

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO. : ICTR-95-1C-I
CHAMBER III

THE PROSECUTOR
OF THE TRIBUNAL
v.
VINCENT RUTAGANIRA

MONDAY, 14 MARCH 2005
1124H
JUDGEMENT

Before the Judges:

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

For the Registry:

Mr. Constant K. Hometowu
Mr. Issa Mjui

For the Prosecution:

Mr. Hassan Bubacar Jallow
Mr. Charles Adeogun-Phillips
Mr. Wallace Kapaya
Mr. Majola Bongani

For the Accused Vincent Rutaganira:

Mr. François Roux

Court Reporter:

Ms. Karen Holm

PROCEEDINGS

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MADAM PRESIDENT:

The session is called to order. Good morning, ladies and gentlemen.

Registry, could you kindly read the matter before the Court this morning?

MR. HOMETOWU:

Thank you, Madam President. Trial Chamber III of the International Criminal Tribunal for Rwanda, composed of Judge Andrésia Vaz, presiding, Judge Flavia Lattanzi and Judge Florence Rita Arrey, is now sitting in open session today, Monday, 14th March 2005, for the delivery of the judgement in the matter of the Prosecutor versus Vincent Rutaganira, case number ICTR-95-16-T. Thank you.

MADAM PRESIDENT:

Thank you, registry.

Today's hearing is devoted to delivery of the judgement in the Prosecutor versus Vincent Rutaganira. The Trial Chamber will now read the summary of the judgement, which shall be interpreted into English and into Kinyarwanda. After the hearing, the judgement shall be made available to the parties and the public.

We shall briefly set out the background to this case, the facts thereof, and the factors the Chamber took into consideration in determining sentence.

The Accused, Vincent Rutaganira, was born in 1944 in Mubuga, Gishyita *commune*, Kibuye *préfecture*, Rwanda. He is married and has ten children. He received training in motor mechanics for two years and training in traditional medicine, at the end of which he obtained the title of *guérisseur herboriste*, herbal healer.

Vincent Rutaganira was elected *conseiller* for Mubuga *secteur* in 1985 and acted as *conseiller* until July 1994; thus, the Accused held that post at the time of the events that underlie the crimes with which he is charged.

On the 22nd of November 1995, the Prosecutor submitted an indictment which was confirmed by Judge Navanethem Pillay on the 28th of November, 1995.

On the 12th of December, 1995, a warrant -- an arrest warrant and a transfer request was sent to the Minister of Justice of Zaire, where Vincent Rutaganira was presumed to be residing.

On the 6th of May 1996, the Chamber granted the Prosecutor's request for leave to amend the

1 indictment against Vincent Rutaganira, Clement Kayishema, Ignace Bagilishema, Charles Sikubwabo,
2 Aloys Ndimbati, Mika Muhimana, Ryandikayo, and Obed Ruzindana, among others.

3
4 The Prosecutor charged the Accused Vincent Rutaganira with seven counts: conspiracy to commit
5 genocide, Count 1; genocide, Count 14; crime against humanity (murder), Count 15; crime against
6 humanity (extermination), Count 16; crimes against humanity, other inhumane acts, Count 17; serious
7 violations of Article 3 common to the Geneva Conventions, Count 18; and serious violations of
8 Additional Protocol II of the Geneva Conventions, Count 19.

9
10 On the 18th of February 2002, a new warrant for the arrest of Vincent Rutaganira was sent to all
11 member states of the United Nations.

12
13 On the 14th of March 2002, the Accused turned himself in to the ICTR authorities and was on that
14 same day transferred to the Tribunal's detention facility. At his initial appearance on the 26th of March
15 2002 the Accused plead not guilty to all the seven counts.

16
17 At the status conference held on the 8th of December, 2004, the Prosecution and Accused
18 Vincent Rutaganira informed the Chamber that they had entered into a plea agreement on the 7th
19 December, 2004.

20
21 At a hearing held that same day, the Prosecution requested the Chamber to accept the guilty plea, find
22 the Accused guilty of Count 16, and also to dismiss Counts 1, 14, 15, 17, 18, and 19 for lack of
23 evidence and acquit the Accused of the said counts. The Accused, for his part, pleaded guilty to Count
24 16, extermination as a crime against humanity, pursuant to Article 3(b) of the Statute of the Tribunal.
25 He pleaded not guilty to the other counts.

26
27 The Trial Chamber found Vincent Rutaganira's guilty plea to be sincere and valid, and taking formal
28 note of the Prosecution request, directed the Registrar to set a date for hearing. The Chamber also
29 granted the Defence request to call three witnesses, three character witnesses, to testify on the
30 Accused's character.

31
32 At the hearing of the 17th January 2005, the Prosecutor, on the one hand, made an application to sever
33 the Accused from the other Accused charged in the indictment of 6th May 1999, and, on the other
34 hand, renewed his request that the Chamber dismiss and acquit the Accuseds of all charges against
35 him except Count 16.

36
37 The Defence requested the Chamber to rectify certain words in the plea agreement; that is, to maintain

1 the words "omissions," omissions, and delete the word "acts," acts. The Defence further requested the
2 Chamber to declare the said agreement confidential, except parts 5 and 6.

3
4 The Chamber ordered the severance of Vincent Rutaganira from the other Accuseds included in the
5 6th May 1996 indictment and ordered the registry to issue a new case number accordingly. After
6 granting the Defence request for rectification, the Chamber further ordered disclosure of the plea
7 agreement in closed session, except parts 5 and 6, for security reasons, pursuant to Rule 62 *bis* of the
8 rules. The Defence then read out parts 5 and 6 of the said agreement in open session.

9
10 The Chamber also granted Defence request to ask the doctor of the detention unit of the Tribunal to
11 issue a confidential medical certificate concerning Rutaganira.

12
13 The Chamber also admitted into evidence the written statements of three non-appearing witnesses.

14
15 The Prosecutor pleaded both aggravating and mitigating circumstances that the Chamber could
16 consider in determining the sentence to be imposed upon the Accused. The Defence, for its part
17 pleaded mitigating circumstances in favour of the Accused.

18
19 With regard to the factual findings, from 1985 to 1994, the Accused was *conseiller* for Mubuga *secteur*,
20 situated in Gishyita *commune*, Kibuye *préfecture*. In that capacity, he was responsible for economic,
21 social and cultural development. As an important figure of the community in this *secteur*,
22 Vincent Rutaganira was, by virtue of the duties conferred on him, a channel between the local
23 population and the local political structure.

24
25 The Accused knew that during the disturbances that occurred earlier in the *préfecture* of Kibuye, Tutsi
26 civilians used to seek refuge in churches and especially that between the 8th and the 15th of April
27 1994, thousands of Tutsi civilians took refuge in the Mubuga church. Moreover, he admitted that
28 between the 14th and about the 17th of April 1994, the Tutsis that congregated in the said church were
29 attacked and that the attacks resulted in thousands of deaths and numerous injuries to the men, women
30 and children within the church. Before the attacks, the Accused saw the attackers assembling. The
31 said attackers included armed Hutu civilians, members of the *communal* police and national
32 gendarmerie.

33
34 In spite of his position and knowledge of the above-mentioned facts, the Accused took no measures to
35 protect the Tutsi.

36
37 Vincent Rutaganira's criminal responsibility on Count 16, crime against humanity (extermination). In

1 holding that the Accused Vincent Rutaganira incurs criminal responsibility on Count 16, the Chamber,
2 after considering the objective indicia, facts admitted by the Accused and the absence of any
3 disagreement between the parties, made the following findings:

4
5 The attacks on Mubuga church between the 14th and 17th of April 1994 constitute a crime against
6 humanity (extermination).

7
8 The Chamber finds that the attacks on Mubuga church between the 14th and 17th April 1994 resulted
9 in the massacre of a predominantly Tutsi civilian population. The Chamber also finds that the attacks
10 were part of a widespread and systematic attack that occurred in Kibuye *préfecture* during the April
11 1994 events in Rwanda.

12
13 The massacres resulted in massive killings, thousands of deaths, and numerous injuries. The
14 massacres were directed against members of the Tutsi civilian population on ethnic grounds. The
15 massacre was part of a widespread and systematic attack that occurred in Kibuye *préfecture* during the
16 April 1994 events in Rwanda.

17
18 The Chamber notes that the ingredients of crime against humanity (extermination) are all present and,
19 accordingly, finds that the crime of extermination was perpetrated at Mubuga church between 14 and
20 17 April 1994.

21
22 The Accused Vincent Rutaganira's participation in crimes against humanity (extermination) and
23 complicity by omission, aiding and abetting. The Accused pleaded guilty to complicity in a crime
24 against humanity (extermination) for aiding and abetting its commission by omission.

25
26 The Chamber considers that participation in a crime against humanity (extermination) by aiding and
27 abetting as admitted by Accused Vincent Rutaganira is provided for in Article 6(1) of the Statute, hence
28 the Chamber considered the ingredients of aiding and abetting by omission, namely, the *actus reus* and
29 the *mens rea*.

30
31 With regard to *actus reus*, in considering participation by omission in a crime against humanity
32 (extermination) as admitted by the Accused, the Chamber asked itself the following questions:

33
34 Did the Accused have the power to act and chose not to exercise it?

35
36 Question 2: Did the Accused have authority over the principle actors to prevent them from committing
37 the crime and chose not to use it?

1 Question 3: Did the Accused have the legal duty to act and failed to so act?

2
3 The Chamber, pursuant to Section 37 of the law on *communal* organisation in Rwanda and considering
4 the Accused's status as *conseiller* for Mubuga *secteur*, finds that the Accused failed to use the powers
5 he had over the population of his *secteur* to protect even a section of the said population from attacks
6 against the Tutsi.

7
8 The Chamber also finds that during the events of 1994, Vincent Rutaganira still wielded moral authority
9 over the civilian population of his *secteur* and that he could have used such authority to prevent certain
10 members of the said population from participating in the massacre at Mubuga church.

11
12 The Chamber further finds that the Accused failed to render assistance to persons in danger pursuant
13 to Section 256 of the Rwandan penal code, and the Chamber concluded that under international law,
14 Vincent Rutaganira had a duty to act, as a state employee, to protect the population of his *secteur*.

15
16 The Chamber also took into account the fact that Vincent Rutaganira was just a few metres away from
17 the location where the attackers were gathered before and during the attacks. He was therefore able to
18 see the attackers, local authority representatives, and Hutu civilians, *communal* policemen, and units of
19 the national gendarmerie who were assembling not far from his house, and to know subsequently that
20 attacks were being carried out at the Mubuga church between the 14th and the 17th of April 1994.

21 Accordingly, the Chamber finds that Vincent Rutaganira participated by omission, as charged, as well
22 before the beginning of the massacres of the refugees at the Mubuga church and, indeed, during the
23 said massacre.

24
25 *Mens rea*. The Chamber had to consider whether the Accused Vincent Rutaganira knew, one, that the
26 crime against extermination was being committed as part of a systematic and widespread attack
27 against a civilian population on ethnic grounds; and, two, that his conduct contributed to the
28 commission of said crime.

29
30 The Chamber finds that these two requirements of *mens rea* are established in this case. Indeed, the
31 Chamber finds that as *conseiller* of Mubuga *secteur*, Vincent Rutaganira could not have been ignorant
32 of the serious events occurring in his *secteur* and of the large-scale crimes that were being committed
33 there. Thus, the Chamber finds that the Accused knew that his inaction contributed to the commission
34 of the crime.

35
36 The Chamber therefore finds that Vincent Rutaganira participated in a crime against humanity
37 (extermination) as an accomplice by omission for having aided and abetted the massacre of a civilian

1 population, a Tutsi population, at Mubuga church between the 14th and the 17th of April, 1994.

2
3 Findings of guilt against Vincent Rutaganira. In the light of the foregoing, the Chamber finds
4 Vincent Rutaganira guilty of crime against humanity (extermination) as charged under Count 16 of the
5 indictment for having aided and abetted the commission of the said crime by omission.

6
7 Regarding Counts 1, 14, 15, 17, 18, and 19, for which the Accused entered a plea of acquittal, recalling
8 that it is the duty of the Chamber to ensure fairness of proceedings and the respect of the rights of the
9 Accused, the Chamber finds that no evidence has been adduced in this case to establish
10 Vincent Rutaganira's guilt under Counts 1, 14, 15, 17, 18, and 19, to which he pleaded not guilty.
11 Accordingly, the Prosecutor did not bring in evidence to -- in support of these counts for which he
12 pleaded acquittal. The Chamber therefore acquits him of those ten counts.

13
14 Now, regarding the circumstances taken into account in sentencing, the Chamber has examined the
15 goals of sentencing in the light of its mandate and considers punishment, deterrence and rehabilitation
16 to be the most important in that regard.

17
18 In imposing sentence, the Chamber has taken into account the gravity of the crime and other factors.
19 Moreover, the Chamber finds that there are mitigating circumstances in favour of Vincent Rutaganira.

20
21 The Chamber is persuaded of the gravity of the crime in respect of which the Accused
22 Vincent Rutaganira was an accomplice by omission. It should be stressed, however, that
23 Vincent Rutaganira did not actively participate in the massacre at Mubuga church on 14th and 17th of
24 April 1994, but aided and abetted its commission by omission.

25
26 Among the factors considered by the Chamber in imposing sentence are the individual and family
27 circumstances of the Accused, his advanced age and his ill health, his personality and behaviour in
28 general, and, in particular, the fact that he has had no previous criminal record, and his good behaviour
29 whilst in custody. All these factors augur in favour of Vincent Rutaganira's chances of rehabilitation.

30
31 The Chamber finds in favour of Vincent Rutaganira the following mitigating circumstances: his
32 voluntary surrender, his plea of guilty, assistance to some victims in Mubuga *secteur* during the events
33 of April 1994, his expression of remorse, the absence of active participation in the killings, and, lastly,
34 restraint.

35
36 In determining the sentence to be imposed on Vincent Rutaganira, the Chamber has had recourse to
37 the general practice regarding prison sentences in the courts of Rwanda.

1 And here is the verdict of the Chamber: The Trial Chamber finds Vincent Rutaganira on Count 1,
2 conspiracy to commit genocide, punishable under Article 2(3)(b) of the Statute of the Tribunal, not
3 guilty; on Count 14, genocide, punishable under Article 2(3)(a) of the Statute of the Tribunal, not guilty;
4 Count 15, crime against humanity (murder) punishable under Article 3(a) of the Statute of the Tribunal,
5 not guilty; on Count 16, crime against humanity (extermination), punishable under Article 3(b) of the
6 Statute of the Tribunal, guilty; on Count 17, crime against humanity (other inhumane acts) punishable
7 under Article 3(1) of the Statute of the Tribunal, not guilty; on Count 18, violation of Article 3 common to
8 the Geneva Conventions, punishable under Article 4(a) of the Statute of the Tribunal, not guilty; on
9 Count 19, violation of Additional Protocol II to the Geneva Conventions punishment under Article 4(a) of
10 the Statute of the Tribunal, not guilty.

11
12 Vincent Rutaganira was arrested on the 4th of March, the year 2002, and transferred the same day to
13 the Tribunal's detention facility in Arusha. Credit for time served shall be deducted from his total
14 sentence.

15
16 We shall now deliver the sentence.

17
18 Mr. Vincent Rutaganira, will you please stand before the Chamber.

19
20 For the foregoing reasons, the Trial Chamber, in open court, after hearing the parties at first instance,
21 pursuant to the Statute and the Rules of Procedure and Evidence, having severed you from the other
22 Accused included in the 6 May 1996 indictment, having heard your plea of guilty, having considered all
23 of the evidence and the arguments of the parties, acquits you, Vincent Rutaganira, of Counts 1, 14, 15,
24 17, 18, and 19 as charged in the indictment of the 6th of May 1996; finds you guilty of crime against
25 humanity (extermination) for having, between 14th and 16th of April 1994 -- I'm going to Count 16 -- or
26 thereabouts, aided or abetted by omission the attacks at Mubuga church in the Gishyita *commune* that
27 resulted in thousands of deaths and numerous injuries to the Tutsi refugees within the church,
28 sentences you, Vincent Rutaganira, to six years' imprisonment; rules that the sentence shall be
29 enforced immediately.

30
31 The period that you spent in detentive custody will be deducted, of course from the sentence that has
32 just been pronounced. And pursuant to Rule 103 of the Rules of Procedure and Evidence, you shall
33 remain in the custody of the Tribunal until appropriate arrangements have been made for transfer to the
34 state where you will serve your sentence.

35
36 That is the sentence.

1 We are most grateful to you. We shall now rise.

2 *(Court adjourned at 1200H)*

3 *(Pages 1 to 8 by Karen Holm)*

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CERTIFICATE

I, Karen Holm, an Official Court Reporter 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 my ability and understanding.

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

Karen Holm