

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO.: ICTR-01-77-I
CHAMBER II

THE PROSECUTOR
OF THE TRIBUNAL
v.
JOSEPH NZABIRINDA

THURSDAY, 14 DECEMBER 2006
1110H
FURTHER APPEARANCE

Before the Judges:

Arlette Ramaroson, Presiding
Williams H. Sekule
Solomy Bossa

For the Registry:

Mr. John Kiyeyeu
Mr. Emmanuel Mwanja

For the Prosecution:

Mr. Bill Egbe
Ms. Veronic Wright
Mr. Patrick Gabaake
Mr. Suleiman Khan

For the Accused Joseph Nzabirinda:

Mr. François Roux
Mr. Jean Haguma

Court Reporter:

Mr. Sheriffo Jammeh

PROCEEDINGS

1

2 MADAM PRESIDENT:

3 We would like to open proceedings.

4

5 Registrar, please read out the roll?

6 MR. KIYEYEU:

7 Thank you, Madam President.

8

9 Trial Chamber II of the International Criminal Tribunal for Rwanda composed of

10 Judge Arlette Ramaroson, presiding, Judge William H. Sekule and Judge Solomy Bossa, is now sitting

11 in open session, today, Thursday the 14th of December 2006, for a further appearance in the matter of

12 the Prosecutor versus Joseph Nzabirinda, Case No. ICTR-01-77-I.

13

14 Thank you, Madam President.

15 MADAM PRESIDENT:

16 Thank you, Counsel.

17

18 Would the parties please introduce themselves?

19 MR. EGBE:

20 For the Prosecution, Your Honour, I am appearing. My name is Bill Egbe. With me, there is legal

21 adviser, Suleiman Khan; attorney Veronic Wright, attorney Patrick Gabaake; and we are assisted by

22 our case manager, Amina Ibrahim. Thank you, Your Honours.

23 MADAM PRESIDENT:

24 Thank you.

25

26 Would the Defence please introduce itself?

27 MR. ROUX:

28 Good morning, Madam President, Your Honours. The Defence this morning is represented by

29 Counsel Jean Haguma, Charlotte Moreau, our legal assistant. We would like to beg your indulgence,

30 Mr. Celestine Buhuru, our second legal assistant is on his way to the Tribunal, and therefore, will not be

31 present in this hearing. I am François Roux of the Montpellier Bar in France, lead counsel. Thank you.

32 MADAM PRESIDENT:

33 Thank you, Counsel.

34

35 Now, we would like to call on Mr. Kiyeyeu to read out the indictment and, therefore, we unsealed the
36 indictment.

37 I beg your pardon, Mr. Prosecutor. You have something to say?

1 MR. EGBE:

2 Your Honours, I am just following up on your last decision to unseal. We observed that other
3 documents were also filed in the course of this plea proceedings which were also marked "under seal
4 and confidential". I am referring notably to the plea agreement dated 9th of December 2006. The joint
5 motion for consideration of the plea agreement, dated 12th of December 2006. All these documents
6 are marked "under sealed and confidential ". May your last decision on sealing the amended
7 indictment apply also to these documents that I have referred to?

8

9 Thank you, Your Honours.

10 MADAM PRESIDENT:

11 Very well, Mr. Prosecutor. We will grant your request. We therefore remove the seal on the plea
12 agreement of 12th December 2006, and the -- that is the plea agreement of the 12th of December as
13 well as the document of the 9th of December and the indictment. Therefore, we have now unsealed all
14 these documents. Is that it?

15 MR. EGBE:

16 Thank you, Your Honours.

17 MADAM PRESIDENT:

18 And now, we will now ask the registrar to kindly read the indictment. We would then ask the Accused to
19 take his seat in the box.

20

21 Now, listen to the indictment. Listen carefully to the indictment that will be read out to you.

22

23 Please read out the indictment.

24 MR. KIYEYEU:

25 Thank you, Madam President.

26

27 "The Prosecutor versus Joseph Nzabirinda, amended indictment pursuant to the decision of the
28 8th of December 2006.

29

30 The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to the authority stipulated in
31 Article 17 of the Statute of the International Criminal Tribunal for Rwanda, the Statute of the Tribunal,
32 charges Joseph Nzabirinda with murder as a crime against humanity under Article 3(a) and 6.1 of the
33 Statute of the Tribunal, as set forth below.

34

35 The Accused, Joseph Nzabirinda, alias Biroto, was born on the 1st of July 1957, in Rwanda, Sahera
36 *secteur*, Ngoma *commune*, Butare *préfecture*. After secondary education and training at the
37 Youth Training Centre, he became *Encadreur* or organiser of youth and sports in Ngoma urban

1 *commune*, Butare, in 1976, and was promoted to the post of *Encadreur* of Youth and Cooperatives in
2 Butare *préfecture* in 1984. Later, he became managing director of the Secobe firm in Kigali, where he
3 settled in 1992.

4
5 2: As the *commune Encadreur*, Joseph Nzabirinda, alias Biroto, was officially responsible for the youth
6 of his *commune*, and in particular for their training in craft skills and literacy, and their initiation into
7 "socio-economic groupings", but also for civic education, sports, recreational and cultural activities at
8 the *préfecture*. He supervise *commune Encadreur*.

9
10 3: In 1990, Joseph Nzabirinda, alias Biroto, was one of the founding members of the PSD, which led
11 him to return frequently to his home region to organise political meetings and to raise awareness
12 among the population regarding his party's policies.

13
14 4: In 1994, as managing director of Secobe, Joseph Nzabirinda, alias Biroto, owned properties in
15 Rwanda and was considered to be rich and well-to-do.

16
17 5: When he returned to Sahera on 12th April 1994, Joseph Nzabirinda, alias Biroto, was regarded by
18 the population not only as Youth *Encadreur*, but also as one of those who opposed the regime in
19 power, symbolised in the *secteur* by *Conseiller* Pascal Habyarimana, his acknowledged political
20 adversary.

21
22 6. Joseph Nzabirinda, alias Biroto, as both former Youth *Encadreur* and a political personality, had
23 moral authority in the eyes of the population in his *secteur*, and in particular of the young people of
24 whom he had been *Encadreur*. As a successful businessman and intellectual, Joseph Nzabirinda, alias
25 Biroto, enjoyed a certain authority over the people living on his hill.

26 27 III. The Charge:

28
29 Murder as a crime against humanity under Articles 3(a) and 6.1 of the Statute.

30
31 The Prosecutor of the International Criminal Tribunal for Rwanda charges Joseph Nzabirinda, alias
32 Biroto, with having aided and abetted murder as a crime against humanity under Articles 3(a) and 6.1 of
33 the Statute of the Tribunal, as accomplice by omission in the preparation of the commission of the
34 crime.

35
36 7. During the period of the crime referred to in this Indictment, Tutsi, Hutu and Twa were identified as
37 ethnic or racial groups.

1 8. After the death of the president of Rwanda, Juvénal Habyarimana, on 6th April 1994, there were in
2 Rwanda in 1994 widespread or systematic attacks against a section of the civilian population, notably
3 Tutsi and moderate Hutu, on political or ethnic grounds, resulting in the deaths of thousands of people,
4 mostly civilians, throughout Rwanda.

5
6 9. Between 7th April and mid-July 1994, the massacre of civilian population was for the most part
7 aimed at the Tutsi in Rwanda. This is evidenced by the indiscriminate nature of the killings, which
8 targeted unarmed women, children, young persons and the aged alike, who were massacred at the
9 roadblocks or places where they sought refuge, such as in the *préfecture* and the *commune* offices,
10 schools, churches and stadia in Butare *préfecture*.

11
12 10. On 12th April 1994, Joseph Nzabirinda, also known as Biroto, together with his children, fled Kigali,
13 where widespread massacres were taking place, and arrived in Sahera *secteur*, Ngoma *commune*,
14 Butare *préfecture*. One certain Antoine Mbarushimana, also known as Bernier, and a soldier called
15 Eugène had also left Kigali for Sahera *secteur*.

16
17 11. On 19th April 1994, the interim president, Theodore Sindikubwabo, held a meeting at Butare
18 *préfecture* with local authorities, including *Préfet* Sylvain Nsabimana and the *bourgmestre* of Ngoma
19 *commune*, Joseph Kanyabashi. On that occasion, the local authorities assured the president that his
20 wishes would be complied with.

21
22 12. Following that meeting, widespread killings of Tutsis and opponents of the regime --" we will read
23 that paragraph again.

24
25 12. "Following that meeting, widespread killings of Tutsis and opponents of the regime began in Butare
26 *préfecture*, which had hitherto been peaceful, and in particular in Sahera *secteur*, where Joseph
27 Nzabirinda then was.

28
29 13. Starting from 6th April 1994, *Secteur Conseiller* Pascal Habyarimana, held a number of pacification
30 meetings.

31
32 14. After 19th April, Joseph Nzabirinda, also known as Biroto, attended meetings where only the Hutu
33 of his *secteur* and those who participated in the Sahera killings were present. Joseph Nzabirinda knew
34 the killers because they were his neighbours, including Yacinthe Rurangirwa,
35 Jean Baptiste Ntawangheza, Joseph Ufiteyezu, Eugène and others.

36 15. After these meetings, systematic attacks were launched on the Tutsi families living on Accused's
37 hill, and these attacks *inter alia* led to the death of Pierre Murara, who was killed by the *Interahamwe*

1 near the location where the meetings were held and where Joseph Nzabirinda, also known as Biroto,
2 was present as an approving spectator.

3
4 16. The Accused, Joseph Nzabirinda, also known as Biroto, attended several meetings organised at
5 the Sahera *secteur* office by the *secteur conseiller*. He never stopped attending those meetings, even
6 though he knew that systematic killings had resulted from the first meetings he had attended. That
7 clearly showed that the pacification activities organised in the course of those meetings, in reality,
8 prepared and encouraged the hunting down and killing of Tutsis. At no time or in any manner, did the
9 Accused openly object to those killings at such meetings.

10
11 17. Joseph Nzabirinda, also known as Biroto, enjoyed such moral authority that, as a person held in
12 high esteem by his fellow citizens, his attendance was liable to have a decisive influence on the
13 criminals attending the meetings, in the light of the particular circumstances prevailing in the *secteur*.
14 Joseph Nzabirinda, also known as Biroto, thus gave the appearance of an "approving spectator" and
15 knew that his silence would be regarded by the killers as tacit approval of the preparations for killings.

16
17 18. On 19th April 1994, the local authorities erected throughout Sahera *secteur*, and in particular at
18 Kabuga. The roadblocks were used for identity checks, and were one of the means employed in the
19 campaign of killings raging in the *secteur*, a fact of which Joseph Nzabirinda was aware.

20
21 19. At the request of the authorities, during this same period, Joseph Nzabirinda, also known as Biroto,
22 went twice to the roadblock at Kabuga to take his turn at manning it. On two occasions he was on duty
23 at the roadblock along with some *Interahamwe* of Sahera *secteur*. In thus appearing beside the killers,
24 and as an approving spectator at the roadblock, the Accused encouraged the murder of
25 Joseph Mazimpaka, killed by Mugenzi near the roadblock where Joseph Nzabirinda, also known as
26 Biroto, was.

27
28 20. Furthermore, the murders of Joseph Mazimpaka and Pierre Murara were committed in his *secteur*,
29 at a location close to those of the meetings and roadblocks where the Accused, Joseph Nzabirinda,
30 also known as Biroto, was present as an approving spectator.

31
32 The crimes alleged against Joseph Nzabirinda, also known as Biroto, in the present Amended
33 Indictment are punishable under Articles 22 and 23 of the Statute of the Tribunal.

34
35 Done in Arusha, this 9th December 2006," and it is signed by Hassan Bubacar Jallow, Prosecutor.
36 I thank you, Madam President, Your Honours.

1 MADAM PRESIDENT:

2 Can you please identify yourself?

3 THE ACCUSED JOSEPH NZABIRINDA:

4 Thank you, Madam President.

5
6 My names are Joseph Nzabirinda. I was born in 1957 in Sahera *secteur*, in Ngoma *commune*. I am
7 married and I am the father of four children. I thank you, Madam President.

8 MADAM PRESIDENT:

9 Thank you. Have you understood the contents of the document which has been read to you, and have
10 you had the opportunity to discuss that document with your counsel?

11 THE ENGLISH INTERPRETER:

12 The Accused is not speaking into the microphone.

13 MADAM PRESIDENT:

14 We are going to ask you questions as to whether you plead guilty or not guilty to the Indictment.

15
16 On the single charge of murder as a crime against humanity, under Articles 3(a) of the Statute of the
17 Tribunal and 6.1 -- Article 6.1 of the Statute, do you plead guilty or not guilty?

18 THE ACCUSED JOSEPH NZABIRINDA:

19 I plead not guilty.

20 MADAM PRESIDENT:

21 Counsel, can you confirm that you explained to your client that he has changed his plea from not guilty
22 to guilty, and that this implies, on the part of the Accused, a -- a reversion of his earlier plea?

23 MR. ROUX:

24 Yes, Madam President, I do confirm to the present Chamber that we have had several working
25 sessions with the Accused and I will, in a moment explain this, but at this point in time, I wish to confirm
26 that every explanation has been given to the Accused regarding his plea of guilty to the crime of
27 murder, a crime against humanity, and that he was an accomplice by omission. Thank you,
28 Madam President.

29 MADAM PRESIDENT:

30 I think there was a mistake in the interpretation. Let me repeat with regard to your plea of not guilty or
31 guilty. Now, with regard to the single charge of murder as a crime against humanity -- can you also
32 speak into the microphone please because we didn't hear you very clearly? With the single charge of
33 murder as a crime against humanity against -- under Articles 3(a) and 6.1 of the Statute of the Tribunal,
34 do you plead guilty or not guilty?

35 THE ACCUSED JOSEPH NZABIRINDA:

36 I plead guilty, Madam President.

37

1 MADAM PRESIDENT:

2 Thank you. Now, I want to explain to you the consequences of your plea. When you plead not guilty,
3 you are presumed innocent until your guilt is proved beyond a reasonable doubt. You have the right to
4 a fair trial especially with the right to cross-examine Prosecution witnesses. You have the right to call
5 Defence witnesses, and you also have the right to testify in your own Defence. Do you understand?

6 THE ACCUSED JOSEPH NZABIRINDA:

7 Yes, I do understand.

8 MADAM PRESIDENT:

9 Now, do you understand that when you are pleading guilty, you are renouncing all these rights?

10 THE ACCUSED JOSEPH NZABIRINDA:

11 Yes, my counsel has explained everything to me, Madam President.

12 MADAM PRESIDENT:

13 Very well. Now, we are going to ask you questions concerning your plea, and this is in compliance with
14 Rule 62(b) of the Rules. We wish to verify certain aspects concerning your guilty plea. To begin with,
15 the Chamber will request you whether your guilty plea is done voluntarily and of your free will, in other
16 words, are you making this plea knowingly without any threats or promises?

17 THE ACCUSED JOSEPH NZABIRINDA:

18 I have done this without any threat or promises, Madam President.

19 MADAM PRESIDENT:

20 Secondly, the Chamber wishes to ask you whether you are making an informed plea, in other words,
21 after having understood the nature of the charges leveled against you, as well as the consequences of
22 your plea in respect of the charge against you, in other words, that you are, in fact, renouncing your
23 right to a fair -- to a trial.

24 THE ACCUSED JOSEPH NZABIRINDA:

25 Yes, this has been explained to me, Madam President.

26 MADAM PRESIDENT:

27 Number 3, the Chamber wishes to know from you whether your plea is unequivocal, in other words, I
28 will explain to you what "unequivocal" means. In other words, when you plead guilty, you are not going
29 to challenge any facts arising from the indictment which has been drawn up by the Prosecutor.

30 THE ACCUSED JOSEPH NZABIRINDA:

31 My plea is unequivocal, Madam President.

32 MADAM PRESIDENT:

33 Very well. We, therefore, noticed that your plea is sufficient -- is based on sufficient facts for the crime
34 and the -- and your participation in it either on the basis of objective indicia or of lack of any material
35 disagreement between yourself and the parties, especially the Prosecution about the facts of the case.
36 We have been notified of a file concerning an agreement between Joseph Nzabirinda and the
37 Prosecution, and this motion was filed on the 12th December 2006, and this is an acknowledgement of

1 your guilt, which is attached to the motion. We are, therefore, asking you whether you have signed this
2 agreement after receiving counsel's -- an advice from your counsel.

3 THE ACCUSED JOSEPH NZABIRINDA:

4 That is in the affirmative, Madam President.

5 MADAM PRESIDENT:

6 Thank you.

7

8 Can you please present your joint motion, Counsel?

9 MR. ROUX:

10 Thank you, Madam President. Before the Defence and the -- Defence presents the motion, I believe
11 the Accused wanted to say something to the Chamber.

12 MADAM PRESIDENT:

13 Please, go ahead. Proceed -- you may proceed.

14 THE ACCUSED JOSEPH NZABIRINDA:

15 Thank you, Madam President, Your Honours. After long and thoughtful reflection and an examination
16 of my conscience throughout my detention, I have taken the decision to go back on my initial plea of not
17 guilty and to plead guilty at present, as indicated in the document that I signed with the Prosecutor.
18 Before Your Honours and before the international community, I wish to ask for pardon of the
19 Murara family and the Mazimpaka family, and generally to the people of Rwanda for the crimes which I
20 committed by omission. And I suffer deep remorse therefrom. I am taking this special occasion which
21 has been offered to me to bow before all the victims of the genocide which took place in Rwanda and in
22 Sahera in particular. I hope that my decision to plead guilty and to speak the truth, will help and
23 encourage others to commit themselves to the path of truth, and to ask for forgiveness of the Rwandan
24 people. It is at that level that it will be able to initiate and ensure the reconciliation of the Rwandan
25 people. Madam President, Your Honours, I take this opportunity to thank you.

26 MADAM PRESIDENT:

27 We thank you. We shall now ask the parties to present their joint motion and we will begin with the
28 Prosecution.

29

30 You may be seated.

31 MR. EGBE:

32 Thank you very much, Your Honours. The parties are before Your Honours today to present their
33 respective positions on this occasion of the formal -- of a further initial appearance of the accused
34 person. The initial indictment of the accused person, Nzabirinda, is dated 6th of December 2001, and
35 that indictment was confirmed on the 13th of December 2001. In that indictment, the accused was
36 charged with genocide, complicity in genocide, extermination as a crime against humanity, rape as a
37 crime against humanity, pursuant to Articles 2 and 3 of the Statute of this Tribunal.

1 At his initial appearance on the 27th of March 2002, the Accused pleaded not guilty to all these
2 charges. In the last couple of months, the parties have engaged in negotiations with a view to reaching
3 an accord, and that accord is before you. It is dated the 9th of December 2006. As per that agreement,
4 the Accused pleads guilty to murder as a crime against humanity under Articles 3(a) and 6.1 of the
5 Statutes for having aided and abetted as an accomplice by omission, the commission of this crime.

6
7 The purpose of the plea agreement that is before Your Honours is to clarify the understanding of the
8 parties and to assist the Chamber in determining that this plea was validly made. As per the crime that
9 the Accused person has pleaded guilty to, that is aiding and abetting murder by omission, the nature of
10 the Accused's omission can be found in the facts that are contained both in the indictment and in the
11 plea agreement. The Accused's omission does not -- rather, the Accused's criminality does not arise
12 from positive acts that he committed. Rather, the omission is found in the encouragement that his
13 actions gave to those who physically perpetrated certain acts. The case law of this Tribunal makes it
14 clear that omission can effectively in certain circumstances constitute *actus reus* of a particular crime.
15 In the *Mpambara* case which was tried by the Trial Chamber of -- by Trial Chamber of this Tribunal, for
16 which judgement was rendered on the 11th of September 2006, the Trial Chamber defined three
17 specific instances where omission may amount to aiding and abetting.

18
19 Firstly, Your Honours, the Trial Chamber said that omission may be evidence of aiding and abetting
20 clearly.

21
22 Secondly, omission, as stated by the Trial Chamber, may be evidence of participation in a joint criminal
23 enterprise.

24
25 Thirdly, the Trial Chamber stated that omission can represent a failure of a duty to prevent or to punish.

26
27 In our instant case, the Accused falls within the first category, that is omission as evidence of aiding and
28 abetting, and this category has also been pronounced upon by the Appeals Chamber of this Tribunal.
29 In this regard, I will refer Your Honours to the case of the *Prosecutor versus Blaxic (phonetic)*, which
30 was a judgement delivered on the 29th of July 2004, particularly at paragraph 47, and I will quote. The
31 Appeals Chamber in that case stated that: "In the circumstances of a given case, an omission may
32 constitute the *actus reus* of aiding and abetting." In the *Mpambara* decision, Your Honours, the
33 Trial Chamber went further to impose certain conditions in order for responsibility to be incurred by way
34 of omission. The Trial Chamber held that: "The Accused's inaction must have had an encouraging or
35 approving effect on the perpetrators, that the effect must have been substantial, and that the Accused
36 knew of this effect on the perpetrator's criminal intention." Again in the *Bisengimana* judgement,
37 Your Honours, with particular reference to paragraph 34 of that decision, the Trial Chamber came back

1 to this concept and stated as follows: I will quote: "That mere presence at the crime of scene may
2 constitute aiding and abetting where it is demonstrated to have a significant encouraging effect on the
3 principal offender, particularly if the individual standing by was the superior of the principal offender or
4 was otherwise in a position of authority, in the *Semanza* decision, particularly in paragraph 386,
5 Your Honours, the Chamber held as follows, and I will quote: "Criminal responsibility as an approving
6 spectator does require actual presence during the commission of the crime, or at least presence in the
7 immediate vicinity of the crime, which is perceived by the actual perpetrator as approving of his
8 conduct. The authority of an individual is frequently a strong indication that the principal perpetrators
9 will perceive his presence as an act of encouragement."

10
11 In the case at hand, Your Honours, the Accused has admitted that he aided and abetted by omission
12 crimes that were committed in the *secteur* at a location close to the meetings and roadblocks where he
13 was present as an approving spectator. The Accused, Nzabirinda, acknowledges that as a result of his
14 presence at meetings and roadblocks as an "approving spectator", he encouraged the killers in his
15 *secteur* to commit a crime against humanity as defined under Article 3(a) and 6.1 of the Statute of this
16 Tribunal, and these, as a matter of fact, contributed to the deaths of Joseph Mazimpaka and
17 Pierre Murara.

18
19 You have listened to the Accused person, Yourself, Your Honours, as to the condition under which
20 he pleaded guilty. For the reasons that we have stated in joint motion which is before you, we are
21 respectfully submitting that having regard to Article 62 and 62 *bis* of the rules, having regard to the
22 relevant case law in this matter, and having regard to the plea agreement which has been annexed to
23 our motion, which is dated the 9th of December 2006, we respectfully urge the Trial Chamber to rule
24 that the guilty plea that has been registered before you today, Your Honours, meets all the conditions
25 as to validity contained in the text and case law.

26
27 Your Honours, a brief word about our plea agreement, which is dated 9th of December 2006, and this is
28 with particular reference to paragraph 60 of that agreement, this relates to sentencing recommendation,
29 the parties came together and negotiated in good faith and agreed on a sentencing recommendation.
30 We do not pretend here that the discretion as to sentencing is that of the parties. In fact and in law, it is
31 that of Your Honours. The parties have further agreed that if the Trial Chamber were to consider our
32 sentencing recommendation as reasonable, the parties will be satisfied with the outcome of your
33 decision.

34
35 The Prosecutor on his part is mindful of the fact that agreements of this nature entered into by the
36 parties in good faith and in conformity with the rules of this Tribunal and the Statutes have a positive
37 effect, not only on the proceedings that are before you, but also on other proceedings regarding

1 persons who are currently in detention, and also persons who are yet to be arrested. We state this in
2 good faith and it is the sincere expectation of the parties that the Honourable Trial Chamber will
3 consider the spirit behind which the parties agreed the terms that are expressed in paragraph 60 of the
4 plea agreement.

5
6 On the issue of Article 9 of the Statute, Your Honour, just a brief word as well, we are aware of your
7 decision of the 8th of December regarding the effect of the withdrawal of the charges that were in the
8 indictment of 2001 that I referred to earlier. It is the position of the Prosecutor and, of course -- and in
9 fact an understanding of the parties that the withdrawal of the charge of genocide, complicity in
10 genocide, extermination and rape that were contained in the earlier indictment, that the --

11 MADAM PRESIDENT:

12 I beg your pardon. There seems to have been a problem in the interpretation. It was not "a crime of
13 rape", it was just "crime" that was mentioned.

14 MR. EGBE:

15 It is the understanding of the parties regarding the charges that has been withdrawn as per our motion
16 before you, Your Honours, that those crimes which are genocide, complicity in genocide, extermination
17 and rape are withdrawn unconditionally. Article 9 of the Statute envisages that for a withdrawal to
18 amount to a discharge on the merits, there must have been a trial. We are aware of your decision of
19 the 8th of December 2006, in which your Chamber ruled that any application regarding *non bis in idem*
20 at this moment is premature.

21
22 Your Honours, Article 9, it is our submission it should be read in its entirety. In other words, Article 9.1
23 and Article 9.2, must be read together to be able to discover the spirit and the letter behind the
24 formulation of this principle. Certainly there has been no trial on the merits -- on the charges that has
25 been withdrawn, but Article 9 does not -- Article 9.1 does not specifically ruled out a discharge on the
26 merits in cases where there has been no trial. If you look at the scenario that is envisaged in
27 Article 9.2, it is clear that were this trial to proceed in a national court, and subsequently it became clear
28 that the proceedings in that court were not impartial, they were not independent, and they were
29 designed to shield the Accused from international criminal responsibility or that the case was not
30 diligently prosecuted, upon a motion by the Prosecutor, you will reopen the matter. Our argument is
31 that if -- if the proceedings were independent, impartial and diligently prosecuted, the case cannot be
32 reopened.

33
34 Now, flipping that agreement over, our view is this -- our submission is this: Through approximately five
35 years of investigation, analysis, review of documentary evidence, review of transcripts, of testimonies of
36 other witnesses, the Prosecutor came to the conclusion that were he to proceed with this trial on the
37 basis of the charge of genocide, extermination, complicity in genocide and rape, there will be no chance

1 of success because the evidence was not there. After five years of investigation, thorough review of
2 documentation, we came to the conclusion that there is no basis either here or elsewhere to proceed or
3 to allow charges of this nature to hang on the head of the Accused. Under those circumstances,
4 Your Honour, we submit that even though there was no trial on the merits regarding those, we have
5 been diligent as an Office of the Prosecutor, we have reviewed all the parameters of the culpability that
6 arise from the acts of the Accused. We came before you on a charge of murder and the proceedings
7 before you today which are connected to the gross -- to the violations of international criminal law which
8 are the subject of his presence today, we came before you today and we can guarantee that no one will
9 say that the proceedings today were partial. On the basis of this extrapolation, Your Honours, we are
10 making that submission once more not with a view to asking you to review your decision of the 8th of
11 December, but to submit to you, Your Honours, that it is possible for you to invoke the principles of
12 *non bis in dem* in the present case in favour of the Accused to the extent where those charges that
13 were withdrawn, will be withdrawn on the merit. This is our humble submission, Your Honours.

14 MADAM PRESIDENT:

15 The Trial Chamber is grateful.

16

17 Counsel, it is now your turn to take the floor.

18 MR. ROUX:

19 Madam President, Your Honours, on behalf of the whole Defence team that worked with
20 Joseph Nzabirinda for several months, we come to ask you respectfully to accept the guilty plea that
21 Joseph Nzabirinda has just made before you. We owe you a few explanations that Mr. Haguma and
22 myself will provide to you.

23

24 Ever since the beginning of my work with Mr. Joseph Nzabirinda, he has told me, "Counsel, I want to
25 plead guilty for I sinned or failed," and that was the mandate he handed down to me. All the work of the
26 Defence team, then consisted of conducting investigations *in situ*, at Sahera, but also in a number of
27 other countries, in meeting witnesses, in an attempt to understand what actually happened. And it was
28 then our task, as we sought the truth, to find the appropriate legal translation to match the guilt with
29 which the Accused reproaches himself. And so it was our duty and we accomplished it to engage in
30 debate with the Office of the Prosecutor. The Office of the Prosecutor, at the time, was charging
31 Joseph Nzabirinda with the gravest of crimes, and our investigations told us that he was not guilty of
32 those crimes. So all our discussions with the Office of the Prosecutor consisted of the following: We
33 would say, "The crimes you accused him of, he is not guilty of, whereas there is at least one point on
34 which he acknowledges his guilt." And that is how over the weeks and the months, we came to
35 common positions. The Prosecutor agreed that the man before you has no blood on his hands.
36 However, he said he was guilty of murder by omission by aiding and abetting such crimes and,
37 therefore, you see, this is what we ended up agreeing with regard to the crimes referred to in 62(a) for

1 after (*sic*) Statute. After weeks and months of discussions, we noticed, together with the Office of the
2 Prosecutor, that there was no longer major disagreement between us on the facts, and so, as my
3 learned friend from the Office of the Prosecutor indicated, we talked up the case law of this Tribunal in a
4 joint effort to determine how the events which we had agreed upon could be viewed from a legal
5 standpoint. And in this manner, we came to a consensual agreement on the count which was
6 submitted to you, and Mr. Nzabirinda earlier on, pleaded guilty to that count, guilty of having aided and
7 abetted the commission of the crime of murder, referred to in Articles 3(a) and 6.1 of the Statute, as an
8 accomplice by omission in the preparation of the commission of the crime. I will not go over the
9 comments made by my learned friend based upon our joint motion on all legal rulings that are the basis
10 of this legal argument, the one of the "approving spectator", who aids and abets by omission. All this
11 has been very clearly canvassed by my learned friend. At this stage of the proceedings,
12 Madam President, Your Honours, your Trial Chamber is now in a position to note that there is no major
13 disagreement between the parties on the facts. And that in analysing these facts legally, such an
14 analysis is consistent with both the Statute and the Case Law of the Tribunal.

15
16 Moreover, you heard the Accused tell you that his confession was done freely and voluntarily. It was
17 his wish, right from the start, that his confession was made knowingly, and that finally, it is an
18 unequivocal plea, and it is for these reasons indeed, that we would ask you today to grant it.

19
20 And I would like to add the following: My learned friend reminded you that in the guilty plea agreement
21 between the parties, we, at paragraph 60 of that agreement, raised what seems to us to be the best
22 recommendation for sentencing, a recommendation we put to the Chamber subsequently. We are
23 aware that the Trial Chamber is in no way required to be bound by agreements between the parties;
24 that it is a sovereign body. However, we call upon the Chamber to understand that this range -- this
25 sentencing range on which we had agreed seems to us to be the most appropriate, the best suited to
26 the case following our agreement on the facts, as well as our agreement on the definition and
27 qualification -- the legal qualification of those facts. You have seen that this scale ranges between five
28 and eight years imprisonment with deduction of time already served. We will discuss this again when
29 we meet for the hearing on sentencing. At the same time, we indicated in the plea agreement in the
30 hearing for sentencing, the Accused will present mitigating circumstances and the
31 Office of the Prosecutor shall not oppose those mitigating circumstances. Such is, therefore, in
32 general, the agreement between the parties which you have decided to render public and we do adhere
33 to this.

34
35 Madam President, Your Honours, a guilty plea is always a moment of importance and solemnity, first of
36 all, for the Accused, who told his lawyers how relieved he felt by his plea. But it is also important, and I
37 would like to believe this that it counts for the victims as well. The direct victims, namely, the

1 Mazimpaka and Murara families, but beyond this -- beyond this, for all the victims in Rwanda, victims of
2 the tragedy of genocide and crimes against humanity which were perpetrated in that country.

3
4 It is also an important moment for our international criminal justice system, to which we are all trying to
5 contribute in building, and I am always happy to recall permission handed down to this Tribunal by the
6 international community, that is to dispense justice and, therefore, usher in reconciliation in Rwanda,
7 but I think Mr. Haguma will comment on this in a few moment.

8
9 Before I close, I have three more comments to make. The Defence would like to support the
10 application made by the Office of the Prosecutor with regard to the *non bis in idem* rule. You will
11 understand how important this issue is to the Defence. You will certainly have understood that the
12 Prosecutor agreed to insert into his motion for amendment of the indictment, but also to incorporate into
13 the guilty plea agreement his request for the withdrawal of the prior charges which had been raised with
14 prejudice, which is to say that he is permanently refraining, and at the same time, (*inaudible*) ask him I
15 was to refrain from prosecuting Joseph Nzabirinda for the counts of the indictment stated by the
16 Prosecutor, which the Prosecutor has indicated he is no longer pursuing given the lack of evidence.
17 And therefore, this is to be noted that in your decision you should indicate that the *non bis in dem* rule is
18 applicable to the counts which were withdrawn from the first indictment.

19
20 I must also at this point make an oral motion which I would ask the Office of the Prosecutor to support
21 in its turn. Madam President, you must be aware and the rest of the Bench too that UNDF is a small
22 environment in which all of the individuals who are there do not necessarily adopt the same approach.
23 So you may imagine, if you will, the swirl of rumour that reigns in that place already based on the
24 possibility of a guilty plea by Joseph Nzabirinda, and the small close world. There is rumour mill and
25 there is a host pressure and insults. We are not far from threats. It will not be appropriate that following
26 this hearing, following this solemn act, which is also important, taken by Joseph Nzabirinda, it will not
27 be right for him to be sent back to the prison, to the UNDF. There are other solutions, which have been
28 used in the past and we would ask you to support the measures we have taken up with the registry so
29 that immediately after this hearing the Accused should be led to a place other than the UNDF, at least,
30 until the sentencing hearing. It is a matter of his security and also for his mental health, given that this
31 is a very fraught time for him.

32
33 Before I close and give the floor to Mr. Haguma, I would just like to say this to the Court, none of the
34 actions we have taken as a Defence team would have been possible without the support and
35 assistance of the DCDMS, and we would like to thank in public for the support they have extended to us
36 so far. In a personal capacity, I would also like to take this opportunity to publicly show my gratitude to
37 all the team that has worked throughout the previous months. I am referring to the investigators. One

1 is present here today and another is in Rwanda. I would like to make special mention of our assistant,
2 Charlotte Moreau, who spared no effort to be here and to assist.

3
4 And lastly, Mister -- Madam President, Your Honours, I would like to give special thanks to
5 Jean Haguma of the Kigali Bar, who honoured us by joining our team. He is present here and he is one
6 of the most important representatives of the Rwandan Bar. Personally, I am glad that in the person of
7 Mr. Haguma, the Rwandan Bar is, indeed, represented in the International Criminal Tribunal to speak
8 for others, especially in the hearing or forum such as this. Thank you.

9 MADAM PRESIDENT:

10 Thank you, Counsel. We will now give the floor to Mr. Haguma, from Rwanda.

11 MR. HAGUMA:

12 Madam President, Your Honours, allow me to add a few words to what submissions has been made by
13 my learned friend during this very important moment of the plea made by our client
14 Mr. Joseph Nzabirinda, as has been explained by the Prosecutor in his excellent presentation, and as
15 well as my learned friend on my side when he provided the explanations concerning the procedure and
16 the steps through which we have gone to come to this particularly important day. I am sure,
17 Madam President, Your Honours, you have understood that the plea which has been made by
18 Mr. Nzabirinda today is a confession which is in conformity with the Statute of the Tribunal. It fulfills,
19 furthermore, all the conditions required by Rule 62(b). But, Madam President, Your Honours, I will not
20 be doing my duty if I were not to mention at this important moment the impact that this confession will
21 make on Rwandan justice on the one hand, and on the people of Rwanda in general, but more
22 particularly, on the victims of crimes of genocide and crimes against humanity.

23
24 Madam President, Your Honour, as a Rwandan lawyer, who is a member of the Rwandan Bar, who is
25 practicing in that country and having attended many trials going on in Rwanda, during which
26 confessions are foreseen, and trials during which some individuals have, indeed, made confessions. I
27 am sure that this confession will assist others who have yet to confess, to go about that confession and
28 assist the Rwandan judicial system in providing justice expeditiously, and also by avoiding impunity. As
29 my learned friend has said, this confession goes along with the objectives of the Tribunal, namely,
30 eradicating impunity and encouraging the reconciliation among the people of Rwanda. This confession
31 would be relieve for the direct victims of crime, for the crime for which Joseph Nzabirinda has
32 confessed, and for victims of crimes against humanity in general, as well as the Rwandan people, who
33 are making efforts to ensure total reconciliation.

34
35 Lastly, Madam President, Your Honours, if I hope -- if this confession is accepted as I hope it will, it
36 shall provide the victims with some kind of reparation, and this is, indeed, one of the objectives of this
37 Tribunal.

1 MADAM PRESIDENT:

2 The Chamber would like to thank you.

3

4 Mr. Prosecutor, do you have something to add?

5 MR. EGBE:

6 Yes, Your Honours, just by way of a response to the oral motion of the Defence on the modification of
7 detention conditions of the Accused person. We entirely support that motion. As a matter of fact, we
8 are aware of instances where the Accused has been the target of veiled threats, this coming as soon as
9 it became clear that the Accused was cooperating with the Office of the Prosecutor. As a matter of fact,
10 the Office of the Prosecutor had commenced, but could not finalised steps without the approval or the
11 decision of the Trial Chamber to have the accused relocated to a facility that allows him not to be in
12 contact with the other accused persons at the UNDF. All of this for security reasons. So, in sum, we
13 support the motion and we urge Your Honours to grant the request.

14

15 Just one or two pointers before I resume my seat, Your Honours. You may have noticed some slight
16 discrepancies in the translations regarding some of the document that we have filed. I wish to state
17 now that certain documents, English or French as the case may be, I will explain later, are the original.
18 So in the event that there is a discrepancy, we wish to direct you to the original text. Starting with the
19 plea agreement, the French text, (*French spoken*) is the authentic text. The English is the translation. I
20 say this particularly because if you look at paragraph 60 in French, there is a discrepancy in the
21 sentencing recommendation in the English text. So I placed it on record that the French text of the plea
22 agreement is the authentic text. In regard to the joint motion for consideration of the plea agreement,
23 the French text is also the authentic text and the English is the translation. Conversely, as far as the
24 amended indictment pursuant to the decision of the 8th of December is concerned, the English text is
25 the authentic text. Thank you very much, Your Honours.

26 MADAM PRESIDENT:

27 Thank you, Mr. Prosecutor.

28

29 Registry representative, could you please indicate to the Chamber matters pertaining to the conditions
30 of detention?

31 MR. KIYEYEU:

32 Madam President, Honourable Judges, the Registry will make arrangements to remove the Accused
33 from the UNDF to the safe house until further instructions from your Honourable Chamber. Thank you,
34 Madam President, Honourable Judges.

35 MADAM PRESIDENT:

36 The Chamber wishes to thank the registry.

37

1 If there are no further submissions, we are going to withdraw to deliberate and we shall return after
2 30 minutes, in other words, that would be past noon -- I do apologise, I do apologise. I meant ten after
3 one. So we shall return here at 1:10 p.m, and the session stands adjourned for the time being.
4 (*Court recessed from 1237H to 1338H*)

5 MADAM PRESIDENT:

6 We resume the session.

7

8 Here is the Chamber's decision:

9

10 "The Chamber reiterates that the seals are lifted on the joint motion and the plea agreement. It further
11 orders that the seals be lifted on all the other documents in the Nzabirinda case; motions, responses,
12 decisions or orders, except for any material related to protected witnesses in conformity with the
13 Chamber's decision in that respect.

14

15 2. The Chamber has noted section 4 of the agreement describing the facts upon which the plea
16 agreement is based and section 5 on factual and legal findings. The Chamber is satisfied that there is
17 no material disagreement between the Accused and the Prosecution. It further finds that the
18 acknowledged facts are sufficient to establish the crimes and the participation of the Accused in those
19 crimes.

20

21 3. The Chamber is satisfied by the answers provided by the Accused and considers that the full
22 conditions of Rule 62(b) of the rules have been met. The Chamber accepts the guilty plea of the
23 Accused.

24

25 4. The Chamber finds the Accused guilty for his responsibility for having aided and abetted the crime of
26 murder as a crime against humanity of Pierre Murara and Joseph Mazimpaka pursuant to Articles 3(a)
27 and 6.1 of the Statute.

28

29 5. The Chamber takes note of the pleadings of the parties with regard to application of the
30 *non bis in dem* principle and indicates that it will address the matter in its sentencing -- in the
31 sentencing judgement." This is the decision, and now we would like to ask the parties if they are
32 prepared to present the submissions with respect to sentencing.

33 MR. ROUX:

34 Madam President, Your Honours, the Defence would like to have a special hearing during which it will
35 call three or four witnesses in support of the motion for consideration of mitigating circumstances, and
36 therefore, we are applying to the Chamber for such a hearing to be held.

37

1 MADAM PRESIDENT:

2 Thank you.

3 MR. ROUX:

4 Thank you.

5 MR. EGBE:

6 Your Honours, in that respect, the position of the prosecutor is not dissimilar to that of the Defence. We
7 would request a special session for the sentencing, during which the Prosecutor shall make his
8 submissions regarding the aggravating and mitigating circumstances in this case. Thank you.

9 MADAM PRESIDENT:

10 Very well. When would you be available for the hearing on sentencing? Can you indicate when you
11 would be available and then the Chamber, of course, will set the date?

12 MR. ROUX:

13 May it please the Court, the week of the 15th of January. Any date in the week beginning the
14 15th of January would be suitable for the Defence, and I think perhaps to be specific around the
15 17th of January, which would give everyone a chance to arrive and wind up what they need to wind up.

16 MR. EGBE:

17 We are in agreement with that proposition.

18 MADAM PRESIDENT:

19 Very well. We would set the date for Wednesday the 17th of January 2007. So it will be Wednesday
20 the 17th of January 2007 at 9 a.m. If you wish to file a brief on sentencing, you should do so a week
21 before the date set for the hearing on sentencing.

22
23 We would also like to remind you, and I am addressing the Defence, that identification of witnesses to
24 be called during this hearing, that is their pseudonyms, should be communicated at least 21 days
25 before they testified. That would also include summaries of the testimony to be presented. That too
26 should be presented 21 days before they take the stand.

27
28 And, therefore, we would annul the pretrial conference which was supposed to be held on the 2nd of
29 February 2007.

30
31 The Chamber also orders that Joseph Nzabirinda continues to be held in conditions which would
32 guarantee his security away from the other detainees in a secure location until his sentencing. I believe
33 we have finished our business. Our order annulling the pretrial conference, which was supposed to be
34 held on the 2nd of February 2007, was not heard in English. We would, therefore, repeat it. We have
35 therefore concluded our business and the session may rise.

36 *(Court adjourned at 1357H)*

37 *(Pages 1 to 17 by Sheriffo Jammeh)*

CERTIFICATE

I Sheriffo Jammeh, 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.

Sheriffo Jammeh