

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO.: ICTR-00-60-T
CHAMBER II

THE PROSECUTOR
OF THE TRIBUNAL
v.
PAUL BISENGIMANA

THURSDAY, 13 APRIL 2006
1435 H
JUDGEMENT

Before the Judges:

Arlette Ramaroson, Presiding
William H. Sekule
Solomy Bossa

For the Registry:

Mr. John Kiyeyeu
Mr. Emmanuel Mwanja

For the Prosecution:

Mr. Charles Adeogun-Phillips
Ms. Florida Kabasinga
Ms. Céline Fomété
Mr. Christopher Luwanga

For the Accused Paul Bisengimana:

Ms. Chaterine Mabilie

Court Reporter:

Ms. Eleanor Bastian

1 MADAM PRESIDENT:

2 The Court is in session.

3

4 Mr. Kiyeyeu, of the Registry, could you please read what appears on the cause list?

5 MR. KIYEYEU:

6 Thank you, Madam President.

7

8 Trial Chamber II of the International Criminal Tribunal for Rwanda, composed of Judge Arlette
9 Ramaroson, presiding, Judge William H. Sekule and Judge Solomy Bossa is now sitting in open
10 session, today, Thursday 13th of April 2006 for the delivery of the sentence in the matter of the
11 Prosecutor versus Paul Bisengimana Case No. ICTR-00-60-S

12 MADAM PRESIDENT:

13 Thank you, Mr. Kiyeyeu.

14

15 Could the parties please enter an appearance, starting, please, with the Prosecutor?

16 MR. ADEOGUN-PHILLIPS:

17 Good afternoon, Madam President, Your Honours.

18

19 Florida Ndabasinga, Céline Fomété, Mr. Chris Luwaga and Mr. Charles Adeogun-Phillips, representing
20 the Prosecution.

21 MADAM PRESIDENT:

22 Thank you.

23

24 Defence, please.

25 MS. MABILLE:

26 Madam President, Catherine Mabilie, of the Paris Bar. I'm Defence Counsel for Paul Bisengimana.

27 MADAM PRESIDENT:

28 Today's hearing deals with the judgment and the sentencing in the case of the Prosecutor versus Paul
29 Bisengimana.

30

31

32 The Trial Chamber will now read a summary of the judgment which will be simultaneously translated
33 into English and Kinyarwanda. Unlike the full version of the judgment this summary is not the official
34 version thereof. The English version of the judgment will be handed over to the parties and the public
35 at the end of this hearing. The Trial Chamber will briefly address the facts, the procedure and the
36 factors considered in sentencing.

37

1 The Accused, Paul Bisengimana, was born in 1948 in Gikoro *commune*. He is married and the father
2 of 10 children. He has been a teacher, headmaster, vice-president of a cantonal court in Nyamata,
3 before being appointed *bourgmestre* in Gikoro from 1981 until 1994 when he left or he went into exile.

4
5 Paul Bisengimana was arrested on the 4th of December 2001 in Mali and transferred on the 11th of
6 March 2002 to the UN detention facility in Arusha. At his initial appearance on the 18th of March 2002,
7 the Accused pleaded not guilty to all 12 counts against him. On 19 October 2005, the parties filed a
8 joint motion for a guilty plea and an agreement between the Office of the Prosecutor and the Defence.

9
10 During his further appearance on 17th November 2005, the Accused pleaded guilty to the counts of
11 murder and extermination as crimes against humanity. Having noted certain discrepancies between
12 the plea agreement and the indictment, the Chamber rejected the joint motion for a guilty plea, because
13 in his opinion the plea was not unequivocal. The Chamber noted on behalf of the Accused that he had
14 pleaded not guilty to all 10 counts.

15
16 On 7 December, 2005 the Accused pleaded guilty to aiding and abetting between the 13th and 15th of
17 April 1994, murder, and extermination as crimes against humanity during two attacks against Tutsi
18 civilians. The attacks occurred, one at Musha Church, and the other at the Ruhanga complex located at
19 Gikoro *commune* where the Accused was *bourgmestre*. More than 1,000 people died as a result of
20 these attacks. During the same hearing the Chamber accepted the joint motion for a guilty plea
21 agreed upon between the Office of the Prosecutor and the Accused, together with a guilty plea of the
22 Accused.

23
24 The 1st of December 2005 indictment on the basis of which the guilty plea of the Accused was
25 accepted, charges him with five counts; genocide, complicity in genocide, murder, extermination and
26 rape as crimes against humanity. And during that hearing, the Trial Chamber granted the Prosecution
27 motion for withdrawal and dismissal of the remaining counts. The Trial Chamber denied the Prosecution
28 request for acquittal on these counts because the Prosecution had failed to justify its motion.

29
30 A pre-sentencing hearing was held on the 19th of January 2006 where three character witnesses were
31 heard. The Accused, Paul Bisengimana and Dr. Épée were also heard concerning a medical report on
32 Paul Bisengimana's health. In its pre-sentencing brief, the Prosecution pleaded aggravating and
33 mitigating circumstances that the Chamber might take into account when considering the sentence to
34 be imposed on the Accused. The Defence pleaded mitigating circumstances, and in the plea
35 agreement the parties agreed on a sentencing range from 12 to 14 years imprisonment.

36
37 The facts of the case are based on the plea agreement and the indictment as amended, both dated

1 1st of December 2005. In the plea agreement, the Accused admits that from the 7th of April 1994, the
2 massacre of the Tutsi population and the murder of numerous political opponents were perpetrated
3 throughout Rwandan including Gikoro *commune*.

4
5 These crimes were carried out by militia military personnel and gendarmes. The Accused
6 acknowledges that between 8 and 13 April 1994, more than 1,000 Tutsis fled from massacres and took
7 refuge at Musha church, a location they thought to be safe. The Accused knew, that on or about
8 13 April 1994, Rwandan Army soldiers distributed weapons to *Interahamwe* militia men and to other
9 civilians and that those weapons were going to be used to attack Tutsi refugees at Musha church.

10
11 The Accused admits that on or about the 13th of April 1994, he was present when an attack was
12 launched against Tutsi civilian refugees at Musha church by Rwandan Army soldiers, *Interahamwe*, and
13 civilians, and *communal* policemen, using guns, grenades, machetes and other traditional weapons.
14 And militia men also set fire to the church.

15
16 The Accused was also present when a Tutsi named Rusangwana, was murdered at the Musha church
17 during the attack. According to the Accused his presence during the attack would have encouraged the
18 attackers, and given them the impression that he endorsed the killings. More than 1,000 Tutsi died
19 during this attack. The Accused also admits that between the 8th and the 10th of April 1994, other
20 civilian Tutsis took refuge at the Ruhanga complex which comprised a school and temple in the Gikoro
21 *commune*.

22
23 He knew that after the attack on Musha church a brigadier, some presidential guards, militia men, and
24 communal policemen had launched an attack on the Ruhanga complex using guns, grenades,
25 machetes and other traditional weapons. This attack resulted in many Tutsi civilian casualties. The
26 Accused admits that despite the fact that he was *bourgmestre*, he did not take any measures to protect
27 these refugees whereas he knew that refugees at Musha church had already been attacked.

28
29 The Trial Chamber will now summarise its reasoning based on its legal findings on murder and
30 extermination as crimes against humanity. On extermination, the Trial Chamber finds the Accused
31 individually and criminally responsible for aiding and abetting extermination as a crime against
32 humanity, count four of the indictment, on the basis of the following conclusions: First, the Chamber is
33 convinced that the attacks on Musha church and the Ruhanga complex in Gikoro *commune* in April
34 1994, were widespread and perpetrated against a civilian population on ethnic grounds. The attacks
35 resulted in the death of more than 1,000 victims, most of whom were Tutsi civilians.

36
37 The Chamber is also satisfied that Paul Bisengimana knew the general context of the widespread

1 attacks occurring throughout Rwanda in April of 1994, and knew that his own acts formed part of these
2 attacks. The Chamber further recalls that Paul Bisengimana was present during the attack on
3 Musha church and that he knew that his presence would encourage the attackers to commit such
4 crimes.

5
6 The Chamber is of the opinion that the Accused knew of the *mens rea* on the attackers on
7 Musha church and knew that weapons had been distributed to them to attack the refugees. Having
8 noted that the elements of the crime of extermination as a crime against humanity are met, the
9 Chamber is of the opinion that it is also established that the presence of Paul Bisengimana at Musha
10 church aided and abetted the extermination of Tutsi civilians on or about 13 April 1994.

11
12 As to the attack on the Ruhanga complex that occurred after the attack on Musha church, the Chamber
13 is of the opinion that this attack, which was committed against Tutsi civilians on ethnic grounds, can
14 also be characterised as extermination, considering that it resulted in a large number of casualties. The
15 Chamber is of the opinion that even if the Accused says that he was not present during this attack, he
16 had reason to know that the attack would take place, and that despite his position as *bourgmestre* of
17 Gikoro *commune*, he did not take any measures to protect these Tutsis although it was his duty to do
18 so.

19
20 The Chamber is of the opinion that his omission to act under such circumstances amounts to gross
21 negligence. The Chamber considers that the Accused knew of the *mens rea* of the perpetrators and
22 that his omission to act would allow the massacres to take place. Having found that the elements of
23 extermination as a crime against humanity are met, the Chamber also notes that the Accused's
24 omission to act to prevent the massacres at the Ruhanga complex aided and abetted the extermination
25 of the Tutsi who had sought refuge there.

26
27 Furthermore, the Chamber considers that Paul Bisengimana had the means to challenge the
28 massacres but remained indifferent, whereas he had a duty to act but took no measures to stop the
29 massacres and protect the Tutsi refugees.

30
31 The Trial Chamber finds that the Accused is individually and criminally responsible, pursuant to Article
32 6(1) of the Statute for aiding and abetting the extermination in April of 1994 of members of the Tutsi
33 population at Musha church and in Ruhanga complex located in the Gikoro *commune*. The Chamber
34 finds Paul Bisengimana guilty of extermination as a crime against humanity pursuant to Article 3 of the
35 Statute and convicts him accordingly.

36
37 On murder, the Chamber finds Paul Bisengimana individually and criminally responsible for aiding and

1 abetting murder as a crime against humanity. Count three: On the basis of the following conclusions,
2 the Chamber recalls that a certain Tutsi man named Rusangwana was murdered with premeditation
3 during the Musha church massacre in the Accused's presence.
4

5 The Chamber only needs to consider if the Accused has the requisite intent to aid and abet the crime
6 as it is not alleged that he personally committed the crime. The Chamber notes that, even if the crime
7 of murder as a crime against humanity could suggest that other murders were committed by the
8 Accused, the plea agreement refers only to the murder of Rusangwana. Accordingly, the Chamber
9 examined only the facts in support of the specific murder alleged.
10

11 The Chamber recalls that the attack on Musha church was widespread and directed against a civilian
12 population on ethnic grounds. The Chamber is satisfied that Paul Bisengimana knew that the murder of
13 Rusangwana was part of this attack, and that he knew the *mens rea* of the perpetrators of this crime.
14 Moreover, the Accused knew that his presence would encourage the attackers to commit such crimes
15 and give them the impression that he endorsed their commission.
16

17 The Chamber recalls that Paul Bisengimana had the means to challenge the massacres, but that he
18 remained indifferent whereas he had a duty to act, but took no measures to stop the massacres and
19 protect the Tutsis. The Chamber is satisfied that Paul Bisengimana is individually and criminally
20 responsible, pursuant to Article 6.1 of the Statute for aiding and abetting the murder of a Tutsi civilian
21 named Rusangwa at Musha church in Gikoro *commune* in April 1994. Accordingly, the Trial Chamber
22 finds Paul Bisengimana guilty of the crime of murder as a crime against humanity.
23

24 However, due to the ideal (*inaudible*) of crimes between the crime of extermination and that of murder
25 committed at Musha church, the Trial Chamber will not convict or sentence Paul Bisengimana for the
26 crime of murder for the following reasons: In the instant case, Bill Rusangwana's murder and the
27 extermination at Musha church were planned and prepared. The Chamber is of the opinion that the
28 murder of Rusangwana is included in the crime of extermination, committed at Musha church because
29 Rusangwana was one of the civilian victims killed during this widespread attack on ethnic grounds.
30

31 Paul Bisengimana had the *mens rea* of aiding and abetting the crimes of murder and extermination as
32 crimes against humanity, and he also knew of the *mens rea* of the principal perpetrators of the crimes
33 of extermination and murder committed at Musha church. Accordingly, the Chamber is of the opinion
34 that the same set of facts proves the crimes of extermination and murder as crimes against humanity.
35

36 The Chamber considers that Paul Bisengimana should only be convicted of extermination, this crime
37 being more specific than the crime of murder, in the sense that it was massacre committed on a large

1 scale. The Chamber, therefore, finds that it is in the interest of justice and fairness of the proceedings
2 to enter a conviction with respect only to the count of extermination as a crime against humanity.

3
4 On sentencing, the Chamber recalls, that the Tribunal was established to contribute to the process of
5 national reconciliation and to the restoration and maintenance of peace. For the purposes of
6 sentencing, the Chamber has considered the following factors: The Chamber is of the opinion that the
7 lack of cooperation by the Accused with the Office of the Prosecutor pursuant to Rule 10 B(ii), cannot
8 be considered as an aggravating factor.

9
10 The Chamber considers as aggravating factors, the gravity of the crime committed, the official position
11 of the Accused as *Bourgmestre* of Gikoro *commune* during the events, and the fact that he is an
12 educated person. The Chamber finds the following mitigating circumstances: The Accused's guilty
13 plea, publicly expressing remorse, his individual and family situation, in a sense it offers him chances of
14 rehabilitation, his good character prior to the events, his lack of prior criminal convictions, his good
15 conduct in detention, and his age, together with his ill-health.

16
17 However, the Chamber does not consider the following to be mitigating circumstances: The alleged
18 assistance to victims and the form of criminal participation by the Accused. Indeed, with respect to the
19 assistance to certain victims, the Chamber is not persuaded that the testimony of Claudine
20 Bisengimana, daughter of Paul Bisengimana, establishes that he protected Tutsi civilians and saved
21 their lives. As to the form of criminal participation by the Accused, the Chamber notes that even if the
22 Accused did not personally commit any violent act, he was aware that an attack would be launched
23 against the refugees at Musha church using weapons that had been previously distributed, and that he
24 had the means to challenge the killings but chose not to act. Moreover, the Chamber recalls that Paul
25 Bisengimana was present when the attack was launched, and more than 1,000 people were murdered
26 at Musha church and that he knew that his presence would encourage the perpetrators of the crimes.

27
28 Paul Bisengimana was a person of authority with an obligation to protect the refugees. Accordingly, the
29 Chamber does not consider his form of participation in the Musha church massacre to be a mitigating
30 circumstance.

31
32 In conclusion, the Trial Chamber is of the view that the gravity of the crime and the position of the
33 Accused as *bourgmestre* militate against total consideration of mitigating circumstances. During the
34 pre-sentencing hearing, the Defence pleaded for a sentence of 12 years' imprisonment, whereas the
35 Prosecutor pleaded for a sentence of not less than 14 years' imprisonment.

36
37 The Chamber considered the general sentencing practice in Rwanda. The Chamber notes that an

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

5
6 However, despite the fact that the Chamber is not sentencing Paul Bisengimana for the count of
7 murder, as a crime against humanity for the reasons mentioned earlier, the Chamber is of the opinion
8 that in light of the official position of the Accused, and the number of persons killed, more than 1,000 in
9 his presence at Musha church, and many others with his knowledge at the Ruhanga complex, a higher
10 sentence, more than the sentence practice would be warranted under extermination. Here is the
11 Chamber's verdict: Paul Bisengimana -- the Trial Chamber is of the opinion that in light of the official
12 position of the Accused and the number of persons killed, more than 1,000, in his presence at Musha
13 church and many others with his knowledge at the Ruhanga complex, a sentence higher than the range
14 of sentences is warranted.

15
16 For the single count of extermination, here is the Chamber's verdict -- could Paul Bisengimana please
17 stand and stand before the Bench, please. In the witness box, please. So here is the Chamber's
18 verdict -- here is the Chamber's verdict: Considering the Chamber's judgment of 7 December 2005,
19 finding you guilty of murder and extermination as crimes against humanity, the Trial Chamber
20 sentences you as follows; delivering its judgment in public (*inaudible*) parties and in the first instance
21 pursuant to the Statutes and the Rules of Procedure on evidence, having accepted your guilty plea, and
22 examined all evidence and having heard the parties' arguments, the Chamber convicts and sentences
23 you on count four, extermination as a crime against humanity, pursuant to Article 3(B) of the Statute,
24 sentencing you to 15 years' imprisonment.

25
26 You are entitled to credit for the time served since the start of your detention on 4 December 2002,
27 when you were arrested at the request of the Tribunal, right up to the date of this judgment. The Trial
28 Chamber decides^ that the sentence shall run as of the date of this judgment and you shall remain in
29 the custody of the Tribunal pending a decision by the President of the Tribunal in consultation with the
30 Chamber on where your sentence will be served.

31
32 This is the Chamber's judgment. Thank you. The court shall now rise.

33 (*Court recessed at 1505H*)

34 (*Pages 1 to 8 by Eleanor Bastian*)

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CERTIFICATE

I, Eleanor Bastian, 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 our 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 no wise interested in the result of said cause.

_____ Eleanor Bastian