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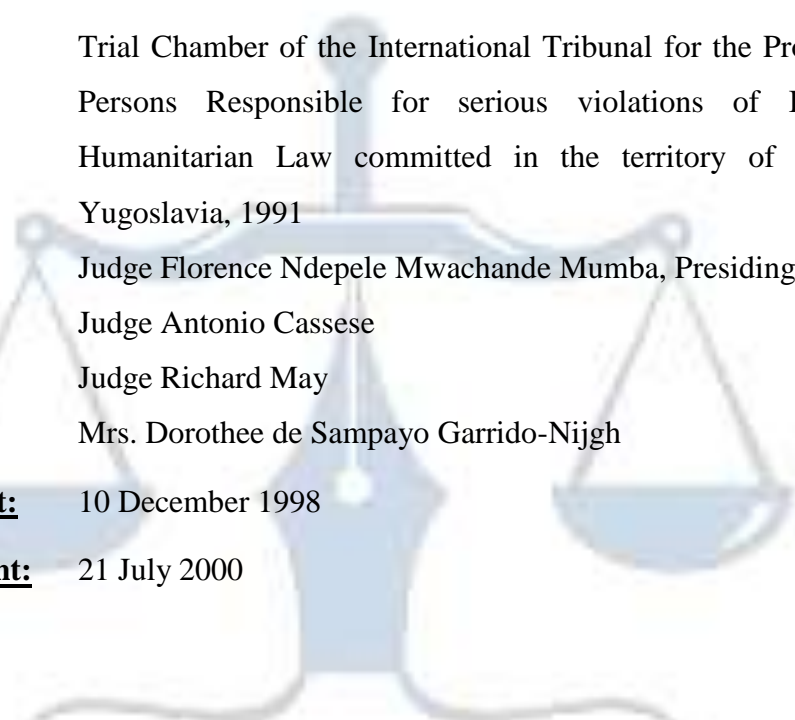
## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

## **CASE COMMENT ON PROSECUTOR V. ANTO** **FURUND@IJA**

AUTHORED BY - K. ASWATHA



<b><u>Case Title:</u></b>	PROSECUTOR v. ANTO FURUND@IJA
<b><u>Citation:</u></b>	Case No. IT-95-17/1-T
<b><u>Court:</u></b>	Trial Chamber of the International Tribunal for the Prosecution of Persons Responsible for serious violations of International Humanitarian Law committed in the territory of the Former Yugoslavia, 1991
<b><u>Judges:</u></b>	Judge Florence Ndepele Mwachande Mumba, Presiding Judge Antonio Cassese Judge Richard May
<b><u>Registrar:</u></b>	Mrs. Dorothee de Sampayo Garrido-Nijgh
<b><u>Trial Judgement:</u></b>	10 December 1998
<b><u>Appeal Judgment:</u></b>	21 July 2000

### **1. INTRODUCTION:**

The International Criminal Tribunal (ICTY) has played a significant role in the prosecution of wartime sexual assault in the former Yugoslavia. The Tribunal investigated reports of systematic incarceration and rape of women, men, and children from the beginning of its mission. The Hague Convention of 1907, the first international agreement that implicitly forbade sexual violence, did not put an end to impunity for these crimes. In response to the need to prosecute sexual violence during times of conflict, the ICTY implemented innovative actions, including identifying gender offenses under customary law and bringing specific allegations of sexual abuse during warfare. It was also the first European international criminal tribunal to pass convictions for rape as a crime against humanity, sexual enslavement as a crime against humanity, and rape as a form of torture. Victims of sexual violence have been shielded from derogatory lines of questioning during testifying by creating rules of procedure and



establishing a strong Victims and Witnesses Section (VWS) to offer support before, during, and after their testimony. The ICTY has sent cases involving intermediate and lower-ranking defendants to regional courts as part of its Completion Strategy, with sexual violence allegations present in most cases sent to the Court of Bosnia and Herzegovina. In this study, we will cover one of the landmark case dealt under ICTY elaborately.

## **2. FACTS OF THE CASE:**

The disintegration of the Socialist Federal Republic of Yugoslavia in the early 1990s led to conflicts among its constituent republics, including Bosnia and Herzegovina. The conflict was marked by violence, ethnic cleansing, and human rights abuses. The Croatian Defense Council (HVO), representing Croat interests, engaged in armed conflict with the Army of Bosnia and Herzegovina (ABiH), primarily representing Bosniaks. The HVO conducted attacks on villages predominantly inhabited by Bosnian Muslims, including Vitez, resulting in the expulsion, detention, wounding, and deaths of numerous civilians.

The HVO took control of Vitez and began a campaign of harassment against the Muslim population, demanding Muslims to submit to HVO authority. Violence escalated significantly, culminating in a concerted attack on Vitez and Ahmići on April 16, 1993. This marked a turning point in the conflict, leading to widespread atrocities against civilians. On 16th April 1993, Witness A, a married woman of Bosnian Moslem origin residing in Vitez, was separated from her husband during these events.

On 15th May 1993, members of the special unit of military police of HVO known as "Joker" came to her apartment and took her into custody. Anto Furundžija, a local commander of the Jokers, interrogated Witness A about a list of Croatian names and the activities of her sons. During her detention, she was subjected to various forms of physical and psychological abuse, including being forced to perform sexual acts and being raped. Another victim, Witness D, was also brought into the room, and the same soldiers who assaulted Witness A forced her to have oral and vaginal intercourse with him. The accused did nothing to prevent this acts.

## **3. ISSUE RAISED:**

1. Whether the accused is held individually responsible for his participation in the alleged crimes pursuant to Article 7(1) of the Statute?



2. Whether the alleged acts of the accused constitute the crime of torture as recognized in Common Article 3 of the Geneva Conventions of 1949?
3. Whether the accused is individually criminally responsible for the alleged acts under Article 4 (2) (e) of Additional Protocol II of Geneva Convention?

#### **4. ARGUMENTS OF THE PARTIES:**

##### **4.1.Submission of the Prosecutor:**

The Prosecution argues that the accused may be held individually responsible for his participation in the alleged crimes under Article 7(1) of the Statute. This article states that a person who planned, instigated, ordered, committed, or aided in the planning, preparation, or execution of a crime shall be individually responsible for the crime. The accused's alleged acts constitute the crime of torture, as recognized in Common Article 3 of Geneva Conventions of 1949.

The Prosecution contends that the accused intentionally inflicted severe physical or mental pain or suffering on Witness A, a non-combatant, during an interrogation for the purpose of obtaining information and for the purpose of intimidation, thereby committing torture. The elements of the crime of torture under Common Article 3 are met, as the events took place in the context of an armed conflict between the armed forces of the Government of the Republic of Bosnia and Herzegovina and the armed forces of the Croatian Community of Herzeg-Bosna. The accused is also individually criminally responsible for the alleged acts under Article 4(2)(e) of Additional Protocol II to the Geneva Conventions, which prohibits "outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution, and any form of indecent assault."

##### **4.2.Submission of the Defense:**

The Prosecution argues that an armed conflict existed, which is necessary to establish jurisdiction under Article 3 of the Statute. The Defense does not concede this point, but if they were to accept it, it would support the Prosecution's argument that the alleged crimes fall within the jurisdiction of the Tribunal.

The Defense argues that Witness A's recollection of the events is unreliable, citing inconsistencies in her testimony. The Prosecution, on the other hand, relies on Witness A's

testimony as a key part of their case. If the Defense were to accept Witness A's credibility, it would strengthen the Prosecution's argument that the accused is guilty of the alleged crimes.

The Defense argues that the accused was not present during any sexual assault on Witness A. The Prosecution, on the other hand, argues that the accused's presence is not necessary to establish his guilt, as he can be held liable for aiding and abetting the crimes. If the Defense were to accept that the accused was present, it would support the Prosecution's argument that he is guilty of the alleged crimes.

## **5. LEGAL IMPLICATIONS:**

### **5.1. Power for the Tribunal to Prosecute Individuals for the violations of the Laws or Customs of War:**

Article 3 of the Statute grants the Tribunal the authority to prosecute individuals for violations of the laws or customs of war. This includes a range of serious offenses, such as the use of poisonous weapons, wanton destruction of property, attacks on undefended locations, and the plunder of public or private property. The Appeals Chamber's interpretation in the *Tadić Jurisdiction Decision* emphasizes that Article 3 has a broad scope, encompassing any serious violation of customary international humanitarian law that incurs individual criminal responsibility, regardless of whether the violation occurs in international or internal armed conflicts. The provision is not limited to the offenses explicitly listed; rather, it serves as an "umbrella rule" that covers serious violations of international humanitarian law not specifically enumerated, allowing for a more comprehensive application of justice under the Tribunal's mandate.

### **5.2. Torture under International Law:**

Torture is explicitly prohibited in armed conflict by international treaty law, particularly the Geneva Conventions of 1949 and the Additional Protocols of 1977. Bosnia and Herzegovina ratified these treaties in 1992, making the prohibitions applicable in the territory during the relevant period. The Penal Code of the Socialist Federal Republic of Yugoslavia also prohibits torture. The Trial Chamber does not need to determine whether the Geneva Conventions and Additional Protocols have fully transitioned into customary law, as a general prohibition against torture has evolved in customary international law. This prohibition is supported by the International Court of Justice's recognition of common Article 3 as customary law applicable

to both international and internal armed conflicts. Individuals engaging in torture are personally accountable. International human rights treaties reinforce the prohibition of torture in both armed conflict and peacetime, establishing mechanisms to ensure compliance and prevent torture. The prohibition of torture is an absolute right that cannot be derogated from, even in emergencies. States are obligated to prohibit and punish torture and refrain from engaging in it through their officials.

The prohibition against torture is characterized by universal revulsion and has acquired a high status in the international normative system. Key features include:

- i) Prevention of Potential Breaches: States must take proactive measures to prevent torture, not just respond after it occurs. This includes implementing national laws and procedures to safeguard against torture.
- ii) Obligations Erga Omnes: The prohibition imposes obligations erga omnes, meaning all states have a duty to uphold this prohibition, and any violation constitutes a breach of the rights of all members of the international community.
- iii) Status of Jus Cogens: The prohibition against torture has evolved into a peremptory norm of international law, which cannot be derogated from by states.

While Article 3 of the Statute does not explicitly prohibit torture, it serves as an "umbrella rule" that encompasses all international rules of humanitarian law, including torture. The Trial Chamber has held that Article 3 covers torture and outrages upon personal dignity, including rape.

International humanitarian law does not provide a specific definition of torture; however, Article 1(1) of the 1984 Torture Convention defines torture as any act that intentionally inflicts severe pain or suffering for purposes such as obtaining information or punishing an individual. This definition is considered authoritative and reflects a consensus among international instruments and jurisprudence. The Trial Chamber recognizes that while this definition applies universally, it is essential to identify specific elements of torture in the context of international criminal law related to armed conflicts. The Trial Chamber outlines specific elements of torture in armed conflict, including the infliction of severe pain or suffering, intentionality, the purpose of obtaining information or coercing the victim, a link to armed conflict, and the involvement of a public official or authority. The notion of humiliation is also included as a purpose of torture, reflecting the spirit of international humanitarian law, which aims to safeguard human dignity.



International mechanisms, such as the United Nations Committee Against Torture and the European Committee for the Prevention of Torture, play a crucial role in monitoring compliance with the prohibition of torture. These bodies ensure that states adhere to their obligations under international law and provide oversight on instances of torture. The consequences of torture extend beyond immediate physical and psychological harm, affecting individuals, families, and communities. The international legal framework recognizes the need for states to provide rehabilitation and support for victims of torture.

The Trial Chamber identifies specific elements of torture in armed conflict, including:

- a) Infliction of severe pain or suffering (physical or mental).
- b) Intentionality of the act or omission.
- c) Aims to obtain information, punish, intimidate, humiliate, or discriminate.
- d) Link to an armed conflict.
- e) Involvement of a public official or authority.

The Trial Chamber emphasizes that humiliating the victim is a recognized purpose of torture, aligning with the spirit of international humanitarian law, which aims to protect human dignity.

### **5.3. Rape and Other Serious Sexual Assaults in International Law:**

Rape is explicitly prohibited in times of armed conflict by international treaty law, including the Geneva Conventions of 1949 and the Additional Protocols of 1977. Common Article 3 of the Geneva Conventions implicitly refers to rape, while Article 4 of Additional Protocol II explicitly mentions it. The provisions prohibiting rape apply as treaty law in Bosnia and Herzegovina, which ratified the Geneva Conventions and Additional Protocols on December 31, 1992. The parties to the conflict also undertook to observe these provisions. Rape and inhuman treatment were prohibited as war crimes under Article 142 of the Penal Code of the Socialist Federal Republic of Yugoslavia, and similar provisions continue to apply in Bosnia and Herzegovina. The prohibition against rape has evolved into customary international law, supported by historical documents like the Lieber Code and the Hague Conventions. Rape was classified as a crime against humanity under Control Council Law No. 10. Rape and serious sexual assaults in armed conflict entail the criminal liability of the perpetrators, and these acts can be prosecuted as serious violations of humanitarian law, grave breaches of the Geneva Conventions, crimes against humanity, or genocide.

While no specific international human rights instrument explicitly prohibits rape, these offenses are implicitly prohibited by provisions safeguarding physical integrity in various

treaties. The right to physical integrity is a fundamental aspect of customary international law. In certain circumstances, rape can amount to torture and has been recognized by international judicial bodies as a violation of the norm prohibiting torture.

Article 5 of the Statute of the International Tribunal explicitly provides for the prosecution of rape as a crime against humanity. Rape may also be classified as a grave breach of the Geneva Conventions or a violation of the laws or customs of war. Article 3 of the Statute serves as an "umbrella rule" that encompasses all international rules of humanitarian law, including rape.

The Trial Chamber notes that rape is defined as a forcible act accomplished by force or threats of force against the victim or a third person. This includes penetration of the vagina, anus, or mouth by the penis or other objects. The definition of rape is not explicitly provided in international law, but it is inferred from various treaties. The Trial Chamber emphasizes that forced oral penetration constitutes a serious violation of human dignity and should be classified as rape. The prohibition extends to serious sexual assaults that do not involve penetration, emphasizing the need to protect individuals from degrading and humiliating treatment.

Article 7(1) of the Statute prohibits not only the commission of rape but also the planning, ordering, instigating, and aiding and abetting such acts. The prosecution has varied its allegations regarding direct perpetration, asserting that the accused's actions during interrogations constituted direct involvement in crimes, including rape. The Trial Chamber has the discretion to allocate criminal responsibility and is empowered to convict the accused if satisfied beyond a reasonable doubt that the crimes alleged have been committed.

#### **5.4.Distinguishing Perpetration of Torture from aiding and abetting Torture:**

The accused is charged with torture and outrages upon personal dignity, including rape. To address these charges, it is essential to define "aiding and abetting" as used in Article 7(1) of the Statute of the International Tribunal. The prosecution clarifies that it will not portray the accused as the actual perpetrator of the rape but will focus on his role in aiding and abetting the crimes.

The Trial Chamber examines the actus reus of aiding and abetting, considering whether assistance must be tangible or can consist of encouragement or moral support. The proximity of the assistance to the criminal act is also analyzed, specifically whether the aider's actions

need to have a causal effect on the crime or merely facilitate its commission.

The Trial Chamber reviews various international cases, including those from U.S. military commissions and British military courts, to understand the nature of assistance required for aiding and abetting. It notes that moral support or encouragement can suffice in certain circumstances, as seen in cases where individuals were found guilty for their presence and support during the commission of crimes.

The Trial Chamber concludes that assistance need not be tangible; it can include moral support that significantly encourages the principal's actions. The cases reviewed illustrate that knowledge of the criminal activities and a role in the organization can establish complicity, even without direct participation in the crime.

The Trial Chamber must determine the mens rea required for aiding and abetting. The case law indicates that mere knowledge of assisting the perpetrator is sufficient, rather than a shared intent to commit the crime. For example, in the Einsatzgruppen case, knowledge was deemed the requisite mental element. The Trial Chamber emphasizes that the knowledge of the criminal purpose is crucial for liability. The International Law Commission's Draft Code and the Rome Statute support the notion that knowledge is the necessary mens rea for aiding and abetting, distinguishing it from the intent required for principal perpetrators.

To determine whether an individual is a perpetrator or an aider and abettor, it is crucial to assess whether they share the purpose behind the torture, such as obtaining information or punishing the victim. If an individual provides assistance with knowledge of the torture but does not share the intent, they may be found guilty of aiding and abetting. The Trial Chamber's interpretation aligns with the provisions of the Torture Convention and the Inter-American Convention, which prohibit not only the physical act of torture but also any deliberate participation in it. This broad interpretation ensures that all individuals involved in the torture process are held accountable. The essential elements to distinguish them are:

- i) The accused must take part in an essential aspect of the torture and share in its goal, which is to get information or a confession, punish, intimidate, humiliate, coerce, or discriminate against the victim or a third party, in order to be found guilty of torture as a perpetrator (or co-perpetrator).



- ii) The accused must aid in a way that significantly influences the commission of the crime and with knowledge that torture is occurring in order to be found guilty of aiding and abetting torture.

## **6. LEGAL FINDINGS OF TRIAL CHAMBER:**

### **6.1. Jurisdiction:**

Based on the witness statement, Trial chamber finds that there was an existence of armed conflict between the HVO and the ABiH. The International Tribunal has the jurisdiction over Torture and outrages upon personal dignity including Rape under Article 3 of its Statute.

### **6.2. Individual Responsibility:**

The amended indictment against the accused charges him with two counts namely Count 13 and 14 for the violation of the laws or customs of war (Torture) recognized under Article 3 of the Statute and violation of the laws or customs of war (outrages upon personal dignity including rape) recognized by Article 3 of the Statute. In regard to the Torture, the Trial Chamber finds that the elements of torture have been met. According to Article 7(1) of the Statute, the accused is the co-perpetrator by virtue of his interrogation of Witness A as an integral part of torture. Thus, the Chamber held that the Accused is held individually responsible for Torture and found him guilty of violation of the laws or customs of war (Torture).

Additionally, in regard to outrages upon personal dignity including rape, the Trial Chamber finds that Witness A was subjected to Rape and serious assaults by accused B in the course of the interrogation by the accused. The elements of rape has been met. The Chamber finds that the Witness A suffered severe physical and mental pain along with public humiliation, at the hands of Accused B in what amounted to outrages upon her personal dignity and sexual integrity. Even though, the accused did not personally rape Witness A or considered to be a co-perpetrator, the accused's presence and continued interrogation of Witness A encourages Accused B substantially contributed to the criminal acts committed by him. The Trial Chamber finds the accused guilty as the presence of the accused and his continued interrogation aided and abetted the crimes committed by accused B. Thus, the Chamber finds the Accused is individually responsible for outrages upon personal dignity including Rape, a violation of the laws or customs of war under Article 3 of the Statute.

### **6.3.Sentencing:**

Anto Furund ija, a former commander of the Jokers, has been found guilty of violating the laws or customs of war in Bosnia and Herzegovina. The trial chamber considered the victim's age, testimony from witness Dragan Trbac, and his age at the time of the offenses. The International Tribunal's decision to sentence Furund ija to 10 years' imprisonment for torture and 8 years' imprisonment for outrages upon personal dignity, including rape, was based on Article 3 of the Statute. The court considered factors such as criminal responsibility, motives, threat intensity, circumstances, past life, personal circumstances, and behavior after the offense. The maximum penalty for war crimes is life imprisonment, not the death penalty. The trial chamber acknowledged the International Tribunal's duty to contribute to reconciliation, deter crimes, and combat impunity. The court also accepted that punishment serves both retribution and deterrence, and supports rehabilitative programs for the accused, especially considering their age. The trial chamber has determined whether multiple sentences should be served consecutively or concurrently, following the practice of the Tadi and Delali cases. Furund ija will serve his sentence in a State designated by the International Tribunal's President and will remain in custody until the final appeal is determined.

## **7. ARGUMENTS FOR APPEAL:**

The Trial Chamber held the Appellant individually responsible for his participation in the crimes charged in the Amended Indictment, finding him guilty of co-perpetrator of torture and aiding and abetting outrages upon personal dignity, including rape, as a violation of war laws or customs under Article 3 of the Statute on 10 December 1998. Subsequently, the appellant preferred an appeal before the Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 ("the International Tribunal" or "the ICTY").

The Appellant argues that the Trial Chamber's conclusion of guilt was unreasonable, asserting that the evidence could also support a rational inference of his innocence. He requests that the Appeals Chamber acquit him based on this interpretation of the evidence. The accused prefer an appeal before the Appeal Chamber upon following five grounds namely

- i) Denial of the right to a fair trial;
- ii) Insufficient evidence to convict on either count;

- iii) Prejudice due to reliance on evidence of acts not charged in the indictment;
- iv) Disqualification of presiding Judge Mumba;
- v) Excessive sentence imposed.

The appellant seeks relief from his convictions, including acquittal, reverse of convictions, or a new trial. If the Appeals Chamber affirms the conviction, they can reduce the sentence to six years, including time served since his original incarceration in December 1997.

The Respondent argues that an appealing party must demonstrate an error under Article 25(1) of the Statute, with the standard of review varying based on whether the error is fact or law. Errors can be substantive law or discretionary, and appeals can be based on new evidence or factual conclusions. The Appeals Chamber defers to the Trial Chamber's findings, focusing on correcting legal errors and factual errors.

#### **7.1.Submission of the Appellant:**

The Appellant presents five grounds of appeal. In the first ground, the Appellant contends that he did not receive fair notice of the charges against him, as required by Articles 20 and 21 of the Statute. He argues that the Prosecutor's case at trial was inconsistent with the allegations in the Indictment and Amended Indictment. He claims that the documents submitted prior to trial did not include allegations of complicity in rapes or sexual assaults, leading him to prepare his defense under the assumption that he would not be implicated in those acts. Furthermore, the Appellant asserts that the Trial Chamber failed to reconcile conflicting testimonies from Witness A and Witness D regarding whether he conducted an interrogation in the Pantry. He argues that the absence of a reasoned opinion on this critical issue violates his right to a fair trial. The Appellant claims he was denied the right to call Witnesses F and Enes [urkovi] during the re-opened proceedings, which he argues is a violation of Article 21(4) of the Statute. He contends that the restrictive scope of the re-opened proceedings prevented him from presenting relevant evidence.

In the Second ground, the Appellant argues that the evidence presented at trial was insufficient to establish his guilt for torture. He claims that Witness D's testimony indicated that he was not involved in the interrogation in the Pantry, contradicting the Trial Chamber's findings. The Appellant challenges the reliability of Witness A's in-court identification, suggesting that it was influenced by external factors, such as seeing his image on television. He argues that the Trial Chamber failed to adequately address the potential for misidentification. The Appellant



contends that even if the acts were proven, they do not meet the legal definition of torture, as there was no evidence of intentional infliction of severe pain or suffering aimed at obtaining information or punishing the victim.

In the third Ground, the Appellant argues that the Trial Chamber improperly admitted and relied on evidence of acts not charged in the Indictment, which he claims led to his conviction for torture. He cites specific findings related to his interrogation of Witness A while she was naked and threats made during the interrogation. The Appellant contends that the Trial Chamber considered evidence of acts unrelated to Witness A, including events in the village of Ahmii, which were not part of the charges against him. The Appellant claims that the Prosecutor violated Rule 50 by attempting to amend the Amended Indictment through evidence presented at trial, which he argues was not disclosed prior to the trial.

In the fourth ground, the Appellant argues that Judge Mumba should have been disqualified due to her prior involvement with the UNCSW, which he claims could affect her impartiality. He asserts that a reasonable observer would apprehend bias based on her associations.

In the fifth ground, the Appellant argues that the sentences of ten years for torture and eight years for aiding and abetting an outrage upon personal dignity are excessively harsh and constitute cruel and unusual punishment. He requests a reduction in sentence based on emerging sentencing principles. The Appellant cites previous cases, such as Tadi and Erdemovi, to argue that his sentence should be reduced to align with the emerging penal regime of the Tribunal.

### **7.2.Submission of the Respondent:**

The respondent has dismissed the appellant's complaints about alleged errors committed by the Trial Chamber. The respondent argues that the appellant received ample notice about the charges, clarified the scope of evidence, and adequately addressed conflicting testimonies. They also argue that the Trial Chamber acted within its discretion in limiting the scope of the re-opened proceedings. The respondent also argues that the evidence presented was sufficient to support the convictions, based on credible evidence and the correct application of the legal definition of torture. They also argue that the appellant did not object to the evidence during the trial, and that the factual findings were not at variance with the Amended Indictment. The respondent also argues that the appellant has failed to demonstrate any bias or disqualifying

interest on the part of Judge Mumba, stating that her prior involvement in the UNCSW does not imply bias against the appellant. They also argue that the Trial Chamber exercised its discretion appropriately in sentencing, stating that sentences must reflect the gravity of the crime and the individual circumstances of the accused, and that the imposed sentences were justified based on the nature of the offenses committed.

## **8. LEGAL FINDINGS OF APPEAL CHAMBER:**

On 21<sup>st</sup> July 2000, the appeals chamber consist of Judge Mohamed Shahabuddeen, Judge Lal Chand Vohrah, Judge Rafael Nieto-Navia, Judge Patrick Lipton Robinson, Judge Fausto Pocar unanimously rejects each ground of appeal, dismisses the appeal, and affirms the convictions and sentences of the Trial Chamber.

## **9. ANALYSIS:**

The Geneva Convention, established to protect civilians during armed conflicts, prohibits torture, murder, corporal punishment, and other brutal acts. In this case, the accused is the commander of a special unit of the armed force, while the victims are civilians of Bosnian Moslem origin. Article 33 of the Geneva Convention IV holds individuals accountable for grave breaches, particularly for rape. The International Criminal Tribunal for the former Yugoslavia (ICTY) aimed to establish individual criminal responsibility for atrocities committed during armed conflicts, holding individuals accountable regardless of their position or status.

The Trial Chamber clarified the definition of torture and reinforced the principle of individual criminal responsibility for acts of torture. It also broadened the scope of liability to include those who may not physically inflict harm but contribute to the commission of torture in other ways. The ICTY Statute broadens the scope of the commission of rape or serious sexual assault, including planning, ordering, or instigating such acts, as well as aiding and abetting in their perpetration. Perpetrators are defined as individuals who directly inflict torture with the intention of achieving its goals, while aiders and abettors provide assistance without sharing that intent. The legal principle of vicarious liability applies to the military as a form of employer-employee relationship, where a commanding officer is responsible for the actions of their subordinates while acting within their duties.

Regarding sentencing policies and guidelines under Articles 23 and 24 of the ICTY Statute, the sentencing is limited to imprisonment. For such grave offenses committed by militants, strict actions should be taken and greater punishments provided, potentially including the death penalty. At least the Appeal Chamber should have death penalty authority since the Trial Chamber does not. However, the establishment of the ICTY Tribunal aims to hold individuals accountable for the grave breaches committed during the armed conflict. How can justice prevail if the trial chamber lacks the death penalty?

The Tribunal's sentencing practice is still developing, with only a few final sentencing judgments issued. We consider it premature to declare an "emerging penal regime" due to the lack of established coherence in sentencing practices. The Appeals Chamber emphasizes the need to adhere to the Statute, Rules, and relevant jurisprudence while considering the unique circumstances of each case.

The three judges provide distinct yet complementary perspectives on judicial impartiality and sentencing. Judge Shahabuddeen emphasizes the foundational nature of impartiality, Judge Vohrah advocates for a hierarchy in sentencing based on the severity of crimes, and Judge Robinson focuses on the interpretation of legal standards. Together, their analyses contribute to a more profound understanding of the principles guiding the Tribunal's judicial processes.

**Judge Shahabuddeen** agrees with the Appeals Chamber's judgment on the principle of judicial impartiality, arguing that it is rooted in a general principle of law rather than customary international law. The principle prohibits both actual bias and the appearance of bias, which can undermine public confidence. Judge Shahabuddeen emphasizes the importance of transparency and the need for judicial bodies to be vigilant in upholding the principles of impartiality to foster trust in the legal system.

**Judge Patrick Robinson** focuses on the methodology for interpreting the Tribunal's Statute and Rules, particularly regarding judicial impartiality. He believes that the Tribunal must apply both customary and conventional international law, considering the context and purpose of the statute. Robinson concludes that the Chamber's findings reflect a customary standard for breaches of judicial impartiality, consistent with the principle that justice must not only be done but must also be seen to be done. Upholding the principle of impartiality is crucial for building and maintaining societal trust in the judicial process. A judiciary that is considered impartial

and transparent contributes to a stable and just society, where individuals feel confident that their rights will be protected and justice will be served without bias or favoritism.

**Judge Lal Chand Vohrah** agrees with the Appeals Chamber's findings, but maintains that crimes against humanity are intrinsically more serious than war crimes and should be viewed as more serious in sentencing. He argues that imposing stringent penalties commensurate with the severity of significant crimes, particularly those that violate fundamental human rights, is essential to restore public confidence and demonstrate that no one is above the law.

In my view, it is essential to impose stringent penalties that are commensurate with the severity of significant crimes, particularly those that violate fundamental human rights. This method acknowledges the harm inflicted on victims and communities, discourages potential offenders, and respects social standards. Those in positions of power must be subject to more severe penalties in order to ensure accountability, as their actions may have significant consequences. The court system restores public confidence and demonstrates that no one is above the law by ensuring that sanctions reflect the severity of the violations. This fosters social justice and equality by promoting responsibility and respect for human rights. In order to deter future violations and accurately reflect the repercussions of serious offenses, the legal system must implement more severe penalties.

## **10.CONCLUSION:**

This case is significant, particularly regarding the prosecution of torture and sexual assault in armed conflict, highlighting the complexity of international humanitarian law. This underscores that individuals in positions of power are liable for their actions and those of their subordinates, emphasizing the principle of accountability for high-ranking authorities. The trial employs a victim-centric approach, focusing on survivor testimonies and addressing the complexities of evidentiary standards, particularly with witness reliability and the effects of trauma on memory. The case ultimately advocates for stronger legal frameworks and accountability mechanisms to avert future abuses, so upholding the necessity of protecting human dignity and assisting victims, as well as reforming the jurisprudence of international law.



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