conventions. This is true regardless of the character or location of the conflict.

In 1999 Belgium added genocide and crimes against humanity to international crimes over which Belgian courts can exercise universal jurisdiction.⁶⁸ Belgium adopted the definition of war crimes found in the Rome Statute of the International Criminal Court.⁶⁹ This definition includes acts such as murder when committed as a part of a widespread or systematic attack against civilians.⁷⁰ However, there is a question as to whether Belgium intended this law to have a retroactive effect.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Keller *supra* at note 31. [Reproduced in the accompanying notebook at Tab 29.]

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* [Reproduced in the accompanying notebook at Tab 29.]

It is not clear whether the law is retroactive. It appears that the Belgian government intended to allow the 1999 law to have a retroactive effect for offenses previously criminalized by customary law, such as crimes against humanity and genocide.⁷¹ At least one Belgian Court has held the law does have a retroactive effect where the alleged acts already constituted crimes against humanity as defined in international criminal law.⁷² That means that because genocide and widespread killing were previously prohibited by customary international law, Belgian courts may assert jurisdiction over such crimes taking place outside the country.

VII. Verdicts

The verdict was returned on June 8, 2001. All four defendants were convicted of international crimes arising from the Rwandan Genocide. The jury deliberated eleven hours prior to finding the defendants guilty of most of the 55 counts against them.⁷³ Ntezimana was the only defendant to have some charges dropped.⁷⁴ He was charged with violations of humanitarian law and was sentenced to 12 years. Sister Gertrude was found guilty of violations of international humanitarian law.⁷⁵ She was sentenced to 15 years imprisonment.⁷⁶ Sister Maria was found guilty of violations of international humanitarian law. She was sentenced to 12 years imprisonment.⁷⁷ Finally Alphonse Higaniro, was found guilty of violations of international humanitarian law and was sentenced to 20 years imprisonment. The fear that the civilian jury would be unable to handle the complicated facts from 3000 miles away was squelched with the return of the verdict. It is reported that the jury picked their way carefully through the

⁷¹ *Id.* [Reproduced in the accompanying notebook at Tab 31.]

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Belgian Court Gives For Rwandans 12 to 20 Year Sentences*, Foundation Hironnelle (2001) available at www.Hironnelle.org/Belgium/Justice. [Reproduced in the accompanying notebook at Tab 19.]

⁷⁵ Consolata Mukangango, Mother Superior at the Sovu Convent *supra* at note 35. [Reproduced in the accompanying notebook at Tab 26.]

⁷⁶ *Id.*

⁷⁷ Comments on Trial of Butare Four *supra* at note 31. [Reproduced in the accompanying notebook at Tab 25.]

accusations, confirming some and rejecting others. For many of these counts the twelve person jury was split jury 7 to 5.⁷⁸

Three of the Butare Four have filed an appeal in Belgium for a retrial challenging the judicial procedure on technical terms.⁷⁹

VIII. Significance of the Trial

The Trial of the Butare Four was significant, not only to the ICTR but also to the world. It was the first trial of its kind and the reviews of it, both good and bad, will likely have an influence on whether or not similar trials occur in the future. If and how these trials occur in the future is significant to the operation and creditability of the ICTR.

A. Significance in Relation to the ICTR

(1) An ally in the fight for Justice in Rwanda

The Belgian trial of the Butare Four is good news for the ICTR. The stated purpose of the ICTR is to “contribute to the process of national reconciliation in Rwanda and to the maintenance of peace in the region, replacing an existing culture of impunity with one of accountability. Only with the commitment to justice of the international community can the architects of the Rwandan genocide, who have fled to countries around the world, be held legally accountable for their actions.”⁸⁰ The number of persons arrested for their involvement in the Rwandan Genocide makes it impractical for the ICTR to prosecute all the individuals who have been indicted.⁸¹ There were over 80,000 people sitting in Rwandan prisons awaiting trial in 1996. At that time the tribunal consisted of only six justices and the appellate court was shared

⁷⁸ Ford *supra* at note 26.[Reproduced in the accompanying notebook at Tab 14.]

⁷⁹IRIN, *Rwanda: Three Genocide convicts appeal in Belgium*, (June 25, 200), available at <http://www.africaonline.com/site/Articles/1,3,3646.jsp> [Reproduced in the accompanying notebook at Tab 23.]

⁸⁰ See Generally, Morris & Scharf *supra* at note 1.

⁸¹ Carabillo *supra* at note 25.[reproduced in the accompanying notebook at Tab 28.]

with the already busy ICTY. Even the most “well-designed international criminal tribunal has sharp limitations, especially in handling a high volume of criminal investigations.”⁸² This problem was anticipated by the drafters of the ICTR statute and was one of the reasons the concurrent jurisdiction provisions were included.⁸³ It is important that the ICTR work in conjunction with national courts to “ensure the greatest number of so-called genocidaires are brought to justice.”⁸⁴ With the exception of Higaniro, the Butare Four were relatively minor players in the genocide, making prosecution at the ICTR impractical. The Belgium court therefore can be seen as a supplement to the work of the ICTR.

(2) ICTR must retain jurisdiction over major players in Genocide

It is important that the ICTR retain jurisdiction over the figureheads and the leaders of the genocide in Rwanda. There is a symbolic reason for conducting the trials near to where the atrocities occurred. This nearness is relevant in both a geographical as well as a cultural sense. It provides closure as the nation moves towards rebuilding and reconciliation. By moving the system 3000 miles away to Belgium it may serve to weaken the authority of the Tribunal, therefore detracting from the goal of reconciliation.⁸⁵

The ICTR must also retain jurisdiction over the figureheads of the genocide in order to create and maintain a historical record. In order to create a historical record that hold credibility and strength, the ICTR must try each of the figureheads of the Rwanda Genocide. This is true for several reasons. First, in order to be perceived as fair and impartial, the Tribunal must apply consistent treatment to each case that it hears. As a result of this consistent treatment, the judgments of the ICTR will be viewed as accurate and credible for the purposes of a historical

⁸² *Id.* [Reproduced in the accompanying notebook at Tab 28.]

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ “Nevertheless, the symbolic effect of prosecuting even a limited number of the perpetrators, especially the leaders who planned and instigated the genocide would have considerable impact on national reconciliation, as well as on deterrence of such crimes in the future.” [Reproduced in the accompanying notebook at Tab 28.]

record. This historical record could be undermined however, if figureheads are tried and convicted in other countries, using different rules and different procedure. An example of this is the conviction of Alphonse Higaniro, which will be discussed below.

Finally, the ICTR must retain jurisdiction over figureheads in order to create a consistent precedent within it's own court system. Because the ICTR was created to conduct fair and just trials for the perpetrators of the Rwanda Genocide, a body of law must be created that shows consistent and fair treatment of the accused.

(3) ICTR must take into account the criticisms Belgium's law has received.

Belgium has a history as a colonial power in Rwanda, and their exercise of universal jurisdiction has been interpreted as just another form of that colonialism. Some critics even go as far as to say that Belgium bears some responsibility for the massacres in Rwanda. This view is based on Belgium's system of indirect rule as colonial master that went on in Rwanda for over fifty years.⁸⁶ This system favored the small minority Tutsi population at the expense of the majority Hutu. However, when Hutu militias began killing Tutsi in the spring of 1994, Belgium pulled out of the United Nations peacekeeping force.⁸⁷ This abrupt departure prompted the withdrawal of most of the rest of the U.N. Force.⁸⁸ It is seen by some as hypocritical for Belgium to now be taking a role in adjudicating individuals for participating in genocide when they themselves withdrew their troops on April 15, 1994, once the genocide began.⁸⁹ This view may take creditability away from the judgments of Belgian courts. While this criticism may not

⁸⁶ Interview by Fergal Keane with Gerard Prunier, Author of the Rwandan Crisis, PBS (1998). Reproduced in the accompanying notebook at Tab 20.]

⁸⁷ *Id.*

⁸⁸ *Rwandans on Trial*, NEW YORK TIMES, May 1, 2001 at A22. [Reproduced in the accompanying notebook at Tab 16.] ; *Rwandan Genocide Could have been Prevented*, BBC NEWS, March 31, 1999 [Reproduced in the accompanying notebook at Tab15.]

⁸⁹Mark S. Zaid, Symposium, Universal Jurisdiction: Myths, Realities and Prospects: Will or Should the United States Ever Prosecute War Criminals?: A Need For Great Expansion in the Areas of Both Criminal and civil Liability, 35 NEW ENG. L. REV. 447, (2001). [Reproduced in the accompanying notebook at Tab 8.]

affect the ICTR directly, it should be considered. The Belgium court is looked at in many ways as assisted the ICTR in bringing justice to Rwanda. The ICTR even helped Belgium financially during the trial of the Butare four.⁹⁰

Belgium has also been criticized for passing a law that gives its courts too much power regarding universal jurisdiction.⁹¹ After the lawsuit against the Butare four, an indictment was issued in Belgium to try Ariel Sharon, now the Prime Minister of Israel, for his alleged role in the massacres, which occurred in Beirut in 1982.⁹² At the time of the massacres Ariel Sharon was the Defense minister of Israel.⁹³ The court rulings on the Belgium's ability to indict Ariel Sharon even though he is a sitting head of state have had negative consequences for Belgium.⁹⁴ Foreign Minister Louis Michel characterized the law as "embarrassing", because heads of state are afraid to visit Belgium due to the prospect of being arrested for crimes.

The Belgium law has been attacked on at least two grounds. One issue is that Belgium is seen as acting as the world's court system for human rights litigation because "they are ready to lock anyone and everyone up in their jails." Another issue is whether Belgium law can apply to perpetrators not physically present in Belgium for prosecution.⁹⁵

The ICTR must also consider what successful prosecutions by other countries will do to its creditability as a court. On the same day that the Butare Four were convicted, the International Crisis Group issued a report heavily criticizing the ICTR for being "bogged down

⁹⁰*Rwanda to Share Costs of Trial of Genocide Suspects in Belgium*, BBC WORLDWIDE MONITORING, August 2, 2001. [Reproduced in the accompanying notebook at Tab 17.] Witnesses asked the government of Rwanda to meet part of the costs amounting to more than one million Belgian Francs used in mostly transporting the witnesses to Brussels and their maintenance.

⁹¹ Hans *supra* at note 6. [Reproduced in the accompanying notebook at Tab 12.]

⁹² *Id.*

⁹³ Need source

⁹⁴ Need source

⁹⁵ *Id.*

by incompetence and bureaucratic infighting.”⁹⁶ According to the report, five of the nine judges had spent more than 18 months without hearing a substantial case. This is affecting international confidence in the court.⁹⁷ If other countries begin to prosecute Rwanda war criminals, the ruling of the ICTR may be undermined.

(4)The failure of ICTR to indict Alphonse Higaniro

Alphonse Higaniro was first arrested in 1995. He was considered one of the ideologues of the genocide. He had spent ten months as the minister of Transport under President Habyarimana. His father in law was the personal doctor of president Habyarimana and was killed when the president’s plane was attacked. According to the prosecutor, apart from being closely linked to the inner circle of power in Rwanda during the time of the genocide, he used his company, Sorwal, to form future militiamen. He also used company vehicles to transport the militia and he participated actively in ethnic cleansing.

In 1996, Alphonse Higaniro was under preventive detention in Belgium. At this time the prosecutor for the ICTR requested his deferral from Belgium to the ICTR. The ICTR then commenced a criminal investigation. In August 1996, the indictment of Higaniro was presented to a judge, Lennart Aspegren for confirmation. At the time of the indictment, the prosecutor presented some of the evidence supporting the accusations of genocide. However, the judge decided not to confirm the indictment. Higaniro was then transferred back to Belgium and indicted under Belgian law. The belief is that procedural differences allowed Higaniro to be indicted by Belgium but not by the ICTR. The ICTR rules of procedure are based on Anglo-Saxon traditions, which do not give the tribunal access to all elements of a case before the

⁹⁶ *Body Dismisses Rwanda War Crimes Tribunal As a Sham*, PANAFRICAN NEWS AGENCY DAILY NEWS WIRE, June 8, 2001. [Reproduced in the accompanying notebook at Tab 4.]

⁹⁷ Comments on Trial of Butare Four *supra* at note 19. [Reproduced in the accompanying notebook at Tab 25.]

hearing. Under the rules of the ICTR the judgment must be based on the court hearings alone.⁹⁸ The Belgium indictment is based on the more cooperative European type rules of evidence, for this reason more evidence was allowed to be used against Higaniro.

This created a problem during the trial in Belgium because the defense counsel for Higaniro pointed to the dismissal many times, using it to indicate that Higaniro was innocent, and had been found so already by the ICTR.

B. First Trial to turn the principal of Universal Jurisdiction into Reality.

Belgium is the pioneer of the international community with regards to universal jurisdiction. Belgium's conviction of the Butare Four for war crimes was the first time that a third party State convicted person of war crimes not directly affecting the prosecuting State.⁹⁹ It was also the first time that persons were convicted of war crimes by a civilian jury, not a military or international tribunal.¹⁰⁰ Belgium's conviction of perpetrators of genocide, crimes against humanity and war crimes "add weight to the legitimacy of universal jurisdiction."¹⁰¹ The action of convicting these perpetrators portrays intolerance for these crimes worldwide.¹⁰² As the Trial of the Butare Four proved, the implementation of laws allowing the exercise of universal jurisdiction is a complicated and drawn-out process. The question still remains, whether or not other countries will pass similar legislation. This may come as more countries ratify the Rome Statute of the International Criminal Court, which provides for complimentary jurisdiction of state courts. However, just because an implementing statute exists does not mean that a state will choose to use their time and resources to investigate and prosecute under the statute. In the last two years a number of countries, such as Australia, Germany, New Zealand and South

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⁹⁹ Hans supra note 6 at ? [Reproduced in the accompanying notebook at Tab 12.]

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

Africa, have amended their laws to provide for the opening of investigations when none of their citizens were victims and the suspect was not in the country.¹⁰³

C. Recent Amendments to Belgium Law.

On April 5, 2003 Belgium amended its universal jurisdiction law.¹⁰⁴ This amendment brings to an end the lawsuit, which was filed against Prime Minister Ariel Sharon, a lawsuit which had been making it's way throughout the Belgian judicial system. These amendment will act as filters which will require future complaints to have more connections with Belgium. The amendments will allow the judiciary to reject complaints in which there are no Belgians as victims. It will also allow the judiciary to reject cases in which the plaintiffs have lived in Belgium for three years or less. Further, the government will be able to reject cases in which the accused comes from a democratic country where he can receive a serious trial.¹⁰⁵

These amendments were passed as a result of the increasing embarrassment Belgium was suffering beginning with the indictment of Ariel Sharon which led to the recall of the Israeli Ambassador and ending in March when a group of Iraqis used the law to file a complaint against the first President Bush, Vice President Dick Cheney, Secretary of State Colin Powell and General Norman Scwartzkopf, accusing them of war crimes during the 1991 Persian Golf War.¹⁰⁶

These Amendments will bring the Belgian judiciary more in line with the principles of the International Criminal Court. By adding a filter, which allows the judiciary to reject cases, which come from democratic countries, Belgium offers a court of last resort to countries who

¹⁰³ *Id.*

¹⁰⁴ Marlise Simons, *Belgium puts limit on War crimes Law*, N.Y.TIMES, April 7, 2003. [Reproduced in the accompanying notebook at Tab 3.]

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

have no independent judiciary.¹⁰⁷ Belgium however, has jurisdiction over crimes at least as far back in 1993 when the implementing statute was adopted, whereas, the International Criminal Court only has jurisdiction over crimes which occurred after July 1, 2002.¹⁰⁸

IX. Conclusion

The Trial of the Butare Four has some important implications for the ICTR. The ICTR should consider Belgium's use of their universal jurisdiction to try Rwanda Genocidaires as a compliment to the work that the tribunal is doing in Arusha. However, the ICTR should retain jurisdiction over the figureheads of the Rwanda genocide for both symbolic and procedural reasons. In addition, the ICTR should consider the implications of Belgium being seen as a partner in providing justice for the Rwandan people. Belgium's assistance has been criticized on several levels.

While the Trial of the Butare Four does have implications for the ICTR it does not make minimize its importance. It is unlikely that many states will use their power of universal jurisdiction to conduct trials such as the one conducted in Belgium. This is true not only because of the great costs to the country, but also because of the criticism that Belgium has received as result of their laws. Even Belgium has amended its implementing statutes to curb the aggressive investigations and indictments that were beginning to flood the countries judicial system. Even if states were willing to take on the economic and political burden of trying Rwandan war criminals it is unlikely that they would provide the consistency and credibility needed to provide equal justice to the Rwandan people. For this reason the ICTR should take note of the trial of the Butare Four, and continue with the important work of providing justice to the Rwandan people.

¹⁰⁷ Id.

¹⁰⁸ Id.