

IN THE APPEALS CHAMBER

Before:

Judge Mehmet Güney Judge Liu Daqun Judge Wolfgang Schomburg

Registrar: Mr. Adama Dieng

Declaration of: 14 July 2006

PROSECUTOR

v. Édouard KAREMERA Mathieu NGIRUMPATSE Joseph NZIRORERA

Case No. ICTR-98-44-AR72.7

DISSENTING OPINION OF JUDGE SCHOMBURG TO DECISION PURSUANT TO RULE 72 (E) OF THE RULES OF PROCEDURE AND EVIDENCE ON VALIDITY OF THE PROSECUTION APPEAL REGARDING THE PLEADING OF JOINT CRIMINAL ENTERPRISE IN A COUNT OF COMPLICITY IN GENOCIDE

Office of the ProsecutorCounsel for the DefenceMr. Hassan Bubacar JallowMs. Dior Diagne MbayeMr. James StewartMr. Félix Sow

Mr. Don Webster
Ms. Linda Bianchi
Ms. Linda Bianchi
Mr. Frédéric Weyl
Mr. Peter Robinson

vir. Peter Robinson

Mr. Patrick Nimy Mayidika Ngimbi

DISSENTING OPINION OF JUDGE SCHOMBURG

1. With respect, I disagree with today's decision of the majority to grant the Prosecution Motion. The Prosecution appeal does not fulfill the requirement pursuant to Rule 72 (D)(iv) of the Rules. The Tribunal has jurisdiction over the case at hand,

irrespective of whether the theory of joint criminal enterprise will be applied and irrespective of whether the charge of complicity in genocide will be characterized as a crime or as a mode of liability. Thus, the appeal does not lie as of right.

- 2. It is not for the Appeals Chamber to decide already now questions of law which have to be decided first by the competent Trial Chamber. Only if at the end of the trial phase an appeal might be lodged on this issue, the Appeals Chamber might be called upon to finally decide the matter based on the Trial Chamber's findings and holdings.
- 3. Deciding already today would mean to accept an upward delegation of a legal matter from the competent trial level to the appeal level, thereby may be even *de facto* undermining the fundamental right to effectively lodge an appeal against a Trial Judgement. Furthermore it amounts to an abuse of an interlocutory appeal.

Done in English and in French, the English text being authoritative.

		Judge Wolf	gang Schomb	ourg		
Dated	this	fourteenth	day	of	July	2006
At		The			-	Hague
The Nethe	rlands					

[Seal of the Tribunal]