THE ICTR’S PROSECUTION OF A POP STAR: THE BIKINDI CASE

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1. Introduction

On 2 December 2008, Trial Chamber III1 of the International Criminal Tribunal for Rwanda (ICTR) issued its judgement in the case against Simon Bikindi.2

The trial of Rwandan pop singer Simon Bikindi drew keen interest, even from outside the law and outside Africa,3 because of the novel question it presented: whether a song can constitute an international crime. Bikindi was indicted for genocide, conspiracy to commit genocide, and crimes against humanity including murder.4 But the central feature of his long trial was his catchy, danceable music, especially three of his songs.5 Relentlessly broadcast by radio stations

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1 For the purpose of this case, the Trial Chamber was composed of Judges Inés Mónica Weinberg de Roca, presiding, Florence Rita Arrey, and Robert Fremr.
5 Bikindi Amended Indictment, paras. 40, 41. The songs’ titles, like their meanings and the meanings of the songs’ lyrics, were hotly debated during Bikindi’s trial. In the ICTR indictment and judgment, the three songs are called by these names: Twasezereye (“We said goodbye”), Bene sebahinzi (“the sons of the cultivators”), and Nanga bahutu (“I hate these Hutu”). On the stand in his
in Rwanda before and during the genocide, Bikindi’s songs were also chanted by Rwandan génocidaires as they hacked their victims to death.⁶

A song might constitute incitement to genocide, or persecution as a crime against humanity, the Trial Chamber concluded in its December 2008 judgment.⁷ In addition, the tribunal found that song lyrics need not incite violence in order to constitute a crime against humanity, since hate speech may constitute persecution.⁸ This expansive view of crimes against humanity is controversial, and will be discussed below.

The Trial Chamber also drew striking and potentially far-reaching factual conclusions about Bikindi’s songs. It found that they led to killings in Rwanda: that the songs were used in 1994 “to incite people to attack and kill Tutsi,”⁹ and that the effort was successful, since the songs “had an amplifying effect on the genocide.”¹⁰ Yet the chamber declined to find Bikindi guilty on any charge related to the songs, for lack of adequate evidence that he played a role in disseminating them in 1994, during the period for which the ICTR has jurisdiction.¹¹

Bikindi was also acquitted of many other detailed allegations, including participating in the training of Interahamwe militias.

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⁶ Forges A., Leave None to Tell the Story: Genocide in Rwanda, p. 315.
⁷ Bikindi Judgment, paras. 389, 395. See also Bikindi Judgment, Footnote No. 885 “The Chamber notes the definition of persecution is broad enough to include music, as the actus reus of persecution is merely defined as an act or omission which discriminates in fact and which denies or infringes upon a fundamental right.”
⁸ Bikindi Judgment, para. 390. See also Bikindi Judgment, paras. 393 and 394.
¹⁰ Id., para. 264.
¹¹ Bikindi Judgment, para. 263 “However, there is no evidence that Bikindi played a role in the dissemination or deployment of his three songs in 1994.” The ICTR’s jurisdiction is temporally restricted, to crimes committed between 1 January 1994 and 31 December 1994. See Bikindi Judgment, para 26.