

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO.: ICTR-00-59-T
CHAMBER II

THE PROSECUTOR
OF THE TRIBUNAL
v.
JUVÉNAL RUGAMBARARA

FRIDAY, 16 NOVEMBER 2007
0910H
SENTENCING JUDGEMENT

Before the Judges:

Joseph Asoka de Silva, Presiding
Taghrid Hikmet
Seon Ki Park

For the Registry:

Mr. Nouhou Diallo
Mr. Abraham Koshopa

For the Prosecution:

Mr. Peter Tafah
Ms. Memory Maposa

For the Accused Juvénal Rugambarara:

Mr. Maroufa Diabira
Mr. Boubou Diabira

Court Reporter:

Ms. Gifty C. Harding

1 0910H

2 MR. PRESIDENT:

3 Good morning, everybody. Court is in session. Parties are invited to enter their appearances; first,
4 Prosecution.

5 MR. TAFAH:

6 Good morning, Mr. President, Your Honours. The Prosecution is represented by
7 Charles Phillips, Adeogun, who is avoidably absent, Madam Memory Maposa, and me, Peter Tafah.

8 MR. PRESIDENT:

9 Thank you. Defence, please.

10 MR. DIABIRA:

11 Thank you, Mr. President. Good morning, Mr. President, Your Honours. The Defence this morning is
12 our investigator, Celestin Kagango, our assistant, Andrea Valdivia from the Canadian Bar association;
13 Mr. Boubou Diabira from the Mauritanian Bar, and Mr. Maroufa Diabira, former president of the
14 bar association of Mauritania. I thank you, Your Honours.

15 MR. PRESIDENT:

16 Thank you.

17

18 In the case of Prosecutor versus Juvénal Rugambarara, the judgment is delivered today.

19

20 Today's proceedings is devoted to the delivery of the sentence in the case of the
21 Prosecutor versus Juvénal Rugambarara. The Trial Chamber will now read the summary of the
22 judgment. The summary is not authoritative. After the summary, the full judgment will be made
23 available to the parties and the public.

24

25 I invite Mr. Rugambarara to take the witness seat here.

26

27 The Chamber will briefly set out the background to this case, the facts thereof, and the factors the
28 Chamber took into consideration in determining the sentence.

29

30 Procedural background:

31

32 Juvénal Rugambarara was born in 1959. He lived most of his adult life in Bicumbi *commune*, where he
33 worked as a medical officer. He was appointed *bourgmestre* of Bicumbi *commune*,
34 Kigali-Rural *préfecture* on 4th August 1993, a position he held from 16 September 1993 until
35 20th April 1994.

36

37 Juvénal Rugambarara was indicted by the ICTR Prosecutor with genocide, complicity in genocide,

1 conspiracy to commit genocide, direct and public incitement to commit genocide, extermination, torture
2 and rape as crimes against humanity, and serious violations of common article of the
3 Geneva Convention of 1949, pursuant to Articles 2, 3, 4 and Articles 6(1) and 6(3) of the Statute of the
4 Tribunal.

5
6 On 11th of August 2003 Rugambarara was arrested in Uganda in execution of the arrest warrant signed
7 by Judge Sekule on 15th February 2002. Rugambarara was transferred to the Tribunal on the
8 13th August 2003. He made his initial appearance two days later and pleaded not guilty to all counts of
9 the indictment.

10
11 On the 12th of June 2007, the Prosecution filed a motion requesting the Chamber to amend the
12 indictment. The Defence supported the Prosecution motion. On 28th June 2007, the Chamber
13 accepted the withdrawal of the previous indictment and the filing of an amended indictment with one
14 count. The amended indictment of 2nd July 2007 charged Juvénal Rugambarara with extermination as
15 a crime against humanity, pursuant to Article 3(b) of the Statute for having failed in his duty to take the
16 necessary and reasonable measures to commission an investigation into the crimes committed by his
17 subordinates between 7th and 20th April 1994, with a view to apprehending and referring the
18 perpetrators thereof to the competent authorities by appropriate punishment, pursuant to Article 6(3) of
19 the Statute.

20
21 More specifically, the indictment alleges that between 7th and 20th April 1994 subordinates under
22 Juvénal Rugambarara's effective control, *conselliers*, *communal* policemen, local administrators and
23 militia, launched attacks against the Tutsi in various places in Bicumbi *commune*, resulting in the deaths
24 of thousands of Tutsi civilians.

25
26 On 13th June 2007, the parties filed a joint motion for consideration of a guilty plea agreement between
27 Rugambarara and the Office of the Prosecutor.

28
29 On 13th July 2007 Juvénal Rugambarara pleaded guilty before this Chamber for having failed in his
30 duty to take the necessary and reasonable steps to ensure the punishment of his subordinates for the
31 crimes they had committed between 7th and 20th April 1994 in Bicumbi *commune*.

32
33 In its oral ruling of 13th July 2007, the Chamber found that there was no disagreement between the
34 Accused and the Prosecution of the acknowledged facts forming the basis of the plea agreement. The
35 Chamber was satisfied that the plea was voluntary, informed and unequivocal, pursuant to Rule 62(B)
36 and 62 *bis* of the Rules and entered a finding of guilt for the crime of extermination, as a crime against
37 humanity, pursuant to Articles 3(b) and 6(3) of the Statute.

1 During the sentencing hearing of 17th September 2007, the Defence called five character witnesses,
2 and was permitted to adduce one witness statement in lieu of oral testimony as per Rule 92 *bis*.

3
4 Sentencing:

5
6 The Chamber will now give a summary of its considerations concerning the sentence. The Chamber
7 understands its obligation to ensure that the sentence is commensurate with the individual facts of the
8 case and the individual circumstances of the offender. Recommendations on the range of the sentence
9 as suggested in the joint motion for consideration of the guilty plea agreement are not binding on the
10 Chamber.

11
12 In determining the sentence, the Chamber has considered a number of factors: the seriousness of the
13 crime, aggravating and mitigating factors, including the individual factors of the convicted person and
14 the general practice regarding prison sentences in the courts of the Rwanda.

15
16 The Chamber recalls that crimes against humanity are inherently serious crimes because they are
17 heinous in nature and shock the collective conscience of mankind. The Chamber finds that
18 Rugambarara's failure to act constitutes a very serious offence and a gross violation of international
19 humanitarian law. The Chamber notes, however, that Rugambarara is only charged with post-factor
20 knowledge of the crimes. Saving lives was therefore not at stake, which makes the crime less serious
21 than if it was otherwise.

22
23 Aggravating circumstances must be proved beyond reasonable doubt, while mitigating circumstances
24 must be proved on a balance of probabilities.

25
26 The Chamber will now consider the aggravating circumstances.

27
28 Despite the fact that the *actus reus* of the crime of extermination requires "killings on the large scale",
29 this requirement does not entail a specific numerical threshold. However, the deaths of a large number
30 of victims as a result of the crime of extermination can be considered as an aggravating factor for the
31 purpose of sentencing. In the instant case, the magnitude of the deaths of Tutsi civilians in
32 Bicumbi *commune* as a result of the crime for which Rugambarara has pleaded guilty, is such that it
33 constitutes an aggravating factor for the purpose of sentencing.

34
35 The Chamber recalls that in determining a sentence, an element of the offence in question cannot be
36 considered to be an aggravating factor, therefore, Rugambarara's position as a superior cannot be
37 deemed to be an aggravating factor since it constitutes an element of the crime under Article 6(3) of the

1 Statute.

2
3 The Chamber now turns to the mitigating circumstances.

4
5 Remorse evinced by the Accused might be considered as a factor in mitigation if the Chamber is
6 satisfied that it is sincere. After considering Rugambarara's public expression of regret and remorse,
7 the Chamber is satisfied that Rugambarara's expression of remorse is sincere.

8
9 The Chamber notes that Rugambarara's admission of guilt prior to the commencement of trial relieved
10 the victims of need to revisit their traumatic experiences. However, the timely nature of the guilty plea
11 facilitated the efficient administration of justice and saved the Tribunal's resources. The Chamber
12 deems these to be factors in mitigation.

13
14 Four witnesses testified during the sentencing hearing that Rugambarara personally assisted Tutsi
15 refugees by extending moral and material support in Bicumbi *commune* during the 1994 events and
16 may have contributed to saving some of their lives. The Chamber accepts Rugambarara's assistance
17 of Tutsi refugees as a factor in mitigation.

18
19 Juvénal Rugambarara is married and has children. The Chamber finds that this particular fact may be
20 imparted with some, although very limited, weight in mitigation. The Chamber accepts that
21 Rugambarara was a person of good character before the events of 1994, with no history of ethnic
22 discrimination. The Prosecutor does not challenge the Defence contention regarding Rugambarara's
23 previous clean criminal record. The Chamber accepts this assertion.

24
25 Finally, the UNDF commanding officer attested to Rugambarara's good behaviour during his detention
26 at the UNDF. All these factors, when considered together, indicate Rugambarara's potential for
27 rehabilitation. Therefore, the Chamber accepts these factors as being in mitigation of the sentence.

28
29 The Chamber accepts as facts of common knowledge that there was an armed conflict in Rwanda in
30 1994. The Chamber also accepts that as a result of the war that had convulsed Rwanda in 1994, there
31 was an influx of refugees and resurgence of interethnic tensions within Bicumbi *commune* which could
32 have made it difficult for Rugambarara to exercise his full authority. The Chamber accepts to take this
33 particular environment as a mitigating factor. The Chamber does not consider, however, as a mitigating
34 factor the Defence submission, that the prevailing circumstances at the relevant period were such that
35 Rugambarara could not be said to have had effective control over his subordinates. The Chamber finds
36 that the fact that Rugambarara pleaded guilty for having failed in his duty, pursuant to Articles 3(b) and
37 6(3) of the Statute, is predicated upon his acknowledgment that he had the material ability to pursue the

1 punishment of the perpetrators of the crimes. To suggest otherwise would make his admission of guilt
2 meaningless.

3 In their joint motion for consideration of a guilty plea agreement between Rugambarara and the
4 Office of the Prosecutor, the Prosecution recommended a term of imprisonment ranging from
5 9 to 12 years imprisonment, with due credit given for time already served. However, during the
6 sentencing hearing, the Prosecution departed from the range of penalties initially agreed upon by
7 recommending a sentence of at least 12 years.

8
9 The Defence request the Chamber to order that Rugambarara serve his sentence in Europe, preferably
10 France, a neighbouring country to Belgium where his family resides. The Prosecution supports the
11 application. The Chamber has taken into consideration the sentencing practice in Rwanda and of this
12 Tribunal when determining this sentence.

13
14 Conclusion:

15
16 In determining the sentence, the Chamber was fully aware of its obligation, as a matter of justice, to
17 maintain consistency in sentences of individuals convicted of similar crimes. The Chamber is also
18 mindful that the sentence should reflect the totality of the criminal conduct of the Accused.

19
20 Verdict.

21
22 Mr. Rugambarara, could you please stand.

23
24 For the reasons above, the Trial Chamber sentences you, Juvénal Rugambarara, to 11 years'
25 imprisonment. The sentence shall run as of the date of this judgment. You are entitled to credit for the
26 time you spent in detention since your arrest on 11 August 2003, including any additional time that you
27 may serve pending an appeal.

28
29 Your request to serve your sentence in France is premature. You will remain in the custody of the
30 Tribunal, pending a decision on whether -- on where your sentence will be served. The decision on
31 where you will serve your sentence will be made in due course by the President of the Tribunal, in
32 consultation with the Chamber. The government of Rwanda and the designated state shall be so
33 notified by the registrar.

34
35 This concludes the proceedings of today. Court is adjourned.

36 *(Court adjourned at 0934H)*

37 *(Pages 1 to 5 by Gifty C. Harding)*

CERTIFICATE

I, Gifty C. Harding, 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.

Gifty C. Harding