

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO. ICTR-95-1C-T  
CHAMBER III

THE PROSECUTOR  
OF THE TRIBUNAL  
v.  
VINCENT RUTAGANIRA

MONDAY 17 JANUARY 2005  
1015H  
COMMENCEMENT OF TRIAL

Before the Judges:

Judge Andréia Vaz, Presiding  
Judge Flavia Lattanzi  
Judge Florence Rita Arrey

For the Registry:

Mr. Constant K. Hometowu  
Mr. Christopher Fry  
Mr. Ramadhani Juma  
Mr. Issa Mjui

For the Prosecution:

Mr. Charles Adeogun-Phillips  
Mr. Wallace Kapaya

For the Accused Vincent Rutaganira:

Mr. François Roux

Court Reporters:

Ms. Judith Baverstock  
Ms. Judith Kapatamoyo  
Ms. Diane Hermann  
Mr. Rex Lear  
Ms. Karen Holm

I N D E XWITNESSESFor the Defence:

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MADAM PRESIDENT:

The Trial Chamber is now in session. Ladies and gentlemen, good morning. We begin trial today in the matter of the Prosecutor versus Vincent Rutaganira. We should like to ask the registry to kindly announce the matter before us.

MR. FRY:

Trial Chamber III of the International Criminal Tribunal for Rwanda, composed of Judge Vaz, presiding, Judge Lattanzi and Judge Arrey, is now sitting in open session today, 17 January 2005, for the commencement of trial in the matter of the Prosecutor versus Rutaganira, case number ICTR-1995-1C-T. Thank you, Your Honour.

MADAM PRESIDENT:

Thank you, registry. We should like to ask the parties to introduce themselves, beginning with the Office of the Prosecutor.

MR. ADEOGUN-PHILLIPS:

Good morning, Your Honours. The office of the Prosecutor is represented by Ms. Maymuchka Lauriston, Mr. Wallace Kapaya, and myself, Charles Adeogun-Phillips.

MADAM PRESIDENT:

Thank you, Prosecutor. We now turn to the Defence.

MR. ROUX:

Thank you, Madam President. The Defence comprises my assistant Soraya Laucci-Brikci, my legal assistant, and myself, François Roux, from the Montpellier bar in France. I should like the Chamber to excuse the absence of Maroufa Diabira, who was held up in Chad and could not join us today.

Thank you.

MADAM PRESIDENT:

Thank you, Mr. Roux. Counsel Diabira is, indeed, excused.

We should now like to turn to the Prosecution.

Mr. Prosecutor, do you wish to present your pleadings at this time?

MR. ADEOGUN-PHILLIPS:

I am grateful, Your Honours. Indeed, the Prosecution intends to address the Court in relation to the sentencing conditions and requirements for Mr. Rutaganira as we see it. But before I do that, Your Honours, I would like to address the Court on some legal matters concerning the plea agreement executed between the Defence and the Office of the Prosecutor on the 7th of December 2004 and, in particular, the indictment in this case dated 29th April 1996.

My first application -- I have two applications to make this morning, Your Honours, to clarify matters a

1 lot better. The first application, Your Honour, is an application pursuant to Rule 73 and Rule 82 of the  
2 Rules of Procedure and Evidence, and to that end, Your Honour, we seek a ruling from Your Honours  
3 which will enable us to sever Mr. Rutaganira from the joint indictment against him and seven others  
4 dated 29 April 1996. In that regard, Your Honour, Your Honours will recall that co-defendants  
5 Clément Kayishema and Obed Ruzindana were severed from this indictment in 1997. Ignace  
6 Bagilishema was subsequently severed from the said indictment in 2001. Mika Muhimana, more  
7 recently, Your Honour, in 2002, was severed, leaving Mr. Rutaganira the only accused person in the  
8 custody of the Tribunal in this indictment. The indictment, however, still alleges factual and legal  
9 charges against three other people, and I wouldn't necessarily mention their names. Our application,  
10 therefore, is to sever the charges and the allegations against Mr. Rutaganira from this indictment so  
11 that they, in effect, stand on their own and, consequently, that you direct the registrar to assign a new  
12 case number to the case against Mr. Rutaganira, pursuant to your capabilities or abilities under  
13 Rule 82(B) of the Rules of Procedure and Evidence of this Tribunal. Your Honours, that will be my  
14 first application.

15  
16 My second application to Your Honours concerns the remainder of the charges that the Prosecutor  
17 requested you on 8th December 2004 to dismiss and return a verdict of not guilty, in effect, acquitting  
18 the Accused, Mr. Rutaganira, in relation to these charges. It is suffice to say, Your Honours, in  
19 relation to Count number 1, which I believe is the Count -- is the charge of conspiracy to commit  
20 genocide, the Prosecutor seeks to discontinue any proceedings in relation to Count 1, simply because  
21 of a lack of evidence in support of that Count. So, again, we renew our application to dismiss and  
22 acquit Mr. Rutaganira in relation to Count 1.

23  
24 Your Honours, I make a similar application, then, in relation to Count number 14 of the indictment,  
25 namely, that of genocide, a violation of Article 2 (3) (a), of the Tribunal statute. And in this regard, we  
26 renew our application that you dismiss and, in effect, acquit Mr. Rutaganira because the Prosecution  
27 does not intend to proceed on this Count due to a lack of evidence to support the said charge at trial.  
28 Same application, Your Honour, in relation to count number 15, that of murder as a crime against  
29 humanity, in violation of Article 3 (a) of the Statute of the ICTR. Again, for the same reason, our  
30 inability to proceed due to a lack of evidence, we ask that you dismiss and return a verdict of not  
31 guilty, in effect, acquitting Mr. Rutaganira in relation to Count 15.

32  
33 I make the application in relation to Count 17 of the indictment, namely, a charge of other inhumane  
34 acts as crimes against humanity in violation of Article 3 (i) of the Statute of the Tribunal, and we ask  
35 that due to a lack of evidence, we are not in a position to proceed with these charges and the  
36 allegations therein in support of, and we ask that you dismiss and acquit Mr. Rutaganira in relation to  
37 them.

1 That leaves Counts 18 and 19, which are violations of common Article 3, common to the Geneva  
2 Conventions, and Additional Protocol II thereof, violations of Article 4 (a), of the Statute of the  
3 Tribunal. Again, Your Honours, I renew my application that due to an insufficiency of evidence, the  
4 Prosecutor is not in a position to proceed to trial on these Counts and we, therefore, request that you  
5 dismiss and acquit Mr. Rutaganira in relation to Count 18 and 19.

6  
7 In summary, Your Honours, we are asking you to dismiss and acquit Mr. Rutaganira by returning a  
8 verdict of not guilty in relation to Counts number 1, 14, 15, 17, 18 and 19 in the indictment of  
9 29 April 1996.

10  
11 Your Honours, those are --

12 MADAM PRESIDENT:

13 One clarification. Pardon me, Mr. Prosecutor. What about Count 16? It seems, in French, there was  
14 a small problem. It doesn't seem to be one for which you are requesting acquittal.

15 MR. ADEOGUN-PHILLIPS:

16 Your Honour, yes. Count 16 is the charge of extermination as a crime against humanity, Your  
17 Honour, which is the Count that we have accepted a plea from Mr. Rutaganira in respect of and which  
18 he pleaded guilty to on the 8th of December 2004, Your Honour. So that remains on the indictment,  
19 and it's the only Count that remains on the indictment, in effect, Your Honour.

20  
21 Your Honour, that done, I then would seek to address you in relation to our position as regards the  
22 mitigating or, indeed, aggravating circumstances surrounding the offence which is currently before  
23 you. In that regard, Your Honours, you would recall that on the 7th of December 2004,  
24 Vincent Rutaganira pleaded guilty before Your Honours to the charge of extermination as a crime  
25 against humanity pursuant to Article 3(b) of the Statute of the Tribunal. The guilty plea was obtained  
26 and accepted on the basis of his responsibility pursuant to Article 6.1 of the statute for having omitted  
27 in the commission of the said crime.

28  
29 Your Honour, I present the sentencing arguments to you this morning, pursuant to Rule 101(A) of our  
30 Rules of Procedure and Evidence at the Tribunal. And in that regard, Your Honours, I would ask that  
31 in determining sentence that you consider that the ICTR was established with the singular objective of  
32 prosecuting and punishing perpetrators of the atrocities in Rwanda with a view to putting an end to  
33 impunity and, therefore, promote national reconstruction, the restoration of peace, and reconciliation.

34  
35 The jurisprudence of the Tribunal with regard to penalties has addressed the principal aims of  
36 sentencing, namely, the need to foster justice, retribution, deterrence, and rehabilitation of  
37 defendants. I request that Your Honours be guided by these aims in assessing the sentence of

1 Mr. Rutaganira. In addition, Your Honours, the Trial Chamber is requested to take into account  
2 factors mentioned in Article 23 of the Statute of the Tribunal and also the provisions of Rule 101(B) of  
3 the Rules of Procedure and Evidence which are also set out in Chapter 3 of the joint sentencing brief  
4 filed by the parties on 7th December 2004.

5  
6 Your Honours, the provisions of Rule 101 of the Rules of Procedure and Evidence of this Tribunal  
7 stipulate that the maximum sentence that can be imposed on an accused under the statute is that of  
8 life imprisonment. However, the said provisions do not set a minimum or any specified term of  
9 imprisonment for any of the offences under the Statute of the Tribunal. Needless to say, Your  
10 Honours, the factors at issue cannot be interpreted by yourselves as being necessarily mandatory,  
11 exhaustive or even binding on the Trial Chamber in the determination of sentence. In that regard,  
12 Your Honours, you, as judges comprising the Trial Chamber, have an unfettered discretion to  
13 evaluate the facts and the attendant circumstances and to take on board any factor which you, as  
14 judges, may deem pertinent.

15  
16 The Prosecutor would represent to the Trial Chamber that it is the international norm that the  
17 maximum sentence should often be reserved for the most serious examples of the offence in  
18 question. In that regard, Your Honours, the Prosecutor submits that in considering whether a  
19 particular offence is one of the worst examples of its kind you, as sentencers, should have regard to  
20 the range of cases which is actually encountered in practice, and in so doing, should ask yourself  
21 whether the particular case that you are dealing with comes within the broad band of that type -- or  
22 those type of cases. In general, it is often said that the maximum sentence should not be imposed  
23 where the accused has, in fact, pleaded guilty. It is in this connection, Your Honours, that the  
24 Prosecutor would represent to the Trial Chamber that the contents of the plea agreement executed by  
25 the parties on 7th December 2004 is particularly instructive on the range of sentence to be imposed in  
26 the instant case. The Prosecutor further submits, Your Honours, that you, as judges, may also  
27 examine and apply, if you deem it appropriate, the available international jurisprudence in this area.

28  
29 Your Honours, I want to talk very briefly about some of the objectives in criminal law of sentencing,  
30 and in that regard, I would represent to Your Honours that in determining the sentence of an accused  
31 person you, as judges, should be guided by the objectives of criminal law which include the following:  
32 The first objective shall be the confirmation of the rule of law, which is a condition of a peaceful  
33 society through a just sentence; and a just sentence, Your Honour, is one which reflects the standard  
34 of proportionality between the gravity of the offence and the degree of responsibility of the offender.  
35 That said, the second objective, Your Honours, would be one of deterrence of the Accused and future  
36 perpetrators.

1 I would describe the third objective as one of retribution; and the fourth, certainly perhaps the most  
2 important in these circumstances, the need to encourage others to come to terms with their respective  
3 roles in the 1994 genocide and accept responsibility for their actions.

4  
5 Your Honour, your colleagues in the ICTR cases of *Kambanda*, *Akayesu*, *Kayishema* and *Ruzindana*,  
6 *Omar Serushago*, and *Rutaganda*, *Kamuhanda*, have all referred and applied the principles which I  
7 have just outlined to you in almost the same words.

8  
9 Article 23 (2) of the Statute of the Tribunal, Your Honours, states that in determining the sentence of  
10 an accused person, the Trial Chamber should take into account the gravity of the offences. In that  
11 regard, Your Honours, the Prosecutor submits that there is no doubt that the crime for which the  
12 Accused, Mr. Rutaganira, has been charged and for which he has pleaded guilty, is inherently a crime  
13 of extreme gravity, the scale of which shock collective conscience. There is no doubt about that.  
14 However, the Prosecutor would represent to Your Honours that in deciding the appropriate sentence  
15 in this case that you, as judges, should consider the aggravating and mitigating factors as required of  
16 you pursuant to Rule 101 of the statute, and Article 23. And in that regard, Article 23 urges you, as  
17 judges, in determining sentence, to take into account the individual circumstances of the convicted  
18 person, in this case Mr. Rutaganira. In so doing, you, as judges, are required to examine the  
19 individual role of the convicted person in the crimes and to assess the surrounding circumstances.  
20 This, of course, should include an analysis of both the mitigating and aggravating circumstances.

21  
22 I now propose to outline what the Office of the Prosecutor considers as particularly aggravating  
23 circumstances in the instant case. The Prosecutor in that regard submits, first of all, Your Honour,  
24 that the Accused in this case, Mr. Vincent Rutaganira, as a *conseiller*, was a member of the local  
25 administration in Mubuga *secteur*, Gishyita *commune*, Kibuye *préfecture*. In that regard, we say that  
26 as the *conseiller* of Mubuga *secteur*, Mr. Vincent Rutaganira was, indeed, a prominent member of the  
27 civilian community in Mubuga *secteur*.

28  
29 Why do we say he was prominent? Well, we say so because by virtue of his position, we say that he  
30 was closest to the population at *secteur* level and was, thus, in effect, the bridge between the citizenry  
31 of Mubuga *secteur* and the local political structure in place within the limits of his duties as set out in  
32 the relevant legislation governing his functions as *conseiller*. In that regard, Your Honour, it could be  
33 argued that Mr. Rutaganira's proximity, his close proximity to the local population in Mubuga *secteur*,  
34 placed him under a legal duty to espouse the principles laid down by the constitution of Rwanda and  
35 to uphold a higher than average degree of morality.

36  
37 Thirdly, and the third aggravating factor, we would say that although Mr. Rutaganira cannot be

1 described as the best educated person in Rwanda, he was certainly not completely illiterate either,  
2 and in that regard, we will submit to Your Honours that Mr. Rutaganira was, therefore, in a position to  
3 know and appreciate the dignity and value of human life. It is further submitted, Your Honours, that  
4 Mr. Rutaganira was certainly enlightened enough to have been aware of the need, value, and  
5 importance of a peaceful co-existence between communities and was, therefore, in a position to  
6 promote the value of tolerance.

7  
8 We consider as particularly aggravating, Your Honour, the fact that in his position as *conseiller* of  
9 Mubuga *secteur* since 1995 (*sic*), Mr. Rutaganira was aware that in times of previous civil arrest in  
10 Kibuye, Tutsi civilians had been forced to leave their homes and gather at preconceived locations of  
11 traditional safety, such as community centres, churches, stadiums and government offices. In other  
12 words, there was a reasonable amount of foreseeability on his part that in the event of trouble,  
13 civilians will go to such places. And in that regard, Your Honours, we say that Mr. Rutaganira, as at  
14 the 8th of April 1994, was aware that thousands of Tutsi civilians, including men, women and children,  
15 had sought refuge from attacks that were directed at members of the Tutsi ethnic group, and they had  
16 sought refuge at the Mubuga parish church in Mubuga *secteur* in Gishyita *commune* which was  
17 located a few hundred metres from his home.

18  
19 We also consider as particularly aggravating, the fact that prior to the attack at Mubuga church,  
20 Mr. Rutaganira actually saw the assailants who later attacked that church. He saw them gather in  
21 front of his residence, and, as I said earlier, Mr. Rutaganira's residence was located approximately  
22 500 metres from the said church. Now, the assailants who gathered outside Mr. Rutaganira's  
23 residence consisted of other local authorities like himself. They included  
24 *Bourgmestre* Charles Sikubwabo, and Hutu civilians, *communal* policemen, and even members of the  
25 *Nationale Gendarmerie*. We consider as particularly aggravating, Your Honour, the fact that  
26 Mr. Rutaganira was aware, at minimum, that the presence of all these local authorities in and around  
27 the area of Mubuga church would have had an encouraging effect on the assailants and would have  
28 given those assailants the distinct impression that the killing of Tutsi civilians who were gathered 500  
29 metres away was something that was endorsed by the local authorities, including himself. We  
30 consider particularly aggravating the fact that Mr. Rutaganira himself was aware that these people  
31 gathered in the church were subsequently attacked by those assailants. That attack, or the series of  
32 attacks, at the Mubuga church resulted in the death and numerous injuries to thousands of men,  
33 women and children that were gathered therein.

34  
35 Your Honours, the Prosecutor finally believes that it is particularly aggravating that despite his position  
36 as the *conseiller* of Mubuga *secteur*, Mr. Rutaganira took no active steps to protect the Tutsi refugees  
37 who had sought refuge inside the Mubuga church and, instead, literally stood aside and watched his



1 fellow Countrymen and women as they were slaughtered at the Mubuga parish church on the 15th of  
2 April 1994.

3  
4 The Prosecutor would represent to the Trial Chamber that these are particularly aggravating factors  
5 and invites the Trial Chamber to treat them as such. However, despite these matters that I have  
6 raised in aggravation, the Prosecutor also finds that there are also somewhat compelling mitigating  
7 circumstances in this case. The first mitigating circumstance, in our opinion, is that Mr. Rutaganira  
8 has shown an impressive degree of remorse for the crime that he is charged with and to which he has  
9 pleaded guilty. This is spelt out without reservation at paragraphs 5 to 13 of part 3 of the plea  
10 agreement of 7 December 2004. In that regard, Your Honours, Mr. Rutaganira has outlined that he is  
11 pleading guilty to the charge of extermination as a crime against humanity because he is, in fact,  
12 guilty and acknowledges full responsibility for his omissions, convinced that it is only the full truth that  
13 can restore national unity and foster reconciliation in Rwanda.

14  
15 Mr. Rutaganira further stated in the said agreement that by pleading guilty, he is indicating a deep and  
16 genuine desire to tell the whole truth and, thus, genuinely contribute to the search for the truth.  
17 Perhaps most importantly, Your Honours, Mr. Rutaganira further stated that he sincerely believes that  
18 by pleading guilty he is expressing his profound and heartfelt apologies to all those who either directly  
19 or indirectly fell victim to the said crime -- said offence.

20  
21 Secondly, Your Honours, it has to be said that Vincent Rutaganira surrendered voluntarily --  
22 voluntarily to the Tribunal on 18th February 2002, and despite any misleading press reports to the  
23 contrary, the truth of the matter is that he surrendered to the custody of this Tribunal voluntarily. This  
24 is, in itself, unique because there are only two accused persons that have ever surrendered voluntarily  
25 to the custody of the Tribunal in the 10 years since its establishment. We find that particularly strong  
26 in his favour.

27  
28 Certainly, Your Honours, as far as the Prosecution is aware, Vincent Rutaganira was a person of  
29 previously good character having had no history of extremism prior to the events of 1994. In addition,  
30 Your Honours, the Prosecutor believes that the plea of guilty from Mr. Rutaganira will assist in the  
31 administration of justice as well as in the process of national reconciliation in Rwanda. The  
32 Prosecution also believes, as particularly strong in Mr. Rutaganira's favour, the fact that  
33 Mr. Rutaganira's guilty plea does, in effect, save the victims who survived the said attack at Mubuga  
34 church from the ordeal of giving testimony before this Tribunal. Again, that is important.

35  
36 In terms of Mr. Rutaganira's role, the Prosecution finds that it is a strong mitigating factor that his role  
37 in the events which led to the attack was extremely passive, and we as Prosecutors have

1 acknowledged before Your Honours at the beginning of this address this morning, that our chances of  
2 success in proving all the charges against him was, in our view, extremely low.

3  
4 Again, Your Honour, the Prosecutor is not in any possession -- is not in possession of any evidence,  
5 rather, which indicates that Mr. Rutaganira himself was implicated in the planning of the said attack,  
6 nor did he possess any evidence -- or nor does he possess any evidence, the Prosecutor, that is,  
7 indicating that Mr. Rutaganira's role in the said attack at Mubuga church was premeditated.

8  
9 The guilty plea entered by Mr. Rutaganira, Your Honours, was timely, and that is important. Why is it  
10 important? It is important for the following reasons: The first reason is that Mr. Rutaganira did not  
11 delay his guilty plea until the last minute so as to secure a tactical advantage. Many people do that,  
12 Your Honours. And by not securing a tactical advantage, Your Honours, Mr. Rutaganira, by his timely  
13 guilty plea, has, in effect, saved the Tribunal considerable expense, resources and time that is often  
14 associated with the investigation and the prosecution of international crimes. We believe as an office  
15 that in light of our completion strategy, and that of the entire Tribunal, Mr. Rutaganira deserves to be  
16 given credit for this.

17  
18 Finally, Your Honours, we feel that by pleading guilty, Mr. Rutaganira should be seen as setting an  
19 example that may encourage others like him to acknowledge their personal involvement in the  
20 massacres that occurred in Rwanda in 1994.

21  
22 The Prosecutor would represent to Your Honours that these are all strong mitigating factors in favour  
23 of the Accused and would also invite Your Honours to treat them as such.

24  
25 In conclusion, Your Honours, considering the general sentencing principles that I outlined in criminal  
26 law, namely, the need to foster justice, retribution, deterrence, rehabilitation, the factors that I have  
27 outlined herein such as the gravity of the offence, and the individual circumstances of the Accused,  
28 both in aggravation and in mitigation, the practice regarding prison sentences obtaining in the courts  
29 of Rwanda, which I acknowledge I have not addressed Your Honours on, and the relevant  
30 international jurisprudence, the Prosecutor, in agreement with the Defence, hereby recommends a  
31 term of imprisonment of between six to eight years with credit given to Mr. Rutaganira for the period  
32 already served on remand, pursuant to your -- to the provisions, rather, of Rule 101(D) of the Rules of  
33 Procedure and Evidence. The Prosecutor further recommends, Your Honour, that Mr. Rutaganira be  
34 allowed to serve his sentence in a prison facility either in Europe or in the kingdom of Swaziland.

35  
36 Unless I can be of further help or assistance to Your Honours, these are my respectful submissions  
37 on behalf of the office of the Prosecutor. I am grateful.

1 MADAM PRESIDENT:

2 I wish to thank the Prosecutor for those submissions made.

3

4 Mr. Roux, the floor is yours for any submissions you may wish to make.

5 MR. ROUX:

6 Thank you, Madam President, Your Honours. Following the plea agreement signed between the  
7 parties, the Defence hereby wishes to present certain information concerning the sentencing and  
8 concerning also the mitigating circumstances which we believe the Accused should benefit from. You  
9 will in your deliberations have to decide on what the Prosecutor has referred to as aggravating  
10 circumstances on his part and a certain number of mitigating circumstances which has been -- which  
11 have been mentioned by the Prosecutor in the joint brief that we filed together with the Office of the  
12 Prosecutor. We have mentioned all the mitigating circumstances for which I wish to express myself in  
13 a moment, but before I do that, as I have indicated to the Chamber, in support of the mitigating  
14 circumstances, we wish to call three witnesses so that further light can be shed on the character of  
15 the Accused for the benefit of the Chamber.

16

17 I am, therefore, in a moment going to request you to hear these witnesses, listen to what they have to  
18 say, but before that, I wish to mention two things: First of all, within the framework of the mitigating  
19 circumstances which I will make submissions on later, the health status of Mr. Rutaganira has made  
20 us take certain measures with Dr. Epée, especially with regard to detainees, so that we can produce  
21 for the benefit of your Chamber, a medical certificate in relation to the diabetes that our client suffers  
22 from and which places him in difficult health situations. It would be desirable for your Chamber to  
23 decide to rule -- or make a ruling asking Dr. Epée to produce a confidential certificate for the  
24 Chamber, a certificate indicating the health problems from which Mr. Rutaganira suffers.

25

26 Furthermore, before we call our witnesses, the Defence is making the following request of the  
27 Chamber: We request that you kindly maintain as confidential the plea agreement concluded  
28 between the Accused and the Office of the Prosecutor, and we request -- we make this request strictly  
29 for security reasons. However, in agreement with the Accused and the Office of the Prosecutor,  
30 before the witnesses are called to the bar, I shall read Chapters 5 and 6 of this plea agreement and  
31 we will, therefore, be lifting confidentiality for these two chapters, only for that purpose. Could I inform  
32 the interpreters that I shall read the document from page 3 of the document which I submitted:

33

34 "Concerning the admission of guilt: The Accused, Vincent Rutaganira, admits that he was born 60  
35 years ago in Rwanda in Mubuga *secteur*, Gishyita *commune*, in Kibuye *préfecture* and he spent most  
36 of his adult life in that locality before being elected *conseiller* of the Mubuga *secteur* in Gishyita  
37 *commune* in 1985. He remained in that position from 1985 until his departure from Rwanda in

1 August 1994.”

2 THE ENGLISH INTERPRETER:

3 Your Honours, the interpreters do not have a copy of this document.

4 MR. ROUX:

5 "The Accused, Vincent Rutaganira, admits that according to Article 27 of the organic law concerning  
6 the *communal* organisation, he was in his capacity as *conseiller de secteur*, responsible for the  
7 economic development, social and cultural development of the Mubuga *secteur*. Vincent Rutaganira  
8 admits that as *conseiller*, he was an important member of the community in Mubuga *secteur*. To that  
9 effect, he was the most close personality in the community and he was the communication channel  
10 between the inhabitants of the Mubuga *secteur* and the local political structure in the responsibilities  
11 bestowed upon him by Article 27 of the organic law dealing with *communal* organisation.

12  
13 "Attack perpetrated on the 15th of April 1994 or around that date on the Mubuga church:

14 Vincent Rutaganira admits that as *conseiller* he was aware that between the 8th and the 15th of April  
15 1994 thousands of Tutsi civilians, including men, women and children, had sought refuge at the  
16 Mubuga church in Mubuga *secteur*, Gishyita *commune*, in order to escape the attacks targeting Tutsi  
17 members of the population. Vincent Rutaganira admits that as *conseiller* he was aware that during  
18 civilian disturbances which had come about earlier in Kibuye *préfecture*, civilian Tutsis had been  
19 forced to leave their homes in order to assemble in places traditionally considered as safe and secure,  
20 such as community centres, churches, stadia and public buildings.

21  
22 "Vincent Rutaganira admits that Tutsis who had found refuge in the Mubuga church were attacked  
23 between the 14th and the 17th of April 1994 or thereabouts. Vincent Rutaganira admits to having  
24 seen, before the attack launched between the 14th and 17th April 1994, assailants who had attacked  
25 the Tutsi refugees at the Mubuga church assembling at the intersection situated in front of his house  
26 on the road between Kibuye and Gishyita, some 100 metres from the church. Vincent Rutaganira  
27 admits that the assailants whom he saw assembling in that location included representatives of the  
28 local authorities, including *Bourgmestre* Charles Sikubwabo, two armed civilian Hutus, *communal*  
29 police officers, and elements of the *Gendarmerie Nationale*.

30  
31 "Vincent Rutaganira admits that the attack lunched on the Mubuga church between the 14th and 17th  
32 April 1994 caused the death of thousands, and there were several wounded amongst the women,  
33 men and children who had sought refuge there. Vincent Rutaganira admits that the presence of the  
34 local authority representative, such as the *bourgmestre* of Gishyita, Mr. Charles Sikubwabo, at the  
35 time of the attack on the Mubuga church, had the effect of encouraging the attackers and to give the  
36 impression that the public authorities were in approval of the take on the Tutsis. Furthermore, the  
37 Accused, Vincent Rutaganira, admits that despite the fact that he was *conseiller* of Mubuga *secteur*,

1 he failed to protect the Tutsis who had sought refuge at Mubuga church in Mubuga *secteur*, between  
2 the 8th and the 15th of April 1994. Vincent Rutaganira admits that the assault on Tutsi civilians --  
3 assault suffered by the Tutsi civilians assembled in the Mubuga church is in the framework of  
4 widespread attack suffered by most Rwandans between the 8th and 15th of April 1994 and in which  
5 were involved representatives of local authorities, including the *préfet* of Kibuye, Clément Kayishema.

6  
7 "Chapter 6, factual and legal conclusions: In light of the fact of law and fact mentioned above and  
8 admitted by the Accused, Vincent Rutaganira certainly, by omission, encouraged the crime of  
9 extermination, crimes against humanity, pursuant to Rule 6 -- Article 6.1 of the statute."

10  
11 These are what we can say publicly and precisely concerning the facts to which Vincent Rutaganira  
12 has pleaded guilty, and jointly with the Office of the Prosecutor and the Defence, these are elements  
13 which have been qualified as his crime by -- as an accomplice in the crimes listed under Article 6.1 of  
14 the statute. This is what it is, no more, no less.

15  
16 In conformity with this agreement, and as has been said by the Office of the Prosecutor, and I do  
17 agree, the Chamber -- the Defence would now wish that the Chamber hears three witnesses, three  
18 character witnesses regarding the mitigating circumstances which we believe the Accused,  
19 Vincent Rutaganira, should enjoy. I thank you, Your Honours.

20 MADAM PRESIDENT:

21 We thank you, Mr. Roux.

22  
23 We shall adjourn the hearing for about 15 minutes or so, so that we can make rulings on the motions  
24 which have just been presented, and then we will immediately move into the hearing of the first  
25 Defence witness. So the session is adjourned for 15 minutes.

26 *(Court recessed at 1115H)*

27 *(Pages 1 to 11 by Judith Baverstock)*

1 (Court resumed at 1145H)

2 MADAM PRESIDENT:

3 Proceedings are called to order. Do the parties have any documents to tender before we read out our  
4 decision?

5  
6 Yes, Mr. Roux.

7 MR. ROUX:

8 Yes, thank you, Madam President. Indeed, I would like to tender the original document of the  
9 statements which have been disclosed, but this time they are in unredacted form. I should like to  
10 tender these documents for information purposes, and I will hand them to the registry for that purpose.  
11 I should request that you admit these documents, that it seems they have already been filed. They  
12 are numbered 261 *bis* up to 1 -- I am sorry, it's in the other direction: 186 *bis* to 201 *bis*. There is  
13 another document that was tendered, but it is not yet marked. It is a good conduct certificate  
14 established by the detention facilities.

15  
16 Of course, Madam President, perhaps I should repeat. All of the unredacted versions, the original  
17 document to be tendered, should be kept under seal.

18 MADAM PRESIDENT:

19 Thank you, Mr. Roux. Mr. Prosecutor, do you have any objections?

20 MR. ADEOGUN-PHILLIPS:

21 No, we don't, Your Honour, we have no objections.

22 MADAM PRESIDENT:

23 Thank you, Prosecutor.

24  
25 The Chamber admits the documents -- one moment, please -- there's informational documents; the  
26 Chamber admits the unredacted form of these informational documents. These documents shall be  
27 placed under seal. These are already filed. These are numbered 186 *bis* to 201 *bis*. The documents  
28 that have not been registered, including the good conduct certificate issued by the detention facilities  
29 regarding the Accused, that document is also tendered to the case file for informational purposes.  
30 That document shall now be placed under seal. The registry shall mark that document appropriately.

31  
32 The Chamber, after deliberating, orders the severance of the trial of Vincent Rutaganira, severed from  
33 the other indictees in the document of 29th April 1996. The Chamber directs the registry to find a new  
34 case number for the Vincent Rutaganira case, and that case number shall apply to all documents of  
35 that trial.

36  
37 Besides Chapters 5 and 6, the Chamber orders that the document read out by Mr. Roux be disclosed

1 that that document be kept under seal. The Chamber urges Dr. Epée from the ICTR health centre to  
2 produce a health certificate, which shall remain under seal, regarding the Accused. And the Chamber  
3 decides to immediately hear witnesses who shall speak about the character of the Accused.

4  
5  
6 The Chamber reserves its ruling. The Chamber reserves its judgement for Count 16 to which the  
7 Accused pled guilty, as well as its decision on the other counts. The Chamber also reserves its  
8 judgement as regards the detention of Mr. Vincent Rutaganira subsequently.

9  
10 Now we invite the Defence to bring in the first witness.

11 THE FRENCH INTERPRETER:

12 Excuse me, the English desk; we didn't get the correct translation of the last one that she gave  
13 concerning the other counts and Count 16. Could you repeat that over again?

14 THE ENGLISH INTERPRETER:

15 If the presiding Judge could kindly repeat, I shall reinterpret that. Thank you.

16 MADAM PRESIDENT:

17 Regarding the motions for acquittal as regards Counts 1, 14, 15, 17, 18 and 19 in the same  
18 judgement on Counts 16, the Chamber will pronounce on those counts. The Chamber will also make  
19 a ruling about the conditions of detention for Mr. Vincent Rutaganira.

20  
21 Good morning, Madam Witness.

22 THE WITNESS:

23 Good morning, Madam President.

24 MADAM PRESIDENT:

25 I see that you can hear me clearly.

26 THE WITNESS:

27 That is correct; I can hear you, Madam President.

28 MADAM PRESIDENT:

29 Witness, you are a protected witness and we shall refer to you as Witness TRV-4, that is your  
30 pseudonym.

31 THE WITNESS:

32 Very well, Madam President.

33 MADAM PRESIDENT:

34 Mr. Roux is the Defence counsel, and he will proceed to question you. You should answer those  
35 questions and avoid giving any details which may reveal your identity.

36 THE WITNESS:

37 Yes. Very well, Madam President.

1 MADAM PRESIDENT:

2 Before responding to Mr. Roux's questions, we should like you to take a solemn declaration.

3 *(Declaration given by Witness TRV-4 in Kinyarwanda)*

4 MADAM PRESIDENT:

5 Thank you, Madam TRV-4.

6

7 Mr. Roux, you may proceed.

8 MR. ROUX:

9 Madam President, Your Honours, I believe that you have the identification sheet of this witness before  
10 you which should assist you in understanding some of the questions I will put to this witness,  
11 especially with regard to the first question.

12 WITNESS TRV-4,  
13 first having been duly sworn,  
14 testified as follows:

15 EXAMINATION-IN-CHIEF

16 BY MR. ROUX:

17 Q. Good morning, Witness TRV-4. Can you --

18 MADAM PRESIDENT:

19 Pardon me one moment, Counsel. May we put this identification sheet before the witness so that she  
20 can confirm that there are no errors in it?

21 MR. ROUX:

22 Yes, the registry has the document, Madam President.

23 MADAM PRESIDENT:

24 Registry, could you place the document before the witness, and we would request a Kinyarwanda  
25 interpreter to go next to the witness and help her through that document. Yes, we will have to turn off  
26 here so that there is no disclosure for the information.

27

28 May we have an interpreter?

29 THE ENGLISH INTERPRETER:

30 That interpreter is on his way.

31

32 Madam President, the witness has stated that she was able to read the information in the  
33 identification sheet. She acknowledges that that information is indeed correct.

34 MADAM PRESIDENT:

35 Very well, thank you, Witness. Thank you, Mr. Interpreter.

36

37 Mr. Roux, you may proceed.



1 MR. ROUX:

2 Thank you, Madam President.

3 BY MR. ROUX:

4 Q. Witness, I have a few questions for you. These questions are meant to shed light on matters for the  
5 Tribunal. Witness, did you know Mr. Vincent Rutaganira prior to the genocide?

6 A. Yes, I knew him.

7 Q. Madam Witness, are you yourself a survivor of the genocide?

8 A. I am.

9 Q. Did you lose any family members during the genocide, Madam Witness?

10 A. Yes, I did.

11 Q. Can you tell us how many family members of yours perished in the genocide?

12 A. During the genocide I lost 35 members of my family.

13 Q. Did any of those family members die at Mubuga church, Witness?

14 A. Yes, some of them did, indeed, lose their lives at the place you indicated.

15 Q. Is it correct, Madam Witness, that you yourself had a false identity card that was marked "Hutu" that  
16 you had during the genocide?

17 A. That is correct. I did have an identity card marked as you described.

18 Q. Why did you have that card, Madam Witness?

19 A. Somebody who had such a card would be able to survive.

20 Q. Madam Witness, did you go into hiding during the genocide?

21 A. I did.

22 Q. Did anyone discover you in your hiding place?

23 A. Yes, at one point in time I was discovered.

24 Q. Can you explain to the Tribunal what happened at that point in time?

25 A. I saw some assailants; they arrived and found me where I was hiding. Immediately I showed my  
26 identity card which was marked "Hutu", and those assailants therefore did not kill me, but they did  
27 bring me to a place where other attackers were, and they were preparing to attack -- kill people at  
28 Bisesero. Near that place, Vincent Rutaganira was there. Now, when the assailants saw me they  
29 shouted all together, "Here is another victim for us." I saw them carrying grenades, firearms and  
30 sticks, and other traditional weapons. One of the attackers came up to me and showed me his sword  
31 and held it out to me so I could smell it, and he said, "I am going to be the one to kill you."  
32

33 Now, in the meantime, other assailants were pulling on my clothing saying, "I am going to kill her".  
34 And they were all pulling from all directions. Rutaganira was sitting down and he heard shouting. He  
35 was curious to find out what was going on. He said, "Bring that person to me." And so I went before  
36 him. He asked, "Do you have any identification papers?" I showed him the card that I had, and that  
37 card was marked "Hutu". After that he said the following: "I see no reason or no basis why this person

1 should be killed." He himself took the card and showed it to everyone there. And he said, "Look at  
2 this, this person is a Hutu woman". But those attackers started shouting. They said, "We have  
3 exterminated all of the members of her family. Why should she continue to live?" Rutaganira became  
4 angry. He stood up, grabbed me by the hand and put me in front of him, and he said to all of the  
5 attackers, "Any of you who are brave, come and attack this woman." The attackers said, "If we don't  
6 kill, she must give her child to us so that we can kill that child in her place."  
7

8 Now, in the meantime, some of the assailants went to Rutaganira's house, searching, perhaps, for  
9 one of my family members to be killed in lieu of me. I was wondering if someone was going to kill me.  
10 In fact, no one ever came. The assailants dispersed, and they were whispering to one other. They  
11 left, but in fact I don't know where they went.  
12

13 Now, for my part I remained there. I was with some other people, and they had decided to bury me in  
14 case the assailants would come back looking for me. So, in summary, if I am still alive today, it is  
15 thanks to Vincent Rutaganira.

16 Q. Madam Witness, I have an additional question for you. Earlier you said that you knew  
17 Vincent Rutaganira prior to the genocide. Can you tell the Tribunal if Vincent Rutaganira was friendly  
18 with regard to the Tutsis?

19 A. Yes, he was a friend of the Tutsis, and I say that because he exchanged cattle with the Tutsis. He  
20 went to their weddings; their families went to each other's weddings.

21 Q. Did you ever participate in one of those ceremonies, Witness?

22 A. Yes, I was invited to one of those ceremonies.

23 Q. Thank you, Madam Witness.

24 MR. ROUX:

25 If it pleases the Chamber, I have no further questions for this witness.

26 MADAM PRESIDENT:

27 Madam Witness, are you in a position to tell us exactly when, in which year, you met  
28 Vincent Rutaganira?

29 THE WITNESS:

30 Yes, I have known him since 1985. I knew him from 1985 until 1994.

31 MADAM PRESIDENT:

32 Thank you, Madam Witness.  
33

34 Mr. Prosecutor, do you wish to put any questions to this witness?

35 MR. ADEOGUN-PHILLIPS:

36 I have no questions, Your Honour.  
37

1 MADAM PRESIDENT:

2 Thank you, Prosecutor.

3  
4 Madam Witness, this marks the conclusion of your testimony before this Tribunal. We thank you for  
5 coming to the Tribunal today. We shall assess your testimony, and we wish you an excellent return  
6 home.

7 THE WITNESS:

8 Thank you very much, Madam President.

9 *(Witness excused)*

10 MADAM PRESIDENT:

11 Mr. Roux, is the next Witness KNN-1?

12 MR. ROUX:

13 Yes. Yes, we are waiting for that witness to be ushered into the courtroom.

14 MADAM PRESIDENT:

15 Good afternoon, Madam Witness KNN-1.

16 THE WITNESS:

17 Good afternoon, Madam President.

18 MADAM PRESIDENT:

19 You are appearing before this Tribunal, and you shall be examined by the Defence counsel, Mr. Roux,  
20 but before that we are going to ask you to kindly take -- make your solemn declaration, and we also  
21 wish to know from you whether you wish to testify as a protected witness.

22 THE WITNESS:

23 I wish to testify in open court, Your Honours.

24 MADAM PRESIDENT:

25 I think there's a small technical problem. Madam Witness, can you please repeat what you have just  
26 said, because we were unable to follow what you have said.

27 THE WITNESS:

28 I wish to testify in open court without protection.

29 MADAM PRESIDENT:

30 Very well, we thank you.

31  
32 Proceed now please with your solemn declaration, and Mr. Roux will ask you questions concerning  
33 your identity and will proceed with questions which he wishes to put to you.

34  
35 Can you now move on to the solemn declaration?

36 *(Declaration made by Immaculée Nyiramasimbi in Kinyarwanda)*

37

1 MADAM PRESIDENT:

2 Thank you, Madam Witness. Mr. Roux please proceed.

3 IMMACULÉE NYIRAMASIMBI,

4 first having been duly sworn,

5 testified as follows:

6 EXAMINATION-IN-CHIEF

7 BY MR. ROUX:

8 Q. Madam Witness, good afternoon. Thank you for having accepted to come to testify today and for  
9 having accepted to do so without any protection offered to you.

10

11 Is it correct to say, Madam Witness, that you are the wife of the Accused?

12 A. Yes, I am.

13 MR. ROUX:

14 Madam President, rather than going into the complete questions regarding the witness's identity, let  
15 me give the identification sheet to the registry, since you already have a copy thereof.

16 MADAM PRESIDENT:

17 Very well. Yes, we do indeed have a copy of the same.

18 BY MR. ROUX:

19 Q. Madam Witness, can you please tell the Chamber for how long you have been married to Vincent  
20 Rutaganira?

21 A. I have been married to him from September 1973.

22 Q. How many children do you have with Vincent Rutaganira?

23 A. We had nine children.

24 Q. What is your occupation presently in Rwanda, Witness?

25 A. In Rwanda, I am the deputy mayor responsible for women's development.

26 Q. Can you please tell the Chamber, Witness, what your duties are more specifically?

27 A. My duties involve a number of things. For example, women are informed about their role and their  
28 place in society therefore, we also tell her about her role in politics in the country. We help women  
29 identify problems they encounter, and we help women find solutions to those problems they have  
30 identified. Within that framework, we have many responsibilities and duties because the woman plays  
31 a major role in society.

32

33 Presently women are facing many difficulties, but we are trying to ensure that she participates in the  
34 country's development, especially with regard to the struggle against poverty. There is a lot that I can  
35 say, but briefly I can say that those are the essential duties that I dealt with.

36 *(Pages 12 to 18 by Judith Kapatamoyo)*

37

- 1 1230H
- 2 MR. ROUX:
- 3 Q. Thank you. Now, within the framework of your duties and responsibilities, did you also, directly or
- 4 indirectly, participate in the Gacaca?
- 5 A. I participated directly in the Gacaca court proceedings.
- 6 Q. Madam Witness, when did you go back to Rwanda?
- 7 A. I went back to Rwanda in June 1997.
- 8 Q. Why did you decide to go back to Rwanda?
- 9 A. I decided to go back to Rwanda because I love my country; also, because I did not participate in the
- 10 genocide.
- 11 Q. Madam Witness, is it correct to say that on the 2nd of December, 2002, you made a statement to the
- 12 Prosecutor in Arusha in the case concerning your husband?
- 13 A. On that date, I made such a statement.
- 14 Q. Is it correct to say that following the guilty plea made by your husband, you accepted to come to
- 15 testify as a character witness with the approval of the Prosecutor?
- 16 A. That is correct.
- 17 Q. Can you please explain to the Chamber under what conditions or under what circumstances your
- 18 husband became *conseiller du secteur* in Mubuga?
- 19 A. He became *conseiller du secteur* in Mubuga after a certain number of conditions were fulfilled.
- 20 Mainly, the population trusted him a great deal. Also, there was insecurity within the same *secteur*.
- 21 Q. What did he do when he was elected? Was he able to fulfil the mission assigned to him by the
- 22 people?
- 23 A. When he was elected, he restored security within the *secteur*. He was working very closely with the
- 24 population, the inhabitants.
- 25 Q. Who was causing insecurity at that time, madam?
- 26 A. There were gangs of bandits who were stealing and who were attacking people at various locations.
- 27 Q. So he managed to restore security?
- 28 A. Yes, he did.
- 29 Q. Throughout this period of time, what was the relationship between your husband and Tutsis?
- 30 A. He didn't have any problem with Tutsis. We would share everything. We would invite one another to
- 31 weddings and to various festivities. We would also exchange cows. We would attend marriages and
- 32 weddings, and so on.
- 33 Q. You say that you exchanged cows. Can you please explain to the Tribunal with how many families
- 34 you exchanged cows?
- 35 A. We exchanged cows with more than 10 families, if my memory serves me right.
- 36 Q. Was it Tutsi families who would give you the cows, or was it you who gave the cows to the Tutsi
- 37 families?

- 1 A. The Tutsi families would give us cows, and we would give them cows, also.
- 2 Q. Can you please remind the Chamber what an exchange of cattle means in Rwandan culture?
- 3 A. The exchange of cattle means -- or is a symbol of love, faithfulness, and cooperation.
- 4 Q. How does the exchange of cattle actually take place within your culture?
- 5 A. When you like someone, you promise that person a cow. When the day arrives, the person who is  
6 going to give the cow prepares himself or herself, and the same applies to the receiver. There is a  
7 feast which is arranged. We share everything in terms of eating and drinking, we dance, and this is  
8 done in public. And we also promise loyalty and self help.
- 9 Q. Is it correct, Madam Witness, to say that some of your children have godparents from Tutsi families?
- 10 A. Yes. We have godfathers and godmothers coming from Tutsi families, and there are even some of  
11 them who are still alive today.
- 12 Q. You yourself and your husband, are you godparents of Tutsi children?
- 13 A. Yes, we are.
- 14 Q. You told us that when your husband was *conseiller du secteur*, he dealt with matters pertaining to  
15 security. Can you also tell the Chamber what he did for the development of his *secteur* while he was  
16 *conseiller*?
- 17 A. For the development of his *secteur*, he was able to ensure water supply in the *secteur*. The water  
18 supply went right up to the Mubuga health centre and to the secondary school, as well.  
19
- 20 He, together with the inhabitants, participated in community work with regard to fighting soil erosion,  
21 the building of roads within the *secteur*, for example. He also was of help in the area of agriculture  
22 and animal husbandry. There were plots where good animal husbandry techniques and agricultural  
23 techniques were shown to the inhabitants.
- 24 Q. You spoke about canals for water supply to the, to the trading centre, to the health centre, and to the  
25 secondary school.
- 26 A. Yes, that is correct.
- 27 Q. Madam Witness, I just wish to ask you a few more questions regarding the events, but I must remind  
28 you that we are not going to touch on the aspects for which your husband has pleaded guilty.  
29
- 30 Is it correct to state that during the events, your husband and yourself had hidden Tutsis in your  
31 home?
- 32 A. That is, indeed, correct, that we did hide them. We hid young girls who remained with us for two  
33 weeks, and one woman who stayed with us for three months.
- 34 Q. Were there any other people, also, whom you hid?
- 35 A. No, there were none.
- 36 Q. Next to your house -- would it be correct to say that there was a roadblock not far from your home?
- 37 A. Yes, that is correct.

- 1 Q. Were there any deaths at that roadblock?
- 2 A. There were no deaths at that roadblock; nor were there any persons wounded there; nor was anybody
- 3 -- nor was anybody's possessions looted.
- 4 Q. Is it correct to say that Vincent, your husband, did not get on well with the *bourgmestre*?
- 5 A. No, they didn't get on well at all.
- 6 Q. Do you know why?
- 7 A. Elections had taken place, and Vincent did not campaign for him to be elected.
- 8 Q. Now, during the events, were they still not on good terms?
- 9 A. Yes, they were not on good terms.
- 10 Q. Why is that so?
- 11 A. Because of those elections, and also because Vincent did not want to participate in the genocide.
- 12 Q. During the events, did you and members of your family ever feel in danger?
- 13 A. Yes, we were in danger, because I was accused of hiding *Inkotanyi* within my family, and also, some
- 14 of our children were accused of having been born of Tutsi women.
- 15 Q. Did killers come right up to your home?
- 16 A. The killers would pass by, and they would go up as they went towards Bisesero, and they would
- 17 check if there were any Tutsis in the house. And they would come by, they would pass by as they
- 18 went to kill.
- 19 Q. Were you and your husband ever threatened during this period of time?
- 20 A. Yes, we were threatened.
- 21 Q. Today, Madam Witness, you told the Tribunal that you have come back to Rwanda and that you're
- 22 working as a deputy mayor. How is the situation between you and the survivors?
- 23 A. I have no problems with the survivors. I work very closely with them. I do not see anything wrong
- 24 between myself and them. We understand one another very well. We give ourselves advice, and we
- 25 share everything. We help one another mutually.
- 26 Q. Thank you, Madam Witness.
- 27 MR. ROUX:
- 28 I have no questions for this witness.
- 29 BY MR. ROUX:
- 30 Q. Thank you very much.
- 31 A. Thank you, Counsel.
- 32 MADAM PRESIDENT:
- 33 Thank you, Mr. Roux.
- 34
- 35 Mr. Prosecutor, do you have any questions for the witness?
- 36 MR. ADEOGUN-PHILLIPS:
- 37 I have no questions, Your Honour.

1 MADAM PRESIDENT:

2 Very well. We thank you, Madam Witness. We thank you for having agreed to come and testify here  
3 without any protection before the Tribunal. You have now reached the end of your testimony, and we  
4 therefore wish you a safe return home. Thank you.

5 THE WITNESS:

6 Thank you very much, Madam President.

7 MADAM PRESIDENT:

8 You're most welcome.

9 *(Witness excused)*

10 MADAM PRESIDENT:

11 The identification sheet for this witness will bear the markings D. 2, and the identification sheet for the  
12 previous witness will bear the reference D. 1. Therefore TRV-4 is D. 1, and the witness we have just  
13 heard, Mrs. Nyiramasimbi, will be D. 2.

14 *(Exhibit No. D. 1 admitted, under seal)*

15 *(Exhibit No. D. 2 admitted)*

16 MADAM PRESIDENT:

17 Can we take your last witness, please? Very well. We shall hear the last witness, who is Witness  
18 KPP-1. I hope that is correct.

19  
20 For the record, we should like to point out that the document marked D. 1 shall be placed under seal,  
21 which is not the case for the document marked D. 2.

22

23 Good afternoon, Witness.

24 THE WITNESS:

25 Good afternoon, Madam President.

26 MADAM PRESIDENT:

27 You are a protected witness.

28 THE WITNESS:

29 Yes, Madam President.

30 MADAM PRESIDENT:

31 We shall refer to you as KPP-1, that's your pseudonym. Your name will not be pronounced here.

32 Also bear in mind that you should not give any information which may tend to reveal your identity,

33 Witness.

34

35 Defence counsel, Mr. Roux, is going to put some questions to you, but before you answer those  
36 questions, we should like to ask you to take a solemn declaration.

37



1 THE WITNESS:

2 Pardon me, Madam President, may I have assistance? Because I cannot read the solemn  
3 declaration. I can't see it well enough.

4 MADAM PRESIDENT:

5 Yes, the registry assistant next to you shall assist.

6 THE WITNESS:

7 In French, please.

8 MADAM PRESIDENT:

9 We did not receive that translation for what the witness has just said. He speaks French and needs  
10 the French translation.

11 *(Declaration made by Witness KPP-1 in French)*

12 MADAM PRESIDENT:

13 Very well. Thank you, registry. We've received the solemn declaration. We didn't know that the  
14 registry assistant spoke French so clearly. We thank him.

15 *(Exhibit No. D. 3 admitted, under seal)*

16 MADAM PRESIDENT:

17 Mr. Roux, you have the floor.

18 MR. ROUX:

19 Thank you, Madam President. Thank you, Your Honours. I would like the Chamber to concentrate on  
20 point 13 in the identification sheet so that you know who the witness is and so that you understand  
21 more clearly the basis for the questions I shall put to the witness.

22 WITNESS KPP-1

23 first having been duly sworn,

24 testified as follows:

25 EXAMINATION-IN-CHIEF

26 BY MR. ROUX:

27 Q. Witness, is it correct that you accepted to testify for the Prosecution in this case?

28 A. Yes, that is correct.

29 Q. Why did you accept to testify today as a character witness?

30 A. I accepted to do so because Vincent Rutaganira pled guilty, so now I am at ease and I can testify  
31 about his character for the Defence.

32 Q. Did you know Vincent Rutaganira well before the events?

33 A. Yes, I knew him.

34 Q. Is it true that you, yourself, were imprisoned after the events?

35 A. Yes. After Vincent left, I remained in Rwanda. I was found there. I was picked up, and I was thrown  
36 into gaol, and I spent eight years there.

37 Q. What happened after those eight years, Witness?

1 A. The judicial system in Rwanda organised a campaign. There were too many detainees in Rwanda,  
2 and there were some people imprisoned who were innocent, so we were asked to participate in  
3 Gacaca trials so as to make a distinction between those who were guilty and those who were not  
4 guilty. We ourselves went on trial, and since the truth had to come out, those who said that they  
5 participated in the crimes also would point out who did not participate in the crimes, and so I was put  
6 subsequently onto the list of innocent persons.

7 Q. Were you then brought before the population so that they could confirm that?

8 A. Yes. You needed -- after you got out of prison, you needed the opinion of the population at the  
9 Gacaca trial. I went to see the population, introduced myself to them, and they, indeed, confirmed my  
10 innocence. That is how I was able to get out of prison.

11 Q. You said that you knew Vincent Rutaganira. Witness, can you tell us -- can you tell the Chamber  
12 what he did as the *conseiller* of the *secteur* prior to the events?

13 A. Well, he did many things, but let me just give you one example. There was no peace in his *secteur*.  
14 There were thugs; there were bandits. They made it difficult for everyone else. He attempted to  
15 restore order in his *secteur* by fighting those criminal actions. There was -- that made him a lot of  
16 enemies with some people, but the population in general owes much to him because he spared them,  
17 those people, those actions perpetrated by those bandits.

18 Q. Would you say that he was a good man as a *conseiller*?

19 A. Yes, he was a good and upright citizen. He dealt with his public life and his own private life, and  
20 sometimes he did his work to the detriment of his own private life.

21

22 I myself witnessed his integrity. One day he did the following:\*\*\*\*\* in a centre. He had  
23 a \*\*\*\*\*

24 \*\*\*\*\* My plot was chosen for the public domain, but that went  
25 against my own interest, and I was even his friend. So, I needed time to understand exactly what he  
26 was doing to me, and I understood that he was doing that because he was an upright citizen acting on  
27 behalf of the population. I understood that.

28 Q. Did he have a good relationship with the Tutsis?

29 A. As far as I know, he always lived in harmony with everyone, with the Tutsis and Hutus. At home when  
30 you want to show that you're a close friend of someone else, if you have a cow, you give that cow to  
31 that person. That is a manifestation, if you will, of that love. Well, he received cows from Tutsis and  
32 he also gave some cows back to Tutsis, so there was a reciprocal exchange.

33 Q. Do you know if Vincent Rutaganira was the godfather of any Tutsi children, and vice versa?

34 A. Yes, he was. He was a godfather of Tutsi children, and Tutsis were godparents to his children.

35 Q. Do you know if Vincent Rutaganira got along well with the *bourgmestre* prior to the events?

36 A. No. This is public knowledge. They did not get along, and I knew about this personally.

37 Q. Witness, during the events, what would become of people who would hide Tutsis, if that was

1 discovered?

2 A. That would be a bad thing. If a Hutu were to hide a Tutsi and that Tutsi was discovered at that Hutu's  
3 home, the Hutu hiding that person had to kill the Tutsi. If that Hutu did not wish to kill the Tutsi, well,  
4 the Hutu would be killed first, and then the Tutsi afterwards. That's why some Hutus stopped to hide  
5 Tutsis. The result was always the same: If you would hide someone, you could be killed.

6  
7 If the Tutsis -- sometimes the Tutsis left, and the Hutus would be spared. And people thought that it  
8 was useless to hide others 'cause they could both be killed, so Tutsis left on their own to try to hide,  
9 and sometimes they were able to survive that way because, indeed, not everyone was killed. Not all  
10 of the Tutsis, indeed, were killed.

11 Q. Witness, during the events, in your opinion, had Mr. Vincent Rutaganira lost any of his authority, or did  
12 he have all of his authority?

13 A. Well, as a *conseiller*, if he had all of his authority, he would have acted, but in fact he didn't have all  
14 the authority he should have. There were bandits, thugs, and gangs, armed gangs, who controlled  
15 the situation. There was nothing he could do about that.

16 Q. Witness, is it correct that you yourself were a widow prior to the events?

17 A. Yes, my wife died in 1992. Yes, I was a widow at the time of the events.

18 Q. Is it correct to say that since you got out of prison, you remarried?

19 A. That is correct. I thought long and hard and found that life was difficult, and I needed someone to live  
20 that life with me, so I decided to get married. I married a genocide survivor, and she suffered a great  
21 deal during the events, as did I. I was not spared the consequences of the genocide. And so, we  
22 decided to live our life together.

23 Q. Thank you.

24 A. Because, you see, there needs to be national reconciliation, and so I have to take steps towards that  
25 reconciliation to rebuild our country so that we could have peace where people could love their  
26 neighbour and so that the words "never again" are respected, and this is why I did what I did.

27 Q. Thank you, Witness.

28 MR. ROUX:

29 I have no further questions for this witness. Thank you, Madam President.

30 MADAM PRESIDENT:

31 Thank you, Mr. Roux.

32

33 Prosecutor, any questions for this witness?

34 MR. ADEOGUN-PHILLIPS:

35 No questions, Your Honour.

36 MADAM PRESIDENT:

37 Thank you, Prosecutor.

1 Witness, we thank you for testifying before this Tribunal and thank you for answering the questions  
2 that were put to you. We wish you a safe journey home.

3 THE WITNESS:

4 Thank you, Madam President.

5 *(Witness excused)*

6 MADAM PRESIDENT:

7 Mr. Roux, that was your last witness, and so I believe we are finished now with the character  
8 witnesses, correct?

9 MR. ROUX:

10 Yes.

11 MADAM PRESIDENT:

12 Prosecutor, do you have any further submissions regarding the parties?

13 MR. ADEOGUN-PHILLIPS:

14 I do not, Your Honour.

15 MR. ROUX:

16 Madam President, may it please the Chamber, I should like to make my submissions after the break.

17 MADAM PRESIDENT:

18 In that case, I think that we can adjourn now and recommence at 3 p.m. Very well, we adjourn, and  
19 we shall start this afternoon at three.

20 *(Court recessed at 1305H)*

21 *(Pages 19 to 26 by Diane Hermann)*

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1 (Court resumed at 1500H)

2 MADAM PRESIDENT:

3 This session is called to order. Good afternoon, ladies and gentlemen.

4  
5 Mr. Roux, you may proceed.

6 MR. ROUX:

7 Thank you, Madam President. Before I go into my explanations, as agreed with my learned friend  
8 from the Office of the Prosecutor, for the proper running of the proceedings, we wish to indicate that  
9 there are two errors, two typographical errors, in our plea agreement. We respectfully, therefore,  
10 request the Chamber to remove from paragraph 5 and paragraph 14 the word "act", so the sentence  
11 becomes, "that the accused assumes full responsibility for his omissions"; therefore we are not having  
12 responsibilities of "acts or omissions", it's only "omissions", and this appears at paragraphs 5 and 14.  
13 We sincerely apologise for those small errors.

14  
15 Madam President, Your Honours, the hearing that took place on 8th December 2004 and the hearing  
16 of today will certainly leave a mark on the Tribunal. This is not a matter of stylistics, but beforehand I  
17 once again wish to thank all those who contributed to the proper functioning of this trial, be it the  
18 Defence section, the Witness and Victims Support Section, for which, once again, I have been able to  
19 assess the efficiency and its availability; or be it, once again, the interpreters and translators; and last,  
20 but not least, those members of my team. May I once again be allowed, being publicly, to  
21 congratulate our assistant, Soraya Laucci, for her diligent work.

22  
23 I also wish to welcome the constructive cooperation which existed between the Office of the  
24 Prosecutor and the Defence, cooperation which enabled us to reach the stage where we are at today.

25  
26 Vincent Rutaganira decided to plead guilty after long and hard reflection, having taken fully into  
27 account the consequences and the scope of the crime he committed as an accomplice by omission in  
28 Rwanda in April 1994.

29  
30 Vincent Rutaganira is convinced that his admission of guilt, taking into account present  
31 circumstances, is the main method of contributing to the prevention of reoccurrence of crimes  
32 committed in Rwanda, a way of participating in the process of peace and reconciliation in his country  
33 and to compensate for the crime that he committed as an accomplice by omission and for the  
34 prejudice he caused to his fellow citizens.

35  
36 As he already indicated in the agreement, signed on the 7th December 2004, and as he reiterated on  
37 the 8th December 2004, Vincent Rutaganira wished to plead guilty in order to present his sincere and

1 profound apologies to the families of all those women and men and children who were victims of the  
2 massacre which occurred at the Mubuga church.

3  
4 In all honesty, he believes that in his capacity as *conseiller de secteur* in Mubuga he would not be  
5 able to escape any part of responsibility for a massacre of such scope committed in his own *secteur*,  
6 although he, himself, did not directly participate in the said massacre.

7  
8 In memory of the victims, for the honour of his own family, for his inhabitants, he decided to assume  
9 his part in the responsibility and to plead guilty of the crime of complicity in the crime of extermination  
10 by omission for having failed to protect the Tutsi refugees in the Mubuga church and for having failed  
11 to accomplish what the jurisprudence in my country calls his legal duty as a human being.

12  
13 It is clear that the crime for which Vincent Rutaganira is pleading guilty is based on the offence of  
14 omitting to provide assistance to a person in danger, something which is also referred to, non-  
15 assistance to a person in danger, which exists in some national codes. Within the framework of  
16 *Article 61* of the Statute of the ICTR this offence becomes a crime, and in conformity with our  
17 agreement with the Office of the Prosecutor, because due to the fact that he had functions as a  
18 *conseiller de secteur* and recused from providing assistance to the victims, was able to aid and abet  
19 the commission of the crime of extermination.

20  
21 It would be interesting in your deliberations, Your Honours, that you look into the provisions of the  
22 various national civil law provisions concerning the failure to assist persons in danger, be it the  
23 Belgian penal code, which, under *Article 422 bis ter*, be it the Senegalese penal code under *Article 49*;  
24 be it the Italian penal code under *Article 593*; the French penal code under *Article 223*, paragraph 6;  
25 or yet again the Rwandan penal code under *Article 256*, paragraph 2; these codes speak mainly of  
26 the same thing; in other words, the guilt of a person who does not provide assistance to other persons  
27 or individuals in danger. In a moment we shall see the circumstances you need to consider and  
28 conclusions you need to draw when it comes to sentencing and this is considered in the various  
29 manners in civil law, but the same basic principles apply.

30  
31 So, after having recalled the guilty plea, and the principles under which it was drawn, we are here to  
32 look, together with you, Your Honours, at the mitigating circumstances which the Defence and his  
33 counsel might refer in order to help you to reduce, as far as possible, his sentence and for you to  
34 come up with that sentencing according to the agreement between the Defence and the Prosecution;  
35 in other words a sentence between six and eight years of imprisonment. From *Article 23* of the  
36 Statute, Rules 100 and 101 of the Rules of Procedure and Evidence, that in order to determine  
37 sentence the Trial Chamber refers -- has recourse to the general practice regarding prison sentences

1 in the courts of Rwanda, taking into account the extenuating circumstances, the personal situation of  
2 the person and the period which may have already been served under detention by the accused. The  
3 Chamber certainly is aware that Vincent Rutaganira has been in detention in the UNDF for almost  
4 three years; it will be three years exactly on the 18th of February 2005.

5  
6 During its deliberation, and in order to determine the terms of imprisonment as fairly as possible, the  
7 Chamber will need to take into account the mitigating circumstances, which we shall go into right now.  
8 But before I do that, I need to make some preliminary observations. Neither the statute nor the Rules  
9 of Procedure and Evidence stipulate which are the mitigating circumstances to be taken into account,  
10 except from the fact that Rule 101(b)ii, requires that the Trial Chamber take into account the  
11 substantial cooperation with the Prosecutor by the Accused person before or after his guilty plea.

12  
13 In the *Plavsic* case before the ICTY the Chamber stated that cooperation with the Prosecution is a  
14 mitigating circumstance but that does not include -- does not mean that the absence of cooperation is  
15 an aggravating circumstance. In the instant case, we agree with the Chamber that there was not and  
16 there shall not be with the Prosecutor -- cooperation with the Prosecutor. But let me add that merely  
17 pleading guilty, in my view, constitutes useful cooperation with international criminal justice and  
18 therefore, something which is useful in the Office of the Prosecutor.

19  
20 In the *Plavsic* case, still before the Tribunal for the former Yugoslavia, the Chamber mentioned that  
21 the mitigating circumstances brought about by the case law of the Tribunal includes voluntary  
22 surrender and manifestation of remorse, which should all be evaluated on the scale of probability.

23  
24 In the *Jokic* case of 18th March, 2003, at paragraph 100, the Trial Chamber in that case also recalled  
25 individual or personal circumstances taken into account by the Tribunal's case law and considered to  
26 be mitigating circumstances, and these are the advanced age of the accused, his good conduct  
27 during detention, his total respect of all the conditions imposed regarding his conditional release, if  
28 that is relevant, and his family's status.

29  
30 Thus, when they look at the various circumstances that will be submitted to your Chamber, you will  
31 need to look at the fact that aggravating circumstances must be proven beyond any reasonable  
32 doubt, but as for mitigating circumstances, we need to consider probabilities, and the said mitigating  
33 circumstances can also include those which do not have a direct link with the offence in question.  
34 Kindly look at the *Nikolic* decision of 18th December 2003, paragraph 145; the *Deronjic* judgement of  
35 30th March 2004 at paragraph 155.

36  
37 In light of this case law, what would be the attenuating or mitigating circumstances the Accused is

1 seeking through me? Some have already been mentioned and repeated by the Office of the  
2 Prosecutor this morning and I shall therefore go through them rather quickly.

3 There is, first of all, the voluntary surrender, which has always been a mitigating circumstance, which  
4 is taken into account by the two international criminal tribunals. And kindly look at the *Serushago*  
5 judgement rendered by the Tribunal on 5th February 1999; the *Babic* judgement in the ICTY on the  
6 29th June 2004; *Jokic*, 18th March 2004; *Plavsic*, 27th February 2003, *Simic*, 17th October 2002.

7  
8 As you well know, it was on the 18th February 2002 that the Accused, Vincent Rutaganira, voluntarily  
9 surrendered himself to the representative of the Office of the Prosecutor in Arusha, Tanzania.

10  
11 The second mitigating circumstance concerns his guilty plea. As was said by the Trial Chamber in the  
12 *Todorovic* case on the 31st July 2001, paragraph 80, guilty plea should, in principle, lead to the  
13 reduction of the sentence that the Accused would, otherwise, have had to serve.

14  
15 Again, at paragraph 81, a guilty plea is also important in determining the fact of a crime. Generally,  
16 however, a guilty plea shall not contribute to such if it is done before the commencement of the trial  
17 against the Accused.

18  
19 It is pointless to say that if it occurs at a stage later than the proceedings, or after the end of the trial, a  
20 voluntary admission of guilt will not enable the Tribunal to gain the time and efforts necessary for a  
21 long investigation and trial.

22  
23 In the present case it is clear that Vincent Rutaganira decided to plead guilty before the  
24 commencement of his trial and, in so doing, he incontestably enabled this Tribunal, and the  
25 international community, to make great and important savings, in terms of time and resources.

26  
27 The third mitigating circumstance which we refer to is that there was no individual participation by the  
28 Accused in the killings.

29  
30 The Chamber will see, as it was the case in the *Ruggiu* case, whose judgement was rendered on the  
31 1st of June 2000, that no individual participation can be blamed on the Accused, because this  
32 morning, once again, the Prosecutor sought the dismissal of all the other counts and he also sought  
33 *acquittal* due to lack of proof, lack of evidence. This clearly means, and I reiterate this, that  
34 Vincent Rutaganira has no blood on his hands. And, as I have said earlier, it is in his capacity as an  
35 official of the Mubuga *secteur* that he decided to assume his responsibility for having failed to protect  
36 the refugee population, which had sought refuge in a church in his *secteur*.



1 The next point concerns assistance or help given to some of the victims. Vincent Rutaganira,  
2 whenever he was able to do so, provided his assistance to some of the victims and helped in saving  
3 their lives. This morning, Your Honours, you heard Witness TRV4, TRV4, who took risks, which you  
4 can imagine, in order to come from where you know she came in order to come to tell you that, "I owe  
5 my life to this man". May I be allowed, once again, to thank this witness in this public session for  
6 having had the courage to take that step.

7  
8 We tendered, by way of information, a document concerning the written statement of Witness TRV6,  
9 who stated that she was hidden for three months in the home of Vincent Rutaganira, which was  
10 indeed confirmed by the latter's wife this morning.

11  
12 We have also tendered another written statement, provided by Witness TRV9, which states that the  
13 Accused hid his children during the genocide, yet the witness further stated that before the war all the  
14 Tutsis trusted the Accused, and that was why he was able to save Tutsis, including the children of the  
15 witness.

16  
17 The witness went on to add that he continued providing assistance during their time of refuge in  
18 Congo, where the children of that witness also sought refuge and the Accused provided aid and  
19 assistance to the witness and to the family of the witness.

20  
21 Other mitigating circumstances that we have considered and mentioned in our brief jointly submitted  
22 by ourselves and the Office of the Prosecutor, this is a more legal matter concerning the status of  
23 necessity, in other words, the constraints involved.

24  
25 Let us be clear, the state of necessity -- the state of necessity may constitute a total exemption of  
26 guilt, as *Article 31* of the International Criminal Court stipulates, or it can be a mitigating circumstance,  
27 as stipulated in the *Erdemovic* judgement of the ICTY of 5 March 1998, the second judgement. As  
28 you know, there were two judgements in the *Erdemovic* trial.

29  
30 Now, today I should like to speak about the state of necessity in clear terms as a mitigating  
31 circumstance. And I will cite *Erdemovic* as an example. It would be interesting to refer to that  
32 *Erdemovic* judgement. I shall allow myself to slowly read that text, and I apologise to the interpreters  
33 who don't have that. I should like to read two paragraphs.

34  
35 "The Accused has manifested himself and called himself a powerless victim. In his testimony he often  
36 refers to situations where he had no choice. He states that he had to commit himself; that he left  
37 Croatia to go to Srebrenica without choosing to do so; that he had to join the BSA in order to feed his

1 family; that he was obliged to go to the barracks, leaving his wife bedridden and his son. He had no  
2 other choice but to participate in this Srebrenica operation, and he was forced to shoot at those people  
3 at the *Pilica 21* collective farm.

4  
5 "However, on several occasions he did take power into his hands and accomplish some concrete  
6 actions. For example", says the Tribunal, "he saved Serb lives in Tusla. He saved the life of  
7 Witness X. He refused to obey the orders of Lieutenant Middlerod Pilomus. He attempted to refuse  
8 to participate in that massacre at the collective farm. He refused to take part in the executions at the  
9 cultural centre of *Pilica*.

10  
11 "As such, after weighing the positives and the negatives, he was able to take concrete actions", says  
12 the Tribunal, which adds, "he took risks and they were calculated and thought-out risks." "Finally" the  
13 Tribunal adds, "given this case, it appears that the Accused was in an extreme situation. The Trial  
14 Chamber therefore concludes that if he had disobeyed he would have certainly and truly risked being  
15 killed.

16  
17 "He expressed those feelings, fully aware he did not have a choice; he had to kill or be killed."  
18 The Chamber ruled that those were mitigating circumstances, and it is on that basis that I should like  
19 to speak now.

20  
21 I point out, as we pointed out in our joint brief, that as a *conseiller* of Mubuga *secteur*, legally  
22 Mr. Rutaganira did not have any authority over the forces of law and order and he himself was under  
23 the authority of the *bourgmestre*.

24  
25 It is public knowledge, furthermore, that he was opposed to the *bourgmestre*, Charles Sikubwabo,  
26 who was a notorious extremist, and he was opposed to him long before the genocide. Please refer to  
27 the statements of Witnesses TRV9, who says, for example, even before the war the population knew  
28 that Vincent did not get along with the *bourgmestre*. According to the organic law of 23 November  
29 1963, which deal with *communal* organisation, in *Article 37* of that law a *conseiller* is solely in charge,  
30 the *conseiller de secteur* is solely in charge of the economic, social and cultural development of  
31 Mubuga *secteur*. He himself will say this, that he was an officer of the peace, and to say that is the  
32 basis of his regret for not having protected the refugees at the church.

33  
34 In its deliberations the Chamber should consider the different legislation regarding non-assistance to  
35 persons in danger. It should also consider *Article 31* of the statute of the International Criminal Court.  
36 Each of those legislations considers a person guilty when that person fails to intervene, when he is in  
37 a position to do so without danger to himself. That means that the absolute danger is justification,

1 absolute justification which excludes any guilt whatsoever.

2  
3 In the instant case the Chamber should take into account the real danger, but not absolute danger,  
4 that weighed on the Accused, and the Chamber, just as in the *Erdemovic* judgement, will analyse the  
5 mitigating circumstances in the light of the proportionality that needs to be established between, on  
6 the one hand, that real danger, and on the other hand the legal duty, as a human being, in which the  
7 Accused failed and therefore pled guilty. The Chamber will make its ruling.

8  
9 And these are the mitigating circumstances and you should remember that this man, if he did commit  
10 omissions, did so because he was constrained and because that weighed heavily upon him.

11  
12 Commit omissions, that doesn't sound very nice. It's, in fact, he failed to act. Let's now move to the  
13 personality and the character of the Accused.

14  
15 The Prosecutor would agree the witnesses that we have presented confirmed this; Vincent Rutaganira  
16 was a man of good moral character prior to the events. In his community he was considered as an  
17 upstanding person who also worked in the general interests and put those before his private interests,  
18 even if he had to do so against the interests of friends, as one witness stated today.

19  
20 Furthermore, Vincent Rutaganira had no criminal record, and we have produced for your Chamber a  
21 certificate from the UNDF which indicates that this man also behaved well, had good conduct ever  
22 since he was brought to the detention facilities of the ICTR.

23  
24 Furthermore, as indicated by a witness this morning, Vincent Rutaganira never discriminated against  
25 the Tutsis, be it before or during the events. On the contrary, he had excellent relations with several  
26 of the families, which made him a lot of enemies, as the Tribunal could imagine, amongst certain  
27 extremist Hutus. The witnesses explained, and the Chamber knows, of course, what the exchange of  
28 cattle signifies between families, and it was a reciprocal exchange, not just one way, both ways, and  
29 that was not always the case in Rwanda.

30  
31 He is still a godfather to Tutsi children, and Tutsi families have him as their children's godfather.

32  
33 I should like to add, on that point, that during his trial the Accused did not hesitate to take from -- to  
34 hire from the very beginning, up to this day, a Tutsi investigator who worked on our team along with  
35 the Hutu investigator. Both of them, together, worked remarkably well, and I should like to  
36 congratulate them on this work.

1 I express my heartfelt thanks to them, and they are a large part of the solution that we were able to  
2 find.

3 Today Vincent Rutaganira is 60 years old, as stipulated in the agreement between the parties.  
4

5 The Trial Chamber of the ICTY, in the *Erdemovic* trial, considered that that factor, in addition to the  
6 outstanding character of the Accused and the absence of any legal problems in the past, could  
7 contribute to -- the absence of a criminal record could contribute to lowering a sentence. This is the  
8 Trial Chamber decision of 28 October 2003, paragraphs 75 and 76, ICTY, *Banovic*. The Trial  
9 Chamber of the ICTY, in the *Plavsic* trial, considered that the age of the accused had to be taken into  
10 account when determining sentence. And there are two reasons for that.

11  
12 First, physical breakdown, advanced age make it that serving a sentence is more difficult for an  
13 elderly Accused than for a young accused.  
14

15 Second, as affirmed in the New South Wales Court of Appeals in the Hollyoak case, there may remain  
16 little time to live for an elderly criminal, once he gets out of prison. Once again, the reference is  
17 *Plavsic*, decision of 27 February 2003, paragraph 105. Vincent Rutaganira is a sick man. We wanted  
18 to produce the medical certificate for you, and that will explain clearly the health situation. But what  
19 we can say here, without difficulty, -- we can say clearly that Mr. Rutaganira has diabetes, and today  
20 he is suffering from all the physiological consequences that that illness brings on, be it his stomach,  
21 and his teeth and his limbs. Vincent Rutaganira has many health problems, and I request the  
22 Chamber to please take those into account.  
23

24 In the documents that we have filed you will find an *Article* about diabetes, and it says that between  
25 the age of 40 and 50 the life expectancy of a diabetic can be reduced by ten years. In the *Milan Simic*  
26 case, a decision of 17 October, 2002, paragraph 98, the ICTY considered that the question of bad  
27 health of a guilty person should normally be taken into account when determining sentence. This is  
28 also repeated in the *Kordic* case. Let's move now to the personal and family situation of the Accused.  
29

30 How can we not have been touched, even moved by the testimony of Mrs. Rutaganira this morning?  
31 With discretion and factually may I say, rather, that his personal and family situation leaves hope, and  
32 there is hope that he will be able to re-find his family. Finally, the sincere and public regret expressed  
33 by the Accused, his contrition, in the *Milan Simic* trial, the decision of 17th October 2002, paragraph  
34 92, the Trial Chamber pointed out that remorse was considered as a mitigating circumstances in  
35 many cases before the Tribunal, but in order to accept that remorse as a mitigating circumstance the  
36 Trial Chamber must find that the remorse that has been expressed is sincere.

37 Now, your Chamber heard Vincent Rutaganira ask for forgiveness on the 8th of December 2004. He

1 was confirming that he had signed his guilty plea and the Chamber ruled that that guilty plea was  
2 sincere and unequivocal. So, in order to determine the sentence that you are going to set for  
3 Mr. Vincent Rutaganira, we request that you refer to several decisions by the ICTY made as regards  
4 guilty pleas. The second *Erdemovic* trial that we spoke about, judgement of 5 March 1998, took into  
5 account the state of necessity that we referred to earlier in that trial. The Accused was sentenced to  
6 five years' of imprisonment. I should point out that he himself had killed a hundred or so individuals.

7  
8 In the *Jokic* trial, ICTY, 18th March 2004, the Accused was sentenced to seven years of imprisonment  
9 for not using his command powers correctly. He was a high-ranking officer. The Chamber will not  
10 forget that Vincent Rutaganira, for his part, had a quite inferior post in the hierarchy of the Rwanda  
11 administration in 1994, and that he had no power, whatsoever, over the forces, the police or the  
12 gendarmerie.

13  
14 In the *Milan Simic* trial, 17 October, 2002, the Accused was sentenced to five years' of imprisonment,  
15 although he had participated personally in acts of torture at time when he had a high-ranking post  
16 within the *commune*. He was the chairman of the executive bureau of the municipal assembly. He  
17 chose his victims as a function of their ethnic origin and the crimes for which he pled guilty were both  
18 repeated and separate. In those three cases the Accused persons were being prosecuted for acts,  
19 while today Vincent Rutaganira is prosecuted for his omissions.

20  
21 And since we are on the topic of omissions, your Chamber will not forget what sentences are provided  
22 for in national legislations; the maximum sentences provided for in national legislation for failure to  
23 assist persons in danger; in Belgium, two years, and or a fine up to 500 francs; in Senegal, five years'  
24 imprisonment and/or a fine -- maximum fine of 1 million francs; in Italy, three months of imprisonment  
25 or a fine, maximum fine of 120,000 lira; in France, five years' imprisonment and maximum fine of  
26 75,000 Euros; and in Rwanda five years' imprisonment maximum and a maximum fine of 10,000  
27 Rwandan francs.

28  
29 For that reason, considering the agreement concluded with the Office of the Prosecutor, an  
30 agreement which does not in any way bind the Trial Chamber, we ask that you determine a sentence  
31 that has been decided within a common agreement between the Defence and the Office of the  
32 Prosecutor and we pray that you rule that there will be credit for time served, credit off of the  
33 sentence, you shall decide, and the rule that that sentence, pursuant to Rule 103 of the Rules of  
34 Procedure and Evidence, be served in one of the European countries that have agreed to accept  
35 guilty persons from ICTR, in particular, France or that, like in the kingdom of Swaziland.

36  
37 I believe it is time to conclude. It is also very difficult for an attorney, after working with an Accused for

1 three years, it is also difficult to remain silent. Counsel wonders, have I said everything? Have I done  
2 enough for my client? Have I done enough to shed light on these matters for the Trial Chamber?  
3 *(Pages 27 to 36 by R. Lear)*

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1 1615H

2 MR. ROUX:

3 I have two things left to say. First, I would like to defend that accord -- that agreement, rather, that  
4 was signed with the Office of the Prosecutor after many hours of negotiations and thinking. The  
5 agreement, as you can imagine, is made of subtle information that had to be balanced, and  
6 concessions, but after that agreement was drafted, we agreed on the facts that I read out this  
7 morning. We agreed on the qualification to give, and together we tried to come as close to reality as  
8 possible; that reality is the crime of complicity by way of omission.

9  
10 For this reason, I request that you validate that agreement, both on the basis of the factual elements  
11 therein and on the basis of the qualifications given to the crime. I ask that you remain within those  
12 time limits for the sentence that has been stipulated. We don't always entirely agree with the  
13 Prosecutor, who is asking for eight years' imprisonment. The Defence says that the sentence should  
14 not be more than six years. Two years is not nothing. It is significant. I ask you to respect that  
15 agreement and go with the six-year term of imprisonment, and I ask that you rule that  
16 Vincent Rutaganira be sentenced to no more than six years' imprisonment and that he should be  
17 given credit for time served off of those six years that you would rule on.

18  
19 The second point, and by way of conclusion, I would ask you to never forget, never lose sight of the  
20 man who is Vincent Rutaganira. You are professional Judges, you are magistrates. You are not only  
21 judging facts but you are judging a human being. On the 8th of December hearing when Vincent  
22 Rutaganira, after all of his thinking and all of the work that went into it, decided to plead guilty, I told  
23 you, "This man has stood up." May I tell you how moved I was when over the past days I've seen a  
24 man who not only stood up, but who also started walking again, in both the literal and figurative  
25 sense. For the two and a half years that I've known Vincent Rutaganira, he uses -- he's been using a  
26 crutch. I found him early in the week and, for the entire past week, that crutch is gone and, as I said,  
27 this is not only in the figurative sense. Today I saw that he picked up the crutch again, which  
28 indicates that the trail ahead, the path ahead, is indeed long. But that is not important. This is a man  
29 who has started walking again.

30  
31 Your Honours, with my own eyes, I have seen a family rebuild itself, and with that exemplary family, I  
32 dreamed of the symbolism of the Rwanda of tomorrow and the symbolism of that family.

33  
34 There's a new dimension to this trial, an unexpected dimension before an international criminal  
35 jurisdiction in which we speak of tragedy and horror. In fact, that dimension is love which has crept  
36 into this trial. The love that illuminated the faces of two human beings who found one another after  
37 seven years of separation and misunderstanding, one of them imprisoned in Arusha, the other

1 working for the new Rwandan administration. As you know, love is often found in places where we do  
2 not expect it. It is not up to us and yet it melts us sometimes beyond -- and it binds us, even, beyond  
3 any tragedy.

4  
5 Vincent Rutaganira was born 60 years ago, born of the love between his parents, a man and a  
6 woman. Vincent Rutaganira loved, and still loves, a woman. Her name is Immaculée. And she gave  
7 him nine children. Vincent Rutaganira loved his population. He worked for them. He served them.  
8 Vincent Rutaganira was carried away in 1994 by the horrible human tsunami of the genocide. Today,  
9 Vincent Rutaganira is born again, again for himself and for others. He has begun to walk on a new  
10 path. He found the strength that has enabled him to look at what happened straight on and to  
11 acknowledge his responsibilities and his faults, and to look at the innocent victims straight on whose  
12 memory will remain with him until the end of his days.

13  
14 I am certain that that path that he's taking will lead, one day, Vincent Rutaganira to return to Rwanda,  
15 something he could not have imagined two months ago. I am certain that one day that path will lead  
16 Vincent Rutaganira to go back to Mubuga church and that he, the believer that he is, will kneel down  
17 in that church to pray for the victims who perished there. As such, that man will have accomplished  
18 his destiny.

19  
20 Your Honours, Madam President, I now hand Vincent Rutaganira over to you. During your  
21 deliberations, always ask yourselves the question: What would I have done in his shoes? What could  
22 I have done in his shoes? Judge him fairly and with respect to the law and give him legal pardon,  
23 legal pardon which should take into account the greatest of mitigating circumstances, and just as we  
24 find in the *Erdemovic* trial, realise that Vincent Rutaganira was in an extreme situation.

25  
26 May I say that your decision will be an important piece for international justice and for the  
27 reconciliation of Rwanda.

28  
29 I'm most obliged. Thank you.

30 MADAM PRESIDENT:

31 We thank Mr. Roux for your brilliant submissions.

32  
33 We wish to know whether the Accused Vincent Rutaganira wishes to address the Court. Is that the  
34 case?

35  
36 Does the Prosecutor wish to speak to the Court at this point in time?



1 MR. ADEOGUN-PHILLIPS:

2 No, Your Honour. No.

3 MADAM PRESIDENT:

4 Very well. We shall therefore give the floor to the Accused Vincent Rutaganira. Can he kindly come  
5 to --

6 THE ACCUSED RUTAGANIRA:

7 Madam President, I wish to be allowed to add the following.

8 MADAM PRESIDENT:

9 You may be seated. You may be seated.

10 THE ACCUSED RUTAGANIRA:

11 Thank you.

12  
13 I'm still very profoundly wounded by what has happened, and I would like to request pardon from the  
14 victims and from the Tribunal.

15  
16 Once again, I wish to speak to you a little about what happened at the Mubuga church. The church  
17 was being guarded by gendarmes 24 hours out of 24 hours from the 10th April to the 18th April 1994,  
18 which was the last day of the massacre. These gendarmes were brought there  
19 by *Préfet* Clement Kayishema so that they could ensure the security of the refugees there and they  
20 had the right to -- he had the right to stop those criminals and to arrest them. They were -- the  
21 gendarmes were the first to kill the refugees instead of protecting them. Once again, this is the  
22 anguish that I feel because these gendarmes were never, ever prosecuted, and this shows that given  
23 that these persons were brought by -- to ensure security and they were not prosecuted, this is a great  
24 shame for the whole of the Rwandan nation.

25  
26 I thank you, Madam President and Your Honours.

27 MADAM PRESIDENT:

28 We thank you, Mr. Rutaganira. We wish to commend you for the courage that you have manifested  
29 by choosing to decide to surrender yourself to the Tribunal and also to plead guilty on a count within  
30 the framework of the agreement that you have reached with the Prosecutor. We have stated  
31 previously in other hearings that we are going to assess your guilty plea which we consider to be  
32 sincere and equivocal. We wish to reassure you because we do hope that your choice will be  
33 followed by others, will be taken as an example by others.

34  
35 We are not going to hastily render our decision and this is why we have decided to go into  
36 deliberations and to come to a decision regarding all the counts levelled against you, but we are  
37 indeed well aware that the Office of the Prosecutor is only maintaining one count.

1 We believe that we shall close the present hearing because we have no more to say and we shall go  
2 into deliberation in order to conclude by the end of February or the beginning of March. We shall  
3 obviously indicate to you the date on which the judgement will be rendered, and let me conclude by  
4 saying to Mr. Rutaganira that I hope, from henceforth, that he shall set aside his crutch completely.

5  
6 Thank you, and we shall now rise.

7 *(Court adjourned at 1629H)*

8 *(Pages 37 to 40 by Karen Holm)*

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## CERTIFICATE

We, Judith Baverstock, Judith Kapatamoyo, Diane Hermann, Rex Lear and Karen Holm, Official Court Reporters for the International Criminal Tribunal for Rwanda, do hereby certify that the foregoing proceedings in the above-entitled cause were taken at the time and place as stated; that it was taken in shorthand (*stenotype*) and thereafter transcribed by computer; that the foregoing pages contain a true and correct transcription of said proceedings to the best of our ability and understanding.

We further certify that we are not of counsel nor related to any of the parties to this cause and that we are in nowise interested in the result of said cause.

\_\_\_\_\_  
Judith Baverstock

\_\_\_\_\_  
Judith Kapatamoyo

\_\_\_\_\_  
Diane Hermann

\_\_\_\_\_  
Rex Lear

\_\_\_\_\_  
Karen Holm