

STATEMENT OF FACTS

Alijahan v. Prosecutor

1. Revate is a State within the Union of Timoshine.
2. Revate consists of a majority Tilen population, and a minority Cotene population. Between the years 1947 and 2005 there have been numerous instances of religious tension between the state's Tilen and Cotene groups. There have been five separate incidents of clashes between the two groups between 1947 and 2005.
3. Accused Alijahan was elected Chief Minister of Revate in 2002. Alijahan was a prominent member of Political Party YLS Party, which had often in the past been accused of being a Tilen fundamentalist organisation.
4. On and between 15 August 2005 and 18 August 2005, clashes between the two groups took place in various villages, towns and cities in the State of Revate. Thousands of persons were killed. It has been widely reported in the media that these clashes were a result of the killing of Bebe Remedeev, a revered Tilen religious leader, in Revate on the evening of 14 August 2005. The clashes continued until the evening of 18 August 2005, when the Central Government of Timoshine, through military forces, was able to bring peace to the State of Revate.
5. The State Government was widely criticised in the media, and by local and international NGO's, for inaction. The Chief Minister, Alijahan, was asked to apologise to the State and country, and resign. He refused, and an official party statement was released that expressed deep anguish at the killings and promises to take action. The Chief Minister described the killings as "spontaneous", and a "terrible and barbaric reaction to the killing of Bebe Remedeev". He said his State government was "helpless" in controlling the situation for those days in August.
6. On 10 December 2005, an NGO called WDU (We Dou) published a report accusing the State Government of Revate, and particularly Alijahan, of being directly responsible for the killings – by organising and inciting the killers to kill innocent Cotene civilians. Alijahan denied the reports and filed a prosecution for a defamation case in the local courts against the NGO directly. That matter is ongoing and the Court has asked Alijahan to justify why the complaint is not filed through the State prosecutor.
7. Following extensive discussions between various prosecutorial agencies, political parties and civil society in Revate and Timoshine, on 15 August 2006 the matter of these clashes was referred to the Security Council, United Nations.
8. On 20 November 2006, Security Council Resolution No. 101/06 was passed for setting up a Tribunal to prosecute persons responsible for the tragic events of 2005 in Revate. The tribunal to be set up would be a United Nations tribunal, functioning with the acquiescence of the Revate government, to prosecute senior persons responsible for the events. The temporal jurisdiction of the tribunal is from 1 January 2005 to 31 December 2005. The Tribunal was set up, and began work, on 10 January 2007 in Brihana, Timoshine.
9. On 20 September 2007 the Office of the Special Prosecutor submitted an indictment for confirmation to the Trial Chamber of the tribunal against Accused Alijahan, who was then charged with crimes of Genocide, as per the indictment. Alijahan plead not guilty. Alijahan was detained in a Special United Nations Detention Facility in Brihana, Timoshine, guarded by soldiers from the Confiday of Democracy (COD).
10. Trial in the case of the Prosecutor v. Alijahan commenced on 15 January 2008 and carried on daily. 60 Prosecution witnesses were called, and the Prosecution closed its case on 29 March 2008. The

Defence opened its case on 1 June 2008 and 40 Defence witnesses were called, and the defence case was closed on 15 August 2008. No rebuttal evidence was led. Closing briefs were duly submitted, and arguments heard.

11. On 10 December 2008, the Trial Chamber issued judgment, finding Alijahan guilty of crimes of Genocide. Alijahan was sentenced for life.
12. Alijahan has appealed the judgment.
13. This is the first, and only, judgment of the tribunal to date.
14. The tribunal is governed by the Statute, and Rules of Procedure and Evidence, of the United Nations International Criminal Tribunal for Rwanda [UNICTR].
15. The domestic law of Timoshine is identical to that of the Union of India.

Prosecutor v. Alijahan, Trial Chamber Judgment, 10 December 2008: Summary

16. This is a summary of the judgment.

Introduction

17. On 14 August 2005, Bebe Remedeev, a renowned Tilen spiritual leader and healer was travelling from Village Hing, Revate, his normal place of residence, to Town Costin, to attend a ceremony in his honour, to be presided over by the President of Timoshine. This function was widely covered in the Revatian press. 15 kms from Town Costin, is Village Zenotia, home to a large Cotene community. At 8 pm that evening, the police in Town Costin were informed that a large group of persons had stopped the car carrying Bebe Remedeev and were assaulting the occupants of the car. By the time the police arrived on the scene, at around 9:30 pm, there was a great amount of chaos. The Daimler Limousine in which he was sitting was completely destroyed. Three dead bodies were found on the scene, one of whom was Bebe Remedeev. His face had been mutilated beyond recognition with knife wounds.
18. From 15 August 2005 to 18 August 2005, 2000 persons were killed. Approximately 90% of these people were persons belonging to the religious Cotene group.
19. The above facts are not in dispute between the parties. Further, the Chamber has judicially noticed the above issues.
20. While the Special Prosecutor referred to the above events in the prosecution case, no evidence was led.
21. In the defence opening statement, on 30 May 2008, extensive reference was made to the killing of Bebe Remedeev. The Defence said they would call 30 witnesses to prove that the murder of Bebe Remedeev was committed by persons belonging to the Cotene religious group, and that all events in the following days were a reaction to that incident.
22. On 2 June 2008, the Special Prosecutor filed a motion seeking a direction of the Chamber to the Defence, that these witnesses would not be heard by the Chamber. The Prosecutor argued that this incident was irrelevant to the matter before the Chamber. The Prosecutor argued that the context i.e. the killing of Bebe Remedeev, and the location where he was killed, is on record, judicially noticed. No further evidence need be led. The Defence responded stating that the issue of the murder of Bebe Remedeev was the crux of its case.

23. On 3 June 2008, this Chamber ruled in favour of the Special Prosecutor. The murder of Bebe Remedeev, while providing necessary context, need not be taken further in these proceedings. Any finding on who killed Bebe Remedeev and why, would have no impact on the Chambers other findings in this case. On 4 June 2008, the Defence sought certification to appeal this decision. The Chamber denied the motion on the grounds that it did not satisfy the standards for certification.
24. As per the indictment, the accused is stated to have committed the following crimes:
- Genocide [Art.2(3)(a) of the Statute of UNICTR]
 - Conspiracy to commit Genocide [Art.2(3)(b) of the Statute of UNICTR]
 - Direct and Public Incitement to commit Genocide [Art.2(3)(c) of the Statute of UNICTR]
 - The indictment states that the above crimes were committed by Alijahan, who was stated to be a part of a joint criminal enterprise [Art.6(1) of the Statute of UNICTR], and the indictment also states that in the alternative, the accused is responsible for planning, aiding and abetting, instigating, and ordering the crimes. The joint criminal enterprise is stated to have been between Accused Alijahan, his wife, Mrs. Yashode, his two close friends and confidantes: businessman K.R. Dolme and the area Superintendent of Police, Mr. Ricardo Melina and another leader Xen. The common purpose was to destroy the Cotene religious group. The indictment also charges the accused with superior responsibility [Art.6(3) of the Statute of UNICTR] for all the crimes. The indictment states that the allegations support all the abovementioned crimes.
25. The judgment lists the various allegations [A to L] as per the trial record, and as listed in the Special Prosecutor's closing brief. Findings, with brief reasoning, are provided immediately after each allegation. More substantial reasoning, and analysis of the witness testimony, is provided in the following pages of the judgment.
26. The parties are in agreement that allegations A to L are the only facts in issue, with the exception of the issue of the murder of Bebe Remedeev, where the Defence submits that the Chamber erred in not allowing it to submit evidence towards its proof.
27. Based on the extensive evidence before it, this Chamber passes the following factual findings.

Allegation A: Funeral for Bebe Remedeev on 15 August 2005

28. On 15 August 2005, at 10 am, the Accused Alijahan, as Chief Minister, and as a faithful follower of Bebe Remedeev, addressed a large public rally in Town Costin.
29. 5000 people attended the rally, including businessman K. R. Dolme.
30. Alijahan spoke for thirty minutes.
31. This speech was carried by media agencies.
32. Relevant statements made by the accused at this rally are:
- The death of this great man has to be dealt with sternly.
 - How can we react to this killing? Answer me! Do we simply stand by and watch? Do we take action? What would a man do? Do you know? Do I need to tell you?
 - Violence is a terrible thing. And in this case even more so.
33. Following this speech, the accused's wife spoke, and said the following:
- Bebe Remedeev has been killed by deceitful Cotene's. The Cotene's in this State have created trouble for a long time. Once again they have hurt the Tilen pride.
 - The Cotene's need to be taught a lesson. They need to be shown their correct place.

34. There was much excitement and commotion in the audience after these two speeches. A senior member of the Political Party YLS requested permission to come onto the stage. Accused Alijahan allowed him. He came on, and said the following words: "Kill them, kill them all", and jumped back into the crowd and began exhorting them again.
35. Alijahan immediately took the microphone and said: "it is now time to end this meeting and all this useless and frivolous talk".
36. Many witnesses said he looked very disturbed and upset at this point.
37. Following this, Alijahan got off the stage, got into his Daimler Limousine along with Yashode and was driven out of the rally premises. On his way out, three members of the audience heard the Alijahan say to Yashode: "Try and understand, sometimes the only solution is to exterminate them like rats".

Allegation B: Killings in Village Zenotia on 15 August 2005

38. At around 10:45 am, a group of 100 persons arrived in Village Zenotia, a short distance away from Town Costin. They arrived in three trucks. Businessman K.R. Dolme led this group towards the large Cotene Prayer Hall. The men were armed with spears and knives. Some people had guns with them.
39. Over the next three hours, around 500 Cotene's were killed. The killings took place in the Cotene Prayer Hall, and in close proximity to the Cotene Prayer Hall. Men, women and children were killed.
40. At the time of these killings, Alijahan was seen by many witnesses heading towards Town Rodin in his vehicle, therefore moving further and further away from Village Zenotia.

Allegation C: Killings in Town Rodin on 15 August 2005

41. The accused arrived in Town Rodin by 12 noon on 15 August 2005, and went to the office of the local police head.
42. The police chief of the Town Rodin, met Alijahan at his car, and they proceeded to have a discussion on the security situation in the State of Revate.
43. At around 12:30 pm, two policemen escorted a group of 15 persons into a large holding area, close to where the accused was standing. After lining them up against a wall, they began to question them. They identified themselves as Cotene's – all civilians performing menial tasks in Town Rodin. All this was in the clear view of the accused. In fact, he could clearly hear what was being said as well. The interrogation began to grow rougher. The 15 Cotene persons began to get slapped and hit by fists.
44. Two witnesses have testified that the policemen only saw the accused Alijahan at this point. The place was crowded and they were engrossed in their task. On seeing the accused Alijahan, who was in fact watching them, they seemed to halt their actions. They seemed hesitant and unsure as to what to do. But, as the accused Alijahan continued to observe them, they returned to their task and the beatings got rougher.
45. At 1 pm, the accused Alijahan left the area which fact is confirmed from his mobile service provider Nofee. The beatings of the Cotene's was continuing.
46. At around 1:30 pm, 6 of these persons collapsed. They died on the spot. The others, all in varying states of consciousness, were thrown into an underground jail cell and nothing further has been heard about them. No further evidence was led on their fate.

Allegation D: Meeting at Alijahan's house in City Diew on 16 August 2005

47. On 16 August 2005, Alijahan met with 5 heads of Political Party YLS's youth wings, at his house in City Diew.
48. Alijahan told these young persons that there were anti-social members in the State that had to be dealt with strongly. He said that within the law, the idea of self-defence was a very important principle and they should not forget that. An attack was underway in the State against "right minded people". One very important casualty was Bebe Remedeev.
49. He told them to organise a meeting that evening in City Diew and spread the message. Immediately, he called up some friends and organised the Yuvkone cricket stadium for the rally. Further, he called up his friend, the Superintendent of Police, Mr. Ricardo Melena, and asked him to be present at the meeting, and provide some police cover.
50. He ended by saying that in this war, there were no friends.

Allegation E: Meeting at the Yuvkone cricket stadium in City Diew

51. At 6 pm at the Yuvkone cricket stadium in City Diew, the five youth wing leaders were ready for the meeting. Mr. Ricardo Melena was also there.
52. Unfortunately only 40 people showed up for the meeting. There was some evidence led in the trial of extensive riots in the city accounting for the poor showing.
53. Nonetheless, the meeting continued.
54. One of the leaders began by echoing the general theme of taking action against the enemies of the State. He was interrupted by a member of the audience who said that all this talk was fine, but there were Tilen's providing cover to Cotene's in the city. They were providing them shelter in their homes and shielding them from the violence outside.
55. Mr. Ricardo Melena responded. First, he rebuked the person for being specific in the meeting and using the words "Tilen's" and "Cotene's". He said, "We all know who the enemies are".
56. Then he said that action had to be taken against anyone shielding the enemy. He said such persons need to be dealt with sternly – including with violence.
57. The meeting ended by 7 pm.

Allegation F: Killing at Housing Colony MRF in City Diew on the night of 16 August 2005

58. At around 11 pm, Mr. Ricardo Melena led a group of 30 youth wing members of Political Party YLS towards Housing Colony MRF, in City Diew. They had guns with them.
59. They entered and proceeded to identify and pull out persons they considered enemies of the state. 10 such people were pulled out. All were Cotene's. No further evidence was led on the fate of these persons. The last witness account was that they were taken away by Mr. Ricardo Melena personally.
60. At around 12 midnight, the group reached the last house in the colony. It belonged to a leading party member Mr. Vas Deferentiale of the opposition party in the State. He was a Tilen. The defence also led extensive evidence on how this person was also a bitter enemy of Mr. Ricardo Melena for some personal reasons. As was their usual strategy, the attackers stormed the house looking for people they

considered enemies. They ran from room to room. One Cotene servant of the house was found. The servant resisted capture, and pulled out a kitchen knife. A struggle ensued.

61. In this chaos, the opposition party member Mr. Vas Deferentiale was shot dead by one of the persons accompanying Mr. Ricardo Melena.

Allegation G: Meeting on New Years night of 31 December 2004

62. On 31 December 2004, at around 9 pm, Mr. Ricardo Melena, businessman K.R. Dolme, the accused Alijahan and his wife Yashode met at the accused's residence at H-92 Bagast, in City Diew, for dinner.
63. Post dinner they began discussions on the state of Political party YLS, and on the situation in Revate.
64. Mr. Ricardo Melena said that the need for the hour was straight talk. He said that the Cotene's in the Country, and State, were not being responsible citizens. From terrorism to other issues, they were responsible for much that was wrong in the Country and State. He said that they needed to be dealt with sternly. All the others agreed.
65. At 12 midnight, the meeting was interrupted by fire crackers outside. At 12:30 am, a group collected outside the accused's house. The accused had called some party workers to wish them a happy new year. In addition to that he also passed on to them the message in the meeting that was discussed.

Allegation H to L: Meetings between Mr. Ricardo Melena, businessman K.R. Dolme, the accused Alijahan and his wife Yashode between 1996 and 15 August 2005

66. The Prosecution, through 10 separate prosecution witnesses, led evidence of a series of meeting between Mr. Ricardo Melena, businessman K.R. Dolme, the accused and his wife, between 1996 and 15 August 2005. The total number of these meetings is 15.
67. 3 meeting were in 1996. 5 meetings in 2000. 2 meetings in 2001. 3 meetings in 2003. 2 meetings in 2005 on unknown dates, but before 15 August 2005.
68. The theme of all these meetings was the need for the State of Revate to become a Tilen State. The stress was on how to achieve this. All the participants voiced their agreement that this was in fact necessary, and they all agreed that strong action would be needed to make it happen.

Legal Findings

69. For reasons recorded in the judgment, based on the above facts, the Chamber finds the following in respect of Accused Alijahan:
- Alijahan is guilty of the commission of Genocide, Conspiracy to commit Genocide, and Direct and Public Incitement of Genocide.
 - Alijahan was a part of a joint criminal enterprise with Mr. Ricardo Melena, businessman K.R. Dolme, and the accused's wife Yashode. This is supported by all the allegations, when considered as a whole.
 - Conspiracy to commit Genocide is proved by all the allegations, when considered as a whole.
 - The *mens rea* required for the commission of crimes of Genocide and Direct and Public Incitement of Genocide are proved by all the allegations, when considered as a whole.
 - Commission of Genocide is proved by the finding on Allegation B. But, the Chamber does not find that proof of the other Allegations, particularly C and F, proves the crime of Genocide.

- Commission of Direct and Public Incitement to commit Genocide is proved by Allegations A, D. But, the Chamber does not find that proof of the other Allegations, particularly E and H to L, proves Direct Public Incitement of Genocide.
- For all the above allegations where Alijahan is found guilty, in the alternative he would also be guilty as a superior, under the principle of superior responsibility.
- As the accused has been found guilty for the commission of the crimes, no findings are made on his planning, aiding and abetting, instigating, and/or ordering the crimes

Note to Counsel

70. No arguments related to sentencing to be plead and/or argued.
71. No arguments related to insufficiency of reasoning of the findings to be plead and/or argued. The above is a summary of the judgment. Counsel can presume that all findings are reasoned.
72. Arguments to be based on facts/findings provided above only. Arguments should also be made in the alternative.
