



UNITED NATIONS

ICTR-00-59-T
12-09-2007
(443-452)

International Criminal Tribunal for the
Prosecution of Persons Responsible for Genocide
and Other Serious Violations of International
Humanitarian Law committed in the territory of
Rwanda and Rwandan Citizens responsible for
genocide and other such violations committed in
the territory of neighbouring States, between 1
January 1994 and 31 December 1994

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Case n° ICTR-2000-59-I

Date: 12 SEPTEMBER 2007

Original: ENGLISH

BEFORE TRIAL CHAMBER II

Composed of: Judge Joseph Asoka Da Silva, presiding
Judge Taghrid Hikmet
Judge Seon Ki Park

Registrar: Adama Dieng

Date filed: 12 September 2007

THE PROSECUTOR

Vs.

JUVENAL RUGAMBARARA

2007 SEP 12 P 5:05
JUDICIAL RECEIVED

THE PROSECUTOR'S SENTENCING BRIEF

Office of the Prosecutor:

Charles Adeogun-Phillips, Senior Trial Attorney
Memory Maposa, Trial Attorney
Peter Tafah, Legal Adviser

Counsel for Juvenal Rugambarara:

Mr. Maroufa Diabira, Lead Counsel
Mr. Boubou Diabira, Co-Counsel

The Prosecutor submits the said brief pursuant to Rule 100 (A) of the Rules of Procedure and Evidence.

PROCEDURAL HISTORY:

1. Juvenal Rugambarara was initially charged before the International Criminal Tribunal for Rwanda on the basis of a 9-count indictment filed on 10 July 2000 and confirmed by Judge Pavel Dolenc on 14 July 2000.

2. On 14 July 2000, Judge Pavel Dolenc issued a warrant of arrest and order for transfer and detention for Juvenal Rugambarara.

3. On 11 August 2003, Juvenal Rugambarara was arrested in Uganda and transferred to the ICTR on 13 August 2003.

4. On 15 August 2003, Juvenal Rugambarara made his initial appearance and pleaded not guilty to all charges in the indictment against him.

5. On 12 June 2007, the Prosecutor filed a request to amend indictment in the said case.

6. In that regard, the proposed amended indictment charges Juvenal Rugambarara with one count of extermination as a crime against humanity pursuant to Article 6(3) of the Statute.

7. On 13 June 2007, Juvenal Rugambarara replied that he did not object to the amendments proposed by the Prosecutor.

8. On 13 June 2007, the parties in the said case filed before the Trial Chamber, a joint application for the consideration of a plea agreement pursuant to Rules 62 and 62 *bis* of the Rules of Procedure and Evidence.

9. On 29 June 2007, the Trial Chamber granted the Prosecutor leave to amend the indictment as proposed his motion of 12 June 2007.

10. On 2 July 2007, the Prosecutor filed before the Trial Chamber, the said amended indictment.

11. On 13 July 2007, the accused made a further appearance before the Trial Chamber and pleaded guilty to count I of the amended indictment on the basis of his individual responsibility pursuant to Article 6(3) of the Statute of the Tribunal.

12. A sentencing hearing is scheduled in the said case for 17 September 2007.

APPLICABLE LAW:

13. Article 23 of the Statute provides:

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chamber shall have recourse to the general practice regarding prison sentences in the courts of Rwanda.

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

3. In addition to imprisonment, the Trial Chamber may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

14. Rule 100 of the Rules of Procedure and Evidence provides:

“(A) If the Trial Chamber convicts the accused on a guilty plea, the Prosecutor and the Defence may submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence.

(B) The sentence shall be pronounced in a judgement in public and in the presence of the convicted person, subject to Sub-Rule 102 (B).

15. Article 101 states:

(A) A person convicted by the Tribunal may be sentenced to imprisonment for a fixed term or the remainder of his life.

(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 factors such as:

- (i) Any aggravating circumstance;*
- (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."*

(C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.

(D) 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."

SUBMISSIONS

16. It is submitted that in determining sentence, the Trial Chamber should consider that the International Criminal Tribunal for Rwanda was established with the singular objective of prosecuting and punishing the perpetrators of the atrocities in Rwanda, with a view to putting an end to impunity and thereby promote national reconstruction, restoration of peace and reconciliation.

17. It is further submitted that the jurisprudence of the Tribunal with regards penalties has addressed the principal aims of sentencing, namely, justice, retribution, deterrence and rehabilitation. The Prosecutor requests that the Trial Chamber be guided by these aims in assessing sentence in the instant case.

18. In addition, the Trial Chamber is requested to take into account the factors mentioned in Article 23 of the Statute of the Tribunal and Rule 101 (B) of the Rules of Procedure and Evidence, which are set out herein.

19. Under the provisions of Rule 101 of the Rules of Procedure and Evidence the maximum sentence under the Statute is life imprisonment. However, it is submitted that the said provisions do not set a minimum or any specified term of imprisonment for any of the offences in the Statute of the Tribunal.

20. The Prosecutor submits that the factors outlined herein can not be interpreted as necessarily mandatory, exhaustive or binding on the Trial Chamber in the determination of sentence. In that regard, the Prosecutor recognizes that the Trial Chamber has unfettered discretion to evaluate the facts and attendant circumstances and take on board any factors it may deem pertinent.

21. The Prosecutor would represent to the Trial Chamber that it is the international norm that the maximum sentence should often be reserved for the most serious examples of offence in question.

22. In that regard, the Prosecutor submits that in considering whether a particular offence is one of the worst examples of its kind, the Trial Chamber should have regard to the range of cases which is actually encountered in practice and ask itself whether the particular case it's dealing with comes within the broad band of that type. In general, the Prosecutor would represent to the Trial Chamber that the maximum sentence should not be imposed where the Accused has pleaded guilty.

23. In this connection, the Prosecutor would represent to the Trial Chamber that the contents of the plea agreement filed by the parties on 13 June 2007 is particularly instructive on the range of sentence to be imposed in this instant case. The Prosecutor further submits that the Trial Chamber may also examine and apply, if it deems appropriate, the available international jurisprudence in this area.

24. The Prosecutor submits further that in determining the sentence of the Accused the Trial Chamber should be guided by the objectives of criminal law, which include:

- (i) The confirmation of the rule of law, which is a condition of a peaceful society, through a just sentence, which reflects the standard of proportionality between the gravity of the offence, the degree of responsibility of the offender, deterrence of the accused and future perpetrators, retribution and the need to encourage others to come to terms with their respective roles in the 1994 genocide and accept responsibility for their actions.¹

¹ The ICTR cases Prosecutor vs. Kambanda, Prosecutor vs. Akayesu, Prosecutor v Kayishema and Ruzindana; Prosecutor v Omar Serushago, Prosecutor v Anderson Rutaganda and Prosecutor v Jean de Dieu Kamuhanda, refer to these principles almost in the same words.

Individual Circumstances of Juvenal Rugambarara

25. The Accused, Juvenal Rugambarara was born in 1959 in Bumba secteur, Tare commune, Kigali-Rural Prefecture Republic of Rwanda and lived most of his adult life in Bicumbi commune where he worked as a medical officer. He is married with children.

26. He was appointed to the position of *bourgmestre* of Bicumbi commune on 04 August 1993, having succeeded Mr. Laurent Semanza and served in that position from 16 September 1993 until 20 April 1994.

27. As *bourgmestre* of Bicumbi commune, the Accused had administrative authority over Mwulire, Mabare, and Nawe secteurs which were all located within the said commune.

28. In that regard, a superior-subordinate relationship existed between the accused and all the conseillers, communal policemen, local administrators, and armed militiamen located in Mwulire, Mabare and Nawe secteurs in Bicumbi commune between 7 and 20 April 1994.

29. In addition, the Accused had effective control over these categories of persons who were responsible for perpetrating attacks on Tutsi civilians at various locations in Mwulire, Mabare and Nawe secteurs in Bicumbi commune between 7 and 20 April 1994.

The Gravity of the Offence.

30. The Prosecutor submits that when determining the sentence of the Accused, the Trial Chamber should take into account the gravity of the offences pursuant to the provisions of Article 23 (2) of the Statute of the Tribunal.

31. As outlined at Chapter II of the plea agreement, the accused understands that he is pleading guilty to the crime of extermination as a crime against humanity as outlined in the single count of the indictment by virtue of the fact that, having known that his subordinates had committed criminal acts, he failed to take necessary and reasonable measures to commission an investigation into the said crimes, with a view to apprehending and referring the perpetrators thereof to the competent authorities for appropriate punishment.

32. The Prosecutor submits that the crimes for which the accused has been charged and for which, he has pleaded guilty are inherently crimes of extreme gravity, the scale of which, shock the collective conscience.²

33. In that regard, the Prosecutor further submits that the mass killings and other crimes alleged in the present indictment occurred as part of a wider plan to exterminate Tutsi civilians throughout Rwanda between April and June 1994. To that end, the factual allegations against the accused in this case cannot be considered in isolation, but rather, in the context of the

² See Kambanda Judgement of 4 September 1998 @ paragraph 15, 42, 43 ,pages 8, 21; See also Erdemovic Judgement of 1 November 1996.

overall events that occurred in Rwanda between April and June 1994 and more specifically in Kigali-Rural prefecture within the same period.

The Aggravating and Mitigating Factors

34. The Prosecutor submits that when determining the sentence of a convicted person the Trial Chamber should take into account the individual circumstances of the convicted person. In so doing, it is submitted that the Trial Chamber should examine the individual role of the convicted person in the crimes and assess the surrounding circumstances. (Article 23 of the Statute of the Tribunal) This should include an analysis of mitigating and aggravating circumstances.

35. The Prosecutor further submits that in examining the various circumstances presented in this brief, the Trial Chamber should bear in mind that while aggravating circumstances should be proven beyond all reasonable doubt, the standard to be met for mitigating circumstances is on the balance of probabilities, and that mitigating circumstances may also include those not directly related to the offence.³

Aggravating Factors

36. It is submitted that the gravity and heinous nature of extermination as crime against humanity and its absolute prohibition makes its commission inherently aggravating. The magnitude of such a crime involving the killing of several thousands of civilians in Rwanda over a period spanning 100 days constitutes an aggravating fact.

37. The Prosecutor submits that, as *bourgmestre* of Bicumbi *commune*, in Kigali-Rural prefecture between 4 August 1993 and 20 April 1994, the Accused was a prominent member of the civilian community in the said commune and represented executive power at communal level.

38. The Prosecutor would submit that the superior position of the accused is indeed an aggravating factor. To that end, although the accused was not in the very first rank of leadership at prefectural level, he held such a position at communal level.

39. As *bourgmestre* of Bicumbi *commune*, the Accused had administrative authority over the entire commune and in that regard was responsible for ensuring peace, public order, safety of people and property and implementing government programme.

40. In addition, as *bourgmestre* of Bicumbi *commune*, the Accused was responsible for, amongst other things, the enforcement of laws and regulations and had a duty to take necessary and reasonable measures to commission investigations into crimes, with a view to

³ See *Jokic Judgement* of 18 March 2003, para. 100; See also *Babic Judgement* of 29 June 2004, paragraph 48; See *Nikolic Judgement* of 18 December 2003 at para 145; See also *Deronjic Judgement*, of 30 March 2004, at para 155.

apprehending and referring the perpetrators of such crimes to the competent authorities for appropriate punishment, but failed to do so.

41. To that end, based on his position as the highest ranking civilian authority in Bicurmbi *commune*, Juvenal Rugambarara came to know of his subordinates' criminal activities in the said *commune* during the month of April 1994. As *bourgmestre* of Bicurmbi *commune*, the Accused failed to take administrative measures that were within his powers to investigate the illegal acts of his subordinates with a view to apprehending and punishing the perpetrators of such crimes.

42. It is submitted that by failing in his duty to take necessary and reasonable measures to commission investigations into crimes, with a view to apprehending and referring the perpetrators of such crimes to the competent authorities for appropriate punishment, the Accused in effect, failed to create or sustain among the persons under his control, an environment of discipline and respect for the law.

43. It is submitted that by virtue of this position as *bourgmestre*, the accused was closest to the civilian population at communal level and thus in-effect, the bridge between the citizenry of Bicurmbi *commune* and the central political structure, within the limits of his duties as set out in the relevant legislation governing his functions as *bourgmestre*.

44. To that end, it could be argued that his proximity to the local population placed him under a duty to espouse the principles laid down in the constitution of Rwanda, and uphold a higher than average degree of morality.

45. The Accused is well-educated, and in that regard, it is submitted that he was in a position to know and to appreciate the dignity and value of human life. In addition, it is submitted that the Accused was enlightened enough to have been aware of the need, value and importance of a peaceful co-existence between communities and was therefore in a position to promote the value of tolerance.

46. The Prosecutor would represent to the Trial Chamber that the accused was entrusted with the duty and authority to punish the illegal acts of the perpetrators of the said attack, but failed to do so thereby abusing the trust that was placed in him.⁴

47. The Prosecutor would further submit that the involvement of the peasant population in the massacres of Tutsi civilians in Bicurmbi *commune* was facilitated by their misplaced belief and confidence in their leadership, and an understanding that the encouragement of the said authorities guaranteed them immunity to kill the Tutsi and loot their property.⁵

48. The Prosecutor would represent to the Trial Chamber that these are particularly aggravating factors and invites the Trial Chamber to treat them as such.

Mitigating Factors

⁴ See Kambanda Judgement of 4 September 1998 at page 21

⁵ See Plavsic Judgement of 27 February 2003 at paragraph 54 page 18 citing the Krstic Judgement of 2 August 2001. See also Kambanda Judgement of 4 September 1998 paragraph 61-62.

49. Despite the matters raised in aggravation as outlined above, the Prosecutor also finds that there are some mitigating circumstances in the instant case. In that regard, the Prosecutor would represent to the Trial Chamber that a finding of mitigating circumstances in a case relates to the assessment of sentence and in no way derogates from the gravity of the crime. In other words, it mitigates punishment, not the crime.⁶

50. The Prosecutor submits that a guilty plea is generally considered, in most national jurisdictions, including Rwanda as a mitigating factor.⁷ To that end, the Prosecutor believes that the plea of guilty of Juvenal Rugambarara will assist in the administration of justice as well as in the process of national reconciliation in Rwanda. The Prosecutor further believes that Juvenal Rugambarara's guilty plea will save the victims who survived the said attack from the ordeal of giving testimony before the Tribunal.⁸

51. It is submitted that the Accused has shown some degree of remorse for the crimes he is charged with.⁹ This was spelt out without reservation in his statement following his guilty plea before the Trial Chamber on 13 July 2007. Similarly, at paragraphs 7-15 of Part I of the plea agreement filed on 13 June 2007, the Accused stated therein that he is pleading guilty because he is in fact guilty and acknowledges full responsibility for his actions or omissions, convinced that it is only the full truth that can restore national unity and foster reconciliation in Rwanda.

52. He stated that by pleading guilty he is indicating his deep and genuine desire to tell the whole truth and thus genuinely contribute to the search for the truth. He further, expressed his profound and heartfelt apologies to all those who, directly or indirectly, fell victim to the said offences.

53. As far as the Prosecutor is aware, the Accused was a person of previous good character having had no known history of extremism prior to the events of 1994.¹⁰

54. By his plea, the Accused he has in effect saved the Tribunal considerable expense and time that is often involved in investigating and prosecuting such cases. The Prosecutor believes that in the light of the completion strategy of the Tribunal, Juvenal Rugambarara deserves credit for this.¹¹

55. Finally, the Prosecutor would represent to the Trial Chamber that by pleading guilty, the Accused should be seen as setting an example that may encourage others like him, to acknowledge their personal involvement in the massacres experienced in Rwanda in 1994.¹²

6 See Kambanda Judgement of 4 September 1998 at paragraph 56-57 page 24 citing Erdemovic Judgement of 5 March 1998.

7 See Kambanda Judgement of 4 September 1998 at paragraph 61(A) iii

8 See *Todorovic* Judgement of 31 July 2001 at para 80.

9 See *Milan Simic* Judgement of 17 October 2002 at para. 92

10 See *Banovic* Judgement of 28 October 2003 at paragraphs. 75 and 76; See also *Plavsic* Judgement of, 27 February 2003 at para. 105

11 See Kambanda Judgement of 4 September 1998 at paragraph 54, page 24

12 See Kambanda Judgement of 4 September 1998 at paragraph 53, page 23; See also Erdemovic Judgement of 5 March 1998 @ page 16.

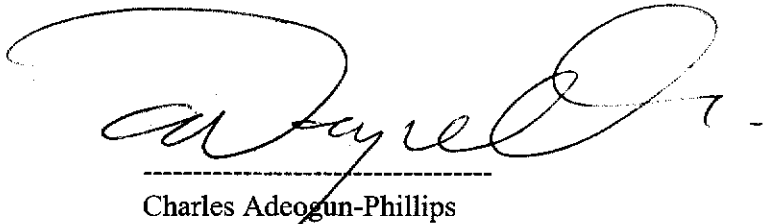
56. The Prosecutor would represent to the Trial Chamber that these are mitigating factors in favour of the accused and invites the Trial Chamber to treat them as such.

CONCLUSION

57. The Prosecutor would represent to the Trial Chamber that considering the general sentencing principles in criminal law, namely; justice, retribution, deterrence, rehabilitation, and the factors outlined herein, such as gravity of offence, individual circumstances of the accused, circumstances in aggravation, the presence of mitigating circumstances, the general practice regarding prison sentences obtaining in the courts of Rwanda and the relevant international jurisprudence, the Prosecutor, hereby recommends that the Accused receive a term of imprisonment of not less than 12 years with credit given for the period already served on remand pursuant to the provisions of Rule 101(D) of the Rules of Procedure and Evidence.

This 12th day of September 2007.

For the Prosecutor

A handwritten signature in black ink, appearing to read 'Charles Adeogun-Phillips', written over a horizontal dashed line.

Charles Adeogun-Phillips
Senior Trial Attorney



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I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

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| No. of Pages: | 10 | Original Language: | <input checked="" type="checkbox"/> English | <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda |
| Title of Document: | THE PROSECUTOR'S SENTENCING BRIEF | | | |
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