

ICTR-95-1-T

1318 - 1309

21: 05: 59

13/8

Kalya



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

Arusha International Conference Centre

P.O. Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzanie

Tel: 255 57 4207-11 4367-72 or 1 212 963 2850 Fax: 255 57 4000/4373 or 1 212 963 2848/49

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule (Presiding)
Judge Yakov Ostrovsky
Judge Tafazzal Hossain Khan

Registry: Dr. Agwu U. Okali, Registrar

Date: 21 May 1999

THE PROSECUTOR

v.

**CLÉMENT KAYISHEMA and
OBED RUZINDANA**

CASE NO. ICTR-95-1-T

ICTR
CRIMINAL REGISTRY
RECEIVED
1999 MAY 21 A 11: 26

SENTENCE

Office of the Prosecutor:

Mr. Jonah Rahetlah
Ms. Brenda Sue Thornton
Ms. Holo Makwaia

Counsel for Clément Kayishema:

Mr. André Ferran
Mr. Philippe Moriceau

Counsel for Obed Ruzindana:

Mr. Pascal Besnier
Mr. Willem F. van der Griend

SENTENCE

Background

1. In determining the sentences, this Chamber is mindful that the Security Council, pursuant to Article 39 and Chapter VII of the United Nations Charter, established the Tribunal to ensure the effective redress of violations of international humanitarian law in Rwanda in 1994. The objective was to prosecute and punish the perpetrators of the atrocities in Rwanda in such a way as to put an end to impunity and promote national reconciliation and the restoration of peace.

2. This Chamber must impose sentences on convicted persons for retribution,¹ deterrence,² rehabilitation,³ and to protect society.⁴ As to deterrence, this Chamber seeks to dissuade for good those who will be tempted in the future to perpetrate such atrocities by showing them that the international community is no longer willing to tolerate serious violations of international humanitarian law and human rights.

General Principles of Sentencing and Applicable Law

3. Article 23(2) of the Statute and Rule 101(B) oblige this Chamber, in determining sentences, to take into account a number of circumstances or factors. These circumstances include: the general practice regarding prison sentences in Rwanda; the gravity of the offences; the individual circumstances of the convicted persons, and; any aggravating or mitigating circumstances. These enumerated circumstances, however, are not necessarily mandatory or exhaustive. It is a matter of individualising the penalty considering the totality of the circumstances.

4. Articles 22, 23, 26 and 27 of the Statute and Rules 86(C), 99, 100, 101, 102, 103 and 104 generally represent the applicable law for sentencing. Article 22(1) of the Statute specifically authorises a Trial Chamber to impose sentence and penalties on those persons convicted of crimes under the Statute. This Chamber also finds that it possesses

¹ See *Prosecutor v. Serushago*, Case ICTR-98-39-S, at para. 20 (sentence of 5 Feb. 1999); *Prosecutor v. Kambanda*, Case ICTR-97-23-S, at para. 28 (judgment and sentencing of 4 Sept. 1998); *Prosecutor v. Akayesu*, Case ICTR-96-4-T, at para. 19 (sentence of 2 Oct. 1998); *Prosecutor v. Furundzija*, Case IT-95-17/1-T-10, at para. 288 (judgment of 10 Dec. 1998); *Prosecutor v. Delalic*, Case IT-96-21-T, at para. 1231 (judgment of 16 Nov. 1998).

² See *Serushago*, at para. 20; *Kambanda*, at para. 28; *Akayesu*, at para. 19; *Furundzija*, at para. 288; *Delalic*, at para. 1234.

³ See *Serushago*, at para. 39; *Furundzija*, at para. 291; *Delalic*, at para. 1233; *Prosecutor v. Erdemovic*, Case IT-96-22, at para. 16.i (sentencing judgment of 5 Mar. 1998).

⁴ See *Delalic*, at para. 1232.

unfettered discretion⁵ to go beyond the circumstances stated in the Statute and Rules to ensure justice in matters of sentencing. This Chamber now turns to analyse this law as it applies to the case at bench, impose sentences, and discuss the enforcement of sentences.

Discussion of Circumstances to Be Taken Into Account in Sentencing

General Practice Regarding Prison Sentences in Rwanda

5. Article 23(1) of the Statute and Rule 101(B)(iii) provide that, in determining the term of sentences, the Trial Chamber shall have recourse to the general practice regarding prison sentences in Rwanda.

6. Rwandan law empowers its courts to impose the death penalty for persons convicted of being “ . . . planners organizers, instigators, supervisors and leaders of the crime of Genocide . . . [or] persons who acted in positions of authority at the national, prefectorial, communal, sector, or cell level . . . [or] notorious murders . . . by virtue of the zeal or excessive malice with which they committed atrocities”⁶ This Chamber notes that this law applies to acts committed after 1 October 1990. Rwandan law also empowers its courts to impose a life sentence for persons convicted of being “persons whose criminal acts or whose acts of criminal participation place them among perpetrators, conspirators or accomplices of intentional homicide or of serious assault against the person causing death.”⁷

7. In light of the findings of the Judgement against Kayishema and Ruzindana, this Chamber finds that the general practice regarding prison sentences in Rwanda represents one factor supporting this Chamber’s imposition of the maximum and very severe sentences, respectively.

Gravity of Offences

8. Article 23(2) of the Statute provides that the Trial Chamber should take into account the gravity of the offences in determining the sentence.

9. This Chamber finds that Kayishema and Ruzindana have committed genocide, an offence of the most extreme gravity, an offence that shocks the conscience of humanity. Trial Chamber I of this Tribunal has held that genocide constitutes the “crime of

⁵ See *Serushago*, at para. 22; *Kambanda*, at para. 30; *Akayesu*, at para. 17.

⁶ Art. 2, Organic Law No. 08/96 of August 30, 1996 on the Organization of Prosecutions for Offences constituting the Crime of Genocide or Crimes against Humanity Committed since October 1, 1990 (Organic Law No. 08/96).

crimes.”⁸ Article 2 of the Statute defines the crime of genocide and its unique element of special intent to “destroy in whole or in part, a national, ethnic, racial or religious group as such.” For purposes of determining sentences, this Chamber finds that Kayishema’s four convictions of genocide and Ruzindana’s one conviction of genocide constitute offences beyond human comprehension and of the most extreme gravity.

Individual Circumstances of the Accused

10. Article 23(2) of the Statute provides that the Trial Chamber should take into account the individual circumstances of the convicted person in determining the sentence. This Chamber addresses in turn the individual circumstances of Kayishema and Ruzindana, respectively.

Individual Circumstances of Kayishema

11. Kayishema was born in 1954 in the Bwishyura Sector, Kibuye *Prefecture* in Rwanda. He is married and has two children. He graduated from the National University of Rwanda in medicine and practised general medicine and surgery. In 1992, he was appointed *Prefect* of Kibuye *Prefecture* and in 1994 re-appointed to this same post, after the death of the President. The Prosecution has not proved that Kayishema has any previous criminal convictions.⁹

Individual Circumstances of Ruzindana

12. Ruzindana was born in 1962 in Gisovu Commune, Kibuye *Prefecture* in Rwanda. He is married and has two children. He was a successful businessman in the transport of merchandise and the import of goods. The Prosecution has not proved that Ruzindana has any previous criminal convictions. This Chamber considers the relatively young age of Ruzindana (thirty-two years old in 1994) and the possibility of his rehabilitation.

Aggravating Circumstances

13. Rule 101(B)(i) requires that the Trial Chamber take into consideration any aggravating circumstances in determining sentence. Both Kayishema and Ruzindana voluntarily committed and participated in the offences¹⁰ and this represents one

⁷ *Ibid.*

⁸ See *Serushago*, at para. 4; *Kambanda*, at para. 16; *Akayesu*, at para. 8.

⁹ See *Kambanda*, at para. 45; *Akayesu*, at para. 35.iii; *Prosecutor v. Tadic*, Case IT-94-1, at para. 63 (sentencing judgment of 14 July 1997).

¹⁰ See *Serushago*, at para. 30.

aggravating circumstance. This Chamber now addresses in turn the particular aggravating circumstances for Kayishema and Ruzindana, respectively

Aggravating Circumstances for Kayishema

14. The Prosecution cites four aggravating circumstances for Kayishema. First, the Prosecution cites Kayishema's disregard of his obligation, as a *Prefect*, to protect the Rwandan people and maintain peace and order, and the use of his position to effectuate the crimes in Kibuye. Second, the Prosecution cites the zeal with which Kayishema executed his crimes. Third, the Prosecution cites Kayishema's methodical and systematic execution of his crimes. Fourth, the Prosecution cites the behaviour of Kayishema after the criminal act, and notably his inaction to punish the perpetrators.

15. This Chamber finds the presence of these four aggravating circumstances. This Chamber finds as an aggravating circumstance that Kayishema, as *Prefect*, held a position of authority.¹¹ This Chamber finds that Kayishema was a leader in the genocide in Kibuye *Prefecture*, and this abuse of power and betrayal of his high office constitutes the most significant aggravating circumstance.

16. To give but one example of the zealousness of Kayishema's crimes, this Chamber recalls that Kayishema attacked places traditionally regarded as safe heavens, such as the Complex and Mubuga Church. The harm suffered by victims and their families represents an aggravating circumstance,¹² and this Chamber recalls the irreparable harm that Kayishema inflicted on his victims and their families. Kayishema asserted an alibi defence and at all times denied his guilt.¹³ This Chamber also finds that this fact, in light of the convictions, represents an additional aggravating circumstance.

Aggravating Circumstances for Ruzindana

17. The Prosecution cited one aggravating factor, Ruzindana's behaviour after the criminal act, and notably the fact that Ruzindana smiled or laughed as survivors testified during trial.

18. This Chamber finds the heinous means by which Ruzindana committed killings constitutes one aggravating circumstance. To give but one example, this Chamber recalls

¹¹ See *Serushago*, at para. 28; *Kambanda*, at paras. 44, 60.viii; *Akayesu*, at para. 36.ii; *Delalic*, at para. 1220; Cf. *Tadic*, at para 60 (finding the lack of "an important leadership or organisational role" constituted a mitigating factor).

¹² See *Delalic*, at para. 1225, *Tadic*, at para. 70.

the vicious nature of the murder of a sixteen-year old girl named Beatrice. Ruzindana ripped off her clothes and slowly cut off one of her breasts with a machete. When he finished, he cut off her other breast while mockingly telling her to look at the first one as it lay on the ground, and finally he tore open her stomach.

Mitigating Circumstances

19. Rule 101(B)(ii) requires that the Trial Chamber take into consideration any mitigating circumstances in determining sentence. This Chamber addresses in turn the mitigating circumstances of Kayishema and Ruzindana, respectively.

20. Before turning to the particulars in this case, this Chamber wishes to help define the term “mitigating circumstances” by noting some that were present in earlier cases. This Chamber is of the opinion that mitigating circumstances may include: cooperating with the Prosecutor;¹⁴ surrendering to authorities;¹⁵ admitting guilt,¹⁶ and; demonstrating remorse for victims.¹⁷

Mitigating Circumstances for Kayishema

21. Kayishema’s Defence Counsel, in the portion of his closing argument dedicated to sentencing under Rule 86(C), proffered mitigating circumstances. First, he asked this Chamber to consider the explosion of the rule of law in Rwanda in 1994 (based on Professor Guibal’s testimony). Second, he advanced the mitigating circumstance that his client was overwhelmed by the events and the mob or “crowd psychology” (based on Professor Pouget’s testimony) that existed in Rwanda in 1994. Kayishema’s Defence Counsel also asserts that this Chamber should take into account that Kayishema is a loyal and honest person. The Prosecution did not advance any mitigating circumstances for Kayishema. This Chamber notes that Kayishema voluntarily submitted to interviews by members of the Office of the Prosecutor.

22. The Chamber gives very little weight to the mitigating circumstances for Kayishema. The two proposed mitigating circumstances rely on testimony that this Chamber finds not particularly probative. This Chamber also is not convinced of

¹³ See *Tadic*, at para. 58.

¹⁴ See *Serushago*, at paras. 31-33; *Kambanda*, at paras. 47, 60.i; *Erdemovic*, at para. 16.iv; *Tadic*, at para. 58.

¹⁵ See *Serushago*, at para. 34.

¹⁶ See *Serushago*, at para. 35; *Kambanda*, at para. 60.iii; *Erdemovic*, at para. 16.ii; *Tadic*, at para. 58.

¹⁷ See *Serushago*, at para. 40; *Kambanda*, at paras. 50-52; *Akayesu*, at para. 35; *Erdemovic*, at para. 16.iii.

Kayishema's qualities of loyalty and honesty in light of his convictions in this case. This Chamber finds the presence of some mitigating circumstances for Kayishema, but none of any significant weight in a case of this gravity. For Kayishema, the aggravating circumstances outweigh the mitigating circumstances.

Mitigating Circumstances for Ruzindana

23. Ruzindana's Defence Counsel, in the portion of his closing argument dedicated to sentencing under Rule 86(C), implored this Chamber to consider mitigating circumstances, but did not mention any. The Prosecution did not suggest any mitigating circumstances for Ruzindana. This Chamber considers as a mitigating circumstance the fact that Ruzindana was not a *de jure* official. This Chamber finds the presence of some mitigating circumstances for Ruzindana, but none of any significant weight in a case of this gravity. For Ruzindana, the aggravating circumstances outweigh the mitigating circumstances.

Sentencing Recommendations

24. Defence Counsel for Kayishema, in the alternative to acquittal, recommended that this Chamber impose a sentence with merely "symbolic implication." This Chamber takes this recommendation to mean a sentence of time already served in custody, or some similarly short sentence. Defence Counsel for Ruzindana, in the alternative to acquittal, declined to suggest any suitable sentence.

25. The Prosecution, on the counts of which this Chamber finds Kayishema and Ruzindana guilty, recommends the following sentences. For Kayishema, the Prosecution recommends concurrent sentences of "life imprisonment" for each of the Counts 1, 7, 13 and 19. For Ruzindana, the Prosecution recommends a sentence of "life imprisonment" for Count 19.

26. This Chamber notes the facts that distinguish between the different levels of culpability of Kayishema and Ruzindana for purposes of sentencing, including Count 19. Considering the totality of the circumstances, this Chamber finds that Kayishema deserves more punishment than Ruzindana. First and foremost, Kayishema held a position of high authority; Ruzindana did not. Second, Kayishema is guilty of four counts of genocide; Ruzindana is guilty of one. Third, this Chamber considers Ruzindana's relatively young age and the goal of rehabilitation in his case. Fourth,

evidence shows that with regard to at least one criminal act, Kayishema instructed and praised Ruzindana, highlighting their different relative levels of criminal responsibility. Fifth, Kayishema is an educated medical doctor who betrayed the ethical duty that he owed to his community. Sixth, this Chamber, in light of practical considerations, is of the opinion that a twenty-five year sentence represents a term of imprisonment just below that of imprisonment for the remainder of his life. Seventh, this Chamber finds these considerations and other interests of justice require that Kayishema and Ruzindana receive different sentences in regard to Count 19.

Imposition of Sentences

Sentence of Kayishema

27. This Chamber sentences Clement Kayishema to: Imprisonment for the remainder of his life for Count 1 (Genocide); Imprisonment for the remainder of his life for Count 7 (Genocide); Imprisonment for the remainder of his life for Count 13 (Genocide); Imprisonment for the remainder of his life for Count 19 (Genocide).

Sentence of Ruzindana

28. This Chamber sentences Obed Ruzindana to: Twenty-five years imprisonment for Count 19 (Genocide).

Enforcement of Sentences

Concurrent Terms of Sentences

29. Rule 101(C) provides that when the Trial Chamber imposes multiple sentences it shall indicate whether the convicted person shall serve the sentences consecutively or concurrently.¹⁸ Here, this Chamber is imposing multiple sentences, namely four remainder-of-his-life sentences against Kayishema. Accordingly, this Chamber orders that Kayishema shall serve his four remainder-of-life sentences concurrently.

Custody Credit Under Rule 101(D)

30. Rule 101(D) requires that the Tribunal give custody credit to the convicted person for the period of time during which he was detained.¹⁹ This Chamber finds that Ruzindana, being in custody, has earned custody credit. This Chamber instructs the

¹⁸ *Akayesu*, at para. 41; *Furundzija*, at paras. 292-96; *Delalic*, at para. 1286; *Tadic*, at para. 75.

¹⁹ See *Serushago*, at Part V; *Furundzija*, at Part IX.A; *Delalic*, at paras. 1287-89; *Erdemovic*, at Part VIII; *Tadic*, at para. 77.

Registrar to take the necessary steps to inform and ensure proper custody credit in the State imprisoning Ruzindana.

Remainder of His Life Sentence

31. Rule 101(A) authorises the Trial Chamber to sentence a convicted person “to imprisonment for a fixed term or the remainder of his life.” This Chamber, in imposing four concurrent remainder-of-his-life sentences for Kayishema, finds that the “remainder of his life” sentence is distinct from a “life sentence” under the laws of most national jurisdictions. This Chamber gives the phrase “remainder of his life” under Rule 101(A) its plain meaning.

DISPOSITION

32. TRIAL CHAMBER II

FOR THE FOREGOING REASONS;

DELIVERING its Judgement and sentence in public;

PURSUANT to the Articles of the Statute and the Rules;

CONSIDERING all of the evidence before it;

CONSIDERING general principles of sentencing and applicable law;

CONSIDERING the general practice regarding prison sentences in Rwanda;

CONSIDERING the gravity of the offences;

CONSIDERING the individual circumstances of Kayishema and Ruzindana;

CONSIDERING the aggravating and mitigating circumstances;

CONSIDERING the Prosecutor’s Sentencing Brief;

HAVING heard from Kayishema and Ruzindana regarding sentencing;

HAVING heard the Prosecution and Kayishema and Ruzindana;

IN PUNISHMENT OF THE ABOVEMENTIONED CRIMES,

SENTENCES Clement Kayishema to:

COUNT 1 (Genocide): Imprisonment for the remainder of his life;

COUNT 7 (Genocide): Imprisonment for the remainder of his life;

COUNT 13 (Genocide): Imprisonment for the remainder of his life;

COUNT 19 (Genocide): Imprisonment for the remainder of his life;

SENTENCES Obed Ruzindana to:

COUNT 19 (Genocide): Twenty-five (25) years imprisonment;

DECIDES that the sentences shall begin to run from today, and shall run in accordance with Rule 102(A);

DECIDES that Kayishema shall serve his multiple sentences concurrently;

DECIDES that Kayishema and Ruzindana shall serve their sentences in a State designated by the President of the Tribunal, in consultation with this Chamber;

ORDERS the Registrar to convey via letter or note verbale information regarding the designation to the designated State and the Government of Rwanda;

ORDERS the Registrar to convey information to the designated State regarding the date of arrest and custody credits of Ruzindana in accordance with Rule 101(D);

ORDERS the Registrar to execute these sentences immediately, and;

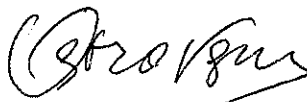
ORDERS the Registrar in the event that Kayishema or Ruzindana appeals, to maintain the appellant in custody of the Tribunal until such a time as the Appeals Chamber has determined the appeal.

Arusha, 21 May 1999.



William H. Sekule

Presiding Judge



Yakov Ostrovsky

Judge



Tafazzal Hossain Khan

Judge

(Seal of the Tribunal)