

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO. ICTR-2005-86-S
CHAMBER III

THE PROSECUTOR
OF THE TRIBUNAL
v.
MICHEL BAGARAGAZA

THURSDAY, 5 NOVEMBER 2009
1503H
JUDGEMENT

Before the Judges:

Vagn Jøensen, Presiding
Bakhtiyar Tuzmukhamedov
Gberdao Gustave Kam

For the Registry:

Ms. Félicité A. Talon
Mr. John Tumati

For the Prosecution:

Mr. Wallace Kapaya
Mr. Patrick Gabaake
Mr. Iskandar Ismail

For the Accused Michel Bagaragaza:

Mr. Geert-Jan Alexander Knoops
Mr. Wayne Jordash

Court Reporter:

Ms. Tanya West

P R O C E E D I N G S

1

2 MR. PRESIDENT:

3 Good afternoon, everybody.

4

5 Madam Registrar, will you open the proceedings.

6 MS. TALON:

7 Good afternoon, Mr. President. Good afternoon, Your Honours.

8

9 Trial Chamber III of the International Criminal Tribunal for Rwanda, composed of Judge Vagn Jøensen,
10 presiding, Bakhtiyar Tuzmukhamedov, and Gberdao Gustave Kam, is now sitting in open session,
11 today, 5th November 2009, for delivery of the sentence in the matter of the
12 Prosecutor versus Michel Bagaragaza, Case No. ICTR-2005-86-S.

13

14 Thank you very much, Mr. President.

15 MR. PRESIDENT:

16 Thank you, Madam Registrar.

17

18 Is -- are there any matters to discuss before we proceed to reading the summary of the judgement?

19

20 This is not the case.

21

22 I will proceed to read the summary. I will do it slowly because there's not been sufficient time to provide
23 the interpreters with the French translation.

24

25 The summary reads as follows: Today the Chamber delivers its sentencing judgement in the case of
26 the Prosecutor versus Michel Bagaragaza. A summary of the judgement will now be read out. The
27 written reasons for the judgement will follow shortly and will be the only authoritative -- authoritative
28 statement of the Chamber's findings and reasonings in this case.

29

30 Michel Bagaragaza was initially charged with conspiracy to commit genocide, genocide, and, in the
31 alternative, complicity in genocide. Another charge was added later to the indictment.

32

33 On 15th August 2005, Bagaragaza voluntarily surrendered to the Tribunal and made his
34 first initial appearance the next day, where he pleaded not guilty to each of the three counts set forth in
35 the initial indictment.

36

37 After failed attempts to transfer the case to a national jurisdiction and failed attempts to proceed with

1 the case before the Tribunal on the basis of a guilty plea agreement between Bagaragaza and the
2 Prosecution, the parties filed another guilty plea agreement in August of this year. This time the
3 Trial Chamber accepted the agreement after being satisfied that Bagaragaza's acceptance of the
4 plea agreement was made freely and voluntarily and that it was informed and unequivocal. With leave
5 from the Chamber, the Prosecutor filed an amended indictment charging Bagaragaza with one count of
6 complicity in genocide, to which Bagaragaza pleaded guilty.

7
8 On 3rd November 2009, the Chamber heard one character witness. On the following day the Chamber
9 admitted 12 written character statements into evidence as well as the parties' joint statement on agreed
10 facts concerning Bagaragaza's cooperation with the Prosecution. On that day the Chamber also heard
11 the parties' submissions on sentencing and Michel Bagaragaza's personal address expressing remorse
12 for his actions.

13
14 Michel Bagaragaza was born in 1945 in Bushiru region, Giciye *commune*, Gisenyi *préfecture*, in
15 Rwanda. He is married and the father of eight children.

16
17 Before the genocide Bagaragaza had become the director general of OCIR/Thé, the government office
18 that controlled the tea industry in Rwanda. In this capacity he controlled 11 tea factories, which
19 employed approximately 55,000 persons. He was also the vice-president of
20 *Banque Continentale Africaine au Rwanda* and a member of the *comité préfectoral* of the
21 MRND political party in Gisenyi *préfecture*.

22
23 He also confessed to being part of a powerful and tightly knit group of people known as the *Akazu* that
24 exercised substantial political and financial power in Rwanda and included the family members of the
25 president of Rwanda.

26
27 In accordance with Bagaragaza's guilty plea, the Chamber has found him guilty of
28 complicity in genocide for having substantially contributed to the killings of more than 1,000 Tutsis who
29 sought refuge at Keshi hill -- Kesho hill and at Nyundo cathedral. Thus, he aided and abetted the
30 planners and principal perpetrators of the killings, including military and civilian leaders and members of
31 the *Interahamwe* militia, members of the Presidential Guard, military personnel, and the staff of the
32 Rubaya and Nyabihu tea factories. Bagaragaza knew that the planners and the principal perpetrators
33 had the special genocidal intent to destroy, in whole or in part, the Tutsi ethnic group, but he did not
34 himself share that special intent.

35
36 As to the particulars of Bagaragaza's actions, the Chamber, in accordance with his confession, has
37 found that, on or about 8 April 1994, he participated in a meeting with the *bourgmestre* and the chief of

1 the *Interahamwe* and assistant *bourgmestre* of Giciye *commune*, Thomas Kuradusenge, and learned
2 that the two men had agreed that Kuradusenge would organise and lead attacks against Tutsis who
3 had sought refuge at Kesho hill and Nyundo cathedral and that reinforcements would continue to be
4 sent to the attackers. Further, Bagaragaza authorised that vehicles and fuel from the
5 Rubaya and Nyabihu tea factories be used to transport members of the *Interahamwe* for the attacks,
6 that the attackers be provided with weapons, which he allowed the army to conceal at the tea factories
7 in 1993, and that personnel from the factories participate in the attacks. Moreover, he met with
8 Kuradusenge two or three times between 9 and 13 April 1994 and, on Kuradusenge's request, gave
9 him a substantial amount of money to buy alcohol for the *Interahamwe* in order to motivate them to
10 continue with the killings in the Kabaya and Bugoyi areas.

11
12 In determining the sentence, the Chamber has considered a number of factors that will be addressed in
13 the written reasons for the judgement. In this summary the Chamber will only address the most
14 decisive factors for its sentencing decision.

15
16 Bagaragaza's offence relates to genocide, which is the most heinous of crimes known to mankind. In
17 this case more than a thousand Tutsi were flee -- who were fleeing their attackers were killed
18 indiscriminately, only because of their ethnicity. With respect to Bagaragaza's mode and degree of
19 participation in that crime -- however, the Chamber notes that Bagaragaza is not charged with
20 participating in the planning or the execution of the killings or with aiding and abetting the planners and
21 principal perpetrators while sharing their genocidal intent. His offence is aiding and abetting the
22 genocidaires to a substantial degree with knowledge of their genocidal intent. Further, there is no basis
23 in the agreed facts presented to the Chamber to assume that Bagaragaza consented to the military's
24 concealment of weapons at the tea factories in 1993 so that they could be used for genocidal acts or
25 that he otherwise acted with premeditation when he complied with the requests of the local, political,
26 and *Interahamwe* leaders. The Defence has led credible evidence that Bagaragaza, in his personal
27 and professional life, showed no bias against the Tutsi and was on excellent terms with them.
28 Therefore, and considering the circumstances, it is likely that, when agreeing to provide assistance to
29 the genocidaires, he was motivated by concern for the safety of his family and himself. However,
30 there's no sufficient basis in the agreed facts or the evidence of character witnesses to conclude that
31 Bagaragaza, being a very resourceful person, would have faced imminent danger, had he not complied
32 with the requests of the local, political, and *Interahamwe* leaders.

33
34 With respect to aggravating and mitigating factors, the Chamber notes that the Prosecution has not
35 made any submissions on particular aggravating factors and that it has concurred with the Defence's
36 submissions on particular mitigating factors.

1 The Chamber acknowledges as particularly important mitigating factors that Bagaragaza surrendered
2 voluntarily to the Tribunal in August 2005, that he pleaded guilty when the charges were amended to
3 comport with his confession, and that he thereby, and in his public address to the Court, has shown
4 genuine remorse for his actions.

5
6 Even more important, however, is the fact that Bagaragaza has provided invaluable assistance to the
7 Prosecution in its investigations. His assistance started before he was indicted, without concern for
8 self-incrimination, continued without reservation after he was indicted and detained, and he has
9 indicated his willingness to also assist in the future. Bagaragaza has thereby, to a remarkable degree,
10 contributed to the process of truth finding with respect to the Rwandan tragedy and to national
11 reconciliation. This warrants a substantial reduction of the sentence that the gravity of his offence
12 would otherwise carry.

13
14 The parties have made a joint recommendation for a prison term of six to ten years. The Chamber is
15 not bound by the joint recommendation but has taken it into due consideration.

16
17 Mr. Bagaragaza, will you please stand up while your sentence is pronounced.

18
19 The Court sentences Michel Bagaragaza to a prison term of eight years with credit for the time he has
20 spent in detention since his arrest on 15 August 2005 and will spend in detention until he can start
21 serving his sentence.

22
23 Mr. Bagaragaza, you may sit down again.

24
25 It seems to follow from the terms of the joint guilty plea agreement that there will be no appeal from
26 either side against this judgement. If that is the case, the President of the Tribunal will, as soon as
27 possible, in accordance with his practice direction on this issue, designate in which state Bagaragaza
28 shall serve his sentence.

29
30 At the conclusion of this case, the Bench wishes to commend counsel on both sides and their teams for
31 the exemplary way in which they have cooperated to have this case completed in an expeditious and
32 just manner. The Bench also thanks the registry, the interpreters, the court recorders (*sic*), as well as
33 the audio-video unit and the security staff, for their usual excellent assistance.

34
35 The case against Michel Bagaragaza is hereby adjourned.

36 *(Court adjourned at 1518H)*

37 *(Pages 1 to 4 by Tanya West)*

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CERTIFICATE

I, Tanya West, 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.

_____ Tanya West