

## **SUMMARY OF JUDGEMENT**

### **I. Introduction**

1. The Chamber today delivers its Judgement in the case of *The Prosecutor v. Emmanuel Ndindabahizi*. It is recalled that the trial started on 1 September 2003. In the course of twenty-seven trial days, the Chamber heard thirty-four witnesses, fifteen for the Prosecution and nineteen for the Accused. The Chamber will now give an oral summary of the Judgement. The full text, amounting to about 130 pages, will be available following this session. The Judgement itself, and not the present summary, is the authoritative text.

2. Emmanuel Ndindabahizi was born in 1950 in Gasharu, Gitesi Commune, Kibuye Prefecture, Rwanda. He obtained a Bachelor degree in Economics and Social Sciences in 1974 and a *licence* in Management in 1976. After having held leading positions in Trafipro, a consumer cooperative, and the Electrogaz Company, the Accused was transferred to the Ministry of Planning in Kigali to head the Internal Financing Section in 1985. He left the civil service in 1991 to work for a private consulting and auditing firm.

3. In 1992, the Accused joined the *Parti Social Démocrate* (“PSD”) and rose to the position of Chairman of the Party in Kibuye Prefecture. In September 1992, he was appointed *Directeur de Cabinet* in the Ministry of Finance, second in rank behind the Minister. On 9 April 1994, the Accused was sworn in as Minister of Finance of the Interim Government. He held that post until after the Government’s flight into exile.

4. The Indictment, as amended on 1 September 2003, charges the Accused with three counts: genocide; extermination as a crime against humanity; and murder as a crime against humanity. All of the alleged events on which these charges are based occurred from April through June 1994, in Kibuye Prefecture. The Accused is alleged to have participated in, encouraged, and assisted the commission of the crimes with which he is charged.

## **II. Preliminary Matters**

5. By way of introduction, the Judgement discusses some preliminary matters. The Defence objects that the Indictment is vague and that it contains erroneous information about the nature of the Prosecution case as presented at trial. According to the Statute of this Tribunal, an Indictment must contain a concise statement of the facts substantiating charges against an accused, who has the right to be informed promptly, and in detail, of the charges against him.

6. The Chamber has considered each of the Defence objections to the Indictment. In respect of the alleged vagueness and inaccuracy of the dates of events at Gitwa Hill, the Chamber finds that the Indictment gave the Defence a reasonably accurate and precise basis of the evidence against the Accused. The Indictment alleges that the events occurred on several occasions between 13 and 26 April, and the dates offered during testimony fell within this date range.

7. The Indictment alleges that the Accused was present at Gasharu cellule in early May, whereas most, but not all, Prosecution witnesses testified that the event was in late May. The Chamber finds that, despite this discrepancy, the Indictment gave a reasonable basis, under the circumstances, upon which the Defence could reasonably prepare to meet the Prosecution case.

8. The Indictment refers by name to two victims at Gasharu, one man and one woman. The evidence showed that these were the names of one woman. This was an error, but the Defence was not deprived of a reasonable basis upon which to undertake its investigations. The information given in the Indictment conveyed the core of the Prosecution case.

9. Finally, the Defence objected that the Prosecution's attempt during closing arguments to withdraw nine paragraphs of the Indictment was prejudicial to the Defence

as it had been misled as to a substantial portion of the Prosecution case. The Chamber finds that the inclusion of unproven matters in the Indictment does not render the remainder of the Indictment defective. Accordingly, the preliminary objections to the Indictment are rejected.

### **III. Factual Findings**

10. The Prosecution submits that the Accused engaged in criminal conduct at five locations in Kibuye prefecture during the months of April and May 1994. In addition, the Chamber heard evidence of the general situation in Rwanda in 1994, and of the Accused's position and responsibilities as a Minister in the Interim Government. The Chamber has noted that the Accused undertook ministerial duties, such as attending Cabinet meetings and traveling on missions. It is also clear that the Accused was present at a meeting in Kibuye on 3 May 1994, during which he praised the Interahamwe and encouraged PSD youth to join the civil defence programme. He did not distance himself from remarks made by the Prime Minister Jean Kambanda, at that meeting. The Chamber has considered this evidence as part of the general context in which the alleged crimes were committed. However, his activities as a Government Minister do not fall within the charges in the Indictment. The Chamber now turns to the five locations in Kibuye.

#### *Gitwa Hill*

11. The first location is Gitwa Hill. According to the Prosecution, the Accused on three occasions participated in, facilitated, and assisted attacks against Tutsi refugees who had gathered there.

12. According to one Prosecution witness, the first occasion was on or about 17 April, when the Accused allegedly arrived at Gitwa Hill in a convoy with a truck transporting *Interahamwe*. Grenades and ammunition were distributed to an assembled crowd of attackers who were taking part in a siege of Gitwa Hill. The Accused was armed with grenades. He allegedly threw a grenade which was signal for the commencement of an attack which involved the use of grenades and machine-guns.

13. The testimony upon which this evidence is based is uncorroborated. Two other Prosecution witnesses who were present at Gitwa Hill did not mention such an attack. It is unlikely that an attack with grenades and machine-guns would have escaped their observation or knowledge. Further, doubt is raised by the unlikelihood of the Accused, who had no military training or experience, throwing a grenade, as described by the witness. No other witness in the case observed the Accused with grenades. Consequently, the Chamber entertains a reasonable doubt as to whether the Accused participated in, or facilitated, an attack on Gitwa Hill on or around 17 April 1994.

14. The second visit of the Accused to Gitwa Hill is alleged to have taken place on 23 April. One witness testified that the Accused, who was traveling in a white sedan in convoy with a blue Daihatsu truck carrying *Interahamwe*, stopped at a roadblock and told the assembled crowd of attackers that “they should implement the plan that was envisaged immediately”. Machetes and camouflage uniforms were then distributed from the Daihatsu. The Accused left the roadblock and there was no attack on the hill that day. Small attacks occurred on 24 and 25 April, and then on 26 April there was a massive and devastating attack on the refugees on Gitwa Hill in which many thousands of Tutsi men, women and children were killed.

15. The third visit of the Accused to Gitwa Hill is alleged to have taken place on 24 April. The witness testified that he saw the Accused arrive in a white sedan, accompanied by a green Daihatsu carrying gendarmes and as many as fifty *Interahamwe*. Machetes were unloaded from the Daihatsu and distributed to the *Interahamwe*, who were joined at that location by many other civilians around the vehicles who rejoiced at the arrival of the vehicles and the distribution of the weapons. The Accused is alleged to have said: “Go. There are Tutsis who have become difficult ... There are Tutsi on the hill and they’ve proved to be difficult. You, therefore, have to kill them, and when you kill them, you will be compensated.” The Accused left in the white sedan, in convoy with the green Daihatsu with only the gendarmes aboard. The *Interahamwe* who had arrived in the Daihatsu were left behind. The civilians to whom the machetes had been distributed then launched an

attack on the hill, which was repulsed by the refugees. On 26 April, there was a devastating attack on the refugees on Gitwa Hill, in which many thousands of Tutsi women and children were killed, including the witness's entire family.

16. The Accused denied making any visits to Gitwa Hill, and the Defence offered two witnesses to rebut the Prosecution evidence. One witness testified that he was an attacker at Gitwa Hill and that he never saw the Accused there. He further testified that he would certainly have seen the Accused, or been aware of his presence, had he been there. However, the Chamber observes that the witness testified that he was there during the large-scale attack on Gitwa Hill on 26 April, and the day before. These are not days on which Prosecution witnesses say that the Accused was at the hill. The Defence also presented an alibi witness who testified to working with the Accused in Gitarama from mid-April through the end of May. He testified that he saw the Accused once or twice a day, excluding weekends, from 15 April until about 28 May. The witness considered it materially impossible for the Accused to have had the means or the time to distribute machetes in Kibuye prefecture during this period. However, the witness acknowledged that he seldom saw the Accused other than during the working week, and that his alibi evidence has little relevance to weekend days.

17. Having considered the totality of the evidence, the Chamber finds that the testimony of the Prosecution witnesses concerning the visits of the Accused to Gitwa Hill on 23 and 24 April was credible. The Defence witnesses did not raise a reasonable doubt about the credibility of these witnesses.

#### *Kibuye Town*

18. The second location where the Accused is alleged to have played a role, is in Kibuye town. One witness testified that the Accused incited the killing of Tutsi women married to Hutus. The Chamber considers the testimony of that witness to be of doubtful credibility. The contradictions in the witness's testimony were significant, and his efforts to explain some of these contradictions were not convincing. Accordingly, the Chamber does not find this allegation to have been proven beyond a reasonable doubt.

*Roadblocks*

19. Thirdly, the Accused is alleged to have distributed weapons and encouraged the killing of Tutsi in May at three roadblocks along the Kibuye-Gitarama road. The first roadblock was located at a place called Gaseke. One witness testified that in late May, the Accused asked those manning a roadblock why Tutsi were being allowed to go through the roadblock without being killed. He then distributed machetes and money. A few minutes after the Accused's departure, those at the roadblock killed a man named Nors, alias Nturusu.

20. Three Defence witnesses testified that they had no knowledge or indication of the involvement of the Accused in the death of Nors. The Chamber has found that one witness lacked credibility. The testimonies of the second and third witness were not inconsistent with that of the Prosecution witness to this event.

21. The evidence of the Prosecution witness of this event was detailed and direct. The Defence was unable to establish any significant weaknesses or contradictions in the testimony. His description of the words and deeds of the Accused at Gaseke roadblock was credible, and no reasonable doubt concerning its reliability has been raised by Defence witnesses. Accordingly, the Chamber finds that the Accused encouraged those manning the roadblock to stop and kill Tutsi, and that he distributed machetes and money to them.

22. The second roadblock along the Kibuye-Gitarama road was alleged to have been at a place called Faye. One witness testified that in May, the Accused arrived in a black sedan in convoy with a green Daihatsu, in which there were *Interahamwe* armed with guns. The Accused asked those at the roadblock whether they had finished killing Tutsi. They answered that they had spared "Tutsi women who were married to Hutu men and their children". The Accused then ordered them to off-load machetes from the Daihatsu and use them to kill those whose lives had been spared. Many machetes were unloaded, and the vehicles left.

23. The witness's testimony about when this event took place was not consistent. It contained few details. She was the only witness testifying that there was a roadblock at Faye. Her description of the Accused before she identified him in the courtroom was inaccurate, and her testimony is not corroborated. Consequently, the Chamber has not found beyond reasonable doubt that the Accused was present at Faye roadblock.

24. The third roadblock was at Nyabahanga Bridge. The Accused arrived at about 1 p.m. in a white car, followed by a green Daihatsu vehicle. Many people gathered around and machetes were offloaded from the Daihatsu. The Accused then ordered people to kill Tutsi women married to Hutu men, saying: "If you have not killed Tutsi women married to the men, they will poison you, if these persons are not killed. Therefore, you have to kill them." The Accused appeared to be in a hurry and left five or six minutes after his arrival.

25. A Defence witness who was one of those manning the roadblock claimed that the purpose of the roadblock was to intercept Hutu refugees fleeing from the RPF towards Cyangugu and Kibuye, rather than to identify and kill Tutsi. He testified that no one was killed at the roadblock, but that four Tutsi were killed nearby, but not by those manning the roadblock. The Chamber did not find this Defence witness credible.

26. The Prosecution witness was credible. His testimony was clear and detailed, and correctly identified that the Defence witness was present at the roadblock. The Chamber finds that the Accused caused the distribution of machetes at a roadblock near Nyabahanga Bridge, along the Kigali-Kibuye road, some time around the end of May or early June. Furthermore, the Chamber finds that the Accused encouraged those at the roadblock to kill Tutsi women married to Hutu men.

#### *Gasharu Cellule*

27. The fourth location at which the Accused is alleged to have committed criminal acts, is at Gasharu Cellule. According to the Indictment, the Accused instigated the

killing of Tutsi, including two specific individuals. These two persons were Cyprien Karegeya, his cousin, and a teacher called Tatiana Nyiramaritete (a.k.a. Mukantabana). This is a complex event, which is discussed at length in the judgement.

28. Most of the Prosecution evidence was that the visit occurred in late May. In response to the four Prosecution witnesses, the Defence called ten witnesses who testified to the circumstances of the death of the two individuals and the presence of the Accused at Gasharu in late-May or June. The Defence evidence suggests that the two individuals were dead by the time of the Accused's visit, even in relation to the date of that visit given by the Prosecution witnesses.

29. Only one Prosecution witness allegedly observed the killing of these persons, and his identification of the killers is not in conformity with Defence evidence, including persons involved in the killings. Close relatives of Karegeya testified in favour of the Accused. There is also evidence that supports the Accused's contention that he was angered by his cousin death and arrested someone whom he believed to be responsible. Based on an assessment of the totality of the evidence, the Chamber finds that the allegations concerning events at Gasharu has not been proven beyond a reasonable doubt.

#### *Kibirizi Market*

30. The fifth and last location is Kibirizi Market. One Prosecution witness testified that the Accused distributed weapons and instigation to kill Tutsi at the Market, which is situated in Rubengera, Mabanza Commune. Having reviewed the witness's testimony, the Chamber entertains certain doubts about its reliability and has not made a finding that the Accused acted as asserted by the witness.



#### **IV. Legal Findings**

##### *Gitwa Hill*

31. It has been proven beyond a reasonable doubt that the Accused explicitly urged the attackers to kill the Tutsi assembled at Gitwa Hill. He distributed machetes and grenades and transported armed attackers to the site. He visited Gitwa Hill, distributing machetes and urging an attack on the Tutsi refugees assembled there. By his words and deeds, the Accused manifested an intent that the Tutsi on Gitwa Hill, who numbered in the thousands, should be attacked and killed. Further, the Accused was well aware that his remarks and actions were part of a wider context of ethnic violence, killing and massacres in Rwanda during this period. The Chamber finds that the Accused intended to destroy, in whole or in part, the Tutsi ethnic group.

32. The words and deeds of the Accused directly and substantially contributed to the mass killing of Tutsi which subsequently took place at Gitwa Hill. When the Accused arrived, the attackers gathered around; when he spoke, they listened attentively. His position as a Minister of Government lent his words considerable authority. Small scale attacks occurred shortly after his visits to the Hill, and a large-scale attack was launched only two days after his last visit.

33. By his words, the Accused is guilty of instigating genocide. By his acts of material assistance, including the distribution of weapons and the transportation of attackers, the Accused is guilty of aiding and abetting genocide.

34. The Accused is also guilty of extermination as a crime against humanity on the basis of the factual findings in relation to Gitwa Hill. The Accused intended to bring about the deaths of the Tutsi besieged on Gitwa Hill on a massive scale. He manifested this intent directly, by urging that the Tutsi be killed. The material element of the crime is satisfied by his distribution of weapons, transportation of attackers, and verbal encouragement of the attack. As a Government Minister, these words and deeds contributed substantial moral support and official approval for the attacks.

35. The general requirements for a crime against humanity are satisfied. The evidence is overwhelming that there were widespread attacks against Tutsi in Rwanda, and in Kibuye Prefecture, during this period. The Accused overtly manifested his intent to kill the civilian refugees at Gitwa Hill because they were Tutsi, knowing that ethnic massacres were occurring throughout Rwanda. At the least, he had knowledge of the widespread nature of the attacks and their discriminatory nature, and knew that an attack on Gitwa Hill would be part of those widespread attacks.

*Roadblocks*

36. The Prosecution did not lead extensive evidence on the consequences of the Accused's actions at the roadblocks along the Kibuye-Gitarama road. However, in order to be guilty of instigating, or aiding and abetting, genocide, the acts constituting the encouragement must directly and substantially contribute to the perpetration of genocide by another person.

37. The Accused explicitly urged those manning the Gaseke roadblock to kill Tutsi. He gave them material assistance in the form of machetes and money. Nors was apprehended and killed at the roadblock shortly after the Accused's visit. The Chamber finds that the Accused directly and substantially contributed to the perpetration of the crime of genocide at the Gaseke roadblock.

38. The Accused is also charged with murder for his actions at the roadblocks along the Kibuye-Gitarama road. The factual findings show that the participants at the Gaseke roadblock were part of a widespread and systematic attack against Tutsi civilians, and that the killing of Nors was part of that systematic attack. The killing occurred at, or near, the roadblock. Nors was targeted because he was Tutsi or, alternatively, because he was perceived to be Tutsi. The Chamber has found that the Accused directly and substantially contributed to the perpetration of the crime of murder at the Gaseke roadblock.

## **V. Verdict**

**FOR THE FOREGOING REASONS**, having considered all the evidence and the arguments,

**THE CHAMBER** finds the Accused, Emmanuel Ndindabahizi,

Count 1: Guilty of Genocide

Count 2: Guilty of Extermination

Count 3: Guilty of Murder

## **VI: Sentencing**

Based on the factual and legal findings, the Chambers has considered the sentence. In mitigation of the sentence, the Chamber has taken into account that, before the Accused joined the Interim Government, he was a member of the PSD, which was a moderate political party. He had a relatively low political profile. It is also noted that he has been found guilty in respect of relatively few criminal events.

As aggravating circumstances, the Chamber observes that the Accused was a well-known and influential figure in his native prefecture of Kibuye and therefore has abused the trust placed in him by the population. Instead of promoting peace and reconciliation, he supported and advocated a policy of genocide. Particularly aggravating is the Chamber's finding that he on two occasions encouraged massacres at Gitwa Hill, during which thousands were killed. He also influenced others to commit crimes, and publicly encouraged the killing of Tutsi women who were married to Hutu.

The Chamber finds that the aggravating circumstances outweigh the mitigating circumstances.

For the crimes of which the Accused was found guilty, the Chamber sentences Emmanuel Ndindabahizi to: **Imprisonment for the remainder of his life.**