

SUMMARY OF JUDGEMENT

I. Introduction

1. This case concerns Lieutenant Colonel Ephrem Setako, who hails from Nkuli commune in Ruhengeri prefecture. In 1994, he was the head of the division of legal affairs in the Ministry of Defence in Kigali. Based on his alleged acts in Ruhengeri and Kigali, the Prosecution has charged him with six counts: Genocide or complicity in genocide; murder and extermination as crimes against humanity; and serious violations (violence to life and pillage) of common Article 3 to the Geneva conventions and Additional Protocol II. The Defence disputes all charges.

2. The trial opened on 25 August 2008 and closed on 26 June 2009, after 60 trial days. The Prosecution presented 21 witnesses and the Defence 34, including Setako. Closing arguments were heard on 5 and 6 November 2009.

3. The Chamber will now give a summary of its findings concerning the allegations against Setako. Only the written judgement is authoritative. It will be available soon after the conclusion of the editorial process. The Defence submissions concerning certain fair trial issues are discussed in the judgement and will not be addressed here. But the Chamber has disregarded evidence of several allegations because of lack of notice. These events are not included in this summary.

II. Killing of Bernard Bajyagahe

4. One Prosecution witness testified that, from January to March 1994, Setako attended monthly meetings at the home of Joseph Nzirorera in Mukingo commune, Ruhengeri prefecture. There prominent personalities discussed the extermination of Tutsis. After one such meeting in February 1994, Setako ordered the witness to kill a Tutsi man named Bajyagahe. The Chamber has doubts about the witness's account and has not relied on his evidence.

III. Meeting at the Home of Joseph Nzirorera's Mother and Subsequent Attacks

5. The evidence shows that on the morning of 7 April 1994, militiamen gathered at the Byangabo trading centre in Mukingo commune and then launched an attack on Tutsis in the neighbouring Rwankeri *cellule* and at the Busogo parish. Hundreds of Tutsis were killed at these locations, and their property was looted or destroyed.

6. According to the Indictment, the attacks were planned during a meeting of prominent personalities. It had been held earlier that morning at the home of Nzirorera's mother, not far from the trading centre. The Prosecution relies on three witnesses, of whom two allegedly observed Setako at the house. The Defence submits that Setako was in Kigali on 6 and 7 April.

7. The Chamber has doubts about the testimonies placing Setako at the meeting. Adequate corroboration is lacking. Although his alibi in Kigali carries limited weight, the Prosecution has not proved beyond reasonable doubt that Setako assisted in initiating these crimes.

IV. Meeting at Rukabu's House and Subsequent Attacks

8. One Prosecution witness testified that Setako attended another meeting on the morning of 7 April 1994, at Rukabu's house in Nkuli commune. There he encouraged the assembled crowd to find and kill Tutsis. There is no dispute that Tutsis were killed and that

their property was looted. But the Chamber has not found it established that Setako was at this meeting.

V. Killing of Ziragwira and Ibambasi

9. Another Prosecution witness stated that, on 7 April 1994, he observed Setako standing near a roadblock in Nkuli commune while two Tutsi men named Ziragwira and Ibambasi were killed by *Interahamwe*. The Defence presented evidence that no violence occurred at the roadblock on that occasion, and that these Tutsis died under different circumstances. The Chamber has not found it established beyond reasonable doubt that they were killed as alleged in the Indictment.

VI. Killing of Rachel

10. It is further alleged that, from 7 to 8 April 1994, Setako harboured a Tutsi woman named Rachel at his home in Nkuli commune. When confronted by an angry mob on the morning of 8 April, he purportedly shot her in the head. One Prosecution witness testified that he observed this event. The Defence presented witnesses and documentary evidence that Rachel was killed elsewhere by other persons. The allegation is dismissed.

VII. Attack on Ruhengeri Court of Appeal

11. According to the Indictment, Setako provided weapons and initiated the training of militia at the Mukingo commune office on 11 April 1994 and urged them to kill Tutsis throughout the prefecture. Around 14 April, some of these militiamen allegedly killed Tutsis taking refuge at the Ruhengeri Court of Appeal. Setako was purportedly present during the attack and congratulated the assailants afterwards.

12. The Chamber has doubts about the credibility of the witness who testified that Setako participated in the meeting of 11 April. Also the testimony of the witness who stated that he observed Setako during the 14 April attack raises questions, in particular in light of Defence evidence that Setako was on an official mission in Zaire during that period. These allegations were therefore not established.

VIII. Killings at Mukamira Military Camp

13. The Indictment alleges that, on or about 25 April 1994, Setako ordered militiamen and soldiers at Mukamira camp to kill Tutsis staying there. That night, around 30 to 40 Tutsis were allegedly shot. Around 11 May, Setako purportedly returned to the camp with around 10 Tutsis and ordered their death.

14. Two Prosecution witnesses provided convincing and largely corroborated accounts of Setako's presence at the camp on 25 April and 11 May 1994 as well as the ensuing killings of Tutsis which followed his instructions on both occasions. The Chamber has found this evidence credible. The testimony of the Defence witnesses who did not know about these events carried only limited weight.

15. Accordingly, the Chamber finds Setako responsible for the killing of 30 to 40 Tutsis at Mukamira camp on 25 April and the death of around 10 others there on 11 May 1994.

IX. Ceremony Installing Juvénal Kajelijeli as *Bourgmestre*

16. The Indictment alleges that Setako attended a ceremony in mid-May 1994 in Mukingo commune for the installation of Juvénal Kajelijeli as *bourgmestre*. Setako purportedly

congratulated the *Interahamwe* and urged them to kill Tutsis in neighbouring areas. The Prosecution relied on one witness. The Chamber has not found this testimony credible.

X. Setako's Role as Liaison Officer in Kigali

17. The Prosecution submits that Setako served as the unofficial liaison officer between the Ministry of Defence and the *Interahamwe* in the Kigali-Ville prefecture from April to July 1994. The purpose was to supply weapons to militia groups in the city. The Prosecution relies primarily on hearsay evidence. The Chamber has not found the allegation proved beyond reasonable doubt.

XI. Looting in Kigali

18. The Indictment alleges that, during the events in 1994, militiamen looted and destroyed property in Kigali-Ville prefecture following orders or encouragement from Setako. There is no dispute that widespread looting occurred in Kigali, as it did in Ruhengeri prefecture. But the Prosecution presented no evidence of Setako's connection to these crimes. His responsibility has therefore not been established.

XII. Killings at Péage Roadblock in Kigali

19. Two Prosecution witnesses claimed that, in May 1994, Setako drove two Tutsi girls to the *Péage* roadblock in Kigali-Ville prefecture and ordered the *Interahamwe* there to kill them. The Chamber has some doubts about the credibility of these witnesses, and it is not quite clear that they testified about the same location. The Prosecution has not proved this allegation beyond reasonable doubt.

XIII. Verdict

20. The Chamber has found Ephrem Setako responsible pursuant to Article 6 (1) of the Statute for ordering the killing of 30 to 40 refugees at the Mukamira military camp on 25 April 1994, and for the killing of around 10 Tutsis at the camp on 11 May 1994. Setako is therefore guilty of genocide (count 1), extermination as a crime against humanity (count 4) and violence to life as a war crime (count 5).

21. He is not guilty of complicity in genocide (count 2), murder as a crime against humanity (count 3) and pillage as a war crime.

XIV. Sentencing

22. The Chamber has considered the gravity of each of the crimes for which Setako has been convicted, as well as aggravating and mitigating circumstances. The Chamber sentences Ephrem Setako to a single sentence of 25 years of imprisonment. He shall remain in the custody of the Tribunal pending transfer to the state where he will serve his sentence.

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