

JUDGMENT SUMMARY

The Prosecutor v. Vincent Rutaganira

1. Today's hearing is devoted to delivery of the judgment in *The Prosecutor v. Vincent Rutaganira*. The Trial Chamber will now read the summary of the Judgment, which shall be interpreted into English and Kinyarwanda. After the hearing, the Judgment shall be made available to the parties and the public. Unlike the integral text of the judgment, this summary is not authentic.
2. We shall briefly set out the background to this case, the facts thereof and the factors the Chamber took into consideration in determining sentence.

Procedural Background

3. The Accused, Vincent Rutaganira, was born in 1944 in Mubuga, Gishyita *commune*, Kibuye *préfecture*, Rwanda. He is married and has ten children. He received training in motor mechanics for two years, and training in traditional medicine at the end of which he obtained the title of *guérisseur herboriste* (herbal healer).
4. Vincent Rutaganira was elected *Conseiller* for Mubuga *secteur* in 1985, and acted as *Conseiller* until 1994. Thus, the Accused held that post at the time of the events that underlie the crimes charged against him.
5. On 22 November 1995, the Prosecutor submitted an Indictment, which was confirmed by Judge Navanethem Pillay on 28 November 1995.
6. On 12 December 1985, an arrest warrant and a transfer request were sent to the Minister of Justice of Zaire, where Vincent Rutaganira was presumed to be residing.
7. On 6 May 1996, the Chamber granted the Prosecutor's request for leave to amend the Indictment against Vincent Rutaganira, Clément Kayishema, Ignace Bagilishema, Charles Sikubwabo, Aloys Ndimbati, Mika Muhimana, Ryandikayo and Obed Ruzindana, among others.
8. The Prosecutor charged the Accused with seven counts:

Count 1: Conspiracy to commit Genocide;
Count 14: Genocide;
Count 15: Crime against Humanity (Murder);
Count 16: Crime against Humanity (Extermination);
Count 17: Crime against Humanity (Other inhumane acts)
Count 18: Violation of Article 3 common to the Geneva Conventions;
Count 19: Serious violations of Additional Protocol II of the Geneva Conventions.
9. On 18 February 2002, a new warrant for the arrest of Vincent Rutaganira was

sent to all UN member States.

10. On 4 March 2002, the Accused turned himself in to ICTR authorities and was, on the same day, transferred to the Tribunal's Detention Facility.
11. At his initial appearance on 26 March 2002, the Accused pleaded not guilty to all the seven counts.
12. At the status conference held on 8 December 2004, the Prosecution and Accused Vincent Rutaganira informed the Chamber that they had entered into a plea agreement on 7 December 2004. At a hearing held that same day, the Prosecution requested the Chamber to accept the guilty plea, find the Accused guilty of Count 16 and also to dismiss Counts 1, 14, 15, 17, 18 and 19 for lack of evidence and acquit the Accused of the said counts. The Accused, for his part, pleaded guilty to Count 16: Extermination as a Crime against Humanity, pursuant to Article 3(b) of the Statute of the Tribunal. He pleaded not guilty to the other counts.
13. The Trial Chamber found Vincent Rutaganira's guilty plea to be sincere and valid and, taking formal note of the Prosecution request, directed the Registrar to set a date for hearing. The Chamber also granted the Defence request to call three witnesses to testify on the Accused's good character.
14. At the hearing of 17 January 2005, the Prosecution, on the one hand, made an application to sever the Accused from the other accused charged in the Indictment of 6 May 1996 and, on the other hand, renewed his request that the Chamber dismiss and acquit the Accused of all charges against him, except Count 16.
15. The Defence requested the Chamber to rectify certain words in the Plea Agreement, that is, to maintain the word "*omissions*" and delete the word "*actes*". The Defence further requested the Chamber to declare the said Agreement confidential, except Parts V and VI.
16. The Chamber ordered the severance of Vincent Rutaganira from the other accused included in the 6 May 1996 Indictment and ordered the Registry to issue a new case number accordingly. After granting the Defence request for rectification, the Chamber further ordered disclosure of the Plea Agreement in closed session, except Parts V and VI, for security reasons, pursuant to Rule 62 *bis* of the Rules. The Defence then read out Parts V and VI of the said Agreement.
17. The Chamber also granted the Defence request to ask the doctor of the Detention Unit of the Tribunal to issue a confidential medical certificate concerning Rutaganira.
18. The Chamber also admitted in evidence the written statements of three nonappearing witnesses.

19. The Prosecution pleaded both aggravating and mitigating circumstances that the Chamber could consider in determining the sentence to be imposed on the Accused. The Defence, for its part, pleaded mitigating circumstances in favour of the Accused.

Factual Findings

20. From 1985 to 1994, the Accused was *Conseiller* for Mubuga *secteur*, Gishyita *commune*, Kibuye *préfecture*. In that capacity, he was responsible for economic, social and cultural development. As an important figure in this *secteur*, Vincent Rutaganira was, by virtue of the duties conferred on him, a channel between the local population and the local political structure.
21. The Accused knew that during the disturbances that occurred earlier in Kibuye *préfecture*, Tutsi civilians used to seek refuge in churches, and especially that between 8 and 15 April 1994, thousands of Tutsi civilians took refuge in the Mubuga church. Moreover, he admitted that between 14 April and about 17 April 1994, the Tutsi that congregated in the said church were attacked and that the attacks resulted in thousands of deaths and numerous injuries to the men, women and children within the church. Before the attacks, the Accused saw the attackers assembling; the said attackers included armed Hutu civilians, members of the communal police and national gendarmerie.
22. In spite of his position and knowledge of the above-mentioned facts, the Accused took no measures to protect the Tutsi.

Vincent Rutaganira's criminal responsibility on Count 16: Crime against Humanity (Extermination)

23. In holding that Accused Vincent Rutaganira incurs criminal responsibility on Count 16, the Chamber, after considering the objective indicia, facts admitted by the Accused and the absence of any disagreement between the parties, made the following findings:
 1. The attacks on Mubuga church between 14 and 17 April 1994 constitute a crime against humanity (Extermination)
24. The Chamber finds that the attacks on Mubuga church between 14 and 17 April 1994 resulted in the massacre of a predominantly Tutsi civilian population. The Chamber also finds that the attacks were part of a widespread and systematic attack that occurred in Kibuye *préfecture* during the April 1994 events in Rwanda:
 - (a) The massacre resulted in massive killings, thousands of deaths and numerous injuries;
 - (b) The massacre was **directed** against members of the Tutsi civilian population on ethnic grounds;
 - (c) The massacre was part of a widespread and systematic attack that occurred in Kibuye *préfecture* during the April 1994 events in Rwanda.

25. The Chamber notes that the ingredients of crime against humanity (Extermination) are all present and, accordingly, finds that the crime of extermination was perpetrated at Mubuga church between 14 and 17 April 1994.

2. Accused Vincent Rutaganira's participation in crimes against humanity (Extermination) and complicity by omission (aiding and abetting)

26. The Accused pleaded guilty to complicity in a crime against humanity (Extermination) for aiding and abetting its commission by omission.

27. The Chamber considers that participation in a crime against humanity (Extermination) by aiding and abetting, as admitted by Accused Vincent Rutaganira, is provided for in Article 6(1) of the Statute. Hence, the Chamber considered the ingredients of aiding and abetting by omission, namely the *actus reus* and the *mens rea*.

(a) *Actus reus*

28. In considering participation by omission in a crime against humanity (Extermination), as admitted by the Accused, the Chamber asked itself the following questions:

- (i) Did the Accused have the power to act and chose not to exercise it?
- (ii) Did the Accused have authority over the principal actors to prevent them from committing the crime and chose not to use it?
- (iii) Did the Accused have the legal duty to act and failed to so act?

29. The Chamber, pursuant to Section 37 of the Law on Communal Organization in Rwanda and considering the Accused's status as *conseiller* for Mubuga *secteur*, finds that the Accused failed to use the power he had over the population of his *secteur* to protect even a section of the said population from attacks against the Tutsi.

30. The Chamber also finds that during the events of 1994, Vincent Rutaganira still wielded moral authority over the civilian population of his *secteur*, and that he could have used such authority to prevent certain members of the said population from participating in the massacre at Mubuga church.

31. The Chamber further finds that the Accused failed to render assistance to persons in danger, pursuant to Section 256 of the Rwandan penal code. *Ad abundantiam*, the Chamber concluded that under international law, Vincent Rutaganira had a duty to act, as a State employee, to protect the population of his *secteur*.

32. The Chamber also took into account the fact that Vincent Rutaganira was just a few metres away from the location where the attackers were gathered before and during the attacks. He was therefore able to see the attackers (local authority representatives, armed Hutu civilians, communal policemen and units of the national gendarmerie) who were assembling not far from his house and to know subsequently that attacks were being carried out at Mubuga church between 14 and 17 April 1994. Accordingly, the Chamber finds that Vincent Rutaganira participated by omission, as charged, well before the beginning of the massacre of refugees at Mubuga church and during the said massacre.

b. *Mens rea*

33. The Chamber had to consider whether the Accused Vincent Rutaganira knew:

(1) that the crime of extermination was being committed as part of a systematic and widespread attack against a civilian population on ethnic grounds; and

(2) that his conduct contributed to the commission of such crime.

34. The Chamber finds that these two requirements of *mens rea* are established in this case. Indeed, the Chamber finds that as *conseiller* of Mubuga *secteur*, Vincent Rutaganira could not have been ignorant of the serious events occurring in his *secteur* and of the large-scale crimes that were being committed there. Thus, the Chamber finds that the Accused knew that his inaction contributed to the commission of the crime.

35. The Chamber therefore finds that Vincent Rutaganira participated in a crime against humanity (extermination), as an accomplice by omission, for having aided and abetted the massacre of a civilian population at Mubuga church, between 14 and 17 April 1994.

3. Findings of guilt against Vincent Rutaganira.

36. In the light of the foregoing, the Chamber finds Vincent Rutaganira guilty of crime against humanity (extermination), as charged under Count 16 of the Indictment, for having aided and abetted the commission of the said crime by omission.

Counts 1, 14, 15, 17, 18 and 19 for which the Accused entered a plea of acquittal

37. Recalling that it is the duty of the Chamber to ensure fairness of the proceedings and respect for the rights of the Accused, the Chamber finds that no evidence has been adduced in this case to establish Vincent Rutaganira's guilt under Counts 1, 14, 15, 17, 18 and 19 to which he pleaded not guilty. Accordingly, the Chamber acquits him on those Counts.

Circumstances to be taken into account in sentencing

38. The Chamber has examined the goals of sentencing in the light of its mandate, and considers punishment, deterrence and rehabilitation to be the most important in that regard.
39. In imposing sentence, the Chamber has taken into account the gravity of the crime and other factors. Moreover, the Chamber finds that there are mitigating circumstances in favour of Vincent Rutaganira.
40. The Chamber is persuaded of the gravity of the crime in respect of which the Accused, Vincent Rutaganira, was an accomplice by omission; it should be stressed that Vincent Rutaganira did not actively participate in the massacre at Mubuga church on 14 and 17 April 1994, but aided and abetted its commission by omission.
41. Among the factors considered by the Chamber in imposing sentence are the individual and family circumstances of the Accused, his advanced age, ill health, his personality and behaviour in general and, in particular, the fact he has no previous criminal record, and his good behaviour whilst in custody. All these factors augur in favour of Vincent Rutaganira's chances of rehabilitation.
42. The Chamber finds in favour of Vincent Rutaganira the following mitigating circumstances: his voluntary surrender, his plea of guilty, assistance given to some victims in Mubuga *secteur* during the events of April 1994, his expression of remorse, absence of active participation in the killings and, lastly, restraint.
43. In determining the sentence to be imposed on Vincent Rutaganira, the Chamber has had recourse to the general practice regarding prison sentences in the courts of Rwanda.

Verdict

The Trial Chamber finds Vincent Rutaganira:

Count 1: Conspiracy to commit genocide, punishable under Article 2(3)(b) of the Statute of the Tribunal: NOT GUILTY;

Count 14: Genocide, punishable under Article 2(3)(a) of the Statute of the Tribunal: NOT GUILTY

Count 15: Crime Against Humanity (**Murder**), punishable under Article 3(a) of the Statute of the Tribunal: NOT GUILTY;

Count 16: Crime Against Humanity (**Extermination**), punishable under Article 3(b) of the Statute of the Tribunal: NOT GUILTY;

Count 17: Crime Against Humanity (**Other Inhumane Acts**), punishable under Article 3(i) of the Statute of the Tribunal: NOT GUILTY;

Count 18: Violation of Article 3 Common to the Geneva Conventions,

punishable under Article 4(a) of the Statute of the Tribunal: NOT GUILTY;

Count 19: Violation of Additional Protocol II to the Geneva Conventions ,

punishable under Article 4(a) of the Statute of the Tribunal: NOT GUILTY;

Credit for time served in custody

44. Vincent Rutaganira was arrested on 4 March 2002 and transferred the same day to the Tribunal's Detention Facility in Arusha. Credit for time served shall be deducted from his total sentence.

Sentence

(Mr. Vincent Rutaganira, will you please stand)

FOR THE FOREGOING REASONS, the Trial Chamber, in open court and after hearing the parties, at first instance, pursuant to the Statute and the Rules of Procedure and Evidence;

HAVING severed you from the other accused included in the 6 May 1996 Indictment ;

HAVING HEARD your plea of guilty;

HAVING considered all of the evidence and the arguments of the Parties;

ACQUITS YOU, Vincent Rutaganira, of Counts 1, 14, 15, 17, 18, and 19 as charged in the Indictment of 6 May 1996;

FINDS YOU GUILTY of crime against humanity (extermination) for having, between 14 and 17 April 1994 or thereabouts, aided and abetted by omission the attacks at Mubuga church (Gishyita *commune*) that resulted in thousands deaths and numerous injuries to the Tutsi refugees within the church.

SENTENCES YOU, Vincent Rutaganira, to 6 years imprisonment.
Rules that the sentence shall be enforced immediately;

RULES, pursuant to Rule 101(D) of the Rules of Procedure and Evidence, that you are entitled to credit for the period during which you were detained in custody following your arrest on 4 March 2002, and for any additional time that you will spend in custody pending appeal, if any.

Pursuant to Rule 103 of the Rules of Procedure and Evidence, you shall remain in the custody of the Tribunal until adequate arrangements have been made for your transfer to the State where you will serve your sentence.

THE COURT SHALL RISE.

Arusha, 14 March 2005