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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
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TRIAL CHAMBER III

Case No. ICTR-95-1C-T

ENGLISH
Original: FRENCH

Before: Judge Andrésia Vaz, presiding
Judge Flavia Lattanzi
Judge Florence Rita Arrey

Registrar: Adama Dieng

Date delivered: 14 March 2005

THE PROSECUTOR

v.

VINCENT RUTAGANIRA

JUDGEMENT AND SENTENCE

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CHAPTER I: INTRODUCTION

A. The Tribunal and its jurisdiction

1. This Judgement is delivered by Trial Chamber III (the "Chamber") of the International Criminal Tribunal for Rwanda (the "Tribunal") in the case of *The Prosecutor v. Vincent Rutaganira*.

2. The Tribunal was established by United Nations Security Council Resolution 955 of 8 November 1994 with a mandate for "prosecuting 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".[1]

3. The jurisdiction *ratione materiae* of the Tribunal covers genocide, crimes against humanity, serious violations of Article 3 Common to the four Geneva Conventions and of Additional Protocol II thereto, with its personal jurisdiction being limited to natural persons.

B. The Accused

4. The Accused Vincent Rutaganira was born in 1944 in Mubuga, Gishyita *commune*, Kibuye *préfecture*, Rwanda. He is married and a father to 10 children. He underwent a two-year technical training course in motor mechanics and another training course in traditional medicine graduating as a herbalist.[2]

5. Vincent Rutaganira was elected *conseiller communal* of Mubuga *secteur* in 1985 and served up to the end of July 1994.[3] Therefore the Accused was holding office at the time of the events which gave rise to the crimes charged.

C. Proceedings

6. On 22 November 1995, the Prosecutor filed an initial Indictment which was confirmed by Judge Navanethem Pillay on 28 November 1995.

7. On 12 December 1995, an arrest warrant and a transfer request were transmitted to the Justice Minister of Zaire where Vincent Rutaganira was allegedly residing.

8. On 6 May 1996, the Trial Chamber granted the Prosecution's request to amend its Indictment.[4]

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[1] S/RES/955, 8 November 1994. The Tribunal is governed by the Statute as amended by Security Council Resolutions 1165, 1329, 1411, 1431, 1503 and 1512.
[2] T.8 December 2004, p. 6.
[3] T.17 January 2005, p. 12.
[4] *The Prosecutor v. Clément Kayishema, Ignace Bagilishema, Charles Sikubwabo, Aloys N'Dimbati, Vincent Rutaganira, Mika Muhimana, Ryandikayo and Obed Ruzindana*, Order to Amend the Indictment of 6 May 1996.

9. The Prosecutor charged Vincent Rutaganira with eight counts: Conspiracy to commit genocide (Count 1), Genocide (Count 14), Murder as crime against humanity (Count 15), Extermination as crime against humanity (Count 16), other inhumane acts as crimes against humanity (Count 17) Serious Violations of Article 3 Common to the Geneva Conventions (Count 18) and Serious Violations of Additional Protocol II thereto (Count 19).

10. On 18 February 2002, an arrest warrant issued against Vincent Rutaganira was sent to all Member States of the United Nations. On 4 March 2002, the Accused surrendered voluntarily to the Tribunal and was transferred on the same day to the Detention Facility of the Tribunal.

11. The initial appearance on 7 March 2002 was adjourned at the request of the Prosecution and the Defence.[5]

12. At his initial appearance on 26 March 2002, the Accused pleaded not guilty to all the counts.[6]

13. At a status conference held on 17 September 2004, the Prosecution asserted that it had sent a letter to the Defence as part of negotiations on the proceedings against Vincent Rutaganira. The Prosecution asserted that "the result of those ongoing negotiations may or could save a substantial amount of time".[7]

14. At a status conference held on 8 December 2004, the Prosecution and Vincent Rutaganira informed the Chamber that they had reached a plea agreement on 7 December 2004.[8]

15. At a new appearance hearing held on 8 December 2004, Vincent Rutaganira indeed pleaded guilty to the charge of complicity by omission in the crime of extermination (crime against humanity) under Article 3(b) of the Statute of the Tribunal, as charged in Count 16 of the Indictment. However, he pleaded not guilty to the remaining counts.[9]

16. The Prosecutor requested the Chamber to admit the guilty plea, to find the Accused guilty under Count 16, to dismiss Counts 1, 14, 15, 17, 18 and 19 for lack of evidence and to acquit him on the said counts.[10]

17. The Chamber found the guilty plea of Vincent Rutaganira sincere and valid and took note of the Prosecutor's request.[11]

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[5] T.7 March 2002, pp. 8-11; p. 13.
[6] T.26 March 2002, p. 15 (French).
[7] T.17 September 2004, p. 3.
[8] T. 2004, p. 2. On the same day, the two parties filed three documents with the Registry: "*Accord de reconnaissance de culpabilité conclu entre M. Vincent Rutaganira et le Bureau du Procureur*", "*Requête conjointe visant à l'examen d'un Accord entre Vincent Rutaganira et le Bureau du Procureur aux fins d'un plaidoyer de culpabilité*" and a " *Mémoire conjoint entre Vincent Rutaganira et le Bureau du Procureur préalable au prononcé de la sentence*" ("Mémoire conjoint").
[9] T.8 December 2004, pp. 7-9.
[10] Ibid., p. 3.
[11] Ibid., pp. 12-13.

18. At the request of the Defence, the Chamber subsequently agreed to hear three character witnesses.

19. At a 17 January 2005 hearing, the Prosecutor, on the one hand, sought severance of Vincent Rutaganira's trial from that of the other accused persons named in the Indictment of 6 May 1996 and, on the other hand, reiterated his request for dismissal of and acquittal on all counts except for Count 16.[12]

20. The Defence sought rectification to the plea agreement which would result in only the words "omissions" being retained with the term "acts" being struck. It also prayed the Chamber to keep said Agreement confidential, except for its Chapters V and VI.

21. The Chamber ordered that Vincent Rutaganira's trial be severed from that of the other accused persons named in the Indictment of 6 May 1996 and directed the Registrar to assign a new number to the case. Furthermore, after granting the Defence's request for rectification, the Chamber ordered disclosure in closed session of the guilty plea agreement, except for Chapters V and VI, on security grounds and pursuant to Rule 62*bis* of the Rules. Subsequently, the Defence read out Chapters V and VI of said Agreement in open court.[13]

22. At the request of the Defence, the Chamber also requested the medical officer of the Detention Facility to produce under seal a medical report on the Accused.[14]

23. The Chamber further admitted into the record written statements by other non-appearing witnesses (TRV-6, TRV-9 and TRV-10).[15]

24. In closing arguments, the Prosecutor pleaded both the aggravating and mitigating circumstances to be considered by the Chamber in determining the sentence to be imposed on the Accused.[16]

25. On the other hand, the Defence pleaded circumstances in mitigation.[17] In this regard, it called its three character witnesses.[18]

[12] T.17 January 2005, p. 2
[13] Ibid., p. 24.
[14] The medical report on Vincent Rutaganira's health was prepared and submitted to the Chamber on 20 January 2005.
[15] T.17 January 2005, p. 17.
[16] Ibid., pp. 6-10.
[17] Ibid., pp. 35-42.
[18] Ibid., pp. 18-31.

CHAPTER II: THE GUILTY PLEA

A. The applicable law

26. The Statute does not directly address guilty pleas. The relevant provisions, namely Rule 62(B) and Rule 62*bis* of the Rules of Procedure and Evidence provide as follows:

Rule 62: Initial Appearance of Accused and Plea

(A) Upon his transfer to the Tribunal, the accused shall be brought before a Trial Chamber or a Judge thereof without delay, and shall be formally charged. The Trial Chamber or the Judge shall:

(i) Satisfy itself or himself that the right of the accused to counsel is respected;

(ii) Read or have the indictment read to the accused in a language he speaks and understands, and satisfy itself or himself that the accused understands the indictment;

(iii) Call upon the accused to enter a plea of guilty or not guilty on each count; should the accused fail to do so, enter a plea of not guilty on his behalf;

(iv) In case of a plea of not guilty, instruct the Registrar to set a date for trial;

(v) In case of a plea of guilty:

(a) if before a Judge, refer the plea to the Trial Chamber so that it may act in accordance with Rule 62 (B); or

(b) if before a Trial Chamber, act in accordance with Rule 62 (B).

(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.

B. The Chamber's consideration of the validity of the guilty plea by the Accused

27. Following a reading of the charges by the Registrar at a new appearance hearing on 8 December 2005, Vincent Rutaganira pleaded guilty to the crime against humanity (extermination) referred to in Count 16 of the Indictment, thereby confining his plea to complicity by omission.[19]

28. Pursuant to Rule 62(B)(i) to (iii) of the Rules, the Chamber proceeded to satisfy itself of the validity of the said guilty plea. In so doing, it asked the Accused if his plea was voluntary, if he had made it freely, knowingly and without coercion, threat or promise; if the Accused had understood well the nature of the charges and the consequences of his plea; if he was aware that the guilty plea was incompatible with any grounds of defence; if he had indeed signed the Agreement containing his plea. The Accused having responded in the affirmative to all these questions, the Chamber found the guilty plea of Vincent Rutaganira to have been done freely and voluntarily, to have been an informed, unequivocal and sincere plea.

29. In the light of Chapter V of the guilty plea agreement, and in the absence of any disagreement between the Prosecutor and the Accused as to the facts of the case, the Chamber, acting pursuant to Rule 62*bis*(B)(iv), also found that the guilty plea of the Accused Vincent Rutaganira relied on sufficient facts to establish both the crime against humanity

[19] T.December 2004, pp. 7-98.

(extermination), referred to in Count 16 of the Indictment and the participation of the Accused for having abetted such a crime by omission.

30. In light of the foregoing findings, the Chamber found the guilty plea of Vincent Rutaganira valid.[20]

CHAPTER III: THE EVENTS

31. From 1985 to 1994, the Accused was *conseiller communal* of Mubuga *secteur* in Gishyita *commune*, Kibuye *préfecture*[21] and was as such responsible for the economic, social and cultural development of his *secteur.*[22] As a prominent member of the community and by virtue of his office, Vincent Rutaganira served as a link between the inhabitants and the local political structures in this *secteur.*[23]

32. The Accused knew, on the one hand, that during the clashes that had occurred earlier in Kibuye *préfecture*, Tutsi civilians had taken refuge in churches[24] and, on the other hand, that between 8 and 15 April 1994, thousands of Tutsi civilians sought shelter in Mubuga church.[25] He admits that the Tutsi who had assembled at the church had been attacked between 14 and 17 April 1994,[26] and that, as a result, thousands of men, women and children who had gathered there died or were wounded.[27] Prior to the attack, the Accused had observed the attackers, including the *bourgmestre*, armed Hutu civilians, *commune* policemen and members of the national *gendarmerie* assembling.[28]

33. Despite his position and of his having knowledge of the above-mentioned events, the Accused failed to act to protect the Tutsi, either before or after the massacres.[29]

Witness TRV- 4

34. During the hearing of 17 January 2005, Witness TRV-4, a Tutsi woman, who had known the Accused since 1985, testified that the Accused had saved her life[30] during the events of 1994 when she lost 35 members of her family.[31] She explained that Vincent Rutaganira had some Tutsi friends, and that his friendship with them was symbolized by mutual gifts of cows and joint celebration of marriages. TRV-4 testified that she had gone into hiding during the events of 1994 and had been discovered by attackers. She had then produced a false Hutu identity card, before being taken by the attackers to a place where other attackers were getting ready to go and kill people in Bisesero. Vincent Rutaganira was at that place. When the attackers tried to kill her, Vincent Rutaganira intervened, saying that

[20] T.8 December 2004, pp. 12-13.
[21] Guilty Plea Agreement, para. 19.
[22] Ibid., para. 20.
[23] Ibid., para. 21.
[24] Ibid., para. 23.
[25] Ibid., para. 22.
[26] Ibid., para. 24.
[27] Ibid., para. 27.
[28] Ibid., para. 26.
[29] Ibid., para. 29.
[30] T.17 January 2005, p. 20.
[31] Ibid., p. 19.

her identity card showed that she was Hutu. The attackers said that if they did not kill her, Vincent Rutaganira had to give them one of her children for them to kill instead. The attackers then dispersed.[32]

Immaculée Nyiramasimbi

35. Known under the pseudonym KNN 1, Immaculée Nyiramasimbi, a Defence witness, sought and obtained leave of the Chamber not to testify under a pseudonym.[33] Immaculée Nyiramasimbi has been married to the Accused since 1973 and they bore nine children. She is currently deputy mayor in charge of women's development in her *commune*.[34]

36. Immaculée Nyiramasimbi testified that Vincent Rutaganira became *conseiller communal* for Mubuga *secteur* because the people had a great deal of confidence in him and he worked in close collaboration with them. While in office, he had restored security in Mubuga *secteur* by putting an end to the activities of criminals who used to attack and rob people. At the time, the Accused was in good terms with the Tutsi as reflected in mutual gifts of cows and participation in weddings. Mr. Rutaganira and his wife had Tutsi godchildren and had chosen Tutsi as godfathers and godmothers to their own children.[35] They get on well with the survivors.[36]

37. The witness also testified that Vincent Rutaganira did not get on well with the *bourgmestre* before and during the events of April 1994, especially since the Accused did not wish to participate in the massacres. She added that she and her husband had been threatened during that period.[37]

38. The witness further testified that she and the Accused had agreed to hide Tutsis at home during the events of 1994 and specifically that some Tutsi girls and a Tutsi woman had stayed at their house for two weeks and three months respectively. She asserted that nobody had died or been wounded at the roadblock that had been erected near their house, and that no property had been looted.[38]

Witness KPP 1

39. Witness KPP 1 testified that he had been detained for eight years[39] and that, being a widower, he remarried a survivor.[40]

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[32] Ibid., p. 20: "In a pre-trial statement, TRV-4 had stated that she was attacked around 20 April at Ryaruhanga centre."
[33] Ibid., p. 22.
[34] Ibid., p. 23.
[35] T.17 January 2005, p. 24.
[36] Ibid., p. 26.
[37] Idem.
[38] Idem.
[39] Ibid., p. 29.
[40] Ibid., p. 31.

40. KPP 1 certified that he knew the Accused before the events of 1994. He testified that when the Accused was *conseiller communal*, he had restored security in the *secteur*, which had previously been disrupted by bandits and hooligans who used to steal from and attack the people. KPP 1 added that the people were grateful to the Accused for saving them from the bandit attacks.[41] According to the witness, the Accused as *conseiller de secteur*, had taken many decisions in the public's interest and against the interests of his friends.[42] He stated that Vincent Rutaganira had been on good terms with the Tutsi; that he is a godfather to their children, just as some Tutsi are godfathers to his children. KPP 1 testified that Vincent Rutaganira did not get on well with the *bourgmestre*.[43]

41. KPP 1 testified that had Vincent Rutaganira been fully in charge during the events of 1994, he would have taken action against the bandits, hooligans and armed gangsters who had taken control of the situation.[44]

Witness TRV-6

42. The Defense submitted to the Chamber a statement from Witness TRV-6 dated 21 January 2003.[45] The witness, whose entire family was killed during the genocide, testified that two days after the death of President Habyarimana, she sought refuge at the Accused's house, and subsequently in another house belonging to him, where she remained for over three months. She was supported by the Accused during her stay in his house.

43. On two occasions, Witness TRV-6 had heard the *bourgmestre* invite the Accused to join him in attacks but the Accused had refused and also denied that he had hidden some Tutsi.

Witness TRV-9

44. The Defense submitted to the Chamber a statement dated 21 January 2003 from Witness TRV-9,[46] whose family and that of Accused Vincent Rutaganira were friends. TRV-9 testified that only three members of his family had survived the genocide. He explained that during the events of 7 April 1994, his children had been saved and protected by the Accused in his house. TRV-9 stated that the Accused had been able to save many Tutsi because they trusted him. He added that before the war, the people already knew that Vincent Rutaganira did not get on well with the *bourgmestre*.

Witness TRV-10

45. The Defence submitted to the Chamber a statement from Witness TRV-10, dated 23 January 2003.[47] TRV-10 testified, *inter alia*, that during the events of 1994, she had been taken to the Accused's house after being raped. The Accused reassured her by telling her not

[41] Ibid., p. 29.
[42] Ibid., p. 30.
[43] T.17 January 2005, p. 30.
[44] Ibid., p. 31.
[45] Exhibit D1. 2D.
[46] Exhibit D1. 3D.
[47] Exhibit D1. 4D.

to be afraid. She added that when the *bourgmestre* arrived at the Accused's house, the Accused told the *bourgmestre* that she was a Hutu. The *bourgmestre* therefore asked the Accused to help her. The Accused then took her to the dispensary and gave orders that she not be harmed.

CHAPTER IV: CRIMINAL RESPONSIBILITY OF THE ACCUSED ON THE COUNT OF EXTERMINATION AS A CRIME AGAINST HUMANITY (COUNT 16 OF THE INDICTMENT)

46. Chapter VI of the Indictment of the guilty plea agreement reads:

> "[In the light of the points of fact and law set forth in this agreement and acknowledged by the Accused, there is no doubt that Vincent Rutaganira, by omission and as an accomplice, aided and abetted the commission of the crime of extermination as a crime against humanity within the meaning of Article 6(1) of the Statute]".

47. The crime to which the Accused pleaded guilty is covered under Article 3(b) with the form of participation being provided under Article 6(1) of the Statute. Under Rule 62(B)(iv), in determining the Accused's responsibility for the crime to which he pleaded guilty, the Chamber must not only satisfy itself that all the elements of the crime of extermination are present, but also ascertain the form of Vincent Rutaganira's participation in the perpetration of the said crime.

A. Extermination as a crime against humanity (Article 3(b) of the Statute of the Tribunal)

48. With respect to crimes against humanity, Article 3(b) of the Statute provides that the Tribunal shall have the power to prosecute persons responsible for the crime of extermination:

- when the crime was committed as part of a widespread or systematic attack against any civilian population, and
- where the civilian population was the target of such an attack on national, political, ethnic, racial or religious grounds.

1. The massacres at Mubuga church between 14 and 17 April 1994

49. *Nahimana et al.* held that "in order to be guilty of the crime of extermination, the Accused must have been involved in killings of civilians on a large scale".[48] *Akayesu* ruled that extermination "is a crime which by its very nature is directed against a group of individuals [and] differs from murder in that it requires an element of mass destruction".[49] In *Bagilishema,* the Trial Chamber found that "extermination is unlawful killing on a large

[48] *Nahimana et al.* Judgement (TC), para. 1061.

[49] *Akayesu* Judgement (TC), para. 591. The Trial Chamber adopted the same definition in *Kayishema and Ruzindana* Judgement (TC), para. 145 and in *Rutaganda* Judgement (TC), para. 82. See also *Musema* Judgement (TC), para. 217, *Ntakirutimana* Judgement (TC), para. 813 and *Semanza* Judgement (TC), para. 259;

scale", and that "large scale" does not suggest a numerical minimum. It must be determined on a case-by-case basis using a common-sense approach".[50]

50. Therefore, the Chamber notes that the Tribunal has consistently held that, by its very nature, extermination is a crime which is directed against a group of individuals as distinct from murder in that it must be perpetrated on a "large scale."

51. In his guilty plea, Vincent Rutaganira admits that the attackers who surrounded and attacked Mubuga church between 14 and 17 April 1994 included representatives of the local authorities, armed Hutu civilians, *commune* policemen and members of the *gendarmerie*. The Accused also admits that thousands of refugees were killed or wounded at Mubuga church massacres perpetrated during the same period.

52. It has also been established that the attacks perpetrated in Kibuye *préfecture*, including those perpetrated between 14 and 17 April 1994 at Mubuga church against the Tutsi people, led to mass killings on a large scale.[51]

53. Therefore, the Chamber finds that the massacres committed at Mubuga church between 14 and 17 April 1994 had been perpetrated on a large scale and had caused thousands of casualties.

2. Widespread and systematic attack

54. That massacres had been perpetrated at Mubuga church between 15 and 17 April 1994 as part of a widespread and systematic attack was indisputably admitted by the Accused Vincent Rutaganira in his guilty plea, under chapters V and VI of the Agreement.

55. It has also been shown with respect to the events which took place in Kibuye *prefecture,* that large scale killings had been perpetrated at Mubuga church during the same period as admitted by the Accused in his guilty plea agreement, and that such killings had been part of a widespread and systematic attack in said *préfecture.*[52]

56. The Chamber finds that the facts in the instant case are sufficient to prove beyond a reasonable doubt that massacres were perpetrated at Mubuga church between 14 and 17 April 1994, as part of a widespread and systematic attack.

3. The civilian population targeted on ethnic grounds

57. In his guilty plea, the Accused Vincent Rutaganira admits that between 8 and 15 April 994, thousands of Tutsi civilians – men, women and children – had sought refuge at Mubuga church in Mubuga *secteur* (Gishyita *commune*), from attacks that had been launched against them. The Accused also admits that those people were victims of the above-mentioned massacres because they were members of the Tutsi ethnic group.

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[50] *Bagilishema* Judgement (TC), para. 87.
[51] *Kayishema and Ruzindana* Judgement (TC), paras. 317 and 404.
[52] *Kayishema and Ruzindana* Judgement (TC), para. 576.

58. It has also been shown that the victims of the attack at Mubuga church between 14 and 17 April 1994 were mainly members of the Tutsi ethnic group.[53]

59. In the opinion of the Chamber, it has been shown that the widespread and systematic attack during which the Mubuga church massacres took place during the relevant period, had been perpetrated against a civilian population on ethnic grounds.

60. Accordingly, the Chamber finds that such massacres amount to extermination under Article 3(b) of the Statute.

B. Participation of the Accused Vincent Rutaganira in the crime of extermination (crime against humanity) through complicity by omission

61. The Accused pleaded guilty of the crime of extermination as a crime against humanity (Count 16 of the Indictment), through complicity by omission.

62. It is the case that complicity is not expressly included among the forms of liability enumerated in Article 6(1), which provides:

> A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 of the present Statute, shall be individually responsible for the crime.

63. The case-law of both *ad hoc* Tribunals has indeed determined a form of complicity in aiding and abetting provided for under Article 6(1). Thus, in *Furundžija*, an ICTY Trial Chamber held that complicity "consists of practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime".[54]

64. The Chamber must also satisfy itself that aiding and abetting as provided for in Article 6(1) can be constituted by an omission and not only by an act. For instance, in *Blaškić*, the ICTY Trial Chamber held that "the *actus reus* of aiding and abetting may be perpetrated through an omission, provided this failure to act had a decisive effect on the commission of the crime and that it was coupled with the requisite mens rea".[55] In *Rutaganda,* the Trial Chamber of the Tribunal held that "an accused may participate in the commission of a crime either through direct commission of an unlawful act or by omission, where he has a duty to act".[56]

65. Accordingly, the Chamber finds that participation by omission in extermination as a crime against humanity as admitted to by the Accused Vincent Rutaganira is covered under Article 6(1) of the Statute.

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[53] Idem.
[54] *Furundžija* Judgement (TC), paras. 235 and 249.
[55] *Blaškić* Judgement (TC), paras. 284.
[56] *Rutaganda* Judgement (TC), para. 41.

66. The Chamber must therefore consider the elements of aiding and abetting by omission, namely, the act *(actus reus)* and the mental element *(mens rea).*

1. *Actus reus*

67. The Chamber notes that determining omission under Article 6(1) of the Statute is a more complex task than showing omission under Article 6(3). In the latter case, omission can be attributed to a person who, *de jure* and/or *de facto*, has an unambiguous status as a military or civilian superior. Such is not the case under Article 6(1) in the instant case.

68. In determining participation by omission in extermination as a crime against humanity as admitted to by the Accused, the Chamber addressed the following questions:

(i) Did the Accused have authority and did he choose to not exercise it?

(ii) Did the Accused have a moral authority over the principals such as to prevent them from committing the crime and did he choose not to exercise it?

(iii) Was the Accused under a legal duty to act which he failed to fulfill?

(i) Powers vested in the *conseiller communal*, Vincent Rutaganira, under the relevant statutory provisions

69. Regarding the Accused's power to act, the Chamber recalls that Vincent Rutaganira did mention his position as *conseiller communal* for Mubuga *secteur* (Gishyita *commune*, Kibuye *préfecture*) during the events that occurred at Mubuga church, as reflected in the guilty plea agreement. Vincent Rutaganira was, *inter alia,* in charge of economic, social and cultural issues in his *secteur.*[57] He also admitted that he was "[the link between all the inhabitants of Mubuga *secteur* and the local political structure, within the limits of his duties under the Organic Law of November 1963]".[58] Lastly, he admitted that although he was *conseiller* of Mubuga *secteur*, he had not acted to protect the Tutsi who sought refuge at Mubuga church between 8 and 15 April 1994.[59]

70. The Chamber notes that under Article 37 of the Rwandan law on communal organization,[60] the position of *conseiller communal* for his *secteur* conferred on the Accused authority to chair public meetings in Mubuga *secteur* and to note and convey the wishes of the people. Such authority implies the power to convene such meetings and to draw up agendas therefor.

71. The Chamber recalls that Witness KPP 1 testified that before the events of 1994, the Accused Vincent Rutaganira, while in office, had managed to restore security in Mubuga *secteur* which had hitherto experienced growing insecurity caused by bandits and hooligans

[57] Guilty Plea Agreement, para. 29.
[58] Ibid., para. 21; Article 37 of the Law of 23 November 1963 on Communal Organization.
[59] Ibid., para. 29.
[60] Law of 23 November 1963 on Communal Organisation (Official Gazette, 1963, p. 507), amended by Legislative Decree of 26 September 1974 (Official Gazette, 1974, p. 577) and Legislative Decree No. 4/75 of 30 January 1975 (Official Gazette,1975, p. 191).

who used to steal and attack the people. The testimony of KPP 1 was also corroborated by Witness Immaculée Nyiramasimbi. Moreover, several testimonies[61] showed that out of his sense of justice, Vincent Rutaganira readily opposed any decisions by the *bourgmestre* of Gishyita *commune*, Charles Sikubwabo, which struck him as unfair to or inappropriate for the people in the *secteur*, with his relations with the *bourgmestre* being strained as a result.

72. Therefore, the Chamber finds that the Accused had the power to convene a meeting of the inhabitants of the *secteur* to initiate and conduct discussions on the tragic events that were taking place in his *secteur*, in order to prevent participation in the massacres that occurred at the church, at least, by civilians. The Chamber notes in this regard that, according to the guilty plea agreement, armed Hutu civilians, *commune* policemen and members of the *gendarmerie*, who were joined by civilians, perpetrated attacks.

73. The Chamber finds that the Accused's admission that he did not attempt to prevent the attacks on the Tutsi although he was *conseiller* of Mubugu *secteur* amounted to an implicit admission that he presumably had the power to do so.

74. Therefore, the Chamber finds that as *conseiller de secteur* with definite, albeit limited powers, the Accused Vincent Rutaganira chose to not exercise such powers during the events that occurred in Mubuga between 14 and 17 April 1994. He particularly failed to take action against the civilians who had joined the armed attackers to kill Tutsi refugees at Mubuga church.

(ii) The Accused's moral authority in Mubuga *secteur* during the events

75. As regards the Accused's moral authority, the Chamber recalls that in the Guilty Plea Agreement, the Accused acknowledged that "[he was a prominent member of the community in Mubuga *secteur* (Gishyita *commune*)]" and that he "[was the closest personality to the people at the *secteur* level]".[62]

76. The Chamber also notes that the evidence clearly shows that at the time of the April 1994 events in Rwanda, the people of Mubuga had total confidence in Vincent Rutaganira because of his position as *conseiller communal* for his *secteur* and his good reputation as a fair and courageous man. Witness KPP 1 testified *inter alia* that the people felt particularly grateful to the Accused for restoring security in the *secteur*, which had previously been disrupted by bandits. Witness TRV-4 testified that Vincent Rutaganira had saved his life and had been quick to intervene when the attackers tried to kill him after surprising him in his hideout. Witness TRV-4 also gave a detailed account of how the Accused came out of his shop for the express purpose of assisting him when he was under threat from the attackers. The Accused's moral authority over the inhabitants of the *secteur* is also reflected in the testimony of Witness Immaculée Nyiramasimbi, who testified that nobody died or was wounded at the roadblock that had been erected near the Accused's house, unlike at the other roadblocks erected during the said events.

[61] Exhibits D1. 1D and D1. 3D.
[62] Guilty Plea Agreement, para. 21.

77. Therefore, the Chamber finds that the Accused Vincent Rutaganira, who was *conseiller communal* for Mubuga *secteur* for 10 years, still enjoyed moral authority over the population of the said *secteur* as a whole during the events that occurred at Mubuga church between 14 and 17 April 1994. Thus, he could have used his moral authority to prevent some members of the public from participating in the attacks at the church, as he had done by protecting some Tutsi from attackers near his shop.

(iii) Legal duties placed on the Accused Vincent Rutaganira

78. The Chamber wishes to add, *ad abundantiam*, that international law also places upon a person vested with public authority a duty to act in order to protect human life. Indeed, the State to which it falls to carry out international obligations, can only act through all its representatives, be they in the upper reaches or at lower levels of Government. The State itself can fulfil its international obligations and not incur any responsibility not only because of its representatives' respect for human rights but also by reason of actions taken, in the performance of their duties, to prevent any violation of the said rights.[63] Hence, the need to incorporate international standards in municipal law, as provided for by all relevant international agreements. The State of Rwandan did so, in particular, with respect to the standards set forth in international human rights instruments, international humanitarian law and respecting individual criminal responsibility for crimes against humanity and war crimes.[64]

79. Consequently, as any person, all public authorities have a duty not only to comply with the basic rights of the human person, but also to ensure that these are complied with,[65] which implies a duty to act in order to prevent any violation of such rights.

80. The Chamber notes that in assessing the Accused's culpable conduct under Article 6(1) of the Statute, the Defence submitted in its closing arguments at the hearing of 17 January 2005, that the Accused had shirked his *legal duty to humanity*. More specifically, the Defence made reference to the fact that every Rwandan citizen who fails to provide assistance to a person in danger could be held criminally responsible.[66]

81. In the opinion of the Chamber, while under the so called "[risk to oneself and to another]" doctrine set forth in Article 256 of the Rwandan Penal Code a person may justifiably fail to act, such a doctrine may not provide complete exoneration in light of the particularly serious nature of the crimes committed during the events that occurred in

[63] See also the commitment under Article 4(c) of the International Convention on the Elimination of All Forms of Racial Discrimination, also incorporated in Rwandan law (Legislative Decree No. 08/75 of 12 February 1975, Official Gazette, 1975, p. 230) "Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination." "Article II of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity."

[64] Not only have all these international conventions been incorporated into Rwandan domestic law upon their being published in the Official Gazette following ratification, but the basic rights of the human person are also enshrined in Articles 12 to 33 of the Constitution in force in 1994. The Arusha Peace Accords, which were also incorporated into the Rwandan Constitution also provided for such obligations.

[65] The obligation in question is explicitly set forth in, for example, Article 1 Common to the Geneva Conventions.

[66] Article 256 paras. 1 and 2 of the Rwandan Penal Code, Legislative Decree No. 21/77 of 18 August 1977 (version in force in 1994).

Rwanda in 1994. Indeed, violence to physical well-being suffered by thousands of people during the said events affects the very fundamental interests of Humanity as a whole, and the protection of such interests cannot be counterbalanced by the mere personal risk that may have been faced by any person in a position of authority who failed to act in order to assist people whose lives were in danger.[67]

82. In the instant, by reason of the authority vested in him by virtue of his office the Accused Vincent Rutaganira was under a duty to provide assistance to people in danger, pursuant to Article 256 of the Rwandan Penal Code.

83. Lastly, the Chamber notes that because of his unique position, the Accused had a duty to report to the relevant authorities the crimes that were being committed against the Tutsi population in his *secteur*.

84. Accordingly, the Chamber finds that the Accused Vincent Rutaganira had a duty to prevent some inhabitants in his *secteur* from participating in attacks against the civilians who had taken refuge at Mubuga church, to provide such civilians with assistance and to report the attackers to the relevant authorities, but chose not to do so.

(iv) Connection between the perpetration of the crime and participation by aiding and abetting

(a) Temporal and geographical connection

85. Under the case-law of the *ad hoc* Tribunals, there must be a temporal and geographical connection between criminal participation under Article 6(1) and the perpetration of the crime.[68] Furthermore, participation may occur before, during or after the act is committed and be geographically separated therefrom.[69]

86. In the instant case, Vincent Rutaganira stood a few metres away from the place where the attackers assembled before and after the attacks. Thus, he was in a position to observe them as they assembled near his house and subsequently to know that attacks were being perpetrated on Mubuga church, between 14 and 17 April 1994.

87. Therefore, the Chamber finds that Vincent Rutaganira participated by omission in extermination as a crime against humanity both before and during the massacre of refugees perpetrated at Mubuga church.

[67] *Erdemović* Judgement, (TC), para. 19: "With regard to a crime against humanity, the Trial Chamber considers that the life of the accused and that of the victim are not fully equivalent. As opposed to ordinary law, the violation here is no longer directed at the physical welfare of the victim alone but at humanity as a whole."
[68] *Furundžija* Judgement (TC), para. 234 ; *Aleksovski* Judgement (TC), para. 129; *Blaškić* Judgement (AC), para. 47.
[69] *Blaškić* Judgement (TC), para. 285.

(b) Effect of aiding and abetting on the perpetration of a crime by the principal perpetrator

88. Both *ad hoc* Tribunals have held that for criminal responsibility under Article 6(1) to attach, the act of aiding and abetting must have a decisive[70] and substantial effect[71] on the commission of the crime by the principal perpetrator.

89. In the light of such case-law, the Chamber is of the opinion that for an accused to incur criminal responsibility under Article 6(1) of the Statute, it must be shown that his or her participation has substantially contributed to, or has had a substantial effect on the consummation of a crime under the Statute. With respect to aiding and abetting by omission, such contribution or effect can be assessed only against the effectiveness of any action taken to prevent the commission of the crime.

90. The Chamber finds that in the instant case, Vincent Rutaganira's intervention saved some people who had been targeted by attackers. It can be inferred from such a finding that a similar intervention by the Accused against some civilians who participated in the attacks on Mubuga church would have had the same decisive effect in sparing human lives.

91. On the basis of objective indicia and the lack of any material disagreement between the Prosecutor and the Accused, the Chamber is satisfied that the facts admitted by the Accused are quite sufficient to prove the existence of the *actus reus* of aiding and abetting by omission, extermination as a crime against humanity as committed by the attackers on Mubuga church between 14 and 17 April 1994.

2. *Mens rea*

92. Pursuant to the case-law of the Tribunal[72] and of ICTY,[73] the Chamber is of the opinion that the *mens rea* of an accomplice lies in his knowledge of, on the one hand, the *mens rea* of the principal perpetrator of the crime and, on the other hand, of the fact that his conduct would further the perpetration of the crime.

93. The Chamber must determine whether the Accused Vincent Rutaganira had knowledge:

(i) of the principal perpetrator committing extermination as part of a widespread and systematic attack against a civilian population on ethnic grounds; and

(ii) of his own conduct furthering the perpetration of said crime

94. In determining whether the Accused had the *mens rea* of the crime admitted, the Chamber will rely on Vincent Rutaganira's confessions and some objective indicia.

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[70] Ibid., (AC), para. 284.
[71] *Rutaganda* Judgement (AC), para. 43; *Musema* Judgement (AC), para. 126; *Bagilishema* Judgement (AC), para. 33; *Ntakirutimana* Judgement (AC), para. 787.
[72] *Akayesu* Judgement (AC), para. 539; *Musema* Judgement (TC), para. 181.
[73] *Vasiljevic* Judgement (AC), para. 102; *Blaškić* Judgement (AC), para. 45.

(i) Knowledge of extermination perpetrated as part of a widespread and systematic attack against a civilian population on ethnic grounds

95. The Chamber finds that, as reflected in the guilty plea agreement, the Accused knew that between 8 and 15 April 1994, thousands of Tutsi civilians had sought refuge at Mubuga church, in Mubuga *secteur* (Gishyita *commune*) from attacks targeting their ethnic group.[74] Vincent Rutaganira admits that the attack on the Tutsi civilians who had assembled in Mubuga church was part of a widespread and systematic attack.[75] Indeed, the Chamber notes that, by virtue of his position as *conseiller communal* for Mubuga *secteur*, the Accused must have known about the serious events that were occurring in his *secteur* and the crimes that were being perpetrated there on a large scale.

96. In the light of the above the Chamber finds that the Accused knew about the general context in which the massacres were being perpetrated at Mubuga church during the relevant period, namely that his omissions were part of a widespread and systematic attack targeted at the civilian population on ethnic grounds.

(ii) Knowledge that his conduct furthered the principal perpetrator's crime

97. The Chamber finds that Vincent Rutaganira was aware not only of his duties as *conseiller communal* for Mubuga *secteur* but also of his moral authority *vis à vis* the civilian population in his *secteur*. Indeed, Vincent Rutaganira admits that "[although he was *conseiller* of Mubuga *secteur*, he did not act to protect the Tutsis who had sheltered at Mubuga church in Mubuga *secteur* (Gishyita *commune*) between 8 and 15 April 1994]".[76]

98. Accordingly, the Chamber finds that the Accused was aware that his failure to act would further the commission of the crime.

99. As a result, the Chamber finds that the Accused knew that his omissions would further the commission of the crime.

C. Findings

100. In light of the foregoing, the Chamber finds that there is sufficient evidence to prove that the Accused Vincent Rutaganira is guilty of extermination as a crime against humanity as charged in count 16 of the Indictment, in that he aided and abetted by omission the commission of the said crime.

[74] Guilty plea agreement, para. 22.
[75] Ibid., para. 30.
[76] Ibid., para. 29.

CHAPTER V: INDIVIDUAL CRIMINAL RESPONSIBILITY OF THE ACCUSED ON COUNTS 1, 14, 15, 17, 18 AND 19

A. Submissions of the Parties

101. In the Indictment of 6 May 1996, in addition to Count 16, the Prosecutor charged Vincent Rutaganira with the following counts:

(i) Count 1: Conspiracy to commit genocide, under Article 2(3)(a) of the Statute of the Tribunal.

(ii) Count 14: Genocide, under Article 2(3)(a) of the Statute of the Tribunal.

(iii) Count 17: Crimes against humanity (murder), under Article 3(a) of the Statute of the Tribunal.

(iv) Count 17: Crimes against humanity (other inhumane acts), under Article 3(i) of the Statute of the Tribunal.

(v) Count 18: Violation of Article 3 common to the Geneva Conventions, under Article 4(a) of the Statute of the Tribunal.

(vi) Count 19: Violation of Additional Protocol II to the Geneva Conventions, under Article 4(a) of the Statute of the Tribunal.

102. During his appearance at the hearing of 8 December 2004, the Accused Vincent Rutaganira pleaded not guilty to Counts 1, 14, 15, 17, 18 and 19.

103. At the hearing of 17 January 2005, citing a lack of evidence to support its allegations, the Prosecution reiterated its request made at the hearing of 8 December 2004 that Counts 1, 14, 15, 17, 18 and 19 be dismissed and that the Accused be acquitted on said counts.

B. Findings

104. Having ascertained the will of the parties, the Chamber notes that where there is an agreement between the parties, the Accused may sometimes be required as a result to waive his right to be presumed innocent, thereby relieving the Prosecution of the burden of proving guilt beyond a reasonable doubt at trial. It follows that, if, as in the instant case, the Prosecution concedes that it lacks evidence to support its allegations, in the absence of any other judicially noticed facts or facts proving the responsibility of the Accused, the Chamber, being responsible for ensuring a fair trial and compliance with the rights of the Accused, is in a position to find, on the evidence before it, that there is no basis for convicting Vincent Rutaganira on Counts 1, 14, 15, 17, 18 and 19.

CHAPTER VI: VERDICT

105. The Chamber finds Vincent Rutaganira:

- Count 1: Conspiracy to commit genocide, under Article 2(3)(b) of the Statute of the Tribunal: NOT GUILTY

- Count 14: Genocide, under Article 2(3)(a) of the Statute: NOT GUILTY

- Count 15: crimes against humanity (murder), under Article 3(a) of the Statute of the Tribunal: NOT GUILTY

- Count 16: crimes against humanity (extermination), under Article 3(b) of the Statute of the Tribunal: GUILTY

- Count 17: Crimes against humanity (other inhumane act), under Article 3(i) of the Statute of the Tribunal: NOT GUILTY;

- Count 18: Violation of Article 3 common to the Geneva Convention, under Article 4(a) of the Statute of the Tribunal: NOT GUILTY;

- Count 19: Violation of Additional Protocol II of the Geneva Conventions, under Article 4(a) of the Statute of the Tribunal: NOT GUILTY.

CHAPTER VII: DETERMINATION OF SENTENCE

A. Sentencing principles

106. Neither the Statute nor the Rules provide explicitly for the penalties applicable to the various crimes within the jurisdiction of the Tribunal. Therefore, in determining appropriate sentences within the guidelines set by the provisions of the Statute and Rules, the Chamber has discretion as to the factors to be taken into account. The relevant provisions relating to sentencing are as follows:

Article 23 of the Statute

Penalties

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

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.

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

Rule 100 of the Rules

Sentencing Procedure on a Guilty Plea

(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.
[...]

Rule 101: Penalties

(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 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;

[...]

(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.

107. The Chamber shall determine Vincent Rutaganira's sentence in compliance with the provisions of Article 23 of the Statute, Rules 100 and 101 of the Rules and the case-law of the Tribunal which identifies retribution, deterrence and rehabilitation as the main purposes of a punishment.

108. Retribution is the expression of the social disapproval attached to a criminal act and to its perpetrator and demands punishment for the latter for what he has done. The sentences handed down by the International Criminal Tribunal are therefore an expression of humanity's outrage against the serious violations of human rights and international

humanitarian law which an accused has been found guilty of committing.[77] Retribution meets the need for justice and may also appease the anger caused by the crime to the victims and within the community as a whole.

109. In citing retribution as a major purpose of the sentence, the Chamber underscores the gravity of the crime to which the Accused has pleaded guilty, given the specific circumstances of the instant case.

110. With the sentence, an attempt is made to deter, that is, to discourage people from committing similar crimes.[78] The main result sought is to discourage people from committing a second offence (special deterrence) since the penalty should also result in discouraging other people from carrying out their criminal plans (general deterrence).[79]

111. The Chamber shall assess the factors relevant to « special deterrence » in considering circumstances in mitigation.

112. With respect to general deterrence, a sentence would contribute to strengthening the legal system which criminalizes the conduct charged and to assuring society that its criminal system is effective.

113. By « rehabilitation », the Chamber understands the need to take into account the ability of the person found guilty to be rehabilitated; such rehabilitation goes hand in hand with his reintegration into society.[80]

114. In the opinion of the Chamber, when an accused pleads guilty, he is taking an important step towards rehabilitation and reintegration. [81] Such admission of guilt is likely to contribute to the search for the truth; it shows the resolve of an accused to accept responsibility vis-à-vis the injured party and society as a whole, which may contribute to reconciliation which is one of the goals pursued by the Tribunal.

B. Factors to be taken into account

115. In determining a sentence, the Chamber must take the following factors into account: the gravity of the offence, the individual circumstances of the accused, any aggravating and mitigating circumstances and the general practice regarding prison sentences in the courts of Rwanda.

[77] *Aleksovski* Judgement, (AC) para. 185.
[78] *Todorović* Judgement (TC), para. 30.
[79] *Tadić* Judgement (TC), paras. 7-9.
[80] *Čelebići* Judgement (AC), para. 806; *Banović* Judgement (TC), para. 35.
[81] *Nikolić*Judgement (TC), para. 93.

1. Gravity of the crime

(i) *Prosecution's submissions*

116. The Prosecution prayed the Chamber to take into account the gravity of the crime when determining sentence. In particular, it submitted that the crime to which the Accused pleaded guilty constitutes a crime «of extreme gravity, the scale of which shock collective conscience».[82]

(ii) Discussion

117. In the opinion of the Chamber, the gravity of the criminal conduct is the primary factor to be taken into account when sentencing. In *Čelebići*, the Appeals Chamber endorsed « the principle that the gravity of the offence is the primary consideration in imposing sentence».[83] It also held that "the determination of the gravity of the crime requires a consideration of the particular circumstances of the case, as well as the form and degree of the participation of the accused in the crime".[84]

118. Vincent Rutaganira admitted to having aided and abetted, as an accomplice by omission, the extermination of thousands of civilian refugees at Mubuga church in April 1994. Such acts of extermination constitute a crime against humanity under Article 3 of the Statute and, as such, constitute serious outrages upon personal dignity.

119. It is the Chamber's view that the gravity of the crime charged is to be assessed in relation to the degree of the Accused's participation in the crime. In that regard, it should be noted that Vincent Rutaganira did not participate actively in the killings at Mubuga church. However, since he failed to act to prevent such killings, he was found guilty of having aided and abetted the massacres.

2. Individual circumstance

2.1 Family circumstance

(i) Submissions of the parties

120. As testified to in open session by the Accused and his wife, nine children were born of their union. Moreover, his wife testified that she serves in the new Government as deputy mayor in charge of women's development in her *commune*.[85] This evidence was not disputed by the Prosecutor.

[82] T.17 January 2005, p. 5.
[83] *Čelebići* Judgement (AC), para. 731: *Todorović* Judgement (AC), para. 31.
[84] Čelebići Judgement (AC), para. 731.
[85] T.18 January 2004, p. 26.

(ii) Discussion

121. The Chamber is of the view that such evidence augurs well for the potential rehabilitation of the Accused into the local community and his joining the national reconciliation process.[86]

2.2 Personality and general conduct of the Accused

(i) Submission of the parties and evidence

122. It is undisputed that prior to the events in the instant, Vincent Rutaganira was a man of upstanding character who placed the public interest over his personal interest[87] and that his sense of duty and presence during the events of 1994 enabled him to save lives.[88]

123. Witness TRV-4 testified about the good relationship the Accused maintained with the Tutsi in the following terms: "Yes, he was a friend of the Tutsis, and I say that because he exchanged cattle with the Tutsis. He went to their weddings; their families went to each other's weddings"[89]. This evidence was confirmed by Witness Immaculée Nyiramasimbi,[90] the wife of the Accused who explained that Vincent Rutaganira is godfather to Tutsi children who are still alive. The witness further testified that the Accused also exchanged cows with more than 10 families, explaining that in Rwandan culture, such exchange of cows is a "symbol of love, faithfulness, and cooperation".[91]

124. Immaculée Nyiramasimbi testified further that in his capacity as *conseiller* of Mubuga *secteur*, Vincent Rutaganira had restored security and that "the population trusted him a great deal".[92] Immaculée Nyiramasimbi explained that by restoring peace and order in the *secteur*, Vincent Rutaganira earned some enemies.[93] The witness also testified about actions taken by the Accused in his capacity as *conseiller*: he managed to ensure water supply for his *secteur*, the health centre, the primary school, the trading centre and the *cellules*.[94]

125. Moreover, Witness KKP 1 testified about a personal experience during which his friend Vincent Rutaganira decided to expropriate his plot of land in order to use it to supply water to Mubuga *secteur*, thereby causing the population's interest to prevail over that of a friend. Witness KKP 1 went on to state that: "So, I needed time to understand exactly what he was doing to me, and I understood that he was doing that because he was an upright citizen

[86] Joint Brief paras. 25-26.
[87] Ibid., para. 33.
[88] Ibid., para. 34.
[89] T.17 January 2005, p. 16.
[90] Initially, this witness bore the pseudonym KNN1. At the hearing, just before he began her testimony, she sought permission from the Chamber to testify in open court without protection. See T.17 January 2005, p. 17.
[91] T.17 January 2005, p. 20. See also testimony of KPP1, p. 30.
[92] T.17 January 2005, p. 19.
[93] Ibid., p. 24.
[94] Ibid., p. 20.

acting on behalf of the population. I understood that".[95].

(ii) Discussion

126. The Prosecutor did not challenge any of the witnesses called by Defence.

127. The Chamber will consider the personality and general conduct of the Accused in determining his sentence.

2.3 Lack of a criminal record and good conduct while in detention

(i) Submissions of the parties

128. Both parties cited Vincent Rutaganira's lack of a criminal record and good conduct since being remanded in custody at the United Nations Detention Facility in Arusha. The Defence tendered a good conduct certificate issued by officials of the Facility.[96]

(ii) Discussion

129. The Chamber notes that the ICTY viewed the lack of criminal convictions as a mitigating circumstance[97] as it did the comportment and behaviour of the Accused while in the Detention Facility.[98]

130. Though no criminal record was included in the record, it is uncontested that the Accused had no prior criminal record. Accordingly, the Chamber finds that the Accused has no criminal convictions and will so note.

131. The certificate issued by the UNDF is a testimony to the good conduct of the Accused while in custody. The Chamber shall take such good conduct into consideration when determining the sentence.

2.4 Old age and sickness

(i) Submissions of the parties

132. The parties agree that the old age of the Accused, who is 60 years old, is a factor to be taken into account by the Chamber in determining the sentence.[99]

133. Both parties also submit that Vincent Rutaganira suffers from diabetes occasioning multiple harmful physiological effects and that he is afflicted with a partial permanent disability (15%) as a result of a motor vehicle accident.[100]

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[95] Ibid., p. 24.
[96] Joint Brief, para. 35; T.17 January 2005, p. 39. Exhibit No. D4 (sealed).
[97] *Simić* Judgement (TC), para. 108; *Nikolić* Judgement (TC), para. 265.
[98] Ibid., para. 112. See also *Krnojelac* Judgement (TC), para. 520, and *Krstić* Judgement (TC), para. 715.
[99] Joint Brief, paras. 30-31.
[100] Ibid., para. 36.

(ii) Discussion

134. The Chamber notes that in some cases, age was taken into account in determining sentence.[101]

135. The Chamber notes that the medical report prepared by the Tribunal's Medical Officer does indeed confirm that Vincent Rutaganira is afflicted with Diabetes II and is in poor health.

136. It is the Chamber's view that, in the instant case, the advanced age of the Accused as well as the state of his health could be taken into account in determining his sentence.[102]

2.5 No active participation in the killings

(i) Submissions of the parties

137. The parties submit that Vincent Rutaganira did not participate actively in the killings in Mubuga *secteur*. He was merely accused of remaining in office at the time of the killings in 1994 and of failing to act so as to prevent or limit the scope of the massacres and atrocities committed at Mubuga.

(ii) Discussion

138. However, in the opinion of the Chamber, this goes to his criminal conduct rather than to mitigation.

3. Aggravating Circumstances

(i) Submissions of the Prosecution

139. The Prosecution submits that as the *conseiller* for Mubuga *secteur*, Vincent Rutaganira was a prominent member of his community.[103]

140. The Accused was the closest person to the people in the *secteur* and was the bridge between the citizens and the local political structure "within the limits of his duties as set out in the relevant legislation governing his functions as *conseiller*". Such closeness to the local civilian population "placed him under a legal duty to espouse the principles laid down by the constitution of Rwanda and to uphold a higher than average degree of morality".[104]

141. It is the Prosecution's submission that given his level of education, Vincent Rutaganira, should know and appreciate the value and dignity of human life.[105] Vincent Rutaganira was therefore aware of the need for peaceful coexistence among the various

[101] *Erdemović II* Judgement (TC), para. 16 (i); *Furundžija* Judgement (TC), par.284 ; *Blaškić* Judgement (TC), para. 778; Jugement *Krnojelac* Jugement (TC.), para. 533.
[102] *Plavšić*Judgement (TC), para. 106; *Strugar* Judgement (TC), para. 469.
[103] T.17 January 2005, p. 7.
[104] T.17 January 2005, p. 6.
[105] Idem.

components of the population in his *secteur* and should have promoted the virtues of tolerance.[106]

142. Lastly, the Prosecution submits that Vincent Rutaganira "took no active steps to protect the Tutsi refugees who had sought refuge inside the Mubuga church and, instead, literally stood aside and watched his fellow countrymen and women as they were slaughtered at the Mubuga parish church in April 1994".[107]

(ii) Discussion

142. [*sic*] The Chamber finds that some of the acts referred to above go to the Accused's criminal conduct rather than to aggravation.

143. The Chamber finds that that many women and children were killed in Mubuga Church is an aggravating circumstance.

4. Mitigating Circumstances

4.1 Voluntary surrender

(i) Submissions of the parties

144. The parties plead as a mitigating circumstance[108] the fact that Vincent Rutaganira voluntarily surrendered to the Tribunal on 18 February 2002,[109] after a warrant of arrest had been issued against him.

(ii) Discussion

145. The Chamber, in keeping with consistent case-law,[110] finds that Vincent Rutaganira's voluntary surrender to the Tribunal after a warrant of arrest had been issued against him is reflective of his respect for the international administration of justice. Therefore, the Chamber finds that his voluntary surrender is a mitigating circumstance.

4.2 Guilty plea

(i) Submissions of the parties

146. It is the submission of the parties that Vincent Rutaganira's guilty plea to Count 16 of the Indictment has resulted in judicial economy for the Tribunal and the international community in terms of financial resources and time. The parties submit that this reflects the

[106] Ibid., pp. 6-7.
[107] Ibid., p. 7.
[108] Joint Brief, 7 December 2004, para. 19.
[109] Guilty Plea Agreement, para. 32; Joint Brief, para. 20; [Joint motion for consideration of a plea agreement between Vincent Rutaganira and the Office of the Prosecutor before Trial Chamber III of the International Criminal Tribunal for Rwanda, 7 December 2004, para. 4.
[110] *Strugar* Judgement (TC), para. 472; *Babić* Judgement (TC), para. 86; Deronjic (TC), para. 266; Plavšić (TC), para. 107; *Serushago* Judgement (TC), para. 34.

Accused's willingness to contribute to the process of peace and national reconciliation in Rwanda.

(ii) Discussion

147. The Chamber notes that Vincent Rutaganira is only the fourth accused person to plead guilty before this Tribunal. In several cases, the Tribunal has held that a guilty plea should be considered as a mitigating circumstance.

148. In *Serushago*, the accused pleaded guilty to genocide and crimes against humanity. In light of his guilty plea, Serushago was sentenced to a single term of 15 years of imprisonment for all the crimes of which he has been convicted.[111] In *Ruggiu*, the accused pleaded guilty to the crime of direct and public incitement to commit genocide and of crime against humanity (persecution). Taking his guilty plea into account, the Chamber sentenced him to 12 years of imprisonment.[112]

149. In *Erdemovic*, the Trial Chamber of the International Criminal Tribunal for the Former Yugoslavia considered a guilty plea as a mitigating circumstance.[113]

150. In the light of such case-law of both *ad hoc* Tribunals, the Chamber finds that since a guilty plea is always an important factor in establishing the truth about a crime,[114] it should cause a reduction in the sentence that would have been otherwise handed down.[115]

151. However, the Chamber wishes to stress that a guilty plea serves public interest better if it is entered before the commencement or at the initial phase of the trial, thus enabling the Tribunal to save time and resources.[116]

152. The Chamber, recalling that Vincent Rutaganira pleaded guilty before the commencement of the trial, finds that his guilty plea's contribution to the search for the truth must redound to his benefit. Accordingly, the Chamber will take such guilty plea into account in sentencing.

4.3 Assistance provided to certain victims

(i) Submissions of the parties

153. The parties agree that Vincent Rutaganira provided assistance to certain victims and saved their lives.

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[111] *Serushago* Judgement (TC). That sentence was confirmed on appeal. See *The Prosecutor (The Respondent) v. Omar Serushago (The Appellant)*, Case No. ICTR-98-39-A, Judgement (appeal of sentence), 14 February 2000; and *The Prosecutor (The Respondent) v. Omar Serushago (The Appellant)*, Case No. ICTR-98-39-A, Grounds of judgement, 6 April 2000.
[112] *Ruggiu* Judgement (TC), 1 June 2000.
[113] *Erdemović* Judgement II (TC), 5 March 1998, para. 16(ii). See also *Erdemović* Judgement (AC), Separate and dissenting opinion of Judge Antonio Cassese, para. 8.
[114] *Banovic* Judgement (TC), para. 68.
[115] *Todorović* Judgement (TC), para. 80.
[116] Idem. *Todorović* Judgement (TC), para. 81.

154. Witness TRV-4 testified that he was saved from death through Vincent Rutaganira's intervention.[117] Witness Immaculée Nyiramasimbi, the Accused's spouse, testified that she and her husband had hidden some Tutsi in their house for some weeks and, in particular, a woman who stayed for three months.[118]

(iii) Discussion

155. On this evidence which is not challenged especially by the Prosecution, and thus is judicially noticed, the Chamber finds that Vincent Rutaganira's assistance to persons targeted by attackers in their *secteur* should operate to mitigate his sentence.

4.4 Remorse

(i) Submissions of the parties

156. The parties agree that Vincent Rutaganira sincerely repented for having failed to act on behalf of the victims of the Mubuga Church massacre and that he is still remorseful for having failed to intervene in order to protect victims from the tragic events that took place in his *secteur*.[119]

157. The Chamber notes that, at his further initial appearance on 8 December 2004, Vincent Rutaganira expressed regret and asked for forgiveness as follows:

> "[as the *conseiller* for the *secteur*, I regret not being able to save the people who were at the church and I will never be able to forget the horror that I saw the day after the attacks that have left deep wounds in my heart. Once again, I ask for forgiveness from the families of the victims, and that is why I surrendered in order to tell the truth.]"[120]

158. The Chamber finds in mitigation that the expression of regret and remorse by the Accused is sincere.[121]

4.5 Duress

(i) Submissions of the parties

159. Both parties plead as a mitigating circumstance the real danger faced by Vincent Rutaganira or a member of his immediate family of being killed if the Accused had objected to the killings that were taking place in his *secteur*.[122]

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[117] T.17 January 2005, pp. 20-21.
[118] Ibid., p. 26.
[119] Joint Brief, para. 28; Guilty Plea Agreement, para. 13.
[120] T.8 December 2004, p. 11.
[121] *Strugar* Judgement (TC), para. 471; *Simić* Judgement (TC), para. 94; *Ruggiu* Judgement (TC), paras. 69-72; *Jokić* Judgement (TC), para. 92; *Nikolić* Judgement (TC), para. 161; *Todorović* Judgement (TC), para. 92; ~~*Deronjić* Judgement (TC), para. 264~~; *Erdemović* Judgement II (TC), para. 16 (iii).
[122] Joint Brief, para. 38; T.17 January 2005, p. 39. See statement of KPP1, T.17 January 2005, p. 31.

160. The Defence prays the Chamber to take into consideration various statutes on failure to assist a person in danger and Article 31 of the Statute of the International Criminal Court.[123] The Defence submits that "[e]ach of those legislations considers a person guilty when that person fails to intervene, when he is in a position to do so without danger to himself. That means that the absolute danger is justification, absolute justification which excludes any guilt whatsoever".[124] The Defence also submits that the Chamber will have to weigh the real risk faced by the Accused and his family as a mitigating circumstance, taking into account "the proportionality that needs to be established between, on the one hand, that real danger, and on the other hand the legal duty, as a human being, in which the Accused failed and therefore pled guilty".[125]

(ii) Discussion

161. The Chamber fully endorses the finding by the Appeals Chamber of ICTY that "*duress does not afford a complete defence to a soldier charged with a crime against humanity and/or war crime involving the killing of innocent human beings*".[126] However, it is the Chamber's opinion that duress may be considered as a mitigating circumstance.[127]

162. The Chamber admits that there was duress in the instant case. In light of all the above, it finds that such duress goes to mitigation.

5. General practice regarding prison sentences in Rwanda

163. In determining the sentence to be imposed on the Accused, the Chamber will also review sentencing practice in Rwanda. Under the Statute and the Rules, such practice is but one of the factors to be taken into account by the Chamber in sentencing.[128]

164. Since the Statute and the Rules only provide for sentences of imprisonment, only such sentences will be taken into account in reviewing sentencing practice in Rwanda.

165. The Chamber notes several provisions of Organic Law No. 40/2000 of 26 January 2001 setting up "Gacaca courts" and organizing prosecutions for offences constituting the Crime of Genocide or Crimes against humanity, committed between 1 October 1990 and 31 December 1994. Such provisions are relevant pursuant to the *lex mitior* principle. Indeed, they provide for reduced sentences as compared to the law in force at the time the offence was committed, in particular, in respect of an accused who has pleaded guilty, and for commuting half of the imprisonment sentence to community service.

166. As regards specifically the plea procedure, the Chamber notes that it is provided for under Article 54 of the same Law in respect of "[anyone who committed the offences under

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[123] Article 422 *bis* of the Belgian Penal Code; Article 49 of the Senegalese Penal Code; Article 593 of the Italian Penal Code; Article 223-6 of the French Penal Code; Article 256, para. 2, of the Rwandan Penal Code.
[124] T.17 January 2005, p. 39.
[125] Idem.
[126] *Erdemović* Judgement (AC), para. 19.
[127] *Erdemović* Judgement II (TC), para. 17.
[128] *Ruggiu* Judgement (TC), para. 34; *Serushago* Judgement (TC), para. 18; *Musema* Judgement (TC), para. 984.

Article 1]". However, under Article 55, only "persons in the 2nd, 3rd and 4th categories", who pleaded guilty "shall have their sentences commuted". The Chamber stresses that Vincent Rutaganira falls outside the first category under said Law. While the Chamber may not decide on commutation of imprisonment sentences, it will rely on the relevant provisions of the Rwandan Organic Law in determining the sentence.

C. Sentencing

167. Both parties submitted that they agreed to pray the Chamber to impose a sentence ranging from six to eight years of imprisonment, with Vincent Rutaganira being given credit for time spent in detention. Furthermore, the Defence prayed the Chamber not to sentence him to more than six years of imprisonment.[129] The Chamber reiterates that it has unfettered discretion in determining the appropriate sentence under the Statute and the Rules and that it is not bound by the parties' agreement, as acknowledged by both parties.[130]

1. Findings

168. In determining the appropriate sentence, the Chamber pursuant to the Statute and the Rules, reviewed factors to be taken into account in assessing the gravity of the crime of which Vincent Rutaganira was found guilty. It then considered the Accused's individual circumstances, and aggravating and mitigating circumstances. Lastly, it took account of the general practice regarding prison sentences in the courts of Rwanda.

169. Vincent Rutaganira is guilty of extermination as a crime against humanity, for having by omission, aided and abetted the massacre of thousands of Tutsi civilians who had taken refuge at Mubugu Church. The crime of extermination is particularly serious in light of the protected interests that were breached, that is, the lives and the physical and mental wellbeing of thousands of victims. That there were many women and children among the victims is an aggravating circumstance.

170. Vincent Rutaganira's guilty plea, his individual and family circumstances, his personality and conduct towards the Tutsi before and during the events, the absence of any criminal record and his good behaviour while in detention, the assistance he provided to some victims, his advanced age and illness, his voluntary surrender, the sincerity and the scope of his expression of remorse and the duress that weighed on him, are all factors that the Chamber considers as mitigating circumstances in determining the sentence.

2. Credit for time served

171. Vincent Rutaganira was arrested and transferred on 4 March 2002 to the United Nations Detention Facility in Arusha. He is entitled to credit for time spent in custody and any additional time he might spend in custody pending a final determination of a possible appeal.

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[129] T.17 January 2005. p. 43.
[130] Guilty Plea agreement, para. 38.

CHAPTER VIII: DISPOSITION

FOR THESE REASONS,

THE TRIAL CHAMBER, delivering its judgement in public, *inter partes* and in the first instance, pursuant to the Statute and the Rules of Procedure and Evidence;

HAVING ORDERED the separation of the proceedings against the Accused Vincent Rutaganira from the other persons in the Indictment of 6 May 1996;

HAVING HEARD Vincent Rutaganira's guilty plea;

HAVING REVIEWED all the evidence as well as submissions by the parties;

ACQUITS Vincent Rutaganira on Counts 1, 14, 15, 17, 18 and 19 in the Indictment of 6 May 1996;

FINDS Vincent Rutaganira GUILTY of extermination as a crime against humanity for having aided and abetted, as an accomplice by omission, between 14 and 17 April 1994 or thereabouts, the massacres that took place at Mubuga Church in Gishyita *commune*, resulting in thousands of deaths and many wounded among the Tutsi refugees who were at said location;

SENTENCES the Accused Vincent Rutaganira to six years of imprisonment;

RULES that the sentence shall be enforced immediately;

RULES that pursuant to Rule 101(D) of the Rules, Vincent Rutaganira is entitled to credit for time spent in custody, to be computed from the date of his arrest, 4 March 2002, and any additional time he may spend in detention pending a final determination of a possible appeal;

RULES that pursuant to Rule 103(B) of the Rules, Vincent Rutaganira shall remain in the custody of the Tribunal pending finalization of arrangements for his transfer to the State where he shall serve his sentence.

Done in Arusha on 14 March 2005, in French and English, the French text being authoritative.

Andrésia Vaz	Flavia Lattanzi	Florence Rita Arrey
Presiding Judge	Judge	Judge

[Seal of the Tribunal]

ANNEX 1: LIST OF THE SOURCES QUOTED AND ABBREVIATIONS

- List of Judgements
- List of Orders
- List of United Nations Security Council Resolutions
- List of Rwandan Laws
- List of Abbreviations

A – List of Judgements

Long form	Short form
International Criminal Tribunal for Rwanda	
The Prosecutor *v.* Jean-Paul Akayesu	
- *The Prosecutor v. Jean-Paul Akayesu,* Case No. ICTR-96-4-T, Judgement, 2 September 1998.	*Akayesu* Judgement (TC)
The Prosecutor *v.* Ignace Bagilishema	
- *The Prosecutor v. Ignace Bagilishema,* Case No. ICTR-95-1A-T, Judgement, 7 June 2001.	*Bagilishema* Judgement (TC)
The Prosecutor *v.* Sylvestre Gacumbitsi	
- *The Prosecutor v. Sylvestre Gacumbitsi* Case No. ICTR-2001-64-T, 17 June 2004.	*Gacumbitsi* Judgement (TC)
The Prosecutor *v.* Clément Kayishema and Obed Ruzindana	
- *The Prosecutor v. Clément Kayishema and Obed Ruzindana,* Case No. ICTR-95-1-T, Judgement, 21 May 1999.	*Kayishema/Ruzindana* Judgement (TC)
The Prosecutor *v.* Alfred Musema	
- *The Prosecutor v. Alfred Musema,* Case No. ICTR-96-13-T, Judgement and Sentence, 27 January 2000.	*Musema* Judgement (TC)
The Prosecutor *v.* Ferdinand Nahimana *et al.*	
- *The Prosecutor v. Ferdinand Nahimana et al.,* Case No. ICTR-99-52-T, Judgement and Sentence, 3 December 2003.	*Nahimana* Judgement (TC)

The Prosecutor *v.* Elizaphan Ntakirutimana and Gérard Ntakirutimana

- *The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana,* Cases Nos. ICTR-96-10-T and ICTR-96-17-T, Judgement, 21 February 2003. — *Ntakirutimana* Judgment (TC)

- *The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana,* Cases Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement, 13 December 2004. — *Ntakirutimana* Judgement (AC)

The Prosecutor *v.* Georges Ruggiu

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

The Prosecutor *v.* Georges Andersen Nderubumwe Rutaganda

- *The Prosecutor v. Georges Andersen Nderubumwe Rutaganda,* Case No. ICTR-96-3-T, Judgement and Sentence, 6 December 1999. — *Rutaganda* Judgement (TC)

The Prosecutor *v.* Omar Serushago

- *The Prosecutor v. Omar Serushago,* Case No. ICTR-98-39-S, Sentence, 5 February 1999. — *Serushago* Judgement (TC)

- *Omar Serushago (Appellant) v. The Prosecutor (Respondent),* Case No. ICTR-98-39-A, Judgement (Sentence Appeal), 14 February 2000. — *Serushago* Judgement (AC)

- *Omar Serushago (Appellant) v. The Prosecutor (Respondent),* Case No. ICTR-98-39-A, Reasons for Judgement, 6 April 2000. — *Serushago* Judgement (AC)

International Criminal Tribunal for former Yugoslavia

The Prosecutor *v.* Zlatko Aleksovski

- *The Prosecutor v. Zlatko Aleksovski,* Case No. IT-95-14/1-T Judgement, 25 June 1999. — *Aleksovski* Judgement (TC)

- *The Prosecutor v. Zlatko Aleksovski,* Case No. IT-95-14/1-T, Judgement, 24 March 2000. — *Aleksovski* Judgement (AC)

The Prosecutor *v.* Milan Babić

- *The Prosecutor v. Milan Babic,* Case No. IT-03-72-S, Sentencing Judgement, 29 June 2004. — *Babić* Judgement (TC)

The Prosecutor v. Predrag Banović

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

The Prosecutor *v.* Tihomir Blaškić

- *The Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T, Judgement (TC), 3 March 2000. — *Blaškić* Judgement (TC)

- *The Prosecutor v. Tihomir Blaškić*, Judgement , Case No. IT-94-14-A, 29 July 2004. — *Blaškić* Judgement (AC)

The Prosecutor *v.* Zejnil Delalić *et al.*, (Case Čelebići)

- *The Prosecutor v. Zejnil Delalić et al. (Case Čelebići)*, Case No. IT-96-21-A, Judgement, 20 February 2001. — *Čelebići* Judgement (AC)

Prosecutor *v.* Miroslav Deronjić

- *Prosecutor v. Miroslav Deronjić*, Case No. IT-02-61-S, Sentencing Judgement, 30 March 2004. — *Deronjić* Judgement (TC)

The Prosecutor *v. Drazen Erdemović*

- *The Prosecutor v. Drazen Erdemovic*, Case No. IT-96-22-A, Judgement, 7 October 1997. — *Erdemovic* Judgement (AC)

The Prosecutor *v.* Drazen Erdemovic

- *The Prosecutor v. Drazen Erdemović*, Case No. IT-96-22-T, Sentencing Judgement, 29 November 1996. — *Erdemović I* Judgement (TC)

- *The Prosecutor v. Drazen Erdemović*, Case No. IT-96-22-T*bis*, Sentencing Judgement, 5 March 1998. — *Erdemović II* Judgement (TC)

The Prosecutor *v.* Anto Furundžija

- *The Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-T, Judgement, 10 December 1998. — *Furundžija* Judgement (TC)

The Prosecutor *v. Goran Jelisić*

- *The Prosecutor v. Goran Jelisić*, Case No. IT-95-10-T, Judgement, 14 December 1999. — *Jelisić* Judgement (TC)

The Prosecutor *v.* Miodrag Jokić

- *The Prosecutor v. Miodrag Jokić,* Case No IT-01-42/1-S, Sentencing Judgement, 18 March 2004. — *Jokić* Judgement (TC)

The Prosecutor *v.* Dragoljub Kunarac *et al.*

- *The Prosecutor v. Dragoljub Kunarac et al.,* Case No. IT-96-23-T & 96-23/1-T, Judgement, 22 February 2001. — *Kunarac* Judgement (TC)

The Prosecutor *v.* Milorad Krnojelac

- *The Prosecutor v. Milorad Krnojelac,* Case No. IT-97-25-T, Judgement, 15 March 2001. — *Krnojelac* Judgement (TC)

The Prosecutor *v.* Momir Nikolić

- *The Prosecutor v. Momir Nikolić,* Case No. IT-02-60-/1-S, Sentencing Judgement, 2 December 2003. — *Nikolić* Judgement (TC)

The Prosecutor *v.* Biljana Plavšic

- *The Prosecutor v. Biljana Plavšic,* Case No. IT-00-39 & 40/1-S, Sentencing Judgement, 27 February 2003. — *Plavšic* Judgement (TC)

Prosecutor *v.* Milan Simić

- *Prosecutor v. Milan Simić,* Case No. IT-95-9/2-S, Sentencing Judgement, 17 October 2002. — *Simić* Judgement (TC)

Prosecutor *v.* Pavle Strugar

- *Prosecutor v. Pavle Strugar,* Case No. IT-01-42-T, Judgement, 31 January 2005. — *Strugar* Judgement (TC)

The Prosecutor *v.* Duško Tadić

The Prosecutor v. Dusko Tadić, Case No. IT-94-1, Judgement, 15 July 1999. — *Tadić* Judgement (TC)

The Prosecutor v. Stevan Todorović

- *The Prosecutor v. Stevan Todorovic,* Case No. IT-95-9/1-S, Sentencing Judgement, 31 July 2001. — *Todorović* Judgement (TC)

The Prosecutor *v.* Mitar Vasiljević

- *The Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-A, Judgement, 25 February 2004.	*Vasiljević* Judgement (AC)

B - List of Orders

Long Form	Short Form

The Prosecutor *v.* Clément Kayishema et al.

- *The Prosecutor v. Clément Kayishema et al.*, Case No. ICTR-95-1-1, Order (An Application by the Prosecutor for leave to Amend the Indictment, and Order Granted on 28 November 1995, for Non-Disclosure of the Identities to be Lifted), 6 May 1996.	*Kayishema* Order

The Prosecutor *v.* Vincent Rutaganira

- *The Prosecutor v. Vincent Rutaganira*, Case No. ICTR-95-1-I, Warrant of Arrest and Orders for Transfer and Detention and for Search and Seizure, 18 February 2002.	*Rutaganira* Warrant of Arrest

C - List of the Resolutions adopted by the United Nations Security Council

(UN)

Long Form	**Short Form**
United Nations Security Council Resolution 955 of 8 November 1994, UN Document S/RES/955 (1994)	Security Council Resolution 955
United Nations Security Council Resolution 1165 of 30 April 1998, UN Document S/RES/1165 (1998)	Security Council Resolution 1165
United Nations Security Council Resolution 1329 of 30 November 2000, UN Document S/RES/1329 (2000)	Security Council Resolution 1329
United Nations Security Council Resolution 1411 of 17 May 2002, UN Document S/RES/1411 (2002)	Security Council Resolution 1411

United Nations Security Council Resolution 1431 of 14 August 2002, UN Document S/RES/1431 (2002)	Security Council Resolution 1431
United Nations Security Council Resolution 1503 of 28 August 2003, UN Document S/RES/1503 (2003)	Security Council Resolution 1503
United Nations Security Council Resolution 1512 of 27 October 2003, UN Document S/RES/1512 (2003)	Security Council Resolution 1512

D - List of Rwandan Laws

- Communal Organization Act of 23 November 1963, Amended by Act No. 31/91 of 5 August 1991.

- Organic Law No. 40/2000 of 26 January 2001 Setting up "Gacaca Jurisdictions" And Organizing Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity, Committed between October 1, 1990 and December 31, 1994.

E - List of Abbreviations

Long Form	**Short Form**
United Nations	UN
United Nations Security Council	Security Council
International Criminal Tribunal for former Yugoslavia	ICTY
International Criminal Tribunal for Rwanda	Tribunal
Statute of the International Criminal Tribunal for Rwanda	Statute
Trial Chamber III	Chamber
Appeals Chamber	AC
Transcripts of 7 March 2002 Hearing, French version	T.7 March 2002
Transcripts of 26 March 2002 Hearing, French version	T.26 March 2002
Transcripts of 17 September 2004 Status Conference, French version	T.17 September 2004
Transcripts of 8 December 2004 Status Conference, French version	T.8 December 2004
Transcripts of 8 December 2004 Initial Appearance Hearing, French version	
Transcripts of 17 January 2005 Status Conference, French version	T.17 January 2005
Transcripts of 17 January 2005 Hearing, French version	T.17 January 2005

ANNEX II: 6 May 1996 Order (Application by the Prosecutor for Leave to Amend the Indictment and Order, granted for non-disclosure of identities on 28 November 1995). [*The Prosecutor v. Clément Kayishema et al.,* Case No. ICTR-95-1-1].

ANNEX III: Indictement of 6 May 1996.

ANNEX IV: Decision (Oral) Ordering the severance of the Trial of Vincent Rutaganira from the other indictees referred to in the Indictment of 6 May 1996
(Transcripts of 17 January 2005, French version).

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