



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

1433
Mwanga

OR: English

ICTR-00-60-S
13 - 04 - 2006
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TRIAL CHAMBER II

Before: Judge Arlette Ramaroson, Presiding
Judge William H. Sekule
Judge Solomy Balungi Bossa

Registrar: Mr Adama Dieng

Date: 13 April 2006

The PROSECUTOR

v.

Paul BISENGIMANA
Case No. ICTR-00-60-T

JUDGEMENT AND SENTENCE

The Prosecution

Mr Charles Adeogun-Phillips
Ms Memory Maposa
Mr Peter Tafah
Ms Florida Kabasinga

The Defence

Ms Catherine Mabilile
Ms Nathalie Passeron

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I. Introduction

A. Overview of the Case

1. Paul Bisengimana (the “Accused”), former *bourgmestre* of Gikoro *commune* in Kigali-Rural *préfecture*, has pleaded guilty to aiding and abetting the murder and extermination of Tutsi civilians at Musha Church and Ruhanga Protestant Church and School (the “Ruhanga Complex”) in Gikoro *commune* between 13 and 15 April 1994.

2. From 7 April 1994, massacres of Tutsis and murders of political opponents were perpetrated throughout the territory of Rwanda by militiamen, military personnel and *gendarmes*. In every region of the country, Tutsis fled from the massacres and sought refuge in places they thought to be safe. In many of these places, the refugees were attacked and killed, often with the complicity of the authorities.

3. The massacres in Gikoro *commune* started on 7 April 1994. Thousands of Tutsi civilians, fleeing from the on-going attacks in Kigali-rural *préfecture*, sought refuge in Musha Church in Gikoro *commune* between 8 and 13 April 1994. On or about 12 April 1994, with the knowledge of the Accused, members of the Rwandan Army distributed weapons to *Interahamwe* militiamen and civilians at Musha Church to be used to attack the refugees.

4. On or about 13 April 1994, in the presence of the Accused, Rwandan Army soldiers, *Interahamwe*, armed civilians and communal policemen launched an attack against the Tutsi civilians at Musha Church using guns, grenades, machetes and pangas. A civilian militiaman set fire to the Church during the attack. More than a thousand Tutsis were killed as a result of the attack. The Accused was present when a Tutsi civilian named Rusanganwa was murdered at that location.

5. Many Tutsi civilians had also sought refuge at the Ruhanga Protestant Church and School in Gikoro *commune* between 8 and 10 April 1994. Between 10 and 15 April 1994, an attack was launched on the Ruhanga Complex by a *brigadier*, soldiers from the Presidential Guard, civilian militiamen and communal policemen. The attackers used guns, grenades, machetes and pangas. Many Tutsi civilians were killed. Paul Bisengimana knew of the previous attack at Musha Church and, despite his position as *bourgmestre* of Gikoro *commune*, did not take any steps to protect the Tutsis refugees.

6. On 7 December 2005, Trial Chamber II (the “Chamber”) accepted the guilty plea of the Accused and found him guilty of having aided and abetted the commission of murder and extermination as crimes against humanity.

B. The Indictment

7. Under the Amended Indictment of 1 December 2005 (the “Indictment”), the Prosecution charged Paul Bisengimana for his individual responsibility on five counts: genocide (Art. 6 (1) and 6 (3) of the Statute¹), complicity in genocide (Art. 6 (1)), and murder (Art. 6 (1)) extermination (Art. 6 (1)) and rape (Art. 6 (1) and 6 (3)) as crimes against humanity. At the second further appearance of the Accused on 7 December 2005, the Prosecution withdrew the

¹ Statute of the Tribunal (the “Statute”).

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counts of genocide, complicity in genocide and rape as crimes against humanity. The Indictment is annexed to this judgement (Annex C).

C. Summary of the Procedure

8. On 4 December 2001, Paul Bisengimana was arrested in Mali. On 11 March 2002, the Accused was transferred to the United Nations Detention Facility in Arusha (the "UNDF"). On 18 March 2002, the Accused made his initial appearance and pleaded not guilty to all counts.

9. On 19 October 2005, the Parties filed a joint motion for consideration of a guilty plea agreement between Paul Bisengimana and the Office of the Prosecutor.²

10. On 17 November 2005, during his further appearance, the Accused pleaded guilty to murder and extermination as crimes against humanity pursuant to Article 6 (1) of the Statute.³ The Chamber dismissed the joint motion for consideration of a guilty plea agreement for not being unequivocal. On behalf of the Accused, the Chamber entered a plea of not guilty regarding the counts of murder and extermination and duly noted the plea of not guilty for all the other counts.⁴

11. The Indictment was filed on 1 December 2005.

12. On 7 December 2005, during his second further appearance, the Accused pleaded guilty to the counts of murder and extermination as crimes against humanity pursuant to Article 6 (1) of the Statute.⁵ The Chamber found the Accused guilty of having aided and abetted the commission of murder (Count 3) and extermination (Count 4) as crimes against humanity pursuant to Article 6 (1) of the Statute.⁶ The Chamber granted the Prosecution motion for withdrawal and dismissal of the remaining counts but denied the Prosecution request for acquittal on these counts because the Prosecution had failed to justify its motion on this point.⁷

13. A Pre-Sentencing Hearing was held on 19 January 2006.

14. A full review of the procedural history is annexed to this judgement (Annex A).

D. The Tribunal and Its Jurisdiction

15. The Judgement in the case of *Prosecutor v. Paul Bisengimana* is rendered by Trial Chamber II of the International Criminal Tribunal for Rwanda (the "Tribunal"), composed of Judge Arlette Ramarosan, presiding, Judge William H. Sekule, and Judge Solomy B. Bossa.

16. The Tribunal is governed by the Statute annexed to Security Council Resolution 955 and by the Rules of Procedure and Evidence of the Tribunal (the "Rules").⁸

17. The Tribunal was established to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States. The Tribunal has jurisdiction over acts of genocide, crimes against humanity, and serious violations of Article 3

² *Requête conjointe visant à l'examen d'un accord entre Paul Bisengimana et le Bureau du Procureur aux fins d'un plaidoyer de culpabilité*, filed on 19 October 2005.

³ T. 17 November 2005 p. 14.

⁴ T. 17 November 2005 p. 26.

⁵ T. 7 December 2005 pp 12-13.

⁶ T. 7 December 2005 p. 17.

⁷ T. 7 December 2005 p. 18.

⁸ Originally adopted by the Judges of the Tribunal on 5 July 1995, the Rules were last amended on 7 June 2005 during the Fifteenth Plenary Session.

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common to the Geneva Conventions and of Additional Protocol II thereto, committed between 1 January 1994 and 31 December 1994.

II. The Guilty Plea

A. Applicable Law

18. The Chamber notes that there is no specific provision in the Statute regarding guilty pleas and plea agreements. The relevant provisions of the Rules regarding the procedure relating to guilty pleas and plea agreements are Rule 62 (B) and Rule 62 *bis*.⁹

B. The Guilty Plea of 7 December 2005

19. On 7 December 2005, after Paul Bisengimana pleaded guilty to murder (Count 3) and extermination (Count 4) as crimes against humanity pursuant to Article 6 (1) of the Statute, the Chamber proceeded to verify the validity of the plea.

20. The Chamber summarised the consequences of the plea. It indicated that when an accused pleads not guilty, he is presumed innocent until his guilt is established beyond reasonable doubt. In consequence, an accused pleading not guilty has a right to a fair trial; to cross-examine Prosecution witnesses, to call Defence witnesses, and to testify in his defence. The Chamber asked the Accused if he understood that by pleading guilty, he was renouncing these rights. The Accused responded that he understood and that he consciously waived these rights.¹⁰

21. Pursuant to Rule 62 (B)(i), (ii), and (iii) of the Rules, the Chamber first asked if the guilty plea was made freely and voluntarily; in other words, if the Accused was fully aware of what he was doing and was not threatened or pressured to so plea. The Accused answered that he was aware of what he was doing, that there were no threats against him, and that he pleaded guilty of his own will.¹¹

⁹ Rule 62: Initial Appearance of Accused and Plea

(B) If an accused pleads guilty in accordance with Rule 62 (A)(v), or requests to change his plea to guilty, the Trial Chamber shall satisfy itself that the guilty plea:

- (i) is made freely and voluntarily;
- (ii) is an informed plea;
- (iii) is unequivocal; and
- (iv) is based on sufficient facts for the crime and accused's participation in it, either on the basis of objective indicia or of lack of any material disagreement between the parties about the facts of the case.

Thereafter the Trial Chamber may enter a finding of guilt and instruct the Registrar to set a date for the sentencing hearing.

Rule 62 *bis*: Plea Agreement Procedure

(A) The Prosecutor and the Defence may agree that, upon the accused entering a plea of guilty to the indictment or to one or more counts of the indictment, the Prosecutor shall do one or more of the following before the Trial Chamber:

- (i) apply to amend the indictment accordingly;
- (ii) submit that a specific sentence or sentencing range is appropriate;
- (iii) not oppose a request by the accused for a particular sentence or sentencing range.

(B) The Trial Chamber shall not be bound by any agreement specified in paragraph (A)

(C) If a plea agreement has been reached by the parties, the Trial Chamber shall require the disclosure of the agreement in open session or, on a showing of good cause, in closed session, at the time the accused pleads guilty in accordance with Rule 62 (A) (v), or requests to change his or her plea to guilty.

¹⁰ T. 7 December 2005 p. 14.

¹¹ T. 7 December 2005, p.14.

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22. Secondly, the Chamber asked the Accused if the plea was informed: that is if the Accused clearly understood the nature of the charges brought against him and the consequences of the plea for each of the counts.¹² The Accused answered that he pleaded “advisedly.”¹³

23. Thirdly, the Chamber asked the Accused if his plea was unequivocal: that is whether the Accused knew that the plea was not compatible with any defence that would contradict it. The Accused answered that there was absolutely no incompatibility.¹⁴

24. Further, the Chamber notes the following elements of the Plea Agreement: the Accused elected freely, “with full knowledge of the facts,” to plead guilty;¹⁵ the Accused decided to plead guilty after a long reflection during which he became fully aware of the scope and consequences of the offences he had committed;¹⁶ the Accused decided to change his plea after being fully briefed on the legal consequences of so changing and having accepted these consequences;¹⁷ the Accused’s decision to plead guilty was voluntary, informed and unequivocal.¹⁸

25. In its oral ruling of 7 December 2005, the Chamber was satisfied that, on account of the absence of any disagreement on the part of the Prosecutor and the Accused about the facts of the case, the plea was based on sufficient facts to establish the crimes and the participation of the Accused in their commission. The Chamber stated that the requirements of Rule 62 (B) were met and it therefore declared the Accused guilty of having aided and abetted the commission of the crimes of murder and extermination as crimes against humanity pursuant to Article 6 (1) of the Statute.¹⁹ The Chamber granted the Prosecution motion for withdrawal and dismissal of the counts to which the Accused had pleaded not guilty.²⁰ However, the Chamber denied the Prosecution motion for acquittal on those counts because the Prosecution had failed to justify its motion on this point.²¹

III. Case on Merits

A. The Accused

26. Paul Bisengimana was born in 1948²² in Duha *secteur*, Gikoro *commune*, Kigali-rural *préfecture*²³ and is the son of Verdiana Nyirabatera and Gervais Ngirumpatse,²⁴ both of whom are deceased.²⁵ He spent most of his adult life in Gikoro *commune*.²⁶

27. Paul Bisengimana is married and is the father of ten children. He had seven children with his first wife, Dorca Kantarama, who died in 1991. He later married Marie Héronline Mukandagijimana, with whom he had two children. He adopted his second wife’s child.²⁷

¹² T. 7 December 2005 p. 14.

¹³ T. 7 December 2005 p. 15.

¹⁴ T. 7 December 2005 p. 15.

¹⁵ Plea Agreement, para. 5.

¹⁶ Plea Agreement, para. 6.

¹⁷ Plea Agreement, para. 8.

¹⁸ Plea Agreement, para. 9.

¹⁹ T. 7 December 2005 p. 17.

²⁰ T. 7 December 2005 p. 17-18.

²¹ T. 7 December 2005 p. 18.

²² Plea Agreement, para. 24; T.17 November 2005 p. 11; T. 7 December 2005 p. 11.

²³ Plea Agreement, para. 24; Indictment, para. 2.

²⁴ T. 17 November 2005 p. 11; T. 7 December 2005 p. 11.

²⁵ T. 17 November 2005 p. 11.

²⁶ Plea Agreement, para. 24.

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28. Paul Bisengimana went to primary school in Gikoro *commune*. He completed the “*premier cycle*” of his secondary education in Rwamagana in three years. He then went to Byumba *école normale*, which he left in 1970 with a teacher’s D 5 certificate.²⁸

29. From 1970 to 1974, Paul Bisengimana worked in his native *commune* as a teacher. From 1974 to 1978, he was headmaster of a secondary school in Nyanza. From 1978 to 1981, he was Presiding Judge of the Cantonal Court of Nyamata, Kigali *préfecture*.²⁹ In May 1981, he was appointed *bourgmestre* of Gikoro *commune*, a position he held until 1994, when he went into exile.³⁰

B. Factual and Legal Findings

1. Individual Criminal Responsibility for Aiding and Abetting Pursuant to Article 6 (1) of the Statute

a. The Indictment

30. In support of the counts of murder and extermination, the Indictment alleges that during April 1994, in the Bugesera region of Kigali-Rural *préfecture*, Paul Bisengimana acting individually and/or in concert with others, was responsible for killing or causing persons to be killed during mass killing events in Gikoro *commune* and its environs, as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds.³¹ For all the acts adduced in support of this charge, the Prosecutor alleges that the Accused either planned, or otherwise aided and abetted in the planning, preparation or execution of the said offence pursuant to Article 6 (1) of the Statute.³²

b. Applicable Law

31. Article 6 (1) reflects the principle that criminal responsibility for any crime in the Statute is incurred not only by individuals who physically commit the crime, but also by individuals who participate in and contribute to the commission of the crime in other ways, such as by aiding and abetting.³³

32. “Aiding” means assisting another to commit a crime.³⁴ “Abetting” means facilitating, encouraging, advising or instigating the commission of a crime.³⁵ In legal usage, including that of the Statute and of the case law of the Tribunal and the International Criminal Tribunal for the Former Yugoslavia (the “ICTY”), the two terms are so often used conjunctively that they are treated as a single broad legal concept.³⁶

²⁷ T. 17 November 2005 p. 11; T.7 December 2005 p. 12.

²⁸ T. 17 November 2005 p. 11; T. 7 December 2005 p. 12.

²⁹ T. 17 November 2005 p. 11; T. 7 décembre 2005 p. 13.

³⁰ Plea Agreement, paras. 24-25; T. 17 November 2005 p. 11; Indictment, para. 3; T. 7 December 2005 p. 12.

³¹ Indictment, paras. 35 and 40.

³² Indictment, paras. 36 and 41.

³³ *Kajelijeli*, Judgement (TC), para. 757; *Semanza*, Judgement (TC), para. 377; *Kayishema and Ruzindana*, Judgement (AC) para. 185; *Musema*, Judgement (TC), para. 114; *Rutaganda*, Judgement (TC), para. 33; *Kayishema and Ruzindana*, Judgement (TC) paras. 196-197; *Akayesu*, Judgement (TC), para. 473.

³⁴ *Kajelijeli*, Judgement (TC), para. 765; *Semanza*, Judgement (TC), para. 384; *Ntakirutimana*, Judgement (TC), para. 787; *Akayesu*, Judgement (TC), para. 484.

³⁵ *Id.*

³⁶ *Kajelijeli*, Judgement (TC), para. 765; *Semanza*, Judgement (TC), para. 384, referring to Mewett & Manning, *Criminal Law* (3rd ed. 1994) p. 272 (noting that aiding and abetting are “almost universally used conjunctively”)

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33. Aiding and abetting is a form of accessory liability. The *actus reus* of the crime is not performed by the accused but by another person referred to as the principal offender.³⁷ The accused's participation may take place at the planning, preparation or execution stage of the crime and may take the form of a positive act or omission, occurring before or after the act of the principal offender.³⁸ The Prosecution is required to demonstrate that the accused carried out an act of substantial practical assistance, encouragement, or moral support to the principal offender, culminating in the latter's actual commission of the crime.³⁹ While the assistance need not be indispensable to the crime,⁴⁰ it must have a substantial effect on the commission of the crime.⁴¹

34. Mere presence at the crime scene may constitute aiding and abetting where it is demonstrated to have a significant encouraging effect on the principal offender, particularly if the individual standing by was the superior of the principal offender or was otherwise in a position of authority.⁴² In those circumstances, an omission may constitute the *actus reus* of aiding and abetting, provided that this failure to act had a decisive effect on the commission of the crime.⁴³

35. However, it is not necessary that the person aiding and abetting the principal offender be present during the commission of the crime.⁴⁴

36. The *mens rea* of aiding and abetting is demonstrated by proof that the aider and abettor is aware that his act is assisting the commission of the crime by the principal offender.⁴⁵ The aider and abettor must have known the intent of the principal offender, and although he need not know the precise offence being committed by the principal offender, he must be aware of the essential elements of the crime.⁴⁶ With respect to an aider and abettor who is in a position of authority *vis-à-vis* the principal offender, his *mens rea* may be deduced from the fact that he knew that his presence would be interpreted by the principal offender as a sign of support or encouragement.⁴⁷

c. *The Plea Agreement*

37. Paul Bisengimana was appointed *bourgmestre* of Gikoro *commune* by the President of the Republic of Rwanda⁴⁸ upon the recommendation of the Minister of the Interior. He acknowledges that as *bourgmestre*, he represented executive power at the communal level.⁴⁹ Further, he had administrative authority over the entire *commune* and was responsible for ensuring peace, public order and the safety of persons and property, and for the implementation of

³⁷ *Kunarać et al.*, Judgement (TC), para. 391.

³⁸ *Kajelijeli*, Judgement (TC), para. 766; *Semanza*, Judgement (TC), para. 386; *Rutaganira*, Judgement (TC) para. 64.

³⁹ *Kayishema and Ruzindana*, Judgement (AC), para. 186; *Kajelijeli*, Judgement (TC), paras. 763, 766; *Kamuhanda*, Judgement (TC), para. 597; *Akayesu*, Judgement (TC), paras. 473-475; *Rutaganda*, Judgement (TC), para. 43.

⁴⁰ *Ibid.*

⁴¹ *Bagilishema*, Judgement (TC), para. 33, *Kamuhanda*, Judgement (AC), para. 70.

⁴² *Akayesu*, Judgement (TC), para. 693; *Kajelijeli*, Judgement (TC), para. 769; *Furundžija*, Judgement (TC), paras. 34, 35.

⁴³ *Blaškic*, Judgement (TC), para. 284; *Tadić*, Judgement (TC), para. 686, *Mucić et al.*, Judgement (TC), para. 842; *Akayesu*, Judgement (TC), para. 705.

⁴⁴ *Musema*, Judgement (TC), para. 125.

⁴⁵ *Blaškic*, Judgement (AC), para. 49, *Kayishema and Ruzindana* (AC), para. 186.

⁴⁶ *Kajelijeli*, Judgement (TC), para. 768; *Kayishema and Ruzindana*, Judgement (AC), paras. 186-187; *Semanza*, Judgement (TC), para. 387; *Bagilishema*, Judgement (TC), para. 32; *Kayishema and Ruzindana*, Judgement (TC), para. 201, *Kayishema and Ruzindana*, Judgement (AC), para. 186.

⁴⁷ *Kayishema and Ruzindana*, Judgement (TC), paras. 200, 201; *Bagilishema*, Judgement (TC), paras. 34-36; *Kamuhanda*, Judgement (TC), para. 600, *Kamuhanda*, Judgement (AC), paras. 70, 71.

⁴⁸ Plea Agreement, para. 25, Indictment, para. 3.

⁴⁹ Plea Agreement, para. 25; Indictment, para. 4.

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local laws and regulations, as well as government policy.⁵⁰ The Accused admits that he had a duty to protect the population, prevent or punish the illegal acts of the perpetrators of attacks against persons or property.⁵¹ Further, he was responsible for informing the central government of any situation worthy of interest in Gikoro *commune*.⁵²

38. By his own account, the Accused's position as *bourgmestre* meant that he exercised both *de jure* and *de facto* authority over all public servants and other holders of public office within Gikoro *commune*,⁵³ including, but not limited to, the *conseillers de secteur*.⁵⁴ The *conseillers de secteur* represented executive power at the *secteur* level and were responsible for maintaining law and order in their respective *secteurs*.⁵⁵

39. Paul Bisengimana acknowledges that he had a duty to protect the population, prevent or punish the illegal acts of the perpetrators of the attacks at Musha Church and Ruhanga Complex but that he failed to do so.⁵⁶ He admits that he had the means to oppose the killings of Tutsi civilians in Gikoro *commune*, but that he remained indifferent to the attacks.⁵⁷ With respect to the Musha Church massacres, Paul Bisengimana acknowledges that his presence during the attack would have had an encouraging effect on the perpetrators and given them the impression that he endorsed the killing.⁵⁸

40. In the following sections, the Chamber will consider the individual criminal responsibility of the Accused under Article 6 (1) of the Statute in relation to the counts to which he has pleaded guilty.

2. Crimes Against Humanity (Article 3 of the Statute)

a. General Elements of the Crime

41. For an enumerated act under Article 3 of the Statute to qualify as a crime against humanity, it must be proved that the crime was committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds.

i. The Attack

42. The Chamber recalls that 'attack' has been defined as "an unlawful act, event, or series of events of the kind listed in Article 3 (a) through (i) of the Statute."⁵⁹

43. The Chamber notes that, based on the practice of this Tribunal and the ICTY, the applicable standard is "widespread or systematic" and not "widespread and systematic."⁶⁰

⁵⁰ Plea Agreement, paras. 26, 29; Indictment, para. 7.

⁵¹ Plea Agreement, para. 29; Indictment, para. 7.

⁵² Plea Agreement, para. 26.

⁵³ Plea Agreement, para. 27; Indictment, para. 5.

⁵⁴ Plea Agreement, para. 27.

⁵⁵ Plea Agreement, para. 28.

⁵⁶ Plea Agreement, para. 29; Indictment, para. 7.

⁵⁷ Plea Agreement, para. 32; Indictment, para. 8.

⁵⁸ Plea Agreement, para. 36.

⁵⁹ *Kajelijeli*, Judgement (TC), para. 867; *Semanza*, Judgement (TC), para. 327.

⁶⁰ The French version of the Statute requires that the attack be widespread and systematic, whereas the English version requires that the attack be widespread or systematic. In the practice of both the ICTR and the ICTY, the English version has been accepted, accepted as being consonant with customary international law, *Kunarac et al.*, Judgement (AC), para. 93.

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44. The “widespread” element of the attack has been given slightly different meanings in the Tribunal’s judgements.⁶¹ The Chamber notes, however, that this element is always taken to refer to the scale of the attack, and sometimes to the number of victims. The Chamber adopts the *Kajelijeli* Judgement definition, which is “large scale, involving many victims.”⁶²

45. The Chamber, agreeing with the *Kajelijeli* Judgement, finds that “systematic” describes the organised nature of the attack.⁶³

46. In the Plea agreement, the Accused admits that from 7 April 1994, massacres of the Tutsi population and the murder of numerous political opponents were perpetrated throughout the territory of Rwanda, including Gikoro *commune*. These crimes were carried out by militiamen, military personnel, and *gendarmes*.⁶⁴

47. Based on the facts contained in the Plea Agreement, the Chamber is convinced that widespread attacks were committed in Gikoro *commune* in April 1994 because the attacks resulted in a larger number of victims.

ii. The Attack Must Be Directed Against a Civilian Population

48. The *Akayesu* Judgement definition of ‘civilian population’ has been consistently followed in the jurisprudence of the Tribunal:⁶⁵

[...] people who are not taking any active part in the hostilities, including members of the armed forces who laid down their arms and those persons placed *hors de combat* by sickness, wounds, detention or any other cause. Where there are certain individuals within the civilian population who do not come within the definition of civilians, this does not deprive the population of its civilian character.⁶⁶

49. As noted in *Blaškić* Judgement, “the specific situation of the victim at the moment the crimes were committed, rather than his status, must be taken into account in determining his standing as a civilian.”⁶⁷

50. Moreover, the term “population” does not require that crimes against humanity be directed against the entire population of a geographical territory or area.⁶⁸ The Trial Chamber in *Semanza* Judgement further clarified that:

The victim(s) of the enumerated act need not necessarily share geographic or other defining features with the civilian population that forms the primary target of the underlying attack, but such characteristics may be used to demonstrate that the enumerated act forms part of the attack.⁶⁹

51. The Chamber agrees with this jurisprudence.

⁶¹ *Kajelijeli*, Judgement (TC), para. 871.

⁶² *Kajelijeli*, Judgement (TC) para. 871.

⁶³ *Kajelijeli*, Judgement (TC) para. 872.

⁶⁴ Plea Agreement, para. 30.

⁶⁵ *Kajelijeli*, Judgement (TC), para. 873; *Rutaganda*, Judgement (TC) para. 72; *Musema*, Judgement (TC), para. 207; *Semanza*, Judgement (TC), para. 330.

⁶⁶ *Akayesu*, Judgement (TC), para. 582, cited in *Kajelijeli*, Judgement (TC) para. 873.

⁶⁷ *Blaškić* Judgement (TC) para. 214, cited in *Bagilishema*, Judgement (TC) para. 79 and *Kajelijeli*, Judgement (TC) para. 874.

⁶⁸ *Kajelijeli*, Judgement (TC) para. 875; *Bagilishema*, Judgement (TC) para. 80; *Tadić*, Judgement (TC), para. 644.

⁶⁹ *Semanza*, Judgement (TC), para. 330, cited in *Kajelijeli*, Judgement (TC), para. 875.

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52. In the Plea Agreement, the Accused admits that massacres of the Tutsi population and the murder of numerous political opponents were perpetrated.⁷⁰ He further admits that the attacks against Tutsi civilians gathered at Musha Church and at Ruhanga Protestant Church and School in Gikoro *commune* were part of the ongoing attacks against Tutsi civilians occurring in most parts of Rwanda during April 1994.⁷¹

53. Based on the facts contained in the Plea Agreement, the Chamber is convinced that the widespread attacks in Gikoro *commune* were committed against a civilian population.

iii. The Attack Must Be Committed on Discriminatory Grounds

54. The Chamber recalls the *Akayesu* Judgement where the “discriminatory grounds” element was considered to be jurisdictional in nature, limiting the jurisdiction of the Tribunal to crimes committed on “national, political, ethnic, racial or religious grounds.”⁷² Nonetheless, in the *Kajelijeli* Judgement the Chamber noted that:

such acts committed against persons outside the discriminatory categories need not necessarily fall out with the jurisdiction of the Tribunal, if the perpetrator’s intention in committing these acts is to support or further the attack on the group discriminated against on one of the enumerated grounds.⁷³

55. In the Plea Agreement, Paul Bisengimana acknowledges that massacres of the Tutsi population and the murder of numerous political opponents were perpetrated.⁷⁴ He acknowledges that from 7 April 1994, in all regions of the country, Tutsis fleeing from massacres sought refuge in locations that they considered to be safe. In many of these places, the refugees were attacked, abducted, and massacred, often with the complicity of some of the authorities.⁷⁵

56. Based on the Plea Agreement, the Chamber finds that the widespread attacks against the civilian population were committed on discriminatory grounds because most of the victims were Tutsis.

iv. The Mental Element of Crimes Against Humanity

57. The Chamber agrees with the reasoning in the *Kajelijeli* Judgement that “the accused must have acted with knowledge of the broader context of the attack and knowledge that his act formed part of the attack on the civilian population.”⁷⁶

58. In the Plea Agreement, the Accused admits that from 7 April 1994, massacres of the Tutsi population and the murder of numerous political opponents were perpetrated in Gikoro *commune*.⁷⁷ He acknowledges that the attacks against the Tutsi civilians gathered at Musha

⁷⁰ Plea Agreement, para. 30.

⁷¹ Plea Agreement, paras. 39, 42.

⁷² *Akayesu*, Judgement (AC), paras. 464-465, also cited in *Kajelijeli*, Judgement (TC), para. 877.

⁷³ *Kajelijeli*, Judgement (TC), para. 878; *Rutaganda*, Judgement (TC), para. 74; *Musema*, Judgement (TC), para. 209; *Semanza*, Judgement (TC), para. 331.

⁷⁴ Plea Agreement, para. 30.

⁷⁵ Plea Agreement, para. 31.

⁷⁶ *Kajelijeli*, Judgement (TC), para. 880; *Semanza*, Judgement (TC), para. 332; *Musema*, Judgement (TC), para. 206; *Ntakirutimana and Ntakirutimana*, Judgement (TC), para. 803; *Bagilishema*, Judgement (TC), para. 94; *Kayishema and Ruzindana*, Judgement (TC), para. 134; *Kunarać et al.*, Judgement (AC), para. 102.

⁷⁷ Plea Agreement, para. 30.

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Church and at Ruhanga Protestant Church and School were part of the ongoing attacks against Tutsi civilians which were occurring in most parts of Rwanda.⁷⁸

59. Based on the Plea Agreement, the Chamber is convinced that the Accused knew the broader context of the attacks occurring in Rwanda in April 1994 and knew that his acts formed part of widespread attacks committed against Tutsi civilians.

b. Findings

60. The Chamber finds that the attacks at Musha Church and at Ruhanga Protestant Church and School in Gikoro *commune* in April 1994 were launched against Tutsi civilians on discriminatory grounds and were of a widespread nature because they resulted in a large number of victims.

3. Crimes Against Humanity - Extermination

a. Indictment

61. Count 4 of the Indictment charges the Accused with extermination as a crime against humanity under Article 3(b) of the Statute and states that:

During the month of April 1994, in the Bugesera region of Kigali-Rural prefecture, Republic of Rwanda, Paul Bisengimana acting individually and in concert with others, was responsible for killing or causing persons to be killed, during mass killing events in Gikoro commune and its environs, as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds.⁷⁹

Between 6 and 21 April 1994, there existed widespread or systematic attacks occurring throughout Rwanda, directed against a civilian population on political, ethnic or racial grounds.⁸⁰

Paul Bisengimana aided and abetted in the planning, preparation, or execution of the killing of Tutsi civilians and by his acts or through persons he assisted with his knowledge and consent.⁸¹

As a direct consequence of his conduct including the provision of moral support to the attackers by Paul Bisengimana, thousands of civilian men, women and children were killed.⁸²

Paul Bisengimana's affirmative acts during the month of April 1994, viz: aiding and abetting in the killing of Tutsi civilians in Musha church in Gikoro commune and at the Ruhanga Protestant Church, Ruhanga cellule, Gicaca secteur, Gikoro commune are specified at paragraphs 17 – 20 and 24 – 28 above, and are hereby reiterated and incorporated herein by reference.⁸³

b. The Plea Agreement

62. Paul Bisengimana acknowledges his guilt for having aided and abetted the commission of extermination as a crime against humanity.⁸⁴

⁷⁸ Plea Agreement, paras. 39, 42.

⁷⁹ Indictment, para. 40.

⁸⁰ Indictment, para. 42.

⁸¹ Indictment, para. 43.

⁸² Indictment, para. 44.

⁸³ Indictment, para. 45.

⁸⁴ Plea Agreement, para. 5

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i. Events at Musha Church

63. The Accused acknowledges that between 8 and 13 April 1994, more than a thousand Tutsi civilians sought refuge at Musha Church, situated in Rutoma *secteur*, Gikoro *commune*, Kigali-Rural *préfecture*, having fled from attacks against Tutsi civilians occurring throughout the *préfecture*.⁸⁵

64. The Chamber notes that whereas the Indictment mentions that Juvénal Rugambarara was among the persons present during the attack on Musha Church,⁸⁶ his name is not mentioned in the Plea Agreement.⁸⁷ The Chamber has noted this difference but is of the opinion that it does not affect the validity of the Accused's plea, nor his responsibility for the commission of the offence.

65. The Accused acknowledges that:

- a) On or about 12 April 1994, weapons such as guns and grenades were distributed to *Interahamwe* militiamen and other armed civilians at Musha Church by members of the Rwandan Army.⁸⁸
- b) He was aware of this and the fact that these weapons would be used to attack Tutsi civilians seeking refuge at Musha Church.⁸⁹
- c) On or about 13 April 1994, an attack was launched against the Tutsi civilians seeking refuge at Musha Church. The attackers used guns, grenades, machetes, pangas and other traditional weapons.⁹⁰
- d) This attack resulted in the killing of more than a thousand Tutsi civilians.⁹¹
- e) During the attack, a civilian militiaman named Manda set fire to the Church, causing the death of many refugees.⁹²
- f) The Accused was present during the attack, along with Laurent Semanza, soldiers from the Rwandan Army, *Interahamwe* militiamen, armed civilians and communal policemen.⁹³
- g) His presence at Musha Church during the attack would have had an encouraging effect on the perpetrators and given them the impression that he endorsed the killing of Tutsi civilians gathered there.⁹⁴

66. Paul Bisengimana acknowledges that he had the means to oppose the killings of Tutsi civilians in Gikoro *commune*, but that he remained indifferent to the attack.⁹⁵

⁸⁵ Plea Agreement, para. 33; Indictment, para. 17.

⁸⁶ Indictment, para. 19.

⁸⁷ Plea Agreement, para. 35.

⁸⁸ Plea Agreement, para. 34.

⁸⁹ Plea Agreement, para. 34.

⁹⁰ Plea Agreement, para. 35.

⁹¹ Plea Agreement, para. 35.

⁹² Plea Agreement, para. 35.

⁹³ Plea Agreement, para. 35.

⁹⁴ Plea Agreement, para. 36.

⁹⁵ Plea Agreement, para. 32.

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ii. Events at Ruhanga Protestant Church and School

67. The Accused acknowledges that between 8 and 10 April 1994, many Tutsi civilians sought refuge at Ruhanga Protestant Church and School, situated in Ruhanga *cellule*, Gicaca *secteur*, Gikoro *commune*, Kigali-Rural *préfecture*, having fled from attacks against Tutsi civilians occurring throughout the *préfecture*.⁹⁶

68. The Accused acknowledges that

- a) Between 10 and 15 April 1994, Brigadier Rwabukumba, along with soldiers from the Presidential Guard, civilian militiamen, and communal policemen, launched an attack against the Tutsi civilians seeking refuge in Ruhanga Complex.⁹⁷
- b) During this attack, the attackers used guns, grenades, machetes, pangas and other traditional weapons, killing many of the Tutsi refugees.⁹⁸
- c) Despite his position as *bourgmestre*, and his knowledge of the facts that the refugees at Musha church had been attacked on 13 April 1994, he took no active steps to protect the Tutsi refugees who sought refuge at Ruhanga Complex between 10 and 15 April 1994.⁹⁹

69. Paul Bisengimana acknowledges that he had the means to oppose the killings of Tutsi civilians in Gikoro *commune*, but that he remained indifferent to the said attacks.¹⁰⁰

c. Applicable Law

70. The Chamber recalls that extermination consists of an act or a combination of acts, which contributes to the killing of a large number of individuals.¹⁰¹ It is irrelevant that the accused's participation in the act is remote or indirect. It is the large number of killings that distinguishes the crime of extermination from the crime of murder.¹⁰²

71. To establish the *mens rea* of extermination, the Prosecution must prove that the accused intended the killings, or was reckless or grossly negligent as to whether the killings would result and was aware that his acts or omissions formed part of a mass killing event.¹⁰³ The accused must also be shown to have known of the vast scheme of collective murders directed against a civilian population on discriminatory grounds and to have been willing to take part in that scheme.¹⁰⁴ As an aider or abettor of extermination as a crime against humanity, the Chamber should consider

⁹⁶ Plea Agreement, para. 40; Indictment, para. 24.

⁹⁷ Plea Agreement, para. 41.

⁹⁸ Plea Agreement, para. 41; Indictment, para. 25.

⁹⁹ Plea Agreement, para. 42.

¹⁰⁰ Plea Agreement, para. 32.

¹⁰¹ *Kayishema and Ruzindana*, Judgement (TC), paras. 144-147; *Rutaganda* Judgement (TC), paras. 82-83; *Musema*, Judgement (TC), para. 217; *Kamuhanda*, Judgement (TC), paras. 691, 692, *Ndindabahizi*, Judgement (TC), para. 479.

¹⁰² *Kajelijeli*, Judgement (TC), para. 893.

¹⁰³ *Kajelijeli*, Judgement (TC), para. 894, 895; *Kayishema and Ruzindana*, Judgement (TC), paras. 144, 146;

Bagilishema, Judgement (TC), para. 89; *Semanza* Judgement (TC), para. 341.

¹⁰⁴ *Kayishema and Ruzindana*, Judgement (TC), paras. 144, 145; *Rutaganda*, Judgement (TC), paras. 83, 84; *Musema*, Judgement (TC), para. 218; *Bagilishema*, Judgement (TC), para. 94; *Semanza*, Judgement (TC), para. 341; *Kamuhanda*, Judgement (TC), para. 696; *Kajelijeli*, Judgement (TC), para. 894.

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whether the Accused knew of the criminal intent of the principal perpetrator and knew that his actions assisted in the commission of the crime.

72. Therefore, in order to be convicted of extermination as a crime against humanity, an accused must have (i) participated in the mass killing of others, or in the creation of conditions of life leading to the mass killing of others; (ii) intended the killings, or been reckless or grossly negligent as to whether the killings would result; and (iii) been aware that his acts or omissions formed part of a mass killing event.¹⁰⁵

d. Findings

i. Musha Church Massacres

73. Based on the facts admitted by the Accused and recalling the Chamber's findings that the attack on Musha Church in Gikoro *commune* was launched against Tutsi civilians on discriminatory grounds, was widespread and resulted in a large number of victims, the Chamber finds that this attack amounts to extermination.

74. The Chamber finds that the Accused participated in the attack against Musha Church by being present and that he was aware that his presence would have encouraged the criminal conduct of the perpetrators of the attack.

75. The Chamber is convinced that the Accused knew of the criminal intent of the principal perpetrators because of his admission that he was aware that arms had been distributed to *Interahamwe* militiamen and other armed civilians at Musha Church and that these weapons would be used to attack the Tutsi population who had sought refuge there.

76. Accordingly, the Chamber is satisfied that Paul Bisengimana's presence at Musha Church on or about 13 April 1994 aided and abetted the extermination of Tutsi civilians there.

ii. Ruhanga Protestant Church and School Massacres

77. Based on the facts admitted by the Accused and recalling the Chamber's findings that the attack on Ruhanga Protestant Church and School in Gikoro *commune* which occurred after the attack on Musha Church was launched against Tutsi civilians on discriminatory grounds, was widespread and resulted in a large number of victims, the Chamber finds that this attack amounts to extermination.

78. The Chamber finds that although the Accused may not have been present during the attack, he had reason to know that an attack would be launched against the Tutsi civilians gathered there because of the earlier attack on Musha Church. Moreover, the Chamber finds that despite the Accused's position as *bourgmestre* of Gikoro *commune*, he did not take any active steps to protect these Tutsi civilians. Although the Accused acknowledges that he had a duty to protect these civilians, the Chamber considers that the Accused failed protect the refugees.

79. The Chamber is convinced that, as a person of authority, the Accused's omission to act to prevent the attack amounts to gross negligence. The Chamber finds that the Accused must have known that his omission to act would allow the massacres to take place.

80. In light of these circumstances, the Chamber is satisfied that the Accused knew the criminal intent of the perpetrators of the attack on the Ruhanga Complex.

¹⁰⁵ *Kayishema and Ruzindana*, Judgement (TC), para. 144; *Bagilishema*, Judgement (TC), para. 89.

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81. Therefore, the Chamber considers that the Accused's omission to act aided and abetted the commission of the extermination of Tutsi civilian refugees at Ruhanga Protestant Church and School.

iii. General Findings

82. The Chamber finds that the Accused is individually criminally responsible pursuant to Article 6 (1) of the Statute for aiding and abetting the extermination of members of the Tutsi population at Musha Church and Ruhanga Church and School in Gikoro *commune* in April 1994. The Chamber finds the Accused guilty of extermination as a crime against humanity under Article 3 (b) of the Statute and convicts him accordingly.

4. Crimes Against Humanity – Murder

a. Indictment

83. Count 3 of the Indictment charges the Accused with murder as a crime against humanity under Article 3 (a) of the Statute and states that:

During the month of April 1994, in the Bugesera region of Kigali-Rural prefecture, Republic of Rwanda, Paul Bisengimana acting individually was responsible for killing or causing persons to be killed in Gikoro commune and its environs, as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds.¹⁰⁶

Paul Bisengimana aided and abetted in the planning, preparation, or execution of the killing of Tutsi civilians, by his acts or through persons he assisted, with his knowledge and consent.¹⁰⁷

Among the Tutsi civilians killed as a consequence of Paul Bisengimana's conduct are a Tutsi man called Rusanganwa. In that regard, Paul Bisengimana was present during the attack at Musha church in Rutoma secteur, Gikoro commune, on 13 April 1994, when Rusanganwa, who had sought refuge at the said location, was murdered.¹⁰⁸

b. The Plea Agreement

84. The Accused acknowledges his guilt for having aided and abetted the commission of murder as a crime against humanity.¹⁰⁹

85. The Accused acknowledges that during the attack at Musha Church on 13 April 1994, he was present when a Tutsi man called Rusanganwa, who had sought refuge there, was murdered.¹¹⁰

86. The Accused acknowledges that he had the means to oppose the killings of Tutsi civilians in Gikoro *commune*, but that he remained indifferent to the attack.¹¹¹

c. Applicable Law

87. The Chamber recalls that murder is the intentional killing of a person, or the intentional infliction of grievous bodily harm knowing that such harm is likely to cause the victim's death or being reckless as to whether death will result, without lawful justification or excuse.¹¹² Murder is

¹⁰⁶ Indictment, para. 35.

¹⁰⁷ Indictment, para. 38.

¹⁰⁸ Indictment, para. 39.

¹⁰⁹ Plea Agreement para. 5

¹¹⁰ Plea Agreement, para. 37.

¹¹¹ Plea Agreement, para. 32.

¹¹² *Akayesu* Judgement (TC), para. 586 ; *Ndindabahizi* Judgement, (TC), para. 487.

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punishable as a crime against humanity when committed as part of a widespread or systematic attack against a civilian population on discriminatory grounds. The Chamber recalls that it is the scale of the killings that distinguishes extermination from murder as a crime against humanity.¹¹³

88. With respect to the Accused's *mens rea* as an aider or abettor of murder as a crime against humanity, the Chamber should consider whether the Accused knew of the criminal intent of the principal perpetrator and knew that his actions assisted in the commission of the crime.

d. Findings

89. As a preliminary matter, the Chamber recalls that the French version of the Statute describes the culpable act in Article 3 (a) of the Statute as '*assassinat*', that is premeditated murder, whereas the English version of the same article describes it as 'murder.'¹¹⁴ The Chamber further recalls that in the original French version of the Plea Agreement, Rusanganwa was '*assassiné*'¹¹⁵ that is murdered with premeditation. This fact is not disputed. However, the Chamber recalls that it is not alleged that the Accused directly committed the murder nor that he shared the intent of the principal offender, but that he aided and abetted the crime. Therefore, the Chamber must examine if the *mens rea* of the Accused was that of an aider and abettor when Rusanganwa's murder was committed, in other words whether he knew the criminal intent of the principal perpetrator and he knew that his presence encouraged the commission of the crime.

90. The Chamber also notes that a reading of the Indictment¹¹⁶ suggests that there are several murder charges against the Accused. However, the Plea Agreement only refers to the murder of Rusanganwa, committed during the attack at Musha Church.¹¹⁷ Accordingly, the Chamber has only examined the facts in support of the specific murder alleged in the Indictment and acknowledged by the Accused, where one victim is clearly identified.

91. The Chamber has already found that the attack at Musha Church was a widespread attack against a civilian population on discriminatory grounds.

92. It is not disputed that a Tutsi man named Rusanganwa was murdered with premeditation. On the basis of the facts admitted by the Accused, the Chamber finds that the Accused was present when Rusanganwa was murdered during the attack at Musha Church.

93. The Chamber is convinced that Paul Bisengimana knew that the murder of Rusanganwa was part of a widespread attack against Tutsis civilians on ethnic grounds. The Chamber is also convinced, based on the factual circumstances of the case that Paul Bisengimana knew the criminal intent of the perpetrator of the murder of Rusanganwa. The Chamber recalls its reasoning at Paragraph 75 in support of this finding.

94. The Chamber finds that the Accused participated in Rusanganwa's murder by being present when the crime was committed. The Accused was aware that his presence would encourage the criminal conduct of the principal perpetrator and give the impression that he endorsed the murder. Moreover, the Chamber recalls that the Accused acknowledges that he had

¹¹³ *Kajelijeli*, Judgement (TC), para. 893.

¹¹⁴ *Semanza*, Judgement (TC), para. 589; *Musema*, Judgement (TC), para. 84; *Rutaganda*, Judgement (TC), para. 80; *Akayesu*, Judgement (TC), para. 585; *Bagilishema*, Judgement (TC), paras. 84, 85; *Kayishema and Ruzindana*, Judgement (TC), para. 140; *Ntakirutimana*, Judgement (TC), paras. 803, 804 and 808.

¹¹⁵ The French version of the Plea Agreement which is the original states that Rusanganwa was "*assassiné*" during the attack at paragraph 37.

¹¹⁶ Indictment, para. 39.

¹¹⁷ Plea Agreement, para. 37.

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the means to oppose the killings of the Tutsi civilians but that he remained indifferent to the attacks.

95. The Chamber is satisfied that the Accused is individually criminally responsible pursuant to Article 6 (1) of the Statute for aiding and abetting the murder of a Tutsi civilian named Rusanganwa at Musha Church in Gikoro *commune* in April 1994. Consequently, the Chamber finds the Accused guilty of murder as a crime against humanity under Article 3 (a) of the Statute.

e. Cumulative Convictions

i. Applicable Law

96. The Chamber recalls that the general test for cumulative convictions was reaffirmed in the *Krstić* Judgement:

The established jurisprudence of the Tribunal is that multiple convictions entered under different statutory provisions, but based on the same conduct, are permissible only if each statutory provision has a materially distinct element not contained within the other. An element is materially distinct from another if it requires proof of a fact not required by the other element. Where this test is not met, only the conviction under the more specific provision will be entered. The more specific offence subsumes the less specific one, because the commission of the former necessarily entails the commission of the latter.¹¹⁸

97. The *Čelebići* Judgement explains that when facts are regulated by two different provisions, a conviction should be entered only under the provision that contains an additional materially distinct element.¹¹⁹

98. The Chamber takes note that the distinct elements test for permissible cumulative convictions should not be applied mechanically or blindly. The ICTY Appeals Chamber has urged that this test be applied carefully to avoid prejudice to the accused.¹²⁰

ii. Findings

99. The Chamber has reflected on the fact that the Plea Agreement was initially based on the 31 October 2005 Indictment which charged the Accused for his direct participation in the murder of Rusanganwa.¹²¹ This Indictment charged the Accused for cutting the arm of Rusanganwa with a machete, after which Rusanganwa bled to death. In contrast, the 1 December 2005 Indictment on which the Plea Agreement is now based only refers to the Accused's presence during the attack at Musha Church when a Tutsi man called Rusanganwa was killed.¹²²

100. In the instant case, both Rusanganwa's murder and the extermination at Musha Church were planned and prepared by the principal perpetrators. The Chamber considers that the murder of Rusanganwa is included in the crime of extermination committed at Musha Church because Rusanganwa was one of the civilian victims killed during this widespread attack on discriminatory ground.

¹¹⁸ *Krstić*, Judgement (AC), para. 218 also cited in *Semanza* Judgement (AC), para. 315; see also *Ntakirutimana* Judgement (AC), para. 542.

¹¹⁹ *Mucić et al.*, Judgement (AC), para. 413.

¹²⁰ *Kunarać*, Judgement (AC), paras. 168-198.

¹²¹ Indictment, 31 October 2005, para. 22.

¹²² Indictment, para. 39.

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101. In the instant case, the Chamber has found that the Accused had the required *mens rea* of an aider and abettor: he knew the criminal intent of the principal perpetrators of extermination and murder, that those crimes were planned and that his presence assisted the commission of the crime. Upon reflection, the Chamber considers that the same set of facts proves the mental element of aiding and abetting murder and extermination as crimes against humanity at Musha Church.

102. The Chamber observes that the charges of extermination and murder at Musha Church are supported by the same set of facts and that the offences were committed with the same mode of participation on the part of the Accused. Thus, in that regard, the crimes of aiding and abetting murder and extermination as crimes against humanity are not materially distinct.

103. The Chamber considers that the murder of Rusanganwa is best understood as an offence included in the crime of extermination committed at Musha Church. Consequently, two convictions on the basis of ideal concurrence of crimes would not be justified in these circumstances as they would not provide a better or more complete description of the entire criminal conduct of the Accused. The Chamber considers that the Accused should only be convicted of extermination as a crime against humanity for the offences committed at Musha Church, this crime being more specific than the crime of murder in light of its large scale which is an additional materially distinct element.

104. The Chamber recalls that on 7 December 2005, the Accused was found guilty of murder and extermination as crimes against humanity after it accepted the guilty plea of the Accused.

105. At this stage of the proceedings, the Chamber decides that it is in the interests of justice and the fairness of the proceedings to enter a conviction only with respect to the count of extermination as a crime against humanity and not with respect to the count of murder. Accordingly, the Chamber will sentence the Accused only with respect to the extermination conviction.

IV. Issues Relating to the Sentence

A. Applicable Texts and Principles

106. The Chamber recalls that the Tribunal was established to contribute to the process of national reconciliation and to the restoration and maintenance of peace and to ensure that the violations of international humanitarian law in Rwanda were halted and effectively redressed.¹²³ The Chamber considers that a fair trial and, in the event of a conviction, a just sentence, contribute towards these goals.

107. The Chamber will sentence Paul Bisengimana pursuant to the provisions of Articles 22 and 23 of the Statute and Rules 100 and 101 of the Rules. The Chamber notes that the only penalty the Tribunal can impose is a prison term. Under Rule 101 (A) of the Rules, such a term shall not exceed life imprisonment.

108. The Statute and the Rules do not provide for specific penalties for any of the crimes within the jurisdiction of the Tribunal.

109. Consequently, the determination of the sentence is left to the discretion of the Chamber. In exercising that discretion, the Chamber shall, pursuant to Article 23 (2) of the Statute and Rule

¹²³ Security Council Resolution 955, 8 November 1994.

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101 (B) of the Rules, consider a number of factors including the gravity of the offence, any aggravating or mitigating circumstances, the personal circumstances of the convicted person and the general practice regarding prison sentences in the courts of Rwanda.

110. The Chamber understands its obligation to ensure that the sentence is commensurate with the individual circumstances of the offender.¹²⁴

111. The Chamber recalls that aggravating circumstances must be proved beyond reasonable doubt, while mitigating circumstances must be proved on a balance of probabilities.¹²⁵

B. Aggravating Circumstances

1. Prosecution's Submissions on the Gravity of the Offence and the Official Position of the Accused

112. The gravity and heinous nature of extermination and murder as crimes against humanity and their absolute prohibition render their commission inherently aggravating. Further, the magnitude of the crimes committed in Rwanda in 1994, resulting in the killing of several thousand civilians within 100 days, shock the collective conscience¹²⁶ and constitutes an aggravating factor.¹²⁷ Paul Bisengimana's actions and omissions directly resulted in the massacre of many Tutsi civilians.¹²⁸

113. Paul Bisengimana, as *bourgmestre* of Gikoro *commune*, bore special responsibilities: he had the duty and the authority to protect the population, prevent, or punish illegal acts.¹²⁹ Paul Bisengimana was under a duty to uphold a higher degree of morality than is usually demanded.¹³⁰ Paul Bisengimana's education enabled him to know and appreciate the dignity and value of human life.¹³¹ He was enlightened enough to be aware of the need for and value of a peaceful co-existence between communities.¹³²

114. The involvement of the peasant population in the massacres was facilitated by their misplaced belief in their leadership and an understanding that the encouragement of the authorities guaranteed that they could kill Tutsi civilians and loot their property with impunity.¹³³

115. In spite of all these factors, Paul Bisengimana took no active steps to protect Tutsi refugees, but stood aside and watched.¹³⁴

116. The Chamber notes that the Defence did not make any submissions on aggravating circumstances.

¹²⁴ *Mucić et al.*, Judgement (AC), paras. 717-719; *Muhimana*, Judgement (TC), para. 594.

¹²⁵ *Kajelijeli* Judgement (AC), para. 294., see also reference in the Defence Sentencing Brief, para. 19; Prosecution Sentencing Brief, para. 34, and T. 19 January 2006 pp. 6, 35.

¹²⁶ Prosecution Sentencing Brief, para. 35; T. 19 January 2006 p. 5.

¹²⁷ Prosecution Sentencing Brief, para. 35; T. 19 January 2006 p. 6.

¹²⁸ Prosecution Sentencing Brief, para. 50; T. 19 January 2006 p. 7.

¹²⁹ Prosecution Sentencing Brief, paras. 36, 40; T. 19 January 2006 p. 6.

¹³⁰ Prosecution Sentencing Brief, para. 41; T. 19 January 2006 p. 6.

¹³¹ Prosecution Sentencing Brief, para. 42; T. 19 January 2006 pp. 6-7.

¹³² Prosecution Sentencing Brief, para. 43; T. 19 January 2006 p. 7.

¹³³ Prosecution Sentencing Brief, para. 44; T. 19 January 2006 p. 7.

¹³⁴ Prosecution Sentencing Brief, paras. 48-49; T. 19 January 2006 p. 7.

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2. Findings

117. The Chamber recalls that the seriousness of the crimes and the extent of the involvement of the Accused in their commission are factors to be considered in assessing aggravating circumstances. Crimes against humanity are inherently aggravating offences because they are heinous in nature and shock the collective conscience of mankind.¹³⁵

118. The Chamber recalls that the Accused acknowledges that his crime consisted of direct and indirect acts leading to physical or mental torture and death as part of a widespread or systematic attack against a civilian population on ethnic grounds.¹³⁶

119. The Chamber finds that the Accused's participation in aiding and abetting extermination and murder as crimes against humanity constitute a gross violation of international humanitarian law and is an aggravating factor.

120. The Chamber finds that the Accused's position as *bourgmestre* of Gikoro *commune* during the events, and the fact that he was an educated person, are aggravating factors. As representative of the executive power at the communal level, the Chamber finds that the Accused had a duty to protect the population in the *commune*, he did not take any action to prevent the massacres which occurred there. Instead, he knowingly encouraged the killers at Musha Church by being present when the attack was launched that resulted in the death of more than a thousand Tutsi refugees. Further, he failed to prevent the subsequent massacres at Ruhanga Protestant Church and School, which resulted in many Tutsis being killed. The Chamber finds that Paul Bisengimana was an educated person who could appreciate the dignity and value of human life and was aware of the need for and value of a peaceful co-existence between communities.

121. However, there is no evidence to support the Prosecution's allegation that the involvement of the peasant population in the massacres was facilitated by their misplaced belief in their leadership and their understanding that the encouragement of the authorities guaranteed that they could kill Tutsi civilians and loot their property with impunity.

C. Mitigating Circumstances

1. Parties' General Submissions

122. The Prosecution submits that there are "compelling mitigating circumstances."¹³⁷ The Prosecution stresses that a finding that there are mitigating circumstances relates to the assessment of the sentence and in no way derogates from the gravity of the crime. Such a finding mitigates the punishment, not the crime.¹³⁸

123. The Defence submits that the Chamber has a large discretionary power with regard to the mitigating circumstances¹³⁹ and recalls that many mitigating circumstances have been found both by this Tribunal and by the ICTY.¹⁴⁰

¹³⁵ *Ruggiu*, Judgement (TC), para. 48.

¹³⁶ Plea Agreement, para. 14.

¹³⁷ Prosecution Sentencing Brief, para. 52; T. 19 January 2006 p. 8.

¹³⁸ Prosecution Sentencing Brief, para. 52, quoting *Kambanda*, Judgement (TC), paras. 56-57; T. 19 January 2006 p. 8.

¹³⁹ Defence Sentencing Brief, para. 18, quoting *Naletilić et al.*, Judgement (TC), para. 742; T. 19 January 2006 p. 34.

¹⁴⁰ Defence Sentencing Brief, para. 18.

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124. The Defence raised eight mitigating circumstances which in its view may assist the Chamber in determining a fair sentence. The Defence is fully aware that mitigation of punishment in no way reduces the gravity of the crime or the guilty verdict.¹⁴¹

2. Applicable Law

125. The Chamber recalls that mitigating circumstances may not be directly related to the offence¹⁴²

126. The Chamber notes that the jurisprudence of the Tribunal and the ICTY has identified several reasons why the guilty plea may have a mitigating effect: the showing of remorse,¹⁴³ repentance,¹⁴⁴ the contribution to reconciliation,¹⁴⁵ the establishment of the truth,¹⁴⁶ the encouragement of other perpetrators to come forward,¹⁴⁷ the sparing of a lengthy investigation and trial and thus time, effort and resources¹⁴⁸ and the fact that witnesses are relieved from giving evidence in court.¹⁴⁹ The timing of the guilty plea is also a factor.¹⁵⁰

127. With respect to the issue of substantial cooperation of the Accused with the Prosecutor, under Rule 101 (B)(ii), the Chamber recalls that the Defence indicated that the Accused did not cooperate with the Prosecutor.¹⁵¹ The Chamber considers at the outset of its deliberations on mitigating circumstances that the lack of cooperation by the Accused with the Office of the Prosecutor¹⁵² can not be considered as an aggravating factor.¹⁵³

3. The Guilty Plea with Publicly Expressed Regrets

a. Prosecution Submissions

128. The Prosecution submits that in most jurisdictions, including Rwanda, a guilty plea is considered as a mitigating factor.¹⁵⁴ Paul Bisengimana's guilty plea will assist in the administration of justice and in the process of national reconciliation in Rwanda. It will also save the victims of the attacks from the ordeal of coming to testify before the Tribunal.¹⁵⁵

129. The Prosecution also states that by pleading guilty, the Accused should be seen as setting an example that may encourage others to acknowledge their personal involvement in the massacres committed in Rwanda in 1994.¹⁵⁶

130. The Prosecution refers to the Plea Agreement in which Paul Bisengimana has shown some degree of remorse for the crimes he is charged with, acknowledges full responsibility for his

¹⁴¹ Defence Sentencing Brief, para. 20, quoting *Ruggiu*, Judgement (TC), para. 80; T. 19 January 2006 p. 35.

¹⁴² *Nikolić*, Judgement (TC), para. 145; *Deronjić*, Judgement (TC), para. 155.

¹⁴³ *Plavšić*, Judgement (TC), para. 73.

¹⁴⁴ *Ruggiu*, Judgement (TC), para. 55.

¹⁴⁵ *Plavšić*, Judgement, (TC), para.70.

¹⁴⁶ *Nikolić*, Judgement, (TC), para. 248.

¹⁴⁷ *Erdemović*, Judgement, (TC) (1998), para.16; *Ruggiu*, Judgement (TC), para. 55.

¹⁴⁸ *Ruggiu*, Judgement (TC), para. 53.

¹⁴⁹ *Erdemović*, Judgement (TC) (1998), para. 450.

¹⁵⁰ *Sikirica et al.*, Judgement (TC), para.150.

¹⁵¹ T.19 January 2006 p.34.

¹⁵² Defence Sentencing Brief, paras.16-17.

¹⁵³ *Plavšić*, Judgement,(TC), paras. 63-64.

¹⁵⁴ Prosecution Sentencing Brief, para. 53, quoting *Kambanda*, Judgement (TC); T. 19 January 2006 p. 8.

¹⁵⁵ Prosecution Sentencing Brief, para. 53, quoting *Todorović*, Judgement (TC), para. 80; T. 19 January 2006 p. 8.

¹⁵⁶ Prosecution Sentencing Brief, para. 58, quoting *Kambanda*, Judgement (TC), para. 53 and *Erdemović*, Judgement (TC) (1998), p. 16; T. 19 January 2006 p. 9.

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actions and omissions, and is convinced that it is only the full truth that can restore national unity and foster reconciliation in Rwanda.¹⁵⁷ The Accused has also indicated his deep and genuine desire to tell the whole truth and expressed his profound and heartfelt apologies to all the direct and indirect victims of the offences he has been charged with.¹⁵⁸

131. The Prosecution adds that the guilty plea was timely and saved the Tribunal considerable expenses.¹⁵⁹ The Prosecution submits that in light of the Tribunal's completion strategy, the Accused deserves credit.¹⁶⁰

b. Defence Submissions

132. The Defence submits that the jurisprudence recognizes that the guilty plea of an accused constitutes a mitigating factor, provided that it is accompanied by publicly expressed sincere regrets or remorse.¹⁶¹ According to the Defence, Paul Bisengimana has already expressed his deepest apologies to the victims of the Rwandan genocide in the Plea Agreement. He also sincerely regrets not having had the courage to personally oppose the massacres and having supported them by his presence. He hopes that his expressions of regret will be heard by Rwandans and the international community, and will help contribute to the process of peace and national reconciliation in Rwanda.¹⁶² The Defence particularly stresses that the Accused acknowledges that his presence gave the impression that he approved of the massacre at Musha Church, and encouraged Rusanganwa's murder. Further, the Accused has admitted that he took no steps to protect the refugees at Ruhanga Protestant Church and School, despite his position as *bourgmestre* and his knowledge of the earlier attack.¹⁶³

133. The Defence adds that the sentiments of the Accused must be evaluated in the light of his statements and conduct.¹⁶⁴

134. The Defence further states that a guilty plea should give rise to a reduction in the sentence the Accused would have received had he not pleaded guilty.¹⁶⁵

135. The Defence submits that whilst a guilty plea is always important in establishing the truth, it can only assist if it is entered before the commencement of trial, when it can save valuable time and resources.¹⁶⁶ In the present case, Paul Bisengimana decided to plead guilty before the commencement of his trial and even before a date had been set by the Registry for the hearing of his case. He has thus assisted the Tribunal and the international community in making substantial savings in terms of time, human and financial resources.¹⁶⁷

c. Findings

136. The Chamber recalls that in the Plea Agreement Paul Bisengimana states that by pleading guilty he indicates his genuine and deep desire to tell the whole truth and to contribute to

¹⁵⁷ Prosecution Sentencing Brief, para. 54; T. 19 January 2006 p. 8.

¹⁵⁸ Prosecution Sentencing Brief, para. 55; T. 19 January 2006 p. 8.

¹⁵⁹ Prosecution Sentencing Brief, para. 57, quoting *Kambanda*, Judgement (TC), para. 54; T. 19 January 2006 pp. 8-9.

¹⁶⁰ Prosecution Sentencing Brief, para. 57; T. 19 January 2006 pp. 9.

¹⁶¹ Defence Sentencing Brief, para. 21; T. 19 January 2006 p. 35.

¹⁶² Defence Sentencing Brief, paras. 27-28; Paul Bisengimana, T. 19 January 2006 pp. 44-45.

¹⁶³ T. 19 January 2006 p. 10; Paul Bisengimana, T. 19 January 2006 pp. 45-46.

¹⁶⁴ Defence Sentencing Brief, paras. 25-26, quoting *Serushago*, Judgement (TC), para. 41.

¹⁶⁵ Defence Sentencing Brief, para. 22, quoting *Todorović*, Judgement (TC), para. 80.

¹⁶⁶ Defence Sentencing Brief, para. 23, quoting *Todorović*, Judgement (TC), para. 81; *Rutaganira*, Judgement (TC), para. 151.

¹⁶⁷ Defence Sentencing Brief, para. 24; T. 19 January 2006 p. 37.

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the search for the truth by revealing the knowledge and information he possesses.¹⁶⁸ The Chamber recalls that the Accused hopes to be setting an example that will help others to contribute to the search for the truth.¹⁶⁹

137. The Chamber notes that at the Pre-Sentencing Hearing, the Accused admitted that he had failed in his duty to protect human life and that he did not show the courage that his citizens expected from their *bourgmestre*. He asked for pardon from the families that lost people in his *commune* and he publicly expressed remorse for not having been able to save those innocent people, which was his first duty.¹⁷⁰

138. The Chamber finds that both in the Plea Agreement and during the Pre-Sentencing hearing, the Accused publicly expressed regrets and remorse for the crimes that he committed.

139. The Chamber observes that an acknowledgement of guilt may constitute proof of the honesty of the perpetrator. The Chamber concurs with the opinions in *Erdemovic* and *Ruggiu* Judgements that some form of consideration should be given to those who have confessed their crimes in order to encourage others to come forward.¹⁷¹ Moreover, the Chamber is of the view that the guilty plea of the Accused may contribute to the process of national reconciliation in Rwanda.

140. The Chamber finds that Paul Bisengimana's change of plea to a guilty plea is a mitigating circumstance. The plea is accompanied by publicly expressed remorse and a recognition of his responsibility.¹⁷² Further, the timely nature of the guilty plea facilitates the administration of justice and saves the Tribunal's resources.¹⁷³

4. Personal and Family Situation

a. Defence Submissions

141. The Defence submits that being married and having children have been deemed to be mitigating circumstances¹⁷⁴ and that the social, professional and family background of an accused also has to be taken into account.¹⁷⁵ The Defence recalls that Paul Bisengimana is married and has ten children, and that the youngest two children, who are four and six years old,¹⁷⁶ live in France with their mother,¹⁷⁷ the Accused's wife, and have recently obtained refugee status,¹⁷⁸ which will allow their mother to resume work as a nurse. This personal and family situation offers real hope for the Accused's rehabilitation after his release.¹⁷⁹

142. The Prosecution did not make any submissions on this matter.

¹⁶⁸ Plea Agreement, para. 7.

¹⁶⁹ Plea Agreement, para. 11.

¹⁷⁰ T. 19 January 2006 pp. 45-46.

¹⁷¹ *Erdemović* Judgement (TC)(1998), para. 11; *Ruggiu*, Judgement (TC), para. 55.

¹⁷² *Ruggiu*, Judgement (TC), para. 54.

¹⁷³ *Ruggiu* Judgement (TC), para. 53.

¹⁷⁴ Defence Sentencing Brief, para. 29, quoting *Kunarać et al.*, Judgement (AC), para. 362; *Vasiljević*, Judgement (TC), para. 300; *Serushago*, Judgement (TC), para. 39; *Rutaganira*, Judgement (TC), paras. 120-121.

¹⁷⁵ Defence Sentencing Brief, para. 30, quoting *Blaškić*, Judgement (TC), para. 779.

¹⁷⁶ Defence Sentencing Brief, para. 31. The Chamber notes that the Accused's daughter, Claudine Uwera Bisengimana, testified that his two youngest children are nine and four years' old, see T. 19 January 2006, Claudine Uwera Bisengimana, p. 24.

¹⁷⁷ Defence Sentencing Brief, para. 32; T. 19 January 2006, Claudine Uwera Bisengimana, p. 24; T. 19 January 2006, p. 38.

¹⁷⁸ Defence Sentencing Brief, para. 32; T. 19 January 2006, Claudine Uwera Bisengimana, p. 24.

¹⁷⁹ Defence Sentencing Brief, paras. 32-33.

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b. Findings

143. The Chamber notes that the fact that the Accused is married and has children may, in the circumstances, be considered mitigating.¹⁸⁰ The Chamber agrees that the social, professional and family background of the Accused also has to be taken into account.¹⁸¹

144. Based on the Defence submissions and on the Accused's statement during his Further Appearance, the personal and family situation of the Accused, a married man with children, lead the Chamber to believe in his chances of rehabilitation, and the Chamber therefore finds this situation to be a mitigating circumstance.

5. Character of the Accused**a. Prosecution Submissions**

145. The Prosecution notes that as far as is known, Paul Bisengimana was of good character and had no record of extremism before 1994.¹⁸²

b. Defence Submissions

146. The Defence submits that an accused's character should be examined to assess his possibility of rehabilitation¹⁸³ and should be taken into account in the determination of the sentence.¹⁸⁴

147. The Defence submits that Paul Bisengimana was a person of good moral conduct before 1994. He was esteemed as a *bourgmestre*, he brought prosperity and development to Gikoro *commune* throughout his term of office and he worked relentlessly to improve the lot of its population.¹⁸⁵ The Accused never discriminated against Tutsis on a personal or professional level before or during the events of 1994.¹⁸⁶ The Accused had a high sense of responsibility.¹⁸⁷

148. The Defence thus submits that Paul Bisengimana's obvious qualities demonstrate his potential for rehabilitation.¹⁸⁸

c. Findings

149. The Chamber considers that the Accused was an educated person with a high level of responsibility in Gikoro *commune* at the time of the events. The Chamber recalls that Witnesses Gervais Condo and RKV testified that Paul Bisengimana was esteemed as a *bourgmestre*, that he brought prosperity and development to Gikoro *commune* throughout his term of office and that he worked to improve the life of its population.¹⁸⁹ These witnesses also testified about development

¹⁸⁰ *Kunarać et al.*, Judgement (AC), para. 362; *Vasiljević*, Judgement (TC), para. 300; *Serushago*, Judgement (TC), para. 39; *Rutaganira*, Judgement (TC), paras. 120-121.

¹⁸¹ *Blašić*, Judgement (TC), para. 779.

¹⁸² Prosecutor's Sentencing Brief, para. 56, quoting *Banović*, Judgement (TC), paras. 75-76; T. 19 January 2006, p. 8.

¹⁸³ Defence Sentencing Brief, para. 34, quoting *Blašić*, Judgement (TC), para. 780; *Ruggiu*, Judgement (TC), para. 68.

¹⁸⁴ Defence Sentencing Brief, para. 34, quoting *Mucić et al.* Judgement (AC)(2001), para. 788; *Serushago*, Judgement (TC), para. 18; *Ruggiu*, Judgement (TC), para. 68; *Rutaganira*, Judgement (TC), para. 127.

¹⁸⁵ T. 19 January 2006, Gervais Condo, p. 14; T. 19 January 2006, Witness RKV, p. 21; Paul Bisengimana, T. 19 January 2006 p. 38, 45.

¹⁸⁶ Defence Sentencing Brief, para. 36.

¹⁸⁷ Defence Sentencing Brief, para. 37.

¹⁸⁸ Defence Sentencing Brief, para. 38.

¹⁸⁹ T. 19 January 2006, Gervais Condo, pp. 13-14; T. 19 January 2006, Witness RKV, p. 21.

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projects carried out in Gikoro *commune* by the Accused.¹⁹⁰ Further, according to Witnesses Gervais Condo and Claudine Uwera Bisengimana, Paul Bisengimana had a strong sense of responsibility because of his role as a widower, father and *bourgmestre*.¹⁹¹

150. The Chamber is satisfied by the witnesses' testimonies that the Accused was a person of good character before he got involved in the crimes committed in Gikoro *commune* in April 1994 and that this constitutes a mitigating factor.

6. Assistance Given to Certain Victims

a. Defence Submissions

151. The Defence states that assistance given to victims has been assessed as a mitigating circumstance,¹⁹² since such assistance indicates that the accused is capable of rehabilitation.¹⁹³

152. The Defence submits that immediately after President Habyarimana's death, a dozen Tutsi civilians asked Paul Bisengimana for protection. The Defence states that he gave them refuge and thus saved their lives.¹⁹⁴

153. The Prosecution did not make any submissions on this matter.

b. Findings

154. The Chamber recalls that Witness Claudine Uwera Bisengimana, the second daughter of the Accused¹⁹⁵ is the only witness who testified that in 1994 about twelve Tutsis took refuge in her home.¹⁹⁶ Among them, she remembered Laurent and his four children, his wife, cousin, and sister, and also Mukarubayiza, who was a lady from Duha, and her three children.¹⁹⁷ The Witness stated that the refugees stayed there until the RPF took over the area, at which point the refugees and her family fled together.¹⁹⁸ The Witness was 14 years old at the time of the events.¹⁹⁹

155. Witness Claudine Uwera Bisengimana stated that "killers" threatened her family and described them as accomplices because they were hiding Tutsis, and that such threats were addressed to Paul Bisengimana, their father. However, Claudine Uwera Bisengimana did not remember any particular incident in that respect.²⁰⁰

156. When questioned by the Bench, Witness Claudine Uwera Bisengimana testified that Laurent's wife and her children were still alive. However, Laurent, his sister, and their cousin were killed. The Witness was not sure if Marie Mukarubayiza and her children were still alive. The Witness stated that some of the refugees survived, whereas others were killed on the way to Kabuga,²⁰¹ although she did not know under what circumstances.²⁰²

¹⁹⁰ T. 19 January 2006, Gervais Condo, p. 14; T. 19 January 2006, Witness RKV, p. 21.

¹⁹¹ T. 19 January 2006, Gervais Condo, p. 18; T. 19 January 2006, Claudine Uwera Bisengimana, p. 25.

¹⁹² Defence Sentencing Brief, para. 39, quoting *Sikirica et al.*, Judgement (TC), paras. 195, 229; *Serushago*, Judgement (TC), para. 38; *Ruggiu*, Judgement (TC), paras. 73-74; *Rutaganira*, Judgement (TC), para. 155; *Blaškic*, Judgement (TC), para. 781.

¹⁹³ Defence Sentencing Brief, para. 39.

¹⁹⁴ Defence Sentencing Brief, para. 40.

¹⁹⁵ T. 19 January 2006, Claudine Uwera Bisengimana, p.24.

¹⁹⁶ T. 19 January 2006, Claudine Uwera Bisengimana, pp. 26, 27.

¹⁹⁷ T. 19 January 2006, Claudine Uwera Bisengimana, p. 25.

¹⁹⁸ T. 19 January 2006, Claudine Uwera Bisengimana, p. 26.

¹⁹⁹ T. 19 January 2006, Claudine Uwera Bisengimana, p. 25.

²⁰⁰ T. 19 January 2006, Claudine Uwera Bisengimana, p. 26.

²⁰¹ T. 19 January 2006, Claudine Uwera Bisengimana, pp. 27-28.

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157. Witness Claudine Uwera Bisengimana explained that she, her family and the refugees all left the house together. She and her family were then dropped off by her father at a school in Bicumbi. Her father then went back to pick those persons up but the RPF were behind them and he had to move his family towards Kabuga, so those persons remained behind. When her father wanted to go back and pick them up, it rained and it was not possible for him to go and collect them. The Witness added that the family remained in Kabuga and that they subsequently learnt that those persons had been killed but that she did not know who had killed them.²⁰³

158. The Chamber notes that no other witness testified to the fact that the Accused assisted Tutsi refugees and neither did the Accused. The Chamber notes that the Prosecution did not challenge this assertion.

159. The Chamber has carefully considered the testimony of Claudine Uwera Bisengimana and considers on a balance of probabilities that it is established that some Tutsis civilians were temporarily sheltered at Paul Bisengimana's house in 1994. However, based on the same testimony, the Chamber considers that it is also established that Paul Bisengimana fled with his family and left the refugees behind and that some of the refugees were subsequently killed. Having considered the totality of this testimony, the Chamber does not find, in the circumstances and, that it is established that the Accused protected Tutsis refugees and thus saved their lives as submitted by the Defence. Accordingly, the Chamber rejects this alleged mitigating circumstance.

7. Lack of Prior Criminal Convictions and Good Conduct in Detention

a. Defence Submissions

160. The Defence submits that the Accused's lack of prior criminal convictions²⁰⁴ and his good conduct in detention²⁰⁵ can be mitigating circumstances.

161. The Defence states that the Accused has no criminal convictions, while admitting that obtaining a copy of his criminal record from the Rwandan authorities has proved difficult.²⁰⁶

162. The Defence further submits that Paul Bisengimana's conduct in detention has been exemplary.²⁰⁷

163. The Prosecution did not make any submissions on this matter.

b. Findings

164. The Chamber recalls that it admitted on 3 February 2006 the Certificate of Good Conduct signed by the Commander of the UNDF.²⁰⁸ This Certificate indicates that between the Accused's transfer to the UNDF on 11 March 2002 and the date of the Certificate (22 December 2005), the Accused was never the subject of any disciplinary action and conducted himself well at all times.

²⁰² T. 19 January 2006, Claudine Uwera Bisengimana, pp. 27-28.

²⁰³ T. 19 January 2006, Claudine Uwera Bisengimana, p. 28.

²⁰⁴ Defence Sentencing Brief, para. 41, quoting *Simić*, Judgement (TC), para. 108; *Nikolić*, Judgement (TC), para. 265; *Ruggiu*, Judgement (TC), paras. 59-60; *Rutaganira*, Judgement (TC), paras. 129-130.

²⁰⁵ Defence Sentencing Brief, para. 41, quoting *Simić*, Judgement (TC), para. 112; *Rutaganira*, Judgement (TC), para. 131; *Krnjelać* Judgement (TC), para. 520, *Krstić* Judgement (TC), para. 715.

²⁰⁶ Defence Sentencing Brief, para. 42; T. 19 January 2006 pp. 39.

²⁰⁷ Defence Sentencing Brief, para. 43; T. 19 January 2006 p. 38.

²⁰⁸ Decision on the Motion for the Admission of a Written Statement in Lieu of Oral Testimony in Accordance with Rule 92bis (A) and (B) of the Rules of Procedure and Evidence, 3 February 2006.

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165. The Chamber has considered the Defence submissions and the fact that the Accused had been *bourgmestre* of Gikoro *commune* from May 1981 until 19 April 1994. The Chamber finds on a balance of probabilities that the Accused had no previous criminal record. The Chamber considers that this finding constitutes a mitigating circumstance.²⁰⁹

8. Age and Ill-Health

a. Defence Submissions

166. The Defence submits that significant weight has been attached to the advanced years of accused persons by this Tribunal and the ICTY,²¹⁰ and refers particularly to the *Rutaganira* Judgement.²¹¹

167. The Defence states the judges should take the age of the Accused into account, for two reasons. Firstly, the same sentence is harder for an older accused than for a younger accused because of the physical deterioration associated with advanced years. Secondly, as observed in the *Holyoak* Decision issued by the New South Wales Court of Appeal, an offender of advanced years may have little worthwhile life left upon release.²¹²

168. The Defence submits that Paul Bisengimana is 57 years old.²¹³

169. The Defence recalls that ill-health has been admitted as a factor in sentencing by both this Tribunal²¹⁴ and the ICTY.²¹⁵

170. The Defence submits that Paul Bisengimana has been suffering from diabetes and hepatitis B for several years.²¹⁶ These two diseases cause the Accused serious physiological problems, which are inevitably exacerbated by his age and detention.

171. The Defence also recalls that in 1994, Paul Bisengimana was suffering from an acute liver ailment as a result of his hepatitis B.²¹⁷ According to the Defence, his fragile health during the events must be taken into account to determine a fair sentence.²¹⁸

172. The Prosecution did not make any submissions on this matter.

b. Findings

173. The Chamber has decided to examine the Accused's age and his alleged ill-health together.²¹⁹ The Chamber has noted the content of the confidential Medical Report drafted by

²⁰⁹ *Ruggiu*, Judgement (TC), paras. 59-60.

²¹⁰ Defence Sentencing Brief, para. 44, quoting *Banović*, Judgement (TC), paras. 75-76 and *Rutaganira*, Judgement (TC), para. 136.

²¹¹ Defence Sentencing Brief, para. 44, quoting *Rutaganira*, Judgement (TC), para. 136.

²¹² Defence Sentencing Brief, para. 45, quoting *Plavšić*, Judgement (TC), para. 105.

²¹³ Defence Sentencing Brief, para. 46; T. 19 January 2006 p. 38.

²¹⁴ Defence Sentencing Brief, para. 48, quoting *Rutaganira*, Judgement (TC), para. 136.

²¹⁵ Defence Sentencing Brief, para. 47, quoting *Simić*, Judgement (TC), para. 98.

²¹⁶ Defence Sentencing Brief, para. 49; T. 19 January 2006, Witness RKV, p. 22; T. 19 January 2006, Claudine Uwera Bisengimana, p. 26; T. 19 January 2006, p. 38.

²¹⁷ Defence Sentencing Brief, para. 50; T. 19 January 2006, Gervais Condo, p. 17; T. 19 January 2006, Claudine Uwera Bisengimana, p. 26; T. 19 January 2006, Paul Bisengimana, p. 45.

²¹⁸ Defence Sentencing Brief, para. 50.

²¹⁹ *Rutaganira*, Judgement (TC), para. 136.

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Doctor Epée which was admitted into evidence during the Pre-Sentencing Hearing on 19 January 2006 and which indicates that the Accused is being treated for several illnesses.²²⁰

174. The Chamber finds no merit in the Defence's submission that the Accused's alleged fragile health at the time of the events should be considered in the determination of a fair sentence. The Chamber has heard the testimonies of the three Defence character witnesses on this point but notes that those witnesses are not medical experts. Moreover, even if it was established that the Accused did suffer from his liver condition at the time of the events, there is no evidence that this would have had an impact on his participation in the massacres.

175. Nonetheless, the Chamber considers that the combination of the Accused's age and his current state of health, as established by the Medical Report, constitutes a mitigating circumstance.

9. Lack of Personal Participation in the Offences

a. Defence Submissions

176. The Defence submits that indirect participation may be a mitigating circumstance. Assisting a crime is often considered to be less serious than actually perpetrating a crime and may warrant a lighter sentence.²²¹ While this principle has been admitted by the Tribunal in *Ruggiu*,²²² it was not accepted in *Rutaganira* because the lack of personal participation was already reflected in the mode of responsibility, namely omission.²²³ The Defence states that it is for this reason that Paul Bisengimana pleads this mitigating circumstance only in relation to the Musha Church site. According to the Defence, Paul Bisengimana did nothing more than be present at a given time during the attack perpetrated against the Tutsis who had taken refuge at Musha Church and during the murder of Rusanganwa. Further, the fact that he did nothing about the crimes being committed there served as a motivation to the main perpetrators.²²⁴

177. The Prosecution did not make any submissions on this matter.

b. Findings

178. The Chamber is mindful of the need to take into account the particular circumstances of the case including the form and the degree of the participation of the Accused in the crime.²²⁵ The Chamber recalls that Paul Bisengimana did not personally commit any violent act during the massacres.

179. However, the Chamber does not agree with the Defence's submissions "that Paul Bisengimana did nothing more than be present at a given time during the attack perpetrated against the Tutsis who had taken refuge at Musha Parish Church." The Chamber recalls that the Accused was aware that an attack would be launched against the refugees at Musha Church using weapons that had been distributed, and that he had the means to oppose the killings but chose not to act. Moreover, the Chamber recalls that the Accused was present when the attack was launched

²²⁰ The Medical Report concerning Paul Bisengimana was admitted under Rule 92 *bis* of the Rules after Dr Epée had confirmed that she was its author, see T. 19 January 2006 pp. 43-44.

²²¹ Defence Sentencing Brief, para. 51, quoting *Krstić*, Judgement (TC), para. 714.

²²² Defence Sentencing Brief, para. 52, quoting *Ruggiu*, Judgement (TC), para. 78; T. 19 January 2006 p. 37.

²²³ Defence Sentencing Brief, para. 52, quoting *Rutaganira*, *Jugement* (TC), paras. 137-138; T. 19 January 2006 p. 37.

²²⁴ Defence Sentencing Brief, paras. 53-54; T. 19 January 2006, Paul Bisengimana, pp. 37, 45-46.

²²⁵ *Mucić et al.* Judgement, (AC), para. 731 quoting *Kupreskić*, Judgement, (AC) para. 852 cited in *Aleksovski*, Judgement (TC), para. 182.

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and more than a thousand people were murdered at Musha Church, including Rusanganwa, and that he knew that his presence would have an encouraging effect on the criminal actions of the perpetrators. Therefore, recalling that the Accused was a person of authority with an obligation to protect the refugees, the Chamber does not consider his form of participation in the Musha Church massacres to be a mitigating circumstance.

D. Findings on Aggravating and Mitigating Circumstances

180. The Chamber finds the gravity of the crimes and the official position of the Accused to be aggravating circumstances but the Chamber also finds the following circumstances to be mitigating: the Accused's guilty plea with publicly expressed remorse, his family situation, his good character prior to the events, his lack of prior criminal convictions, his good conduct in detention and his age and ill-health.

181. However, after considering the gravity of the crime and the official position of the Accused, the Chamber finds that limited mitigation is warranted.

182. The Chamber considers that, in the circumstances of the case, Paul Bisengimana's official position as *bourgmestre* is an overwhelmingly aggravating circumstance. The Chamber considers that the Accused is an educated person who administered Gikoro *commune* for a period long enough to gain full knowledge of his duties and responsibilities. The Chamber recalls that despite knowing that Tutsi civilians had taken refuge at Musha Church and Ruhanga Complex and that weapons had been distributed to be used to attack them, and despite having the means to oppose the killings, Paul Bisengimana did nothing to stop the killings.

183. The Chamber is aware of the reasoning in the *Semanza* Judgement that a higher sentence is likely to be imposed on "one who orders rather than merely aids and abets exterminations."²²⁶ However, the Chamber recalls that in the instant case, it did not accept the Accused's form of participation as a mitigating circumstance.²²⁷ Regarding the Musha Church massacres, the Chamber does not consider that the Accused omitted to act. The Accused had a duty to act to protect the population and that he knew that his presence when the attack was launched would encourage the attackers by giving them the impression that he approved of their criminal actions. The Chamber considers that the Accused's presence is a very serious form of participation even if it is not alleged or established that he was a co-perpetrator or that he directly committed a criminal act during the massacre. The Chamber recalls that more than a thousand Tutsi civilians died as a result of the massacres at Musha Church and Ruhanga Complex.

E. Sentencing Recommendations by the Parties

184. The Plea Agreement signed by the Parties recommends that the Accused be sentenced to between 12 and 14 years' imprisonment, with credit given for the time already served.²²⁸ The Parties indicate that they clearly understand that their sentencing recommendation do not bind the Chamber.²²⁹

²²⁶ *Semanza*, Judgement (AC), para. 388.

²²⁷ Judgement, paras. 178, 179.

²²⁸ Plea Agreement, para. 48.

²²⁹ Plea Agreement, para. 50.

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1. The Prosecution

185. The Prosecution recalls that the Tribunal was established by the Security Council to prosecute and punish the perpetrators of the atrocities committed in Rwanda, in order to end impunity and thereby to promote national reconstruction, the restoration of peace, and reconciliation.²³⁰

186. In the Sentencing Brief and at the Pre-Sentencing Hearing, the Prosecution recommends that the Accused receives a term of imprisonment of not less than 14 years with credit given for the time already served.²³¹

187. The Prosecution indicates that in accordance with the Plea Agreement, it would support any application by the Accused to serve his sentence in a prison facility in Europe.²³²

2. The Defence

188. The Defence requests that Paul Bisengimana be sentenced to not more than 12 years' imprisonment, with credit given for the time spent in custody.²³³

189. The Defence stresses that when sentencing Paul Bisengimana, the basic question must be, "What would we have done if we were in his shoes? Would we have stood up in a timely manner to stop these massacres, even if it meant putting our necks on the line?"²³⁴

190. The Defence states that Paul Bisengimana requests that France, where his wife and two youngest children live, be designated as the State where he will serve his sentence.²³⁵ In the alternative, Paul Bisengimana requests that one of the other European states which have indicated their willingness to accept convicted persons from the Tribunal, be designated.²³⁶ The Defence stresses that this would enable him to receive the health care he "so desperately needs."²³⁷

191. Finally, the Defence reminds the Chamber that pursuant to Article 26 of the Statute, sentences passed by the Tribunal shall be served in accordance with the applicable law of the State concerned, subject to the supervision of the Tribunal.²³⁸

F. Findings

1. The General Sentencing Practice in the Courts of Rwanda

192. The Chamber recalls Article 23 of the Statute and Rule 101 of the Rules, which indicates that the Tribunal shall take into account the general practice regarding prison sentences in the courts of Rwanda.

193. The Chamber notes that for serious offences such as murder, the Rwandan Penal Code states that the maximum sentence is life imprisonment or the death penalty.²³⁹ Article 89 of the

²³⁰ T. 19 January 2006 p. 3.

²³¹ Prosecution Sentencing Brief, para.60; T.19 January 2006, p. 9.

²³² Prosecution Sentencing Brief, para. 60; T. 19 January 2006 p. 9.

²³³ Defence Sentencing Brief, paras. 56-58; T. 19 January 2006 pp. 40-41.

²³⁴ T. 19 January 2006, p. 41.

²³⁵ Defence Sentencing Brief, para. 59; T. 19 January 2006 p. 40.

²³⁶ Defence Sentencing Brief, para. 59.

²³⁷ T. 19 January 2006 p. 40.

²³⁸ Defence Sentencing Brief, para. 60.

²³⁹ *Code Pénal Rwandais, Décret-Loi n° 21/77, 18 August 1977, modified by Décret-Loi n° 23/81, 13 October 1981,* Articles 311-317.

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Code specifically provides that accomplices may be subject to the same sentence as the principal perpetrator.

194. The Chamber considers that the Rwandan Organic Law setting up “Gacaca Jurisdictions”²⁴⁰ and the Organic Law modifying and completing it²⁴¹ are relevant in the instant case because they address the procedure for persons pleading guilty to crimes against humanity. A person acting in a position of authority at the municipal level,²⁴² who has encouraged others to commit a crime against humanity, may, after pleading guilty and under certain conditions,²⁴³ be sentenced to a term of imprisonment ranging from 25 years to life.²⁴⁴

195. The Chamber is also mindful of Article 83 of the Rwandan Penal Code which provides that where there are mitigating circumstances, sentences shall be amended or reduced as follows: a death penalty shall be replaced by a sentence of imprisonment of no less than five years; a life imprisonment sentence shall be replaced by an imprisonment sentence of no less than two years; and an imprisonment sentence of five to 20 years or more than 20 years may be reduced to an imprisonment sentence of one year.²⁴⁵

2. Credit for Time Served in Custody

196. Pursuant to Rule 101 (D) of the Rules, “credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending his surrender to the Tribunal or pending trial or appeal.”

197. The Chamber regards 4 December 2001 as the starting date of the detention in custody of the Accused.²⁴⁶ The Chamber recognizes that the Accused is entitled to credit for all the time since this date, including the additional time he may serve pending the determination of an appeal.

198. The Chamber bears in mind the need for consistency in sentencing for similar cases but is also mindful of the *Kupreškic* Judgement holding that a Chamber is “under no obligation to expressly compare the case of one accused to that of another.”²⁴⁷ The Chamber also understands its obligation to ensure that the sentence is commensurate with the individual circumstances of the offender.²⁴⁸

3. Conclusion

199. On examination of the sentencing practice of this Tribunal and the ICTY, the Chamber notes that principal perpetrators convicted of crimes against humanity such as murder and

²⁴⁰ Organic Law setting up “Gacaca Jurisdictions” and organizing prosecutions for offences constituting the crime of genocide or crimes against humanity committed between October 1990 and December 31, 1994, N. 40/2000 of 26/01/2001, Official Gazette of the Republic of Rwanda, Year 40, n° 6, 15th March 2001 (“Organic Law of 26 January 2001”).

²⁴¹ Organic Law modifying and completing Organic Law n 40/2000 of January 26, 2001 setting up “Gacaca Jurisdictions” and organizing prosecutions for offences constituting the crime of genocide or crimes against humanity, committed between October 1, 1990 and December 31, 1994, Official Gazette of the Republic of Rwanda, Year 40, n° 14, 15th July 2001 (“Organic Law Modifying and Completing the Organic Law of 26 January 2001”).

²⁴² Article 51 of Organic Law of 26 January 2001 and Article 1 of the Organic Law Modifying and Completing Organic Law of 26 January 2001.

²⁴³ Article 56 of the Organic Law of 26 January 2001.

²⁴⁴ Article 68 of the Organic Law of 26 January 2001.

²⁴⁵ *Code Pénal Rwandais, Décret-Loi n° 21/77*, 18 August 1977.

²⁴⁶ Letter from the *Procureur Général près la Cour d’Appel de Bamako* dated 14 January 2002, filed on 15 January 2002 indicating that Paul Bisengimana was detained since 4 December 2001 in Bamako, Mali.

²⁴⁷ *Kupreškic*, Judgement (AC), para. 443.

²⁴⁸ *Mucić et al.*, Judgement (AC), paras. 717-719; *Muhimana*, Judgement (TC), para. 594.

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extermination have received sentences ranging from ten years' to life imprisonment.²⁴⁹ Persons convicted of secondary forms of participation have generally received lower sentences.²⁵⁰ The sentence should reflect the totality of the criminal conduct of the accused.²⁵¹

200. The Chamber will not enter a sentence for Count 3, murder as a crime against humanity under Article 3 (a) of the Statute, for the reasons explained above.²⁵²

201. The Chamber reiterates that an acknowledgement of guilt may constitute proof of the honesty of the perpetrator and that some form of consideration should be given to those who have confessed their crimes in order to encourage others to come forward. Moreover, the Chamber is of the view that the guilty plea of the Accused may contribute to the process of national reconciliation in Rwanda.²⁵³

202. However, despite the fact that the Chamber is not sentencing Paul Bisengimana for the count of murder as a crime against humanity, the Chamber is of the view that considering the official position of the Accused and the number of persons killed- more than a thousand- in his presence at Musha Church and many others with his knowledge at Ruhanga Complex, a higher sentence than the range proposed by the Parties is justified for the single count of extermination.

V. Verdict

203. Having considered the Statute and the Rules, the general practice regarding prison sentences in Rwanda, the Parties' submissions and evidence during the Sentencing Hearing and having weighed the aggravating and mitigating circumstances, the Chamber convicts and sentences Paul Bisengimana for Count 4, extermination as a crime against humanity pursuant to Article 3 (b) of the Statute to

15 years' imprisonment

204. The Chamber finds that Paul Bisengimana is entitled to credit for the time served since the start of his detention on 4 December 2002 to the date of this judgement.

205. In accordance with Rule 102 (A) of the Rules, the sentence shall run as of the date of this judgement.

206. Pursuant to Rule 103 of the Rules, Paul Bisengimana shall remain in the custody of the Tribunal pending a decision on where his sentence will be served pursuant to Article 26 of the Statute and Rule 103 (A). The Chamber has noted the Parties' submissions with respect to the State in which the sentence will be served, but recalls that the President of the Tribunal, in consultation with the Chamber, will designate the State. The Government of Rwanda and the designated State shall be notified of such designation by the Registrar.

²⁴⁹ *Muhimana*, Judgement (TC), para. 618; *Ntagerura et al.*, Judgement (TC), paras. 822, 825; *Ntakirutimana*, Judgement (TC), paras. 922, 924.

²⁵⁰ Laurent Semanza was sentenced to eight years' imprisonment for instigating the murder of six persons as a crime against humanity (*Semanza*, Judgement (TC), para. 588) and Vincent Rutaganira to six years' imprisonment for his complicity by omission in extermination as a crime against humanity (*Rutaganira*, Judgement (TC), para. 40); Elizaphan Ntakirutimana was sentenced to ten years' imprisonment for aiding and abetting genocide (*Ntakirutimana*, Judgement (TC), paras. 790, 921) has been upheld by the Appeals Chamber (*Ntakirutimana*, Judgement (AC), para. 570.)

²⁵¹ *Mucic et al.*, Judgement (AC), para. 771.

²⁵² Judgement, paras. 99-105.

²⁵³ Judgement, para. 139.

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207. Pursuant to Rule 102 (A) of the Rules, if notice of appeal is given, the enforcement of this judgement shall be stayed until the decision on appeal has been delivered, with the convicted person meanwhile remaining in detention.

Done in English

Arusha, 13 April 2006



Arlette Ramaroson
Presiding Judge



William H. Sekule
Judge



Solomy B. Bossa
Judge



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VI. Annexes

A. The Procedure

208. On 10 July 2000, the Prosecution filed an indictment against the Accused dated 1 July 2000, which was confirmed by Judge Pavel Dolenc on 17 July 2000.²⁵⁴

209. The Prosecution charged the Accused with the following twelve counts: genocide; complicity in genocide; conspiracy to commit genocide; direct and public incitement to commit genocide; murder as a crime against humanity; extermination as a crime against humanity; torture as a crime against humanity; rape as a crime against humanity; other inhumane acts as crimes against humanity; and violations of Article 3 common to the Geneva Conventions and of Additional Protocol II, as provided for by Articles 4 (a), 4 (e) and 4 (f) of the Statute.

210. On 8 August 2001, at the request of the Prosecution, Judge Pavel Dolenc issued a warrant for the arrest of the Accused, pursuant to Rules 54, 57 and 64 of the Rules. The warrant was addressed to all States and included an order for the Accused's transfer to and detention at the UNDF, and an order for search and seizure.²⁵⁵

211. On 4 December 2001, the Accused was arrested in Mali. On 11 March 2002, the Accused was transferred to the UNDF.

212. On 18 March 2002, the Accused made his initial appearance before Judge Lloyd G. Williams and pleaded not guilty to all twelve counts in the 1 July 2000 Indictment.²⁵⁶

213. On 17 June 2005, the Prosecution filed a motion for leave to amend the 1 July 2000 Indictment.²⁵⁷ On 23 June 2005, a corrigendum thereof was filed.²⁵⁸

214. On 19 August 2005, the Prosecution filed a motion to withdraw both its motion for leave to amend the 1 July 2000 Indictment and its corrigendum thereof.²⁵⁹

215. On 24 August 2005, Judge Arlette Ramaroson dismissed the Prosecution motion to withdraw both its motion for leave to amend the 1 July 2000 Indictment and its corrigendum for being moot.²⁶⁰

216. On 21 September 2005, the Prosecution filed a new motion for leave to amend the 1 July 2000 Indictment.²⁶¹

²⁵⁴ Confirmation of the Indictment and Order for Non-Disclosure of the Indictment and for Protection of Victims and Witnesses, 17 July 2000.

²⁵⁵ Warrant of Arrest and Orders for Transfer and Detention and for Search and Seizure, 9 August 2001.

²⁵⁶ T. 18 March 2002 pp. 24-31.

²⁵⁷ Prosecutor's Request for Leave to Amend an Indictment Pursuant to Rules 73, 50 and 51 of the Rules of Procedure and Evidence filed on 17 June 2005.

²⁵⁸ Corrigendum to the Prosecutor's Request for Leave to Amend an Indictment Pursuant to Rules 73, 50 and 51 of the Rules of Procedure and Evidence, filed on 23 June 2005.

²⁵⁹ Prosecutor's Request to Withdraw Prosecutor's Request for Leave to Amend the Indictment and Corrigendum Thereof, filed on 19 August 2005.

²⁶⁰ Decision on the Prosecutor's Request to Withdraw Prosecutor's Request for Leave to Amend the Indictment and Corrigendum Thereof issued on 24 August 2005.

²⁶¹ Prosecutor's Request for Leave to Amend an Indictment Pursuant to Rules 73, 50, and 51 of the Rules of Procedure and Evidence, filed on 21 September 2005.

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217. On 19 October 2005, the Prosecution and the Defence filed a joint motion for consideration of a guilty plea agreement between Paul Bisengimana and the Office of the Prosecutor.²⁶²

218. On 27 October 2005, the Chamber granted the Prosecution motion for leave to amend the 1 July 2000 Indictment.²⁶³

219. On 31 October 2005, the Prosecution filed an amended indictment charging the Accused with the following five counts: genocide; complicity in genocide; murder, extermination and rape as crimes against humanity.

220. On 17 November 2005, during his further appearance, the Accused pleaded guilty to murder and extermination as a crime against humanity,²⁶⁴ both pursuant to Article 6 (1) of the Statute.²⁶⁵ The Accused pleaded not guilty to genocide;²⁶⁶ complicity in genocide;²⁶⁷ murder as a crime against humanity pursuant to Article 6 (3) of the Statute,²⁶⁸ extermination as a crime against humanity pursuant to Article 6 (3) of the Statute,²⁶⁹ and rape as a crime against humanity.²⁷⁰

221. On the basis of the Plea Agreement reached between the Parties, which had been filed with the Chamber on 19 October 2005,²⁷¹ the Prosecution orally moved the Chamber to dismiss those counts to which the Accused had pleaded not guilty and to enter a verdict of not guilty regarding those count pursuant to Rules 73, 54 and 51.²⁷² The Chamber declined to rule on this request at this stage of the proceedings.

222. The Chamber unsealed the aforementioned Plea Agreement in open session pursuant to Rule 62 *bis*. The Chamber listed discrepancies between the facts supporting the counts to which the Accused had pleaded guilty and the facts in the Plea Agreement.²⁷³ The Prosecution submitted that since the Accused had pleaded guilty to Counts 3 and 4 pursuant to Article 6 (1) of the Statute, it would amend paragraphs 8, 19, 20, 21, 22, 28, 38, 39, and 42 of the Amended Indictment to avoid the aforementioned discrepancies and would file a revised amended indictment thereafter. The Defence indicated that it only considered the contents of the Plea Agreement valid and would therefore support the Prosecution in its intention to file a revised amended indictment.²⁷⁴

223. The Chamber orally denied the joint motion for consideration of a guilty plea agreement between Paul Bisengimana and the Office of the Prosecutor for not being unequivocal. Pursuant to Rule 62 (A)(iii) and on behalf of the Accused, the Chamber entered a plea of not guilty

²⁶² « *Requête conjointe visant à l'examen d'un accord entre Paul Bisengimana et le Bureau du Procureur aux fins d'un plaidoyer de culpabilité* », filed on 19 October 2005.

²⁶³ Decision on the Prosecutor's Request for Leave to Amend the Indictment, 27 October 2005.

²⁶⁴ T. 17 November 2005 pp. 13, 14.

²⁶⁵ T. 17 November 2005 pp. 13, 14.

²⁶⁶ T. 17 November 2005 p. 12.

²⁶⁷ T. 17 November 2005 p. 12.

²⁶⁸ T. 17 November 2005 p. 14.

²⁶⁹ T. 17 November 2005 p. 15.

²⁷⁰ T. 17 November 2005 p. 14.

²⁷¹ « *Requête conjointe visant à l'examen d'un accord entre Paul Bisengimana et le Bureau du Procureur aux fins d'un plaidoyer de culpabilité* », filed on 19 October 2005, along with the « *Accord de reconnaissance de culpabilité conclu entre Mr Paul Bisengimana et le Bureau du Procureur.* »

²⁷² T. 17 November 2005 pp. 15-16.

²⁷³ T. 17 November 2005 pp. 18-21.

²⁷⁴ T. 17 November 2005 pp. 24-25.

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regarding Counts 3 and 4 of the Amended Indictment and duly noted the plea of not guilty for all the other counts.²⁷⁵ The Chamber noted the Prosecution's undertaking to revise the Amended Indictment to make it consistent with the facts on which the Parties had agreed.²⁷⁶

224. On 28 November 2005, the Prosecution filed a second amended indictment dated 23 November 2005 in English.

225. On 1 December 2005, the Prosecution and the Defence filed a new joint motion for consideration of a guilty plea agreement between Paul Bisengimana and the Office of the Prosecutor dated 30 November 2005, with an attached Plea Agreement between the Accused and the Prosecutor, signed by the Accused and his counsel on 4 October 2005 and by the Prosecutor on 17 October 2005. The same day, the Prosecution filed a new amended indictment, dated 23 November 2005, in English and French.

226. Following an enquiry by the Chamber about a missing portion of the French transcripts of 17 November 2005, revised transcripts of the Bisengimana hearing of 17 November 2005 were filed on 16 December 2005.²⁷⁷

227. On 7 December 2005, during a Status Conference, the Defence made two oral motions: the first requested that the person in charge of the UNDF provide the Defence with an attestation concerning the detention of the Accused; the second requested that Dr. Epée provide the Defence with an attestation concerning the medical situation of the Accused.²⁷⁸

228. On 7 December 2005, during his second further appearance, the Accused pleaded guilty to the following counts: murder as a crime against humanity pursuant to Article 6 (1) of the Statute²⁷⁹ and extermination as a crime against humanity pursuant to Article 6 (1) of the Statute.²⁸⁰ The Accused pleaded not guilty to the following counts: genocide pursuant to Articles 6 (1) and 6 (3) of the Statute;²⁸¹ complicity in genocide pursuant to Article 6 (1) of the Statute;²⁸² and rape as a crime against humanity pursuant to Articles 6 (1) and 6 (3) of the Statute.²⁸³

229. Based on the Plea Agreement reached between the Parties,²⁸⁴ the Prosecution orally moved the Chamber to withdraw and to dismiss the counts to which the Accused had pleaded not guilty and to acquit him on these counts, pursuant to Rules 51, 54, and 73 of the Rules.²⁸⁵

²⁷⁵ T. 17 November 2005 p. 26.

²⁷⁶ T. 17 November 2005 p. 26.

²⁷⁷ On 7 December 2005, at the requests of the Defence, a Status Conference was held in closed session in the presence of the Accused. Defence Counsel observed that it appeared from the French transcript of 17 November 2005 that the Accused had not been asked to enter a plea in relation to Count 5 of the Amended Indictment. The Chamber indicated in open court that there must have been an error in the French transcripts because the Accused had indeed pleaded to this count, as was reflected in the English transcripts.

²⁷⁸ T. 7 December 2005 p. 3 (Status Conference)(ICS).

²⁷⁹ T. 7 December 2005 p. 12.

²⁸⁰ T. 7 December 2005 p. 13.

²⁸¹ T. 7 December 2005 p. 12.

²⁸² T. 7 December 2005 p. 12.

²⁸³ T. 7 December 2005 p. 13.

²⁸⁴ The Motion titled «*Requête conjointe visant à l'examen d'un accord entre Paul Bisengimana et le Bureau du Procureur aux fins d'un plaidoyer de culpabilité*» was filed on 1 December 2005 along with the «*Accord de reconnaissance de culpabilité conclu entre Mr Paul Bisengimana et le Bureau du Procureur*» dated 30 November 2005.

²⁸⁵ T. 7 December 2005 pp. 13-14. Those counts are as follows: Count 1, genocide pursuant to Articles 6(1) and 6(3) of the Statute, Count 2, complicity in genocide pursuant to Article 6(1) of the Statute and Count 5, rape as a crime against humanity pursuant to Articles 6(1) and 6(3) of the Statute.

230. Pursuant to Rule 62 *bis*, the Chamber asked for the unsealing of the Plea Agreement and for its disclosure to the public.²⁸⁶ The Defence moved the Chamber to make public only chapters 3, 4 and 5 of the Plea Agreement, arguing that it was not necessary to make the remaining chapters public.²⁸⁷ The Chamber orally denied this motion, having found that the Defence had failed to show good cause why only portions of the Plea Agreement should be made public.²⁸⁸

231. The Chamber granted the joint motion for consideration of the Plea Agreement between Paul Bisengimana and the Office of the Prosecutor.²⁸⁹ The Chamber stated that the requirements of Rule 62 (B) were met and it therefore declared the Accused guilty of having aided and abetted the commission of the crimes of murder (Count 3) and extermination (Count 4) as crimes against humanity pursuant to Article 6 (1) of the Statute.²⁹⁰ The Chamber granted the Prosecution motion for withdrawal and dismissal of the counts to which the Accused had pleaded not guilty (genocide, complicity in genocide, and rape as a crime against humanity).²⁹¹ However, the Chamber denied the request for acquittal because the Prosecution had failed to justify its motion on this point.²⁹² As regards the Defence request for issuance of attestations regarding the detention of the Accused and his medical situation, the Chamber directed the Defence to seize the Registry on these matters.²⁹³ Finally, the Chamber ordered that the Accused be detained under conditions which guaranteed his security.²⁹⁴

232. During the same hearing, the Defence indicated that it intended to call character witnesses. On 16 December 2005, the Defence filed a motion for protective measures for its character witnesses.²⁹⁵ On 20 December 2005, the Chamber granted this motion in part.

233. The Defence filed its Pre-Sentencing Brief in French on 20 December 2005 and the Prosecution filed its Pre-Sentencing Brief in English on 16 January 2006. On 19 January 2006, the Pre-Sentencing Hearing was held. The Chamber heard the Prosecution, the Defence, three character witnesses for the Defence and the Accused. The medical report concerning the Accused was admitted under Rule 92 *bis* after Dr Epée testified that she was its author.²⁹⁶

234. The attestation of good conduct by the Commander of the UNDF was admitted under Rule 92 *bis* on 3 February 2006.²⁹⁷

²⁸⁶ T. 7 December 2005 p. 15.

²⁸⁷ T. 7 December 2005 p. 15.

²⁸⁸ T. 7 December 2005 p. 18.

²⁸⁹ T. 7 December 2005 p. 17.

²⁹⁰ T. 7 December 2005 p. 17.

²⁹¹ T. 7 December 2005 p. 18.

²⁹² T. 7 December 2005 p. 18.

²⁹³ T. 7 December 2005 p. 18; T. 7 décembre 2005, p. 22.

²⁹⁴ T. 7 December 2005, p. 19.

²⁹⁵ The Motion is entitled « *Requête en extrême urgence de la défense aux fins de prescription de mesures de protection des témoins de moralité* » and was filed on 16 December 2005.

²⁹⁶ T. 19 January 2006 pp. 43-44.

²⁹⁷ Decision on the Defence Motion for the Admission of a Written Statement in Lieu of Oral Testimony in Accordance with Rule 92*bis* (A) and (B) of the Rules of Procedure and Evidence, 3 February 2006.

B. Jurisprudence and Defined Terms

1. ICTR

Prosecutor v. Akayesu, Case No-ICTR-96-4-T, Judgement (TC), 2 September 1998.

Prosecutor v. Akayesu, Case No-ICTR-96-4-A, Judgement (AC), 1 June 2001.

Prosecutor v. Bagilishema, Case No ICTR-95-1A-T, Judgement (TC), 7 June 2001.

Prosecutor v. Kambanda, Case No ICTR- 97-23-S, Judgement (TC), 4 September 1998.

Prosecutor v. Kamuhanda, Case No ICTR-95-54-T, Judgement (TC), 22 January 2004.

Prosecutor v. Kamuhanda, Case No ICTR-95-54-A, Judgement (AC), 19 September 2005.

Prosecutor v. Kajelijeli, Case No-ICTR-99-44-T, Judgement (TC), 1 December 2003.

Prosecutor v. Kajelijeli, Case No-ICTR-99-44-A, Judgement (AC), 23 May 2005.

Prosecutor v. Kayishema and Ruzindana, Case No ICTR-95-1-T, Judgement (TC), 21 May 1999.

Prosecutor v. Kayishema and Ruzindana, Case No ICTR-95-1-A, Judgement (AC), 1 June 2001.

Prosecutor v. Kambanda, Case No ICTR-97-23-S, Judgement (TC), 4 September 1998.

Prosecutor v. Muhimana, Case No ICTR-95-1B-T, Judgement (TC), 28 April 2005.

Prosecutor v. Musema, Case ICTR-96-13-T, Judgement (TC), 27 January 2000.

Prosecutor v. Ndingabahizi, Case No ICTR-2001-71-I, Judgement (TC), 15 July 2004.

Prosecutor v. Ntagerura et al., Case No ICTR-99-46-T, Judgement (TC), 25 February 2004.

Prosecutor v. Ntakirutimana, Case No-ICTR-96-10-T and ICTR-96-17-T, Judgement (TC), 21 February 2003.

Prosecutor v. Ntakirutimana, Case No ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004.

Prosecutor v. Ruggiu, Case No ICTR-97-32-T, Judgement (TC), 1 June 2000.

Prosecutor v. Rutaganira, Case No ICTR-95-1C-T, Judgement (TC), 14 mars 2005.

Prosecutor v. Rutaganda, Case No ICTR-96-3-T, Judgement (TC), 6 December 1999.

Prosecutor v. Semanza, Case No ICTR-97-20-T, Judgement (TC), 15 May 2003.

Prosecutor v. Semanza, Case No ICTR-97-20-A, Judgement (AC), 20 May 2005.

Prosecutor v. Serushago, Case No ICTR-98-39-T, Judgement (TC), 5 February 1999.

Prosecutor v. Simba, Case No ICTR-01-76-T, Judgement (TC), 13 December 2005.

2. ICTY

Prosecutor v. Aleksovski, Case IT-95-14/1-T, Judgement (TC), 25 June 1999.

Prosecutor v. Banović, Case No IT-02-65/1S, Judgement (TC), 28 October 2003.

Prosecutor v. Blaškić, Case No IT-94-14-S, Judgement (TC), 3 March 2000.

Prosecutor v. Blaškić, Case No IT-94-14-A, Judgement (AC), 29 July 2004.

Prosecutor v. Deronjić, Case No IT-02-61-S, Judgement (TC), 30 March 2004.

Prosecutor v. Erdemović, Case No IT-96-22-Tbis, Judgement (TC), 5 March 1998.

Prosecutor v. Furundžija, Case No IT-95-17/1-T, Judgement (TC), 10 December 1998.

Prosecutor v. Krstić, Case No IT-98-33-T, Judgement (TC), 2 August 2001.

Prosecutor v. Krstić, Case No IT-98-33-A, Judgement (AC), 19 April 2004.

Prosecutor v. Kunarać et al., Case No IT-96-23-T & 96-23/1-T, Judgement (TC), 22 February 2001.

Prosecutor v. Kunarać et al., Case No IT-96-23-A & 96-23/1-A, Judgement (AC), 12 June 2002.

Prosecutor v. Kupreškić, Case No IT-95-16-A, Judgement (AC), 23 October 2001.

Prosecutor v. Mucić et al. ("Čelebići"), Case No IT-96-21-A, Judgement (AC), 20 February 2001.

Prosecutor v. Naletilić et al., Case No IT- 98-34-T, Judgement (TC), 31 March 2003.

Prosecutor v. Nikolić, Case No IT-02-60/1-S, Judgement (TC), 18 December 2003.

Prosecutor v. Plavšić, Case No IT-00-39 & 40/1-S, Judgement (TC), 27 February 2003.

Prosecutor v. Sikirica et al., Case No IT-95-8-T, Judgement (TC), 13 November 2001.

Prosecutor v. Simić, Case No IT-95-9/2-S, Judgement (TC), 17 October 2002.

Prosecutor v. Strugar, Case No IT-01-42-T, Judgement (TC), 31 January 2005.

Prosecutor v. Tadić, Case No IT-94-1, Judgement (TC), 15 July 1999.

Prosecutor v. Todorović, Case No IT-95-9/1-S, Judgement (TC), 31 July 2001.

Prosecutor v. Vasiljević, Case No IT-98-32-S, Judgement (TC), 29 November 2002.

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3. Defined Terms

Chamber

Trial Chamber II

Indictment

Prosecutor v. Bisengimana, Case No. ICTR-2000-60-I, Amended Indictment, signed on 23 November 2005 and filed on 1 December 2005 in English and French.

Plea Agreement

Prosecutor v. Bisengimana, Case No. ICTR-2000-60-I, Plea agreement between Paul Bisengimana and the Office of the Prosecutor, filed on 1 December 2005.

Defence Closing Brief

Prosecutor v. Bisengimana, Case No. ICTR-2000-60-I, *Mémoire de la défense préalable au prononcé de la sentence* (Defence Pre-Sentencing Brief), filed on 20 December 2005.

Judgement

Prosecutor v. Bisengimana, Case No. ICTR-2000-60-T, Judgement and Sentence, 13 April 2006.

Prosecution Closing Brief

Prosecutor v. Bisengimana, Case No. ICTR-2000-60-I, Prosecutor's Sentencing Brief, filed on 16 January 2006.

RPF

Rwandan Patriotic Front

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Official transcripts of the proceedings in English unless otherwise indicated.

C. Indictment