



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER I

**Before:**

Judge Erik Møse, presiding  
Judge Sergei Alekseevich Egorov  
Judge Dennis C. M. Byron

**Registrar:** Adama Dieng

**Date:** 13 December 2005

**THE PROSECUTOR**

**v.**

**Aloys SIMBA**

*Case No. ICTR-01-76-T*

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**SUMMARY OF JUDGEMENT**

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**Office of the Prosecutor:**

Richard Karegyesa  
Ignacio Tredici  
Didace Nyirinkwaya

**Counsel for the Defence**

Sadikou Ayo Alao  
Beth Lyons

**SUMMARY OF JUDGEMENT**

1. The judgement in the case of the Prosecutor v. Aloys Simba is delivered by Trial Chamber I, composed of Judges Erik Møse, presiding, Sergei Alekseevich Egorov, and Dennis C. M. Byron. The Chamber will now read out a summary of the judgement. The full text of the judgement will be available after this session, in

English. A French translation will be provided later. This summary is not binding. The written judgement is the only authoritative version.

2. The Prosecutor originally charged Aloys Simba with four counts. At the close of its case, the Prosecution withdrew the counts of complicity to commit genocide and murder as a crime against humanity. Simba is therefore facing two counts: genocide and extermination as a crime against humanity.

3. Aloys Simba was arrested in Senegal on 27 November 2001. The trial commenced on 30 August 2004 and closed on 8 July 2005. Over the course of thirty trial days, the Prosecution called sixteen witnesses. The Defence case opened on 13 December 2004. During twenty-three trial days, the Defence called twenty witnesses, including the Accused.

4. This trial is the first case in the Tribunal which specifically concerns events in Gikongoro prefecture.

5. The evidence reflects that in the days following the death of President Habyarimana, thousands of Tutsi civilians in Gikongoro prefecture in southern Rwanda fled their homes in the wake of attacks by Hutu militiamen. They sought sanctuary at places such as Kibeho Parish, Cyanika Parish, Murambi Technical School, and Kaduha Parish. Attacks against the refugees at these places began with Kibeho Parish on 14 April 1994. On 21 April 1994, Hutu militiamen assisted by local officials and gendarmes launched subsequent attacks against refugees at Murambi, Cyanika, and Kaduha in the course of a period of around twelve hours. At the end of April, attackers from Gikongoro prefecture continued the killings by crossing the Mwogo river into neighbouring Butare prefecture to kill Tutsi civilians who had fled to Ruhashya commune. These five massacre sites are the primary basis of this case.

6. The Prosecution places responsibility for these killings on Aloys Simba, a retired lieutenant colonel and former member of parliament. Simba hails from Musebeya commune, Gikongoro prefecture and became a national hero fighting the “*Inkotanyi*” in the 1960s. He is a member of the “comrades of the fifth of July”, who participated in the *coup d'état* that brought former President Juvenal Habyarimana to power in 1973, and was well-known throughout Rwanda. At the time of the events in

1994, the evidence suggests Simba had no formal ties to any government, military, or political structure. He claims that he was an ordinary man who had become a marginal figure in Rwandan society. Simba assumed the role of civil defence adviser to the Prefect of Gikongoro on 18 May 1994. The five massacres are not related to his actions in this position.

7. The Prosecution contends that Simba is one of the principal architects of the five massacres and that he personally participated in their execution by furnishing arms, ordering militiamen and government forces to attack and kill Tutsi.

8. The Defence denies this involvement and claims that Simba was not in Gikongoro prefecture when the genocide was planned or unfolded and that he played no role in the killings in Butare.

9. The Defence has also challenged the fairness of the proceedings. The Defence did not receive sufficient notice of allegations, arising for the first time at trial, related to roadblocks, certain meetings and related activity in Gikongoro town, and a massacre at Kinyamakara commune. The Chamber has therefore excluded certain portions of the testimonies of Witnesses KSM, KDD, KSU, and KEI from evidence. In addition, the Defence argued that the government of Rwanda has unduly interfered with the Defence's efforts to call witnesses. However, the Defence did not demonstrate that any interference from Rwandan authorities called into question the fairness of the proceedings. These issues are discussed in greater detail in the judgement.

10. The Chamber will now summarize its factual findings concerning the five massacre sites at Kibeho Parish, Murambi Technical School, Cyanika Parish, Kaduha Parish, and in Ruhashya commune. The Prosecution presented other evidence of Simba's activities in Gikongoro prefecture. However, it is not seeking a conviction on the basis of these events, and the Chamber will not therefore discuss them here.

11. For the Kibeho Parish massacre on 14 April, the Prosecution points to evidence of a single witness who three to five days after the death of President Habyarimana, observed Simba addressing Hutu militiamen in Gasarenda Trading Centre in Mudasmwa commune, and urging them to kill Tutsi in surrounding areas,

including Kibeho. Over the course of the next few days, the witness heard the same attackers shouting that they were on their way to Kibeho and saw them returning covered in blood and heard them recounting their exploits

12. According to Simba, in the days following the death of President Habyarimana, he remained in Kigali gathering family, friends, and neighbours in an effort to protect them from the ensuing violence. As Kigali became a war-zone, he evacuated a number of refugees hiding in his home to Gitarama Town where some of them remained with him from 13 until 24 April.

13. The Chamber has some concern with the Prosecution's uncorroborated evidence. Moreover, in the Chamber's view, Simba presented a reasonable account of his time from 6 to 13 April. Consequently, the Prosecution did not establish beyond reasonable doubt that Simba was involved in this massacre.

14. The Chamber will now consider together the three massacres occurring on 21 April at Murambi Technical School, Cyanika Parish, and Kaduha Parish. The Prosecution presented evidence placing Simba and other local authorities at Murambi Technical School and Kaduha Parish during the attacks. The Defence led evidence that Simba was in Gitarama town at this time. The Prosecution and Defence evidence for these events is set out in detail in the judgement.

15. The Chamber has noted discrepancies in the alibi which undermine its reasonableness. Nonetheless, the Prosecution still bears the burden of proving beyond reasonable doubt that Simba participated in the massacres on that day. The Chamber has not accepted all of the Prosecution's evidence. However, the Prosecution presented corroborated first-hand testimony placing Simba at Murambi Technical School and Kaduha Parish. The Chamber found this evidence reliable.

16. The Chamber will summarize its findings concerning these three attacks based on the evidence presented at trial:

17. The massacres at Murambi Technical School, Cyanika Parish, and Kaduha Parish on 21 April commenced around 3.00 a.m. when *Interahamwe* and gendarmes armed with guns and grenades began the killings at Murambi. Around 6.00 a.m.,

Prefect Bucyibaruta, Captain Sebhura, and Bourgmestre Semakwavu replenished ammunition and directed half of the assailants to reinforce the assault at nearby Cyanika Parish. Simba came to Murambi Technical School around 7.00 a.m. and distributed traditional weapons to the attackers who then continued the killing. Attackers at Murambi Technical School also participated in the massacre at Cyanika Parish, which commenced around 8.00 a.m.

18. Simba arrived at Kaduha Parish around 9.00 a.m. where hundreds of attackers had already assembled. Most of the assailants were armed with traditional weapons. However, there was also a well-armed contingent of gendarmes, former soldiers, and communal policemen with guns and grenades. Simba invoking the approval of the government, urged the attackers to “get rid of the filth” at the parish. He then distributed guns and grenades to the assailants who proceeded to kill the Tutsi at the parish.

19. The three massacres on 21 April can only be described, in the Chamber’s view, as a highly coordinated operation involving local militiamen backed by gendarmes, armed with guns and grenades, and with the organizational and logistical support offered by local authorities and prominent personalities such as Simba who provided encouragement, direction, and ammunition. This operation was conducted over the course of a period of around twelve hours on a single day and involved the killing of thousands of Tutsi concentrated at three geographically proximate locations. Prior planning and coordination is the only reasonable explanation for the manner in which the perpetrators conducted these three massive assaults.

20. Turning now to the fifth massacre, which took place in Ruhashya commune, the Prosecution points to evidence that Simba participated in the attack along with government forces to reinforce an initial assault. While the Chamber accepts that this attack occurred, it is not satisfied that the evidence presented is sufficiently reliable to determine beyond reasonable doubt that Simba participated in it or that this formed part of the same operation described above.

21. In its legal findings, which are based on the evidence presented at trial, the Chamber finds that Aloys Simba participated in a joint criminal enterprise to kill Tutsi at Murambi Technical School and Kaduha Parish by distributing weapons to the

assailants and providing encouragement and approval for the attacks. The Chamber has some doubt, however, that Simba participated in the planning of the attacks. There is no direct evidence of this, and the Chamber cannot say that this would be the only reasonable inference on the evidence.

22. Simba is charged with genocide in Count I of the Indictment. Given the scale of the killings and their context, the only reasonable conclusion is that the assailants who physically perpetrated the killings possessed the intent to destroy in whole or in part a substantial part of the Tutsi group. This genocidal intent was shared by all participants in the joint criminal enterprise, including Simba.

23. In reaching this conclusion, the Chamber has considered the arguments of the Defence that Simba could not have committed genocide given his close association with Tutsi and his tolerant views. There is no clear evidence that Simba was among the adherents of a hard-line anti-Tutsi philosophy. However, he was physically present at two massacre sites. He provided weapons to attackers poised to kill thousands of Tutsi. Simba was aware of what was going on in his country, and as a former military commander, he knew what would follow when he urged armed assailants to “get rid of the filth”. The only reasonable conclusion, even accepting the Defence submissions as true, is, at that moment, he acted with genocidal intent.

24. The Chamber finds beyond reasonable doubt that Simba is criminally responsible for genocide for his role in a joint criminal enterprise to kill Tutsi at Murambi Technical School and Kaduha Parish.

25. Simba is also charged with extermination as a crime against humanity under Count 3 of the Indictment based on the same facts underlying the count of genocide. As discussed in the judgement, this evidence equally supports a conviction against Simba for extermination.

26. For the reasons set out in this Judgement, having considered all evidence and arguments, the Trial Chamber finds unanimously in respect of Aloys Simba as follows:

Count 1: GUILTY of Genocide

Count 2: NOT GUILTY of Complicity in Genocide

Count 3: GUILTY of Crimes Against Humanity (Extermination)

Count 4: NOT GUILTY of Murder

27. Having found Aloys Simba guilty on Counts I and III of the Indictment for genocide and extermination as a crime against humanity, the Chamber must determine the appropriate sentence.

28. The Prosecution submits that the adequate penalty is life imprisonment. The Defence did not make any sentencing submissions.

29. In this Tribunal, a sentence of life imprisonment is generally reserved those who planned or ordered atrocities and those who participate in the crimes with particular zeal or sadism. Offenders receiving the most severe sentences also tend to be senior authorities.

30. Simba held no formal position at the time of the events. The Chamber is not convinced beyond reasonable doubt that Simba was one of the architect of the massacres. His own actions did not evidence any particular zeal or sadism. In particular, he did not personally kill anyone and only remained at the sites for a brief period.

31. Among the aggravating factors, the Chamber notes Simba's stature in Rwandan society as a prominent former political and military figure. The influence he derived from this status made it likely that others would follow his example, which is an aggravating factor. The number of victims of the massacres is also an aggravating factor. Additionally, it is significant that Simba supplied the attackers with guns and grenades which greatly facilitated the slaughter during the attacks on 21 April.

32. The Chamber finds few mitigating circumstances. Simba spent much of his life and career before 1994 engaged in the public service of his country. There is some evidence that his political views before April 1994 appear to have been relatively moderate. Such evidence can in no way exonerate or excuse Simba for his participation in the killings. However, it provides a somewhat nuanced picture and

may imply that his participation in the massacres resulted from misguided notions of patriotism and government allegiance rather than extremism or ethnic hatred. The Chamber also notes that Simba does not deny the existence of genocide in Rwanda and condemned the massive slaughter that occurred. The Chamber has also considered the selective assistance he provided several members of his family and others close to him after the death of President Habyarimana.

33. In the Chamber's view, after weighing the gravity of the crime and the circumstances of the Accused, limited mitigation is warranted.

34. The Chamber has the discretion to impose a single sentence and notes that this practice is usually appropriate where the offences may be characterized as belonging to a single criminal transaction. Considering all the relevant circumstances discussed above, the Chamber **SENTENCES** Aloys Simba to **TWENTY-FIVE YEARS IMPRISONMENT**.

35. Simba shall receive credit for his time served since his arrest in Senegal. The Chamber has calculated this time as four years and sixteen days.

36. In accordance with Rules 102 (A) and 103, Simba shall remain in the custody of the Tribunal pending transfer to the State where he will serve his sentence.