

Bizimungu's verdict delivered by the Appeals Chambers

Trial Chamber II on 17 May 2011 convicted Mr. Bizimungu for gross violation of Article 3 Common to the Geneva Convention and of Additional Protocol II¹³; he was sentenced to 30 years imprisonment in connection with the attacks that took place between April, May and June 1994. In paragraph two of her summary judgement, the judges in Appeal Chamber II accused him of inaction after his appointment in January 1994 as commander of military operations in Ruhengeri Sector and subsequent promotions from colonel to Major General and Chief of staff in the Rwandan Army in April 16, 1994.¹⁴ Bizimungu was arrested on 02 August 2002 and on 30 June 2014 in the Laity Kama court room his fate was settled.¹⁵

It is interesting to remark at this stage that the evidence against Mr. Bizimungu is overwhelmingly clear in his capacity as Chief of Staff in the Rwandan Army; he assumed this position on 19 April 1994. In his dissenting opinion or separate declaration Judge Liu Daqun opined with respect to successor command liability as part of superior responsibility to Article 6(3) of the Statute of the International Criminal Tribunal for Rwanda.

He expounded on similar lines that building on the jurisprudence from the International Criminal Tribunal for the Former Yugoslavia (ICTY) the Appeals Chamber in the case of *The Prosecutor v. Enver Hadžihasanović et al.* Appeal Decision¹⁶ declined to charge Bizimungu for failing to punish crimes committed under his authority; in its appeal, the Prosecution argue that the Trial Chamber erred in doing so. The Appeals Chamber concluded that a superior can only be charge for crimes committed at the time when he effectively has control over the perpetrator.¹⁷ This implies that according to the reasoning in *Hadžihasanović et al* a superior is not duty bound to punish crimes committed by subordinates even if he has foreknowledge before he assume command. Against this ground, Judge Liu submits and argues that this will defeat the purpose of successor command liability and offend Article 6(3) of the Tribunal Statute.

¹³ UN Treaties:

<https://treaties.un.org/Pages/Result.aspx?searchText=Common%20Article%203%20of%20Geneva%20Conventi%20and%20its%20Additional%20Protocol&dir=Publication\MTDSG&file=&query=All&tab=UN>, [05 July 2014].

¹⁴ ICTR, <http://www.unictl.org/tabid/155/Default.aspx?id=1416>, [04 July 2014].

¹⁵ ICTR, <http://www.unictl.org/tabid/155/Default.aspx?id=1415>, [05 July 2014].

¹⁶ *Prosecutor v. Enver Hadžihasanović et al.*, Case No. IT-01-47-AR72, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 July 2003 (“*Hadžihasanović et al.* Appeal Decision”).

¹⁷ *Hadžihasanović et al.* Appeal Decision, para. 51.

He therefore contend that the Majority in the *Hadžihasanović et al case* erred in reasoning that there is a convention in customary law rule that incriminate commanders for crimes committed by their subordinate prior to their assumption in command or even in the process of exercising their administrative duties; in fact the *raison d'être* of superior responsibility aimed at ensuring that commanders comply with the laws and customs of war and international humanitarian law.¹⁸ To this end judge Liu submit that there is a framework that allows commanders to be punished for failure to punish their subordinate because he said if the previous commander cannot be prosecuted, then the criminal act of his subordinate would go unpunished which will defeat the aim of justice and open a Pandora box of uncertainty.¹⁹ He however concurs with the judgment for the interests of certainty and applicability of the law.²⁰

To dovetail our discussion it is worth mentioning that this judgement sum up to a total of 41 judgements rendered by the Tribunal, disposing appeals that involve 51 persons; the ICTR Appeals Chambers is left with four cases to deal with that consist of 10 persons in their case file.²¹

¹⁸ *The Prosecutor v. Augustin Bizumungu*, Case No. ICTR-00-56B-A, Part VII, para. 4.

¹⁹ *The Prosecutor v. Augustin Bizumungu*, Case No. ICTR-00-56B-A, Part VII, para. 5 – 7.

²⁰ *The Prosecutor v. Augustin Bizumungu*, Case No. ICTR-00-56B-A, Part VII, para. 7.

²¹ ICTR, <http://www.unictr.org/tabid/155/Default.aspx?id=1416> [06 July 2014].