



**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR: ENG

TRIAL CHAMBER II

Before: Judge Asoka de Silva, Presiding
Judge Taghrid Hikmet
Judge Seon Ki Park

Registrar: Mr. Adama Dieng

Date: 16 November 2007

The PROSECUTOR
v.
Juvénal RUGAMBARARA

Case No. ICTR-00-59-T

Sentencing Judgement

Office of the Prosecutor

Mr. Charles Adeogun-Phillips
Mr. Peter Tafah
Ms. Memory Maposa

Counsel for the Defence

Mr. Maroufa Diabira
Mr. Boubou Diabira

I. Introduction

1. Juvénal Rugambarara was born in 1959 in Bumba *secteur*, Tare *commune*, Kigali-Rural *préfecture*.¹ He lived most of his adult life in Bicumbi *commune*, where he worked as a medical officer.² He was appointed *bourgmestre* of Bicumbi *commune*, Kigali-Rural *préfecture* on 4 August 1993, having succeeded Laurent Semanza.³ Juvénal Rugambarara served as the *bourgmestre* of Bicumbi *commune* from 16 September 1993 until 20 April 1994.⁴

2. The Indictment against Rugambarara, containing nine counts, was confirmed on 13 July 2000 by Judge Pavel Dolenc.⁵ He was charged with genocide, complicity in genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, extermination, torture and rape as crimes against humanity and serious violations of common Article 3 of the Geneva Conventions of 12 August 1949, pursuant to Articles 2, 3, 4 and Articles 6(1) and 6(3) of the Statute of the Tribunal (the “Statute”).⁶ On 14 July 2000, Judge Pavel Dolenc issued the first warrant of arrest and order for the transfer and detention of Rugambarara.⁷ On 11 August 2003, Rugambarara was arrested in Uganda⁸ and on 13 August 2003 transferred to the Tribunal. On 15 August 2003, he made his initial appearance and pleaded not guilty to all counts of the Indictment.⁹

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

¹ Amended Indictment, 2 July 2007 (“Indictment”), para. 2.

² Indictment, para. 2.

³ Indictment, para. 3.

⁴ Indictment, para. 3.

⁵ Confirmation of the Indictment and Order for Non-Disclosure of the Indictment and Protection of Victims and Witnesses (TC).

⁶ *Ibid.*

⁷ Warrant of Arrest and Order for Transfer and Detention (TC), 14 July 2000; this was followed by the issuance of 2 further warrants for the arrest of Rugambarara: Warrant of Arrest and Orders for Transfer and Detention and for Search and Seizure (TC), 1 June 2001; and Warrant of Arrest and Orders for Transfer and Detention and for Search and Seizure (TC), 15 February 2002.

⁸ The Warrant of Arrest and Order for Transfer and Detention of the Accused Juvénal Rugambarara was communicated by the ICTR Registrar to the Ugandan Minister of Justice on 11 August 2003.

⁹ T. 15 July 2003, pp. 6, 8, 11, 13, 16, 17, 20, 24 and 26.

¹⁰ Prosecutor’s Request for leave to amend an Indictment pursuant to Rules 73, 50 and 51 of the Rules of Procedure and Evidence.

¹¹ *Réponse de la Défense à la requête du Procureur demandant l’autorisation de modifier un acte d’accusation conformément aux articles 73, 50 et 51 du Règlement de Procédure et de Preuve*, filed on 13 June 2007.

¹² Decision on the Prosecution Motion to Amend the Indictment (TC).

appropriate punishment pursuant to Article 6(3) of the Statute.¹³ More specifically, the Indictment alleges that, between 7 and 20 April 1994, subordinates under Juvénal Rugambarara's effective control (*conseillers*, communal policemen, local administrators and militiamen) had launched attacks on the Tutsi gathered at Mwulire, Mabare and Nawe *secteurs* in Bicumbi *commune* of Kigali-Rural *préfecture*, resulting in the deaths of thousands of Tutsi civilians.¹⁴ The attacks took place between 13 and 18 April 1994 at the Mwulire camp, on or about 13 April at the Mwulire *secteur* office, between 12 and 18 April 1994 in Mabare *secteur*, between 16 and 18 April 1994 at Mabare Mosque and on 8 April 1994 in Nawe *secteur*.¹⁵

II. Background

A. The Guilty Plea

4. On 13 June 2007, the Parties filed a Joint Motion for Consideration of a Guilty Plea Agreement between Rugambarara and the Office of the Prosecutor.¹⁶ The Motion sets forth the factual basis and legal requirements of the Accused's guilty plea, for the Chamber's consideration pursuant to Rules 62(B) and 62*bis* of the Rules of Procedure and Evidence (the "Rules").¹⁷

5. On 13 July 2007, at his further appearance, Juvénal Rugambarara pleaded guilty for having failed in his duty to take the necessary and reasonable steps to ensure the punishment of his subordinates for the crimes they committed between 7 and 20 April 1994.¹⁸

¹³ Indictment, paras. 14-15.

¹⁴ Indictment, para. 16.

¹⁵ Indictment, paras. 17-33.

¹⁶ Joint Motion for Consideration of a Guilty Plea Agreement between Juvénal Rugambarara and the Office of the Prosecutor ("Joint Motion").

¹⁷ Rule 62: Initial Appearance of Accused and Plea

(B) If an accused pleads guilty in accordance with Rule 62(A)(v), or requests to change his plea to guilty, the Trial Chamber shall satisfy itself that the guilty plea:

- (i) is made freely and voluntarily;
- (ii) is an informed plea;
- (iii) is unequivocal; and
- (iv) is based on sufficient facts for the crime and accused's participation in it, either on the basis of objective indicia or of lack of any material disagreement between the parties about the facts of the case. Thereafter the Trial Chamber may enter a finding of guilt and instruct the Registrar to set a date for the sentencing hearing.

Rule 62*bis*: Plea Agreement Procedure

(A) The Prosecutor and the Defence may agree that, upon the accused entering a plea of guilty to the indictment or to one or more counts of the indictment, the Prosecutor shall do one or more of the following before the Trial Chamber:

- (i) apply to amend the indictment accordingly;
- (ii) submit that a specific sentence or sentencing range is appropriate;
- (iii) not oppose a request by the accused for a particular sentence or sentencing range.

(B) The Trial Chamber shall not be bound by any agreement specified in paragraph (A).

(C) If a plea agreement has been reached by the parties, the Trial Chamber shall require the disclosure of the agreement in open session or, on a showing of good cause, in closed session, at the time the accused pleads guilty in accordance with Rule 62(A)(v), or requests to change his or her plea to guilty.

¹⁸ T. 13 July 2007, p. 8.

6. The Chamber proceeded to verify the validity of the plea. After questioning the Accused, the Chamber was satisfied that Rugambarara understood that when an accused pleads not guilty, he is presumed innocent until proven guilty beyond reasonable doubt and that in pleading guilty, he was waiving his right to a fair trial, including the right to cross-examine Prosecution witnesses.¹⁹ Rugambarara also understood that his plea, if accepted, would result in a conviction with imprisonment associated thereto. Furthermore, Rugambarara acknowledged the existence of the Plea Agreement. He confirmed that his Counsel had fully explained to him the terms of the Plea Agreement, and that he understood the nature of the charges against him.²⁰

7. The Accused indicated that his guilty plea was made out of his own free will and with no guarantees or promises, other than those set out in the Plea Agreement. The Accused confirmed that he was satisfied with the explanations provided in the Indictment and that he could not challenge any of the facts alleged in the Indictment after the plea.²¹ Rugambarara further confirmed that his plea was made without any pressure or coercion.²²

B. Findings on the Guilt of Rugambarara

8. The Chamber was satisfied that the guilty plea by the Accused was made freely, voluntarily, unequivocally and was informed. In its Oral Ruling of 13 July 2007, the Chamber found that there was no disagreement between the Accused and the Prosecution on the acknowledged facts forming the basis of the Plea Agreement and that such facts were sufficient to establish the crimes to which he confessed. The Chamber found the facts set out in the Indictment satisfy the different elements of a crime against humanity: the attacks were widespread and directed against the Tutsi civilian population on ethnic grounds.²³ Furthermore, the scale of the killings undoubtedly amounts to extermination.²⁴

¹⁹ T. 13 July 2007, pp. 8, 10.

²⁰ T. 13 July 2007, p. 9.

²¹ T. 13 July 2007, pp. 9-10.

²² T. 13 July 2007, pp. 8-10.

²³ Article 3 of the Statute: Crimes against Humanity

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation;
- (e) Imprisonment;
- (f) Torture;
- (g) Rape;
- (h) Persecutions on political, racial and religious grounds;
- (i) Other inhumane acts.

²⁴ *The Prosecutor v. Ndindabahizi*, Case No. ICTR-2001-71-A, Judgement (AC), 16 January 2007, para. 135, citing *The Prosecutor v. Ntakirutimana*, Case No. ICTR-96-10/ICTR-96-17, Judgement (AC), 13 December 2004, para. 516.

9. Based on the premises above, the Chamber declared the Accused guilty of the crime of extermination as a crime against humanity pursuant to Articles 3(b) and 6(3) of the Statute.²⁵

III. Sentencing

10. On 13 July 2007, the Chamber scheduled a sentencing hearing for 17 September 2007.²⁶ The Parties filed their sentencing briefs on 12 September 2007 and the hearing was held on 17 September 2007. The Defence called five character witnesses and was permitted to adduce one witness statement under Rule 92*bis*.²⁷

A. Applicable Law

11. The Tribunal was established to prosecute and punish the perpetrators of the atrocities in Rwanda in 1994 so as to end impunity. It was also created to contribute to the process of national reconciliation, the restoration and maintenance of peace and to ensure that the violations of international humanitarian law in Rwanda are halted and effectively redressed.²⁸ The Chamber considers that a fair trial and, in the event of a conviction, a just sentence, contribute towards these goals. Furthermore, deterrence, retribution and rehabilitation are relevant principles considered by the Chamber when imposing a sentence.²⁹

12. The penalty imposed by the Chamber is limited to imprisonment, as per Article 23 of the Statute and Rule 101 of the Rules. Such a term shall not exceed life imprisonment.³⁰ The Statute and the Rules do not provide for specific penalties for any of the crimes within the jurisdiction of the Tribunal.

13. Consequently, the determination of the sentence is left to the discretion of the Chamber. In exercising that discretion, the Chamber shall consider a number of factors, including the gravity of the offence, any aggravating or mitigating circumstances, the personal circumstances of the convicted person and the general practice regarding prison sentences in the courts of Rwanda.³¹

²⁵ T. 13 July 2007, p. 14.

²⁶ T. 13 July 2007, p. 16.

²⁷ On 14 September 2007, the Defence for Rugambarara filed a Motion requesting the admission of 4 witness statements under Rule 92*bis* and a Motion requesting the admission of documentary evidence under Rule 100(A). During the sentencing hearing, the Chamber noted that only one of the witness statements met the requirements of Rule 92*bis*. The Chamber also rejected the Defence Motion requesting admission of documentary evidence on the basis that the Defence should have filed the material by 12 September 2007 in accordance with Rule 100(A) and no good reasons had been given for its late filing (T. 17 September 2007, pp. 25-26).

²⁸ Security Council Resolution 955, 8 November 1994.

²⁹ *Prosecutor v. Joseph Serugendo*, Case No. ICTR-2005-84-I, Judgement and Sentence (TC), 12 June 2006, para. 33; *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-A, Judgement (AC), 24 March 2000, para. 185; *Prosecutor v. Mucić et al.*, Case No. IT-96-21-A, Judgement (AC), 20 February 2001, para. 806.

³⁰ Rule 101(A).

³¹ Article 23: Penalties

2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

Rule 101: Penalties

14. Aggravating circumstances must be proved beyond reasonable doubt, while mitigating circumstances must be proved on a balance of probabilities.³²

15. The Chamber understands its obligation to ensure that the sentence is commensurate with the individual facts of the case and the individual circumstances of the offender.³³

16. Recommendations on the range of the sentence as suggested in the Joint Motion for Consideration of the Plea Agreement are not binding on the Chamber.³⁴

B. Gravity of the Offence

1. Submissions

17. The Prosecution submits that the gravity of the offence is the first element to consider in determining an appropriate sentence. According to the Prosecution, the crimes for which Rugambarara has been charged with and to which he pleaded guilty are inherently crimes of extreme gravity, the scale of which shock the collective conscience. The Prosecution further submits that the mass killings, as alleged in the Indictment, occurred as part of a wider plan to exterminate the Tutsi civilians throughout Rwanda between April and June 1994. To that end, the factual allegations against Rugambarara should not be considered in isolation, but rather in the overall context of the events that occurred in Rwanda in 1994, and more specifically in Kigali-Rural *préfecture* within the same period.³⁵

18. The Defence submits that Rugambarara fully recognizes his responsibility. The Defence submits, however, that Rugambarara did not personally participate in any of the massacres committed in Bicumbi *commune* nor did he order or encourage them.³⁶

2. Findings

19. The seriousness of the crime, including the form and the degree of the Accused's participation in the crime,³⁷ are factors to be considered in sentencing. Crimes against

(B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 23(2) of the Statute, as well as such factors as:

- (i) Any aggravating circumstances;
- (ii) Any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;
- (iii) The general practice regarding prison sentences in the courts of Rwanda;
- (iv) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9(3) of the Statute.

³² *The Prosecutor v. Juvénal Kajelijeli*, Case No. ICTR-98-44A-A, Judgement (AC), 23 May 2005, para. 294.

³³ *Mucić et al.*, Judgement (AC), para. 717; *Prosecutor v. Mikaeli Muhimana*, Case No. ICTR-95-1B-T, Judgement and Sentence (TC), 28 April 2005, para. 594; *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66A, Judgement (AC), 27 September 2007, paras. 127, 133, 135.

³⁴ T. 13 July 2007, p. 10.

³⁵ Prosecutor's Sentencing Brief, para. 33.

³⁶ Defence Sentencing Brief, para. 49.

³⁷ *Mucić et al.*, Judgement (AC), para. 731; *Prosecutor v. Zoran Kupreskić*, Case No. IT-95-16-A, Judgement (AC), 23 October 2001, para. 442; *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-T, Judgement (TC), 25 June 1999, para. 243.

humanity are very serious offences because they are heinous in nature and shock the collective conscience of mankind.³⁸

20. The Chamber finds that Rugambarara's failure to act constitutes a very serious offence and a gross violation of international humanitarian law. The Chamber also recalls that "Trial Chambers, when assessing the gravity of the offence, have no obligation to take into account what the accused did *not* do".³⁹ Furthermore the Chamber is not required to give the Accused credit for the fact that he did not order, plan or instigate the crimes.⁴⁰ The Chamber notes, however, that the Accused is only charged with *post facto* knowledge of the crimes. Saving lives was therefore not at stake, which makes the crime less serious than if it were otherwise.

C. Aggravating Circumstances

1. Nature of the Crime

a. Submissions

21. The Prosecution submits that the gravity and heinous nature of extermination as a crime against humanity and its absolute prohibition in international law make its commission inherently aggravating. The Prosecution further submits that the magnitude of such a crime involving the killings of several thousands of civilians in Rwanda over a period of 100 days constitutes an aggravating factor.⁴¹

b. Findings

22. The Chamber is mindful that "where an aggravating factor for the purposes of sentencing is at the same time an element of the offence, it cannot also constitute an aggravating factor for the purposes of sentencing."⁴²

23. Although the *actus reus* of the crime of extermination requires "killing on a large scale", this does not suggest a "numerical minimum." A particularly large number of victims, however, can be an aggravating circumstance in relation to the sentence for this crime if the extent of the killings exceeds that required for extermination.⁴³

24. The crimes to which Rugambarara confessed involve the deaths of thousands of Tutsi civilians in Mwulire, Mabare and Nawe *secteurs*, Bicumbi *commune*.⁴⁴ The Chamber finds this to be a particularly large number of victims and that it therefore constitutes an aggravating factor for the purpose of sentencing.

³⁸ *Prosecutor v. Georges Ruggiu*, Case No. ICTR-97-32-I, Judgement and Sentence (TC), 1 June 2000, para. 48.

³⁹ *Prosecutor v. Momir Nikolic*, Case No. IT-02-60/1-A, Judgement on Sentencing Appeal (AC), 8 March 2006, para. 56.

⁴⁰ *Ibid.*, para. 56.

⁴¹ Prosecutor's Sentencing Brief, p. 7, para. 36; T. 17 September, p. 27.

⁴² *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14A, Judgement (AC), 29 July 2004, para. 693 cited in *Ndindabahizi*, Judgement (AC), para. 137; *Limaj et al.*, Judgement (AC), para. 143.

⁴³ *Ndindabahizi*, Judgement, (AC), para. 135, citing *Ntakirutimana* Judgement (AC), para. 516.

⁴⁴ A Plea Agreement between Mr. Juvénal Rugambarara and the Office of the Prosecutor ("Plea Agreement"), 13 June 2007, paras. 38, 40, 41, 42, 44, 46-48, 49-50 and 52, annexed to Joint Motion.

2. Position of Juvénal Rugambarara

a. Submissions

25. The Prosecution submits that, as *bourgmestre* of Bicumbi *commune* in Kigali-Rural *préfecture* between 4 August 1993 and 20 April 1994, Juvénal Rugambarara was in the first rank of leadership at the communal level, had administrative authority over the entire commune and represented executive power at the communal level. He was a prominent member of the civilian community in the said *commune*. The Prosecution further submits that a particularly aggravating factor is that Rugambarara was charged with the specific enforcement of laws and regulations, and failed in his duty to take the necessary and reasonable measures within his powers to ensure the punishment of his subordinates. The Prosecution submits that by failing in this duty, Rugambarara failed to create or sustain an environment of discipline and respect for the law amongst the persons under his control and abused the trust placed in him when such authority was entrusted to him. The Prosecution further submits that Rugambarara's position of authority and proximity to the local population placed him under a duty to uphold the principles laid down in the constitution of Rwanda and exhibit a higher than average degree of morality, both of which he failed to do. The Prosecution also submits that Rugambarara is well educated and in a position to know and appreciate the dignity and value of human life. Finally, the Prosecution submits that the involvement of the peasant population in the massacres of Tutsi civilians in Bicumbi *commune* was facilitated by their misplaced belief and confidence in their leadership and an understanding that the encouragement of said authorities guaranteed them immunity to kill the Tutsi and loot their property.⁴⁵ The Prosecution requests the Chamber to treat all these factors relating to Rugambarara's position of authority as aggravating.

b. Findings

26. The Chamber recalls that an element of the offence itself cannot constitute an aggravating factor. As such, Rugambarara's position as a superior is not aggravating since it constitutes an element of the crime under Article 6(3) of the Statute. However, the Chamber notes that although certain modes of liability require a position of authority, a high level of authority is not an element of the mode of liability and may still be considered as an aggravating factor.⁴⁶

27. Furthermore, it is well established in the jurisprudence of the ICTR and ICTY that the manner in which the accused exercised his command or the abuse of an accused's personal position in the community may be considered as aggravating factors.⁴⁷

⁴⁵ Prosecutor's Sentencing Brief, para. 47; T. 17 September 2007, pp. 28-29.

⁴⁶ *The Prosecutor v. Galic*, Case No. IT-98-29-A, Judgement (AC), 30 November 2006, para. 412.

⁴⁷ *Aleksovski*, Judgement (AC), para. 183; *Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-A, Judgement (Reasons) (AC), 1 June 2001, paras. 357, 358; *Ntakirutimana*, Judgement (AC), para. 563; *The Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-54A-A, Judgement (AC), 19 September 2005, paras. 347-348; *Prosecutor v. Paul Bisengimana*, Case No. ICTR-00-60-T, Judgement and Sentence (TC), 13 April 2006, para. 120; *Serugendo*, Judgement (TC), para. 48; *Ndindabahizi* Judgement (AC), para. 136.

28. The Chamber considers that Juvénal Rugambarara did not hold a high level of authority. His position as *bourgmestre* of Bicumbe *commune* made him an immediate superior and can therefore not constitute an aggravating factor.

29. The Chamber also notes that the Prosecution deliberately expands its allegations against Rugambarara beyond the scope of the Indictment by lending a role to him over the behaviour of the peasant population and by further vilifying the manner in which he exercised his authority. The Chamber dismisses these allegations.

D. Mitigating Circumstances

1. Applicable Law

30. Mitigating circumstances may not be directly related to the offence.⁴⁸ A guilty plea may have a mitigating effect on the sentence by: the showing of remorse,⁴⁹ repentance,⁵⁰ the contribution to reconciliation,⁵¹ the establishment of the truth,⁵² the encouragement of other perpetrators to come forward,⁵³ the sparing of a lengthy investigation and a trial and thus time, effort and resources,⁵⁴ and the fact that witnesses are relieved from giving evidence in court.⁵⁵ The timing of the guilty plea is also a factor to be considered in sentencing.⁵⁶

2. Personal Mitigating Circumstances

a. The Guilty Plea and Public Expression of Remorse

i) Submissions

31. The Parties contend that, in principle, a guilty plea is a mitigating factor. Specifically, they argue that, because Rugambarara pleaded guilty before the start of his trial, judicial time and resources have been saved; victims of the attacks in Bicumbe *commune* in 1994 have been spared the ordeal of giving testimony before the Chamber; and the plea will assist in the administration of justice as well as in the process of national reconciliation in Rwanda.⁵⁷ The Prosecution further submits that the guilty plea is important to establish the truth and that by pleading guilty, Rugambarara should be seen

⁴⁸ *Prosecutor v. Dragan Nikolić*, Case No. IT-94-2-S, Sentencing Judgement (TC), 18 December 2003, para. 145; *The Prosecutor v. Miroslav Deronjić*, Case No. IT-02-61-S, Sentencing Judgement (TC), 30 March 2004, para. 155.

⁴⁹ *Prosecutor v. Biljana Plavšić*, Case No. IT-00-39&40/S, Sentencing Judgement (TC), 27 February 2003, para. 73.

⁵⁰ *Ruggiu*, Judgement (TC), para. 55.

⁵¹ *Plavšić*, Judgement (TC), paras. 80-81.

⁵² *Prosecutor v. Drazen Erdemović*, Case No. IT-96-22, Sentencing Judgement (TC), 5 March 1998, para. 21; *Nikolić*, Judgement (TC), para. 248; *Serugendo*, Judgement (TC), para. 55.

⁵³ *Ruggiu*, Judgement (TC), para. 55.

⁵⁴ *Ibid.*, para. 53.

⁵⁵ *Serugendo*, Judgement (TC), paras. 52, 57.

⁵⁶ *Prosecutor v. Jean Kambanda*, Case No. ICTR-97-23-S, Judgement and Sentence (TC), 4 September 1998, para. 52; *Prosecutor v. Dusko Sikirica et al.*, Case No. IT-95-8, Sentencing Judgement (TC), 13 November 2001, para. 150; *Serugendo*, Judgement (TC), para. 54.

⁵⁷ Prosecutor's Sentencing Brief, paras. 50, 54; Defence Sentencing Brief, paras. 60-62; T.17 September 2007, p. 29.

as setting an example that may encourage others like him to acknowledge their personal involvement in the events in Rwanda in 1994.⁵⁸

32. On 13 July 2007, during his further appearance before the Chamber, Juvénal Rugambarara indicated his decision to change his initial plea of “not guilty” after a period of long reflection during which he became fully aware of both the consequences and scope of the offences he had committed in Rwanda in 1994.⁵⁹ He asked the families of the victims in Bicumbi *commune* in particular and the people of Rwanda in general for forgiveness for his failure to punish his subordinates and added that he felt deep remorse.⁶⁰

ii) Findings

33. The Chamber accepts the Prosecution’s position that a guilty plea not only saves time but may also encourage others to come forward, thus contributing to the process of national reconciliation in Rwanda.⁶¹ For remorse to be considered mitigating, the Chamber must be satisfied that the expression of remorse is sincere.⁶²

34. After considering Rugambarara’s public expression of regret and remorse, the Chamber is satisfied that Rugambarara’s expression of remorse is sincere.

35. Rugambarara’s change of plea has indeed saved judicial time and resources, and may contribute to the process of national reconciliation in Rwanda. The Chamber considers these factors as mitigating.

b. Assistance Provided to Certain Individuals

i) Submissions

36. The Defence submits that Rugambarara assisted Tutsi refugees in the Bicumbi communal office during the events in 1994.⁶³ The Defence called Witnesses JRR10, JRR11, JRR23 and JRR24 to support this contention.⁶⁴

ii) Findings

37. After considering the testimonies of the above witnesses, the Chamber accepts the evidence that Rugambarara personally assisted Tutsi refugees by way of moral and material support in Bicumbi *commune* during the 1994 events. Rugambarara’s acts contributed to saving some of their lives. In the Chamber’s view, this constitutes a mitigating factor.

⁵⁸ Prosecutor’s Sentencing Brief, para. 55; T.17 September 2007, p. 29.

⁵⁹ Plea Agreement, para. 8.

⁶⁰ T. 13 July 2007, pp. 11-13.

⁶¹ *Bisengimana*, Judgement (TC), para. 139; *Prosecutor v. Joseph Nzabirinda*, Case No. ICTR-2001-77-T, Sentencing Judgement (TC), 23 February 2007, para. 68.

⁶² *Prosecutor v. Predrag Banović*, Case No. IT-02-65/1-S, Sentencing Judgement (TC), 28 October 2003, para. 72.

⁶³ Defence Sentencing Brief, paras. 75, 76.

⁶⁴ T. 17 September 2007, pp. 6, 9, 12-13, 15-16.

c. Personal and Family Situation

i) Submissions

38. The Defence argues that the jurisprudence of the Tribunal and the ICTY has taken into consideration, as mitigating factors, personal circumstances such as the accused's family situation. It puts forth the fact that Rugambarara is married and has six children as proof of his capacity for reintegration into society.⁶⁵ The Defence called Witness JRK01, who is Rugambarara's wife, who testified favourably about the Accused's personal and family situation.⁶⁶

ii) Findings

39. The Chamber notes that the fact that an accused is married and has children may, under certain circumstances, be considered as mitigating.⁶⁷ In the instant case, the personal and family situation of the Accused, as a married man with children, leads the Chamber to believe in his chances of rehabilitation after his release. The Chamber therefore finds this personal situation to be a mitigating circumstance.

d. Character of the Accused, Lack of Prior Criminal Record and Good Conduct in Detention

i) Submissions

40. Both Parties submit that Rugambarara was a person of good character with no history of extremism before the events of 1994.⁶⁸

41. The Defence adduced evidence that as a medical assistant, Rugambarara took care of all his patients without discrimination and had excellent relationships with Tutsi, some of whom were close friends of his family.⁶⁹ The Defence further submits that as *bourgmestre*, Rugambarara abolished the practice of reinserting the Tutsi ethnicity of ID holders who had changed their ethnicity to Hutu in the 1960s, and that he spearheaded an initiative at the national level to abolish the reference to ethnicity on identification cards.⁷⁰

42. The Defence submits that the Accused has a clean record and has never been convicted of a crime, an assertion which was not challenged by the Prosecution.⁷¹ The Chamber also accepted, pursuant to Rule 92*bis*, a statement from the UNDF

⁶⁵ Defence Sentencing Brief, paras. 65-68; T. 17 September 2007, p. 39.

⁶⁶ T. 17 September 2007, pp. 18-23.

⁶⁷ *Prosecutor v. Dragoljub Kunarać et al.*, Case No. IT-96-23&23/1, Judgement (AC), 12 June 2002, para. 362; *Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-T, Judgement (TC), 29 November 2002, para. 300; *Prosecutor v. Vincent Rutaganira*, Case No. ICTR-95-1C-T, *Jugement et Sentence*, (TC), 14 March 2005, paras. 120-121.

⁶⁸ Prosecutor's Sentencing Brief, para. 53; Defence Sentencing Brief, paras. 71-74; T. 17 September 2007, p. 29.

⁶⁹ Defence Sentencing Brief, paras. 71-74; Testimony of JRK01, T. 17 September 2007, pp. 20-22.

⁷⁰ Defence Sentencing Brief, paras. 77-78.

⁷¹ Defence Sentencing Brief, para. 69.

Commanding Officer, stating that the Accused exhibited good behaviour during his four-year detention.⁷²

ii) Findings

43. The Chamber accepts that Rugambarara was a person of good character before the events of 1994, with no history of ethnic discrimination. The Chamber also accepts the unchallenged assertion that Rugambarara had no previous criminal record. Finally, the Chamber considers that the statement of the UNDF Commanding Officer demonstrates Rugambarara's good conduct while in detention. The Chamber accepts these as mitigating factors.

3. Prevailing Circumstances in Bicumbi Commune in April 1994

a. Absence of Hierarchical Superior in April 1994

i) Submissions

44. The Defence submits that Rugambarara had knowledge of the crimes committed by his subordinates only on or about 18 April 1994. The Defence further submits that Rugambarara fled when the RPF took control of Bicumbi *commune* on 20 April 1994. This left Rugambarara with only 48 hours to report to his hierarchical superiors and to inform them about the crimes committed by his subordinates. The Defence also submits that the Public Prosecutor of Kigali at the time, who was Rugambarara's judicial superior and to whom Rugambarara would have had to report, had already fled.⁷³

ii) Findings

45. The Chamber finds the Defence submission, concerning the circumstances of Rugambarara's failure to act as pleaded in the Indictment, misplaced. By pleading guilty, the Accused admitted that he had effective control over his subordinates and the material ability to punish the perpetrators or commission an investigation into the said crimes. The suggestion that it was almost materially impossible for him to report to his hierarchical superior is not supported by any evidence and casts a shadow on the unequivocal acknowledgement of responsibility. The Chamber does not consider this a mitigating factor.

b. War Situation in Bicumbi Commune in April 1994

i) Submissions

46. The Defence submits that the Chamber should take into consideration the circumstances prevailing in Bicumbi *commune* in April 1994: i) the existence of an armed conflict; ii) the renewed political intolerance and inter-ethnic tensions within the commune; iii) an influx of refugees into the *commune*, people displaced by the war, infiltrators and RPF recruitment in the region; and iv) the insufficient number of communal police.⁷⁴

⁷² T. 17 September 2007, p. 26.

⁷³ Defence Sentencing Brief, paras. 32, 55.

⁷⁴ Defence Sentencing Brief, paras. 18-22, 29-33, 51, 54, 56-57.

ii) Findings

47. Although the Defence did not adduce evidence to sustain these assertions, the Chamber accepts as facts of common knowledge that there was an armed conflict in Rwanda in 1994 and as a result there was renewed political intolerance, interethnic tensions and an influx of refugees into the Bicumbi *commune*. The Chamber accepts that this particular environment could have made it difficult for Rugambarara to exercise his full authority. The Chamber considers this as a mitigating factor. Other facts relied upon by the Defence do not bear the character of indisputability so as to warrant their acceptance without proof. The Chamber rejects, therefore, the Defence contention that there were infiltrators in Bicumbi *commune* in 1994 and that RPF recruitment took place in the region. Furthermore, the Chamber finds the Defence submission that the communal police was understaffed is not necessarily relevant to Rugambarara's failure, which forms the basis of his criminal responsibility.

E. Sentencing Recommendations by the Parties

48. In the Joint Motion for Consideration of a Guilty Plea Agreement between Rugambarara and the Office of the Prosecutor, the Prosecution recommended a term of imprisonment ranging from nine to twelve years imprisonment, with due credit given for time spent in detention.⁷⁵ However, in its Sentencing Brief, the Prosecution appears to depart from the sentencing range agreed upon and recommends a term of imprisonment of not less than twelve years.⁷⁶ The Prosecution further submits that the Chamber should consider the principal aims of sentencing, namely justice, retribution, deterrence and rehabilitation.⁷⁷ The Defence requests the Chamber to take into account in the determination of the sentence, all mitigating factors, including the personal situation of Rugambarara and his desire for reintegration.⁷⁸ The Defence submits that the sentence should be fair, should reflect the chances of rehabilitation and reinsertion into society and should foster national reconciliation.⁷⁹ Both Parties acknowledge, however, that the Chamber is not bound by their sentencing recommendations.⁸⁰

49. The Defence requests the Chamber to order that Rugambarara serve his sentence in Europe, preferably France, a neighbouring country to Belgium, where his family resides.⁸¹ The Prosecution supports that application.⁸²

F. Findings

1. The General Sentencing Practice in the Courts of Rwanda

50. Article 23 of the Statute and Rule 101 of the Rules mandate the Tribunal to take into account the general practice regarding prison sentences in the courts of Rwanda.

⁷⁵ Plea Agreement, para. 56.

⁷⁶ Prosecutor's Sentencing Brief, para. 57; T. 17 September 2007, p. 30.

⁷⁷ Prosecutor's Sentencing Brief, para. 17.

⁷⁸ Defence Sentencing Brief, para. 79; T. 17 September 2007, p. 40.

⁷⁹ Defence Sentencing Brief, paras. 35-37.

⁸⁰ Plea Agreement, para. 59.

⁸¹ Defence Sentencing Brief, para. 80.

⁸² Plea Agreement, para. 58.

51. Under Rwandan Law, serious offences, such as genocide or crimes against humanity, carry a maximum sentence of life imprisonment or life imprisonment with special provisions, depending on the nature of the accused's participation.⁸³ If the defendant confesses to the crime, pleads guilty, repents and apologizes, the sentence may range from 25 to 30 years of imprisonment.⁸⁴

52. The Chamber, though not bound by the Rwandan law, regards this as one factor supporting the imposition of a heavy penalty upon the convicted person.

2. Conclusion

53. The Chamber is mindful that sentences of individuals in similar cases should be consistent. However, a Chamber is "under no obligation to expressly compare the case of one accused to that of another,"⁸⁵ and "any given case contains a multitude of variables, ranging from the number and type of crimes committed to the personal circumstances of the individual."⁸⁶

54. The Chamber recalls that it has found that Rugambarara's superior responsibility for the crime of extermination as a crime against humanity constitutes a very serious offence and is a gross violation of international humanitarian law. The Chamber also recalls that the gravity of his crime is reduced by the fact, as set forth in the Plea Agreement, that the Accused only had *post facto* knowledge of the crimes committed by his subordinates.

55. The Chamber has found as an aggravating circumstance the high number of victims.

56. The Chamber found the following circumstances to be mitigating: the Accused's guilty plea accompanied by a public expression of remorse which the Chamber found to be sincere, his personal and family situation, his good character prior to the 1994 events, his lack of prior criminal convictions, his good conduct in detention, and the assistance he provided to certain individuals.

57. Nonetheless, while Rugambarara's personal circumstances are relevant in the mitigation of the sentence, the Chamber is of the view that such factors cannot play a significant role in mitigating international crimes and therefore the weight to be accorded to them is limited.⁸⁷

58. On examination of the sentencing practice of this Tribunal, the Chamber notes that there is only limited authority on sentencing for superior responsibility in relation to the

⁸³ Articles 51 and 72 of the Organic Law N. 16/2004 of 19/6/2004 Establishing the Organisation, Competence and Functioning of Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and Other Crimes against Humanity, Committed between October 1, 1990 and December 31, 1994 and Articles 2, 3, 5, 6(1) and 18(3) of the Law N. 33 bis/2003 of 06/09/2003 Repressing the Crime of Genocide, Crimes against Humanity and War Crimes as amended by Articles 3 and 4 of Organic Law N. 31/2007 of 25 July 2007.

⁸⁴ Article 72(2) of Organic Law N. 16/2004.

⁸⁵ *Kupreskić*, Judgement (AC), para. 443.

⁸⁶ *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-A, Judgement (AC), 28 February 2005, para. 681.

⁸⁷ *Banović*, Sentencing Judgement (TC), para. 76; *Nzabirinda*, Sentencing Judgement (TC), para. 108.

crime of extermination.⁸⁸ Furthermore, the Chamber notes that the case law on guilty plea sentencing concerning extermination does not follow a consistent pattern.⁸⁹ Finally, the Chamber is mindful that the sentence should reflect the totality of the criminal conduct of the accused.⁹⁰

3. Credit for Time Served in Custody

59. Pursuant to Rule 101(D) of the Rules, “credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending his surrender to the Tribunal or pending trial or appeal.”

60. The Chamber considers 11 August 2003⁹¹ as the beginning of Rugambarara’s detention, this being the date on which he was arrested and detained. The Chamber recognizes that Rugambarara is entitled to credit for the time spent in detention from this date, including any additional time that he may serve pending an appeal.

⁸⁸ In a judgement yet to be decided on appeal (which further limits its authority), Jean-Bosco Barayagwiza was convicted of, *inter alia*, genocide pursuant to Articles 2 and 6(3) of the Statute for his active engagement in the management of RTLM prior to 6 April 1994, and his failure to take necessary and reasonable measures to prevent the killing of Tutsi civilians instigated by RTLM (*The Prosecutor v. Jean-Bosco Barayagwiza*, Case No. ICTR 99-52, Judgement (TC), 3 December 2003, para. 973) and extermination as a crime against humanity under Article 3(b), pursuant to Article 6(3) of the Statute of the Tribunal for RTLM broadcasts in 1994 that caused the killing of Tutsi civilians (*Barayagwiza*, Judgement (TC), para. 1064). The Trial Chamber considered that the appropriate sentence for Barayagwiza, in light of all the counts on which he was convicted, was imprisonment for the remainder of his life (*Barayagwiza*, Judgement (TC), para. 1106). However due to the violation of Barayagwiza’s rights, the Trial Chamber reduced the sentence to 35 years imprisonment in respect of all the counts on which he was convicted (*Barayagwiza*, Judgement (TC), para. 1107). Alfred Musema was sentenced to a single sentence of life imprisonment for the counts of genocide, extermination as a crime against humanity pursuant to Articles 6(1) and 6(3) of the Statute (*Musema*, Judgement (TC), para. 951).

⁸⁹ Jean Kambanda entered a guilty plea and was sentenced to life imprisonment for, *inter alia*, extermination as a crime against humanity pursuant to both Articles 6(1) and 6(3) of the Statute (*Kambanda*, Judgement (TC), para. 40, Verdict). Paul Bisengimana was sentenced to 15 years imprisonment after having pleaded guilty to aiding and abetting extermination as a crime against humanity (*Bisengimana*, Judgement (TC), para. 203). Omar Serushago was also sentenced to 15 years imprisonment after having pleaded guilty to genocide, murder, extermination and torture as crimes against humanity (*Prosecutor v. Serushago*, ICTR-98-39-S, Sentence (TC), 5 February 1999, Disposition). The Trial Chamber considered many mitigating factors in determining the sentence of Serushago, including his family circumstances and the fact that he helped some Tutsi to avoid capture (*Serushago*, Sentence (TC), paras. 31-35). Vincent Rutaganira was sentenced to six years imprisonment after having pleaded guilty to complicity by omission in extermination as a crime against humanity (*Rutaganira*, Judgement (TC), Disposition).

⁹⁰ *Mucić et al.*, Judgement (AC), para. 772; *Gacumbitsi*, Judgement (TC), para. 354; *Semanza*, Judgement (TC), para. 563.

⁹¹ Transmission of Warrant of Arrest and Order for Transfer and Detention of the Accused Juvénal Rugambarara, dated 11 August 2003.

IV. Verdict

61. The Chamber sentences Juvénal Rugambarara to **11 years imprisonment**.
62. The sentence shall run as of the date of this judgement.
63. Juvénal Rugambarara is entitled to credit for the time spent in detention from 11 August 2003 to the date of this sentencing judgement.
64. Juvénal Rugambarara shall remain in the custody of the Tribunal, pending a decision on where his sentence will be served.
65. The request to designate France as the country where Rugambarara will serve his sentence is premature and is therefore denied. The President of the Tribunal, in consultation with the Chamber, will designate the State in due course. The Government of Rwanda and the designated State will be so notified by the Registrar.

Done in English
Arusha, 16 November 2007

Asoka de Silva
Presiding Judge

Taghrid Hikmet
Judge

Seon Ki Park
Judge

[Seal of the Tribunal]

Annexes

A. Jurisprudence and Defined Terms

1. ICTR

Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgement (TC), 2 September 1998.

Prosecutor v. Barayagwiza, Case No. ICTR 99-52, Judgement (TC), 3 December 2003.

Prosecutor v. Bisengimana, Case No. ICTR-00-60-T, Judgement and Sentence (TC), 13 April 2006.

Prosecutor v. Gacumbitsi, Case. No. ICTR-01-64, Judgement (TC), 17 June 2004.

Prosecutor v. Gacumbitsi, Case. No. ICTR-01-64, Judgement (AC), 7 July 2006.

Prosecutor v. Kajelijeli, Case No. ICTR-98-44-T, Judgement (TC), 1 December 2003.

Prosecutor v. Kajelijeli, Case No. ICTR-98-44-A, Judgement (AC), 23 May 2005.

Prosecutor v. Kambanda, Case No. ICTR- 97-23-S, Judgement (TC), 4 September 1998.

Prosecutor v. Kamuhanda, Case No. ICTR-99-54-T, Judgement (TC), 22 January 2004.

Prosecutor v. Kamuhanda, Case No. ICTR-99-54-A, Judgement (AC), 19 September 2005.

Prosecutor v. Kayishema and Ruzindana, Case No. ICTR-95-1-A, Judgement (AC), 1 June 2001.

Prosecutor v. Muhimana, Case No. ICTR-95-1B-T, Judgement (TC), 28 April 2005.

Prosecutor v. Musema, Case No. ICTR-96-13-T, Judgement (TC), 27 January 2000.

Prosecutor v. Musema, Case No. ICTR-96-13-T, Judgement (AC), 16 November 2001.

Prosecutor v. Nahimana, Case No. ICTR-99-52, Judgement (TC), 3 December 2003.

Prosecutor v. Ndindabahizi, Case No. ICTR-2001-71-I, Judgement (TC), 15 July 2004.

Prosecutor v. Ndindabahizi, Case No. ICTR-2001-71-A, Judgement (AC), 16 January 2007.

Prosecutor v. Niyitegeka, Case No. ICTR-96-14, Judgement (TC), 16 May 2003.

Prosecutor v. Ngeze, Case No. ICTR-99-52, Judgement (TC), 3 December 2003.

Prosecutor v. Ntakirutimana et al., Cases No. ICTR-96-10-T and ICTR-96-17-T, Judgement (TC), 21 February 2003.

Prosecutor v. Ntakirutimana et al., Cases No. ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004.

Prosecutor v. Nzabirinda, Case No. ICTR 2001-77-T, Sentencing Judgement, 23 February 2007.

Prosecutor v. Ruggiu, Case No. ICTR-97-32-I, Judgement (TC), 1 June 2000.

Prosecutor v. Rutaganda, Case No. ICTR-96-3-T, Judgement (TC), 6 December 1999.

Prosecutor v. Rutaganda, Case No. ICTR-96-3-T, Judgement (AC), 26 May 2003.

Prosecutor v. Rutaganira, Case No. ICTR-95-1C-T, *Jugement* (TC), 14 mars 2005.
Prosecutor v. Semanza, Case No. ICTR-97-20-T, *Jugement* (TC), 15 May 2003.
Prosecutor v. Semanza, Case No. ICTR-97-20-A, *Jugement* (AC), 20 May 2005.
Prosecutor v. Seromba, Case No. ICTR-01-66, *Jugement* (TC), 13 December 2006.
Prosecutor v. Serugendo, Case No. ICTR-2005-84-I, *Jugement and Sentence* (TC), 12 June 2006.
Prosecutor v. Serushago, Case No. ICTR-98-39-S, *Sentence* (TC), 5 February 1999.

2. ICTY

Prosecutor v. Aleksovski, Case No. IT-95-14/1-T, *Jugement* (TC), 25 June 1999.
Prosecutor v. Aleksovski, Case No. IT-95-14/1-A, *Jugement* (AC), 24 March 2000.
Prosecutor v. Banović, Case No. IT-02-65/1-S, *Jugement* (TC), 28 October 2003.
Prosecutor v. Blaškić, Case No. IT-95-14-A, *Jugement* (AC), 29 July 2004.
Prosecutor v. Deronjić, Case No. IT-02-61-S, *Jugement* (TC), 30 March 2004.
Prosecutor v. Erdemović, Case No. IT-96-22, *Jugement* (TC), 5 March 1998.
Prosecutor v. Galić, Case No. IT-98-29-A, *Jugement* (AC), 30 November 2006.
Prosecutor v. Kunarać et al., Case No. IT-96-23 & 23/1, *Jugement* (AC), 12 June 2002.
Prosecutor v. Kupreškić et al., Case No. IT-95-16-A, *Jugement* (AC), 23 October 2001.
Prosecutor v. Kvočka, Case No. IT-98-30/1-A, *Jugement* (AC), 28 February 2005.
Prosecutor v. Limaj, et al., Case No. IT-03-66A, *Jugement* (AC), 27 September 2007.
Prosecutor v. Mucić et al. (“Čelebići”), Case No. IT-96-21-A, *Jugement* (AC), 20 February 2001.
Prosecutor v. Dragan Nikolić, Case No. IT-94-2, *Jugement* (TC), 18 December 2003.
Prosecutor v. Momir Nikolić, Case No. IT-02-60/1-A, *Jugement on Sentencing Appeal* (AC), 8 March 2006.
Prosecutor v. Plavšić, Case No. IT-00-39 & 40/1-S, *Jugement* (TC), 27 February 2003.
Prosecutor v. Sikirica et al., Case No. IT-95-8-T, *Jugement* (TC), 13 November 2001.
Prosecutor v. Vasiljević, Case No. IT-98-32, *Jugement* (TC), 29 November 2002.

3. Defined Terms

Chamber

Trial Chamber II

ICTR

International Criminal Tribunal for the Former Yugoslavia

Indictment

Prosecutor v. Rugambarara, Case No. ICTR-2000-59-I, Amended Indictment, filed on 2 July 2007.

Judgement

Prosecutor v. Rugambarara, Case No. ICTR-2000-59-I, Sentencing Judgement, 16 November 2007.

Plea Agreement

Prosecutor v. Rugambarara, Case No. ICTR-2000-59-I, Plea Agreement between Mr. Juvénal Rugambarara and the Office of the Prosecutor, filed on 13 June 2007.

T.

Official transcripts of the proceedings in English.

B. Indictment