

ICTR-00-60-I  
(16-01-2006  
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UNITED NATIONS

International Criminal Tribunal for the  
Prosecution of Persons Responsible for Genocide  
and Other Serious Violations of International  
Humanitarian Law committed in the territory of  
Rwanda and Rwandan Citizens responsible for  
genocide and other such violations committed in  
the territory of neighbouring States, between 1  
January 1994 and 31 December 1994

Case n° ICTR-2000-60-I

Date: 16 JANUARY 2006

Original: ENGLISH

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**BEFORE TRIAL CHAMBER II**

Composed of: Judge Arlette Ramaroson, presiding  
Judge William Hussein Sekule  
Judge Solony Balungi Bossa

Registrar: Adama Dieng

Date filed: 16 January 2006

2006 JAN 16 P 3:21  
ICTR

**THE PROSECUTOR**

**Vs.**

**PAUL BISENGIMANA**

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**THE PROSECUTOR'S SENTENCING BRIEF**

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Office of the Prosecutor:

Charles Adeogun-Phillips, Senior Trial Attorney  
Memory Maposa, Assistant Trial Attorney  
Florida Kabasinga, Associate Legal Officer  
Olabisi Amire, Legal Intern

Counsel for Paul Bisengimana:

Catherine Mabile, Lead Counsel  
Nathalie Passeron, Legal Assistant

The Prosecutor submits the said brief pursuant to Rule 100 (A) of the Rules of Procedure and Evidence.

#### **PROCEDURAL HISTORY:**

Paul Bisengimana was arrested in Mali on 4 December 2001 and transferred to the Tribunal's detention facility on 11 March 2002 pursuant to a warrant of arrest issued by the Honorable Judge Pavel Dolenc in August 2000. On 18 March 2002, he made his initial appearance before the Trial Chamber of the Tribunal during which he pleaded not guilty to the 12 counts he stood charged with.

1. On 21 September 2005, the Prosecutor filed a request to amend indictment in the said case.
2. In that regard, the proposed amended indictment charges Paul Bisengimana with five counts, namely: genocide (count 1), complicity in genocide (Count 2), murder as a crime against humanity (count 3), extermination as a crime against humanity (count 4) and rape as a crime against humanity (count 5).
3. On 5 October 2005, Paul Bisengimana replied that he did not object to the amendments proposed by the Prosecutor.
4. On 20 October 2005, the parties in the said case filed before the Trial Chamber, a joint application for the consideration of a plea agreement pursuant to Rules 62 and 62 *bis* of the Rules of Procedure and Evidence.
5. On 27 October 2005, the Trial Chamber granted the Prosecutor leave to amend the indictment as proposed his motion of 21 September 2005. On 31 October 2005, the Prosecutor filed before the Trial Chamber, the said amended indictment.
6. On 17 November 2005, the accused made a further appearance before the Trial Chamber and pleaded guilty to counts III and IV of the amended indictment on the basis of his individual responsibility pursuant to Article 6(1) of the Statute of the Tribunal.
7. Further, the Accused pleaded not guilty to Counts I, II and V of the indictment on the basis of his responsibility pursuant to Articles 6(1) and 6(3) of the Statute of the Tribunal. He also pleaded not guilty to Counts III and IV on the basis of his individual responsibility pursuant to Article 6(3) of the Statute of the Tribunal.
8. The Trial Chamber rejected the said plea agreement on the basis that the factual allegations therein were inconsistent with those outlined in the indictment in support of the relevant charges on which the said plea was based. In that regard, the Trial Chamber found that such discrepancies had an impact on the unequivocal nature of the plea the accused had entered.
9. To that end, the Trial Chamber invited the parties to amend the indictment to conform to the relevant sections of the indictment following which the Prosecutor, on 23

November 2005, filed before the Trial Chamber, a further amended indictment to conform to the said order.

10. On 30 November 2005 the parties re-presented the plea agreement for re-consideration by the Trial Chamber.

12. On 7 December 2005, Mr. Paul Bisengimana pleaded guilty to having aided and abetted extermination and murder as crimes against humanity pursuant to Articles 3 (a) and 3 (b) of the Statute of the Tribunal, as set out in Counts 3 and 4 of the indictment. Following an application from the Prosecutor, the remaining counts in the said indictment were dismissed.

13. A sentencing hearing was scheduled in the said case for 19 January 2006.

**APPLICABLE LAW:**

14. Article 23 of the Statute provides:

*1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chamber shall have recourse to the general practice regarding prison sentences in the courts of Rwanda.*

*2. In imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.*

*3. In addition to imprisonment, the Trial Chamber may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.*

15. Rule 100 of the Rules of Procedure and Evidence provides:

*“(A) If the Trial Chamber convicts the accused on a guilty plea, the Prosecutor and the Defence may submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence.*

*(B) The sentence shall be pronounced in a judgement in public and in the presence of the convicted person, subject to Sub-Rule 102 (B).*

16. Article 101 states:

*(A) A person convicted by the Tribunal may be sentenced to imprisonment for a fixed term or the remainder of his life.*

*(B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 23 (2) of the Statute, as well as factors such as:*

- (i) Any aggravating circumstance;*
- (ii) Any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;*
- (iii) The general practice regarding prison sentences in the courts of Rwanda;*
- (iv) The extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9 (3) of the Statute.”*

*(C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.*

*(D) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending his surrender to the Tribunal or pending trial or appeal."*

## **SUBMISSIONS**

17. It is submitted that in determining sentence, the Trial Chamber should consider that the International Criminal Tribunal for Rwanda was established with the singular objective of prosecuting and punishing the perpetrators of the atrocities in Rwanda, with a view to putting an end to impunity and thereby promote national reconstruction, restoration of peace and reconciliation.

18. It is further submitted that the jurisprudence of the Tribunal with regards penalties has addressed the principal aims of sentencing, namely, justice, retribution, deterrence and rehabilitation. The Prosecutor requests that the Trial Chamber be guided by these aims in assessing sentence in the instant case.

19. In addition, the Trial Chamber is requested to take into account the factors mentioned in Article 23 of the Statute of the Tribunal and Rule 101 (B) of the Rules of Procedure and Evidence, which are set out herein.

20. Under the provisions of Rule 101 of the Rules of Procedure and Evidence the maximum sentence under the Statute is life imprisonment. However, it is submitted that the said provisions do not set a minimum or any specified term of imprisonment for any of the offences in the Statute of the Tribunal.

21. The Prosecutor submits that the factors outlined herein can not be interpreted as necessarily mandatory, exhaustive or binding on the Trial Chamber in the determination of sentence. In that regard, the Prosecutor recognizes that the Trial Chamber has unfettered discretion to evaluate the facts and attendant circumstances and take on board any factor it may deem pertinent.

22. The Prosecutor would represent to the Trial Chamber that it is the international norm that the maximum sentence should often be reserved for the most serious examples of offence in question.

23. In that regard, the Prosecutor submits that in considering whether a particular offence is one of the worst examples of its kind, the Trial Chamber should have regard to the

range of cases which is actually encountered in practice and ask itself whether the particular case it's dealing with comes within the broad band of that type. In general, the Prosecutor would represent to the Trial Chamber that the maximum sentence should not be imposed where the accused has pleaded guilty.

24. In this connection, the Prosecutor would represent to the Trial Chamber that the contents of the plea agreement filed by the parties on 30 November 2005 is particularly instructive on the range of sentence to be imposed in this instant case. The Prosecutor further submits that the Trial Chamber may also examine and apply, if it deems appropriate, the available international jurisprudence in this area.

### **Objectives of criminal law in sentencing**

25. The Prosecutor submits further that in determining the sentence of the accused the Trial Chamber should be guided by the objectives of criminal law, which include:

- (i) The confirmation of the rule of law, which is a condition of a peaceful society, through a just sentence, which reflects the standard of proportionality between the gravity of the offence, the degree of responsibility of the offender, deterrence of the accused and future perpetrators, retribution and the need to encourage others to come to terms with their respective roles in the 1994 genocide and accept responsibility for their actions.

26. The ICTR cases Prosecutor vs. Kambanda, Prosecutor vs. Akayesu, Prosecutor v Kayishema and Ruzindana; Prosecutor v Omar Serushago, Prosecutor v Anderson Rutaganda and Prosecutor v Jean de Dieu Kamuhanda, refer to these principles almost in the same words.

### **Individual Circumstances of Paul Bisengimana**

27. Paul Bisengimana was born in Rugarama in Duha secteur, Gikoro commune, Kigali-Rural prefecture in 1948. He was educated at the Gikore primary school, the Rwamagana secondary school, and the Byumba Teacher Training College from where he graduated in 1970 with a teacher's training certificate.

28. He held several teaching appointments in Nyanza prior to being appointed as a Judge and President of the canton court in 1978. He was appointed bourgmestre of Gikoro commune by the President of Rwanda on 27 May 1981. He remained in that position until 19 April 1994. He is married with ten children.

### **The Gravity of the Offence.**

29. The Prosecutor submits that when determining the sentence of the accused, the Trial Chamber should take into account the gravity of the offences pursuant to the provisions of Article 23 (2) of the Statute of the Tribunal.

30. As outlined at chapter II of the plea agreement, the accused understands that he is pleading guilty to aiding and abetting murder and extermination as crimes against humanity - as set forth in Counts 3 and 4 of the indictment and that the said crimes constitute gross violations of international humanitarian law.

31. The Prosecutor submits that the crimes for which the accused has been charged and for which, he has pleaded guilty are inherently crimes of extreme gravity, the scale of which, shock the collective conscience.<sup>1</sup>

32. In that regard, the Prosecutor further submits that the mass killings and other crimes alleged in the present indictment occurred as part of a wider plan to exterminate Tutsi civilians throughout Rwanda between April and June 1994. To that end, the factual allegations against the accused in this case cannot be considered in isolation, but rather, in the context of the overall events that occurred in Rwanda between April and June 1994 and more specifically in Kigali-Rural prefecture within the same period.

### **The Aggravating and Mitigating Factors**

33. The Prosecutor submits that when determining the sentence of a convicted person the Trial Chamber should take into account the individual circumstances of the convicted person. In so doing, it is submitted that the Trial Chamber should examine the individual role of the convicted person in the crimes and assess the surrounding circumstances. (Article 23 of the Statute of the Tribunal) This should include an analysis of mitigating and aggravating circumstances.

34. The Prosecutor further submits that in examining the various circumstances presented in this brief, the Trial Chamber shall bear in mind that while aggravating circumstances should be proven beyond all reasonable doubt, the standard to be met for mitigating circumstances is on the balance of probabilities, and that mitigating circumstances may also include those not directly related to the offence.<sup>2</sup>

### **Aggravating Factors**

35. It is submitted that the gravity and heinous nature of murder and extermination as crimes against humanity and their absolute prohibition makes their commission inherently aggravating. The magnitude of such crimes involving the killing of several thousands of civilians in Rwanda over 100 days constitutes an aggravating fact.

36. The Prosecutor submits that Paul Bisengimana, as bourgmestre of Gikoro

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<sup>1</sup> See *Kambanda Judgement* of 4 September 1998 @ paragraph 15, 42, 43 ,pages 8, 21; See also *Erdemovic Judgement* of 1 November 1996.

<sup>2</sup> See *Jokic Judgement* of 18 March 2003, para. 100; See also *Babic Judgement* of 29 June 2004, paragraph 48; See *Nikolic Judgement* of 18 December 2003 at para 145; See also *Deronjic Judgement*, of 30 March 2004, at para 155.

commune, in Kigali-Rural prefecture between May 1981 and 19 April 1994 was a prominent member of the civilian community in the said commune and represented executive power at communal level.

37. In that regard, it is submitted that the accused had administrative authority over the entire *commune* and, was responsible for ensuring peace, public order, safety of people and property, and implementing government policy. He was also responsible for informing the central government of any situation worthy of interest in Gikoro *commune*.

38. It is submitted that by virtue of this position as *bourgmestre*, the accused was closet to the civilian population at communal level and thus in-effect, the bridge between the citizenry of Gikoro commune and the central political structure, within the limits of his duties as set out in the relevant legislation governing his functions as *bourgmestre*.

39. It is further submitted that as *bourgmestre* of Gikoro commune, the accused had hierarchical authority and exercised both *de jure* and *de facto* authority over all civil servants and other holders of public office within Gikoro *commune* including but not limited to the *conseillers de secteurs*.

40. In that regard, the Prosecutor would represent to the Trial Chamber that the accused was entrusted with the duty and authority to protect, prevent or punish the illegal acts of the perpetrators of the said attack, but failed to do so thereby abusing the trust that was placed in him.<sup>3</sup>

41. To that end, it could be argued that his proximity to the local population placed him under a duty to espouse the principles laid down in the constitution of Rwanda, and uphold a higher than average degree of morality.

42. Paul Bisengimana is well-educated, and in that regard, it is submitted that he was in a position to know and to appreciate the dignity and value of human life. To that end, it is submitted that Paul Bisengimana committed the said crimes knowingly and with premeditation.

43. It is submitted that Paul Bisengimana was enlightened enough to have been aware of the need, value and importance of a peaceful co-existence between communities and was therefore in a position to promote the value of tolerance.

44. The Prosecutor further submits that the involvement of the peasant population in the massacres of Tutsi civilians in Gikoro commune was facilitated by their misplaced belief and confidence in their leadership, and an understanding that the encouragement of the said authorities guaranteed them immunity to kill the Tutsi and loot their property.<sup>4</sup>

45. In that regard, the Prosecutor submits that the superior position of the accused is indeed an aggravating factor. To that end, although the accused was not in the very first rank of leadership at prefectural level, he held such a position at communal level.

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<sup>3</sup> See Kambanda Judgement of 4 September 1998 at page 21

<sup>4</sup> See Plavsic Judgement of 27 February 2003 at paragraph 54 page 18 citing the Krstic Judgement of 2 August 2001. See also Kambanda Judgement of 4 September 1998 paragraph 61-62.

46. It is further submitted that as bourgmestre of Gikoro commune since 1985, Paul Bisengimana was aware that in times of previous civil unrest in Kigali-Rural prefecture, Tutsi civilians had been forced to leave their homes and gather at perceived locations of traditional safety such as community-centres, churches, stadiums and government offices.

47. In that regard, Paul Bisengimana was aware that thousands of Tutsi civilians including men, women and children sought refuge from attacks directed at members of the Tutsi ethnic group, at the Musha church, in Rutoma *secteur*, and at the Ruhanga Protestant Church and School in Gicaca *secteur*, Gikoro *commune*, Kigali-Rural *préfecture*, between 8 and 15 April 1994.

48. Despite his position as bourgmestre of Gikoro commune, it is submitted that Paul Bisengimana took no active steps to protect hundreds of vulnerable Tutsi refugees who sought refuge at both the Musha Church Rutoma *secteur* and at the Ruhanga Protestant Church and School in Gicaca *secteur*, Gikoro *commune*, Kigali-Rural *préfecture*, between 8 and 15 April 1994.

49. Instead, it is submitted that Paul Bisengimana stood aside and watched as hundreds of his fellow country men, women and children were slaughtered at the Musha Parish church Rutoma *secteur* and at the Ruhanga Protestant Church and School in Gicaca *secteur*, Gikoro *commune* Kigali-Rural *préfecture* between 10 and 15 April 1994.

50. Paul Bisengimana's actions and omissions resulted directly in the massacre of many civilian Tutsi men, women and children including a Tutsi man called Rusanganwa, who had sought refuge at Musha Church.

51. The Prosecutor would represent to the Trial Chamber that these are particularly aggravating factors and invites the Trial Chamber to treat them as such.

### **Mitigating Factors**

52. Despite the matters raised in aggravation as outlined above, the Prosecutor also finds that there are compelling mitigating circumstances in the instant case. In that regard, the Prosecutor would represent to the Trial Chamber that a finding of mitigating circumstances in a case relates to the assessment of sentence and in no way derogates from the gravity of the crime. In other words, it mitigates punishment, not the crime.<sup>5</sup>

53. The Prosecutor submits that a guilty plea is generally considered, in most national jurisdictions, including Rwanda as a mitigating factor.<sup>6</sup> To that end, the Prosecutor believes that the plea of guilty of Paul Bisengimana will assist in the administration of justice as well as in the process of national reconciliation in Rwanda. The Prosecutor further believes that Paul Bisengimana's guilty plea will save the victims who survived the said attack from the ordeal of

<sup>5</sup> See Kambanda Judgement of 4 September 1998 at paragraph 56-57 page 24 citing Erdemovic Judgement of 5 March 1998.

<sup>6</sup> See Kambanda Judgement of 4 September 1998 at paragraph 61(A) iii

giving testimony before the Tribunal.<sup>7</sup>

54. It is submitted that Paul Bisengimana has shown some degree of remorse for the crimes he is charged with.<sup>8</sup> This is spelt out without reservation at paragraphs 5-13 of Part I of the plea agreement filed on 30 November 2005. Paul Bisengimana outlined therein that he is pleading guilty because he is in fact guilty and acknowledges full responsibility for his actions or omissions, convinced that it is only the full truth that can restore national unity and foster reconciliation in Rwanda.

55. He stated that by pleading guilty he is indicating his deep and genuine desire to tell the whole truth and thus genuinely contribute to the search for the truth. He further, expressed his profound and heartfelt apologies to all those who, directly or indirectly, fell victim to the said offences.

56. As far as the Prosecutor is aware, Paul Bisengimana was a person of previous good character having had no known history of extremism prior to the events of 1994.<sup>9</sup>

57. The guilty plea entered by Paul Bisengimana was timely. In that regard, Paul Bisengimana did not delay his guilty plea until the last minute so as to secure a tactical advantage.<sup>10</sup> By his timely plea, he has in effect saved the Tribunal considerable expense and time that is often involved in investigating and prosecuting such cases. The Prosecutor believes that in the light of the completion strategy of the Tribunal, Paul Bisengimana deserves credit for this.<sup>11</sup>

58. Finally, the Prosecutor would represent to the Trial Chamber that by pleading guilty, Paul Bisengimana should be seen as setting an example that may encourage others like him, to acknowledge their personal involvement in the massacres experienced in Rwanda in 1994.<sup>12</sup>

59. The Prosecutor would represent to the Trial Chamber that these are mitigating factors in favour of the accused and invites the Trial Chamber to treat them as such.

## CONCLUSION

60. The Prosecutor would represent to the Trial Chamber that considering the general sentencing principles in criminal law, namely; justice, retribution, deterrence, rehabilitation, and the factors outlined herein, such as gravity of offence, individual circumstances of the accused, circumstances in aggravation, the presence of mitigating circumstances, the general practice

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<sup>7</sup> See *Todorovic* Judgement of 31 July 2001 at para 80.

<sup>8</sup> See *Milan Simic* Judgement of 17 October 2002 at para. 92

<sup>9</sup> See *Banovic* Judgement of 28 October 2003 at paragraphs. 75 and 76; See also *Plavsic* Judgement of, 27 February 2003 at para. 105

<sup>10</sup> See *R v Sandercock* (1985); 22 C.C.C (3d) 79 at p.86 C.R (3d) 154 (1986) I.W.W.R 291 (Ala CA)

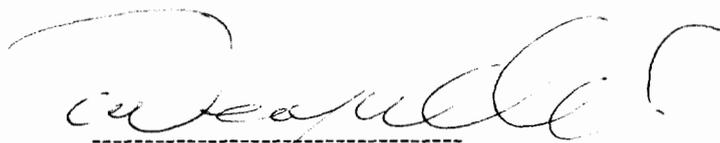
<sup>11</sup> See *Kambanda* Judgement of 4 September 1998 at paragraph 54, page 24

<sup>12</sup> See *Kambanda* Judgement of 4 September 1998 at paragraph 53, page 23; See also *Erdemovic* Judgement of 5 March 1998 @ page 16.

regarding prison sentences obtaining in the courts of Rwanda and the relevant international jurisprudence, the Prosecutor, hereby recommends that the accused receive a term of imprisonment of not less than 14 years with credit given for the period already served on remand pursuant to the provisions of Rule 101(D) of the Rules of Procedure and Evidence. Further in accordance with paragraph 49 of the plea agreement filed on 30 November 2005, the Prosecutor would support any application by the accused to serve his sentence in a prison facility in Europe.

This 16<sup>th</sup> day of January 2006.

For the Prosecutor

A handwritten signature in black ink, appearing to read 'Charles Adeogun-Phillips', written over a horizontal dashed line.

Charles Adeogun-Phillips  
Senior Trial Attorney



## TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

**COURT MANAGEMENT SECTION**  
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### I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

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<b>Case Name:</b>	The Prosecutor vs. <b>Paul BISENGIMANA</b>			<b>Case Number:</b> ICTR-00-60-I
<b>Dates:</b>	Transmitted: <b>16/01/2006</b>		Document's date: <b>16/01/2006</b>	
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<input type="checkbox"/> Strictly Confidential / Under Seal		<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence
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<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: