



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before: Judge Asoka de Silva, Presiding
Judge Taghrid Hikmet
Judge Seon Ki Park

Registrar: Mr. Adama Dieng

Date: 16 November 2007

The PROSECUTOR
v.
Juvénal RUGAMBARARA

Case No. ICTR-00-59-T

Summary of Judgement

Office of the Prosecutor

Mr. Charles Adeogun-Phillips
Mr. Peter Tafah
Ms. Memory Maposa

Counsel for the Defence

Mr. Maroufa Diabira
Mr. Boubou Diabira

I. INTRODUCTION

1. Today's hearing is devoted to the delivery of the sentence in the case of *The Prosecutor v Juvénal Rugambarara*. The Trial Chamber will now read the summary of the Judgement. This summary is not authoritative. After the hearing, the full judgement will be made available to the Parties and the public.
2. The Chamber will briefly set out the background to this case, the facts thereof and the factors the Chamber took into consideration in determining the sentence.

II. PROCEDURAL BACKGROUND

3. Juvénal Rugambarara was born in 1959. He lived most of his adult life in Bicumbi *commune*, where he worked as a medical officer. He was appointed *bourgmestre* of Bicumbi *commune*, Kigali-Rural *préfecture* on 4 August 1993, a position he held from 16 September 1993 until 20 April 1994.
4. Juvénal Rugambarara was indicted by the ICTR Prosecutor with genocide, complicity in genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, extermination, torture and rape as crimes against humanity and serious violations of Common Article 3 of the Geneva Conventions of 1949, pursuant to Articles 2, 3, 4 and Articles 6(1) and 6(3) of the Statute of the Tribunal. On 11 August 2003, Rugambarara was arrested in Uganda, in execution of an Arrest Warrant signed by Judge Sekule on 15 February 2002. Rugambarara was transferred to the Tribunal on 13 August 2003. He made his initial appearance two days later and pleaded not guilty to all counts of the Indictment.
5. On 12 June 2007, the Prosecution filed a Motion, requesting the Chamber to amend the Indictment. The Defence supported the Prosecution Motion. On 28 June 2007, the Chamber accepted the withdrawal of the previous indictment and the filing of an Amended Indictment with one count. The Amended Indictment of 2 July 2007, charged Juvénal Rugambarara with extermination as a crime against humanity, pursuant to Article 3(b) of the Statute for having failed in his duty to take the necessary and reasonable measures to commission an investigation into the crimes committed by his subordinates between 7 and 20 April 1994, with a view to apprehending and referring the perpetrators thereof to the competent authorities for appropriate punishment, pursuant to Article 6(3)

of the Statute. More specifically, the Indictment alleges that between 7 and 20 April 1994 subordinates under Juvénal Rugambarara's effective control (*conseillers*, communal policemen, local administrators and militiamen) launched attacks against the Tutsi in various places in Bicumbi *commune*, resulting in the deaths of thousands of Tutsi civilians.

6. On 13 June 2007, the Parties filed a Joint Motion for Consideration of a Guilty Plea Agreement between Rugambarara and the Office of the Prosecutor.

7. On 13 July 2007, Juvénal Rugambarara pleaded guilty before this Chamber for having failed in his duty to take the necessary and reasonable steps to ensure the punishment of his subordinates for the crimes they had committed between 7 and 20 April 1994 in Bicumbi *commune*.

8. In its Oral Ruling of 13 July 2007, the Chamber found that there was no disagreement between the Accused and the Prosecution on the acknowledged facts forming the basis of the Plea Agreement. The Chamber was satisfied that the plea was voluntary, informed and unequivocal pursuant to Rules 62(B) and 62*bis* of the Rules and entered a finding of guilt for the crime of extermination as a crime against humanity pursuant to Articles 3(b) and 6(3) of the Statute.

9. During the sentencing hearing of 17 September 2007, the Defence called five character witnesses and was permitted to adduce one witness statement in lieu of oral testimony as per Rule 92*bis*.

III. SENTENCING

10. The Chamber will now give a summary of its considerations concerning the sentence. The Chamber understands its obligation to ensure that the sentence is commensurate with the individual facts of the case and the individual circumstances of the offender. Recommendations on the range of the sentence as suggested in the Joint Motion for Consideration of the Guilty Plea Agreement are not binding on the Chamber.

11. In determining the sentence, the Chamber has considered a number of factors: the seriousness of the crime, aggravating and mitigating factors, including the individual circumstances of the convicted person and the general practice regarding prison sentences in the courts of Rwanda.

12. The Chamber recalls that crimes against humanity are inherently serious crimes because they are heinous in nature and shock the collective conscience of mankind. The Chamber finds that Rugambarara's failure to act constitutes a very serious offence and a gross violation of international humanitarian law. The Chamber notes, however, that Rugambarara is only charged with *post facto* knowledge of the crimes. Saving lives was therefore not at stake, which makes the crime less serious than if it were otherwise.

13. Aggravating circumstances must be proved beyond reasonable doubt, while mitigating circumstances must be proved on a balance of probabilities.

14. The Chamber will now consider the aggravating circumstances.

15. Despite the fact that the *actus reus* of the crime of extermination requires "killing on a large scale", this requirement does not entail a specific numerical threshold. However, the deaths of a large number of victims as a result of the crime of extermination can be considered as an aggravating factor for the purposes of sentencing. In the instant case, the magnitude of the deaths of Tutsi civilians in Bicumbi *commune* as a result of the crime for which Rugambarara has pleaded guilty is such that it constitutes an aggravating factor for the purpose of sentencing.

16. The Chamber recalls that in determining a sentence, an element of the offence in question cannot be considered to be an aggravating factor. Therefore, Rugambarara's position as a superior cannot be deemed to be an aggravating factor since it constitutes an element of the crime under Article 6(3) of the Statute.

17. The Chamber now turns to the mitigating circumstances. Remorse evinced by the Accused might be considered as a factor in mitigation if the Chamber is satisfied that it is sincere. After considering Rugambarara's public expression of regret and remorse, the Chamber is satisfied that Rugambarara's expression of remorse is sincere.

18. The Chamber notes that Rugambarara's admission of guilt prior to the commencement of trial relieved the victims of the need to revisit their traumatic experiences. Moreover, the timely nature of the guilty plea facilitated the efficient administration of justice and saved the Tribunal's resources. The Chamber deems these to be factors in mitigation.

19. Four witnesses testified during the sentencing hearing that Rugambarara personally assisted Tutsi refugees by extending moral and material support in Bicumbi

commune during the 1994 events and may have contributed to saving some of their lives. The Chamber accepts Rugambarara's assistance of Tutsi refugees as a factor in mitigation.

20. Juvénal Rugambarara is married and has children. The Chamber finds that this particular fact may be imparted with some, although very limited, weight in mitigation.

21. The Chamber accepts that Rugambarara was a person of good character before the events of 1994, with no history of ethnic discrimination. The Prosecutor does not challenge the Defence contentions regarding Rugambarara's previous clean criminal record. The Chamber accepts this assertion. Finally, the UNDF Commanding Officer attested to Rugambarara's good behaviour during his detention at the UNDF. All these factors when considered together indicate Rugambarara's potential for rehabilitation. Therefore the Chamber accepts these factors as being in mitigation of the sentence.

22. The Chamber accepts as facts of common knowledge that there was an armed conflict in Rwanda in 1994. The Chamber also accepts that as a result of the war that had convulsed Rwanda in 1994, there was an influx of refugees and a resurgence of interethnic tensions within Bicumbi *commune*, which could have made it difficult for Rugambarara to exercise his full authority. The Chamber accepts to take this particular environment as a mitigating factor.

23. The Chamber does not consider, however, as a mitigating factor the Defence submission that the prevailing circumstances at the relevant period were such that Rugambarara could not be said to have had effective control over his subordinates. The Chamber finds that the fact that Rugambarara pleaded guilty for having failed in his duty pursuant to Articles 3(b) and 6(3) of the Statute is predicated upon his acknowledgement that he had the material ability to pursue the punishment of the perpetrators of the crimes. To suggest otherwise would make his admission of guilt meaningless.

24. In their Joint Motion for Consideration of a Guilty Plea Agreement between Rugambarara and the Office of the Prosecutor, the Prosecution recommended a term of imprisonment ranging from nine to twelve years imprisonment, with due credit given for time already served. However during the sentencing hearing, the Prosecution departed from the range of penalties initially agreed upon by recommending a sentence of at least 12 years.

25. The Defence requests the Chamber to order that Rugambarara serve his sentence in Europe, preferably France, a neighbouring country to Belgium, where his family resides. The Prosecution supports the application.

26. The Chamber has taken into consideration the sentencing practices in Rwanda and of this Tribunal when determining this sentence.

IV. CONCLUSION

27. In determining this sentence, the Chamber was fully aware of its obligation, as a matter of justice, to maintain consistency in sentences of individuals convicted of similar crimes. The Chamber is also mindful that the sentence should reflect the totality of the criminal conduct of the accused.

V. VERDICT

(Mr Juvénal Rugambarara, will you please stand)

FOR THE REASONS ABOVE, the Trial Chamber,

SENTENCES YOU, Juvénal Rugambarara, to 11 years imprisonment.

- The sentence shall run as of the date of this judgement;
- You are entitled to credit for the time you spent in detention since your arrest on 11 August 2003, including any additional time that you may serve pending an appeal;
- Your request to serve your sentence in France is premature. You will remain in the custody of the Tribunal, pending a decision on where your sentence will be served. The decision on where you will serve your sentence will be made in due course by the President of the Tribunal, in consultation with the Chamber. The Government of Rwanda and the designated State shall be so notified by the Registrar.

This concludes the proceedings of today. Court is adjourned.