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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO: ICTR-95-1-T

THE PROSECUTOR
OF THE TRIBUNAL

AGAINST

CLEMENT KAYISHEMA
AND
OBED RUZINDANA

ICTR
CRIMINAL REGISTRY
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MAY 21, 1999
9:30 a.m.

JUDGMENT OF THE HONOURABLE INTERNATIONAL
CRIMINAL TRIBUNAL FOR RWANDA

Before: Mr. Justice William H. Sekule, President
Mr. Justice Yakov Ostrovsky
Mr. Justice Tafazzal Hossain Khan

For the Registry:
Ms. Beverley Baker-Kelly
Dr. Kesia-Mbe Mindua

Courtroom Assistant:
Mr. Abraham Koshopa

Courtroom Officer:
Mr. John Kiyeyeu

For the Prosecution:
Ms. Brenda Sue Thornton
Ms. Holo Makwaia

For the Accused, Kayishema:
Mr. Andre Ferran

For the Accused, Ruzindana:
Mr. Pascal Besnier

Court Reporters:
Ms. Noorjahan Pirani-Hirji
Ms. Karen Holm
Mr. Rex Lear

P R O C E E D I N G S

930H

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4 MR. PRESIDENT:

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The proceedings are called to order, could the Registrar introduce the matter coming before us this morning, please.

8

MS. BAKER-KELLY:

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21

Thank you, My Lords.

22

MR. PRESIDENT:

23

24

25

Thank you very much. Could we now have counsel's appearances, starting with the Prosecution, please.

KAYISHEMA & RUZINDANA

1 MS. THORNTON:

2 Good morning Mr. President, Honourable
3 Judges, Defence Counsel. The Prosecution
4 is represented today by Ms. Holo Makwaia
5 and myself, Ms. Brenda Sue Thornton. The
6 other counsel from the case, Mr. Jonah
7 Rahetlah is unable to be with us today.
8 Thank you.

9 MR. PRESIDENT:

10 Thank you very much. Could we also have
11 the appearances for the defence, please.

12 MR. FERRAN:

13 I am here for the judgment representing
14 Dr. Clement Kayishema. My co-counsel, Mr.
15 Moriceau, was unable to be here with us.

16 MR. BESNIER:

17 Good morning, Mr. President, my name is
18 Pascal Besnier of the Paris Bar
19 representing Mr. Obed Ruzindana. Thank
20 you very much.

21 MR. PRESIDENT:

22 Thank you very much. The Trial Chamber II
23 will now proceed to give its decision in
24 this matter.

25

KAYISHEMA & RUZINDANA

1 Trial Chamber II of the International
2 Criminal Tribunal for Rwanda is sitting
3 today, 21st May, 1999 to deliver its
4 judgment in summary form in the case of
5 the Prosecutor versus *Clement Kayishema*
6 *and Obed Ruzindana*, Case Number
7 ICTR-95-1-T. The full text of the
8 judgment will be available immediately
9 upon the completion of its translation in
10 French.

11

12 The proceedings before the International
13 Criminal Tribunal for Rwanda, Tribunal,
14 are governed by its Statute and annexed to
15 the Resolution 955 of the Security
16 Council, and its Rules of Procedure and
17 Evidence (the Rules). The *ratione*
18 *materiae* jurisdiction of the Tribunal is
19 to prosecute persons charged with
20 genocide, crimes against humanity and
21 serious violations of Article 3 Common to
22 the Geneva Conventions of 12 August, 1949
23 for the Protection of Victims in Times of
24 War and of Additional Protocol II thereto
25 of 8 June, 1977.

1

2

Background.

3

General Background Information.

4

5

The Prosecutor was represented by Mr.

6

James Stewart, Mr. Jonah Rahetlah, Ms.

7

Elizabeth Farr, Ms. Brenda Sue Thornton

8

and Ms. Holo Makwaia. Clement Kayishema,

9

(hereinafter referred to as Kayishema),

10

was represented by Mr. Andre Ferran and

11

Philippe Moriceau of the bar of

12

Montpellier, France, and Obed Ruzindana,

13

(hereinafter referred to as Ruzindana),

14

was represented by Mr. Pascal Besnier of

15

the bar of Paris, France and Mr. Willem

16

Van Der Griend of the bar of Rotterdam,

17

The Netherlands.

18

19

Kayishema was born in 1954 in Bwishyura

20

Sector, Gitesi Commune, Kibuye Prefecture,

21

Rwanda. He is a medical doctor by

22

training and was appointed to the position

23

of *Prefect of Kibuye* on 3 July, 1992, a

24

position which he held until his departure

25

to Zaire in July 1994. Kayishema was

KAYISHEMA & RUZINDANA

1 arrested on 2 May, 1996 and his initial
2 appearance was held on 31 May, 1996 before
3 the Trial Chamber I and he pleaded not
4 guilty to all the charges.

5
6 Yes, we will stop here. Could the accused
7 persons come to the front? They are
8 supposed to be in front.

9
10 Yes. Be seated. I will repeat.

11
12 Kayishema was arrested on the 2 May 1996
13 and his initial appearance was heard on
14 the 31st May, 1996 before Trial Chamber I
15 and he plead not guilty to all the
16 charges.

17
18 Ruzindana, a successful businessman, was
19 born in 1962, in Gisovu *Commune*, Kibuye
20 *Prefecture*, Rwanda. His father, Elie
21 Murakaza, had been a Bourgmestre in the
22 Mugonero *Commune*, where the family
23 resided. Murakaza, and by extension, his
24 family, were well-known and respected in
25 the community. Ruzindana was arrested on

KAYISHEMA & RUZINDANA

1 20 September 1996 and his initial
2 appearance was held on 29 October 1996
3 before Trial Chamber II and he pleaded not
4 guilty to all of the charges.

5

6

Procedural Background.

7

8 At the pre-trial stage, Kayishema and
9 Ruzindana were charged in the original
10 indictment submitted by the Prosecutor,
11 Richard Goldstone, on 22 November, 1995
12 with six others. The indictment was
13 confirmed by Judge Navanethem Pillay on 28
14 November, 1995. Judge Pillay ordered that
15 the indictment be amended on 6 May, 1996
16 to strike the conspiracy charges. Hence
17 the trial and this judgment are based upon
18 the First Amended Indictment filed with
19 the Registry on 11 April, 1997.

20

21

22

23

24

25

NOORJAHAN PIRANI-HIRJI - OFFICIAL REPORTER
ICTR - CHAMBER II

KAYISHEMA & RUZINDANA

1 form of the Indictment; and amendments to
2 the indictment.

3
4 On 11 April, 1997, the Trial of Kayishema
5 and Ruzindana commenced before Trial
6 Chamber II. The Prosecution completed its
7 case-in-chief on 13 March, 1998, having
8 called a total of 51 witnesses and having
9 tendered into evidence 345 exhibits. The
10 Defence commenced their case on 11 May,
11 1998 and closed their case-in-chief on 15
12 September, 1998. It should be noted that
13 at the conclusion of the Prosecution's
14 case, the Defence requested an adjournment
15 in order to prepare its case. In the
16 interests of justice, the Trial Chamber
17 granted the Defence team a two-month
18 adjournment to prepare. The Defence
19 presented a total of 28 witnesses, 16 of
20 whom testified on behalf of the accused,
21 Ruzindana, seven for Kayishema and five
22 for both accused persons. Additionally,
23 Kayishema testified on his own behalf.
24 The Defence admitted 59 exhibits. After
25 closing arguments, the Trial Chamber

1 adjourned on 17 November, 1998 for
2 deliberation.

3

4 **Historical Context**

5

6 In the judgment, the Trial Chamber does
7 not engage in a lengthy examination of the
8 geo-political or historical difficulties
9 faced by Rwanda. A number of reports and
10 other publications have been written on
11 these issues, to which interested persons
12 can refer. The Chamber only sets out the
13 salient landmarks in the history of Rwanda
14 leading to the atrocities of 1994. The
15 Chamber has described, for example, the
16 installation of the identity cards, the
17 1991 Constitution and the Arusha Accords.

18

19 This part of the Judgment, which addresses
20 the historical context of these events,
21 concludes that Hutu extremists in power in
22 1994, implemented their plan of genocide
23 in order to avoid power sharing as
24 provided for in the Arusha Accords. The
25 ongoing ethnic tensions between the Hutus

KAYISHEMA & RUZINDANA

1 and the Tutsis were aggravated by the war
2 between the Rwandan Patriotic Front (RPF)
3 and the Rwandan Armed Forces and after the
4 crash of President Juvenal Habyarimana's
5 airplane, the extremists in power set into
6 effect their plan. The responsible
7 parties disregarded the Arusha Accords and
8 used the mass media to incite the Hutu
9 population into believing that all Tutsis,
10 and other persons who did not support the
11 war against the RPF, were in fact RPF
12 supporters and as such the enemy. The
13 militias and the civil defense programmes
14 were directed to aid in the
15 implementation, a policy of genocide. It
16 is against this backdrop that the massacre
17 of hundreds of thousands of people was
18 carried out in just three short months.

19

20 **The law.**

21

22 After the examination of the evidentiary
23 matters pertinent to the case, the Trial
24 Chamber considers the law pertaining to
25 the crimes with which the accused are

1 charged.

2

3 **Genocide**

4

5 The law on genocide includes Article 2 of
6 the Statute. The Chamber has offered its
7 interpretation of this Article, which
8 reproduces verbatim Articles 2 and 3 of
9 the Genocide Convention of 1948 and
10 Article 17 of the International Law
11 Commission Report of 1996, in its Draft
12 Code of Crimes Against Peace and Security
13 of Mankind. (ILC Code of Crimes).

14

15 The Trial Chamber then distinguishes the
16 well-established crime of genocide from
17 crimes against humanity and observes that
18 the latter crimes are distinct, although
19 instances arise when the discriminatory
20 grounds coincide and overlap. This
21 scenario is detailed in the present
22 judgment in the part of the cumulative
23 charges. In Chapter 4.1, the Trial
24 Chamber discusses the necessary elements
25 of the crime of genocide, namely the *mens*

1 rea, that is the requisite specific intent
2 or *dolus specialis*, and the *actus reus*,
3 the prohibited act or omission.

4
5 With regard to the *mens rea* of the crime
6 of genocide, the "intent to destroy, in
7 whole or in part, a national ethnical,
8 racial or religious group as such" is
9 inter-linked to the acts listed in Article
10 2(2(a) to (e) of the Statute. It is this
11 "specific intent" which distinguishes the
12 crime of genocide from the common crime of
13 murder. The Chamber is of the view that
14 the specific intent must be
15 pre-determined. Regarding the
16 ascertainment of the requisite intent, the
17 Trial Chamber acknowledges that it may be
18 proved by explicit manifestations of
19 intent by the perpetrators. However, the
20 Chamber also finds that the intent could
21 be inferred either from words or deeds or
22 may be demonstrated by a pattern of
23 purposeful action. In particular,
24 evidence such as the physical targeting of
25 the group or their property; the use of

1 derogatory language toward members of that
2 targeted group; the type of weapon used in
3 the cause of assault or killings or the
4 parts of the bodies assaulted; the
5 methodical way of planning, the systematic
6 manner of killing, should be considered.

7
8 The *actus reus* for the crime of genocide
9 is stipulated in Article 2(2)(a) to (e) of
10 the Statute. The acts stipulated in
11 Articles 2(2)(b) to (e) of the Statute,
12 are set out in full in the judgment. In
13 this summary, the Chamber confines itself
14 to an examination of Article 2(2)(a).
15 Both parties addressed themselves to the
16 variations between the English and the
17 French version of the text. In French,
18 the term used is "*muertrre*", which the
19 Defence submitted was a legal term
20 connoting unlawful and intentional
21 killing. In the English text, the word
22 "killing" is used, which, according to the
23 Prosecutor, could be broadly interpreted
24 to include spontaneous killing. Being
25 seized of the arguments of the parties on

1 this point, and the views of the
2 International Law Commission, the Trial
3 Chamber is of the view that where doubt
4 exists, as a matter of statutory
5 interpretation, this doubt should be
6 interpreted in favour of the accused and
7 the term "meurtre" should be adopted.
8 Hence, the relevant act under Article
9 2(2)(a) is *meurtre*. The Trial Chamber
10 notes that all enumerated acts must be
11 committed with intent to destroy, in whole
12 or in part, a targeted group. The
13 Chamber adopts the view of the
14 International Law Commission that the
15 enumerated acts, by their very nature, are
16 intentional, conscious, or volitional
17 acts. Consequently, the Trial Chamber
18 finds that there is no difference between
19 the terms "killing" and "meurtre". The
20 term "killing" cannot be interpreted in a
21 vacuum, but it should be inter-linked to
22 the specific intent.

23

24

Crimes Against Humanity.

25

1 The enumerated acts within crimes against
2 humanity must be committed as part of a
3 widespread or systematic attack against
4 any civilian population on national,
5 political, ethnic, racial or religious
6 grounds. A widespread attack is one that
7 is directed against a multiplicity of
8 victims. A systematic attack means an
9 attack carried out pursuant to a
10 preconceived policy or plan. To have
11 jurisdiction over either of the accused,
12 the Chamber must be satisfied that their
13 actions were instigated or directed by a
14 government or by any organization or
15 group. Further, the perpetrator must
16 knowingly commit crimes against humanity
17 in the sense that he must understand the
18 overall context of his act.

19
20 In relation to crimes of murder, Article
21 3(a) of the English version of the Statute
22 uses the term "murder", whilst the French
23 version of the Statute uses the term
24 "assassinat." The use of these terms has
25 been the subject of some debate because of

1 *mens rea* of murder, as it is defined in
2 most common law jurisdictions, includes
3 but does not require premeditation;
4 whereas, in most civil law systems,
5 premeditation is always required for
6 *assassinat*. In the opinion of this Trial
7 Chamber that premeditation must be proved.
8 The drafters chose to use the term
9 *assassinat*. As a matter of
10 interpretation, the intention of the
11 drafters should be followed so far as
12 possible and a statute should be given its
13 plain meaning. Since the concepts of
14 murder and *assassinat* can correspond to
15 one another, there is no need to change
16 the wording of the Statute. Further, if
17 in doubt, a matter of interpretation
18 should be decided in favour of the
19 accused; in this case, the inclusion of
20 premeditation is favourable to the
21 accused. Therefore, the Chamber holds
22 that the Prosecution must prove the mental
23 element demanded by *assassinat*, namely
24 intentional and premeditated killing.
25

1 For extermination, the Prosecution must
2 prove that the accused purposely
3 participated in a mass killing event,
4 having the intention to kill, or being
5 reckless, or grossly negligent as to
6 whether the killing would result. For
7 other inhumane acts, the Chamber holds
8 that these are acts not otherwise
9 specified in Article 3, but are of
10 comparable seriousness and should be
11 determined on a case-by-case basis.

12

13 **Common Article 3 and Additional Protocol**

14 **II.**

15

16 In this Chapter, the Chamber comes to the
17 conclusion that Common Article 3 and
18 Additional Protocol II were applicable to
19 the situation in Rwanda in this period of
20 time and persons responsible for the
21 breaches of these international
22 instruments during the events in the
23 Rwandan territory in 1994 could be subject
24 to prosecution. The question before this
25 Chamber is to what extent these

1 instruments are applicable to the instant
2 case; that is, to the alleged crimes at
3 four massacre sites referred to in the
4 indictment.

5
6 This Chamber is of the opinion that in
7 order for an act to breach Common Article
8 3, and Additional Protocol II, a number of
9 elements must be shown. It must be
10 established that the armed conflict in
11 Rwanda in this period of time was of a
12 non-international character. There must
13 also be a link between the accused and the
14 armed forces. Further, the crimes must be
15 committed *rationae loci* and *rationae*
16 *personae*. And finally, there must be a
17 nexus between the crime and the armed
18 conflict.

19
20 As a result of legal analysis, this
21 Chamber finds that in the present case,
22 all material requirements existed to
23 consider the situation in Rwanda during
24 April, May, June and July 1994 as an armed
25 conflict not of an international

1 character. This Chamber also finds that
2 members of the armed forces, that is the
3 FAR and RPF, were responsible for serious
4 violations of Common Article 3 and
5 Additional Protocol II. However, this
6 Trial Chamber does not exclude that in
7 certain circumstances the civilians also
8 could be responsible for such breaches if
9 there is a link between them and the armed
10 forces and this link is established
11 factually.

12
13 The Chamber is also of the opinion that it
14 is unnecessary that the serious violations
15 of Common Article 3 and Additional
16 Protocol II occur in actual theatre of
17 military operations and during these
18 operations. The offences should not be
19 considered in the narrow geographical or
20 temporal framework. The only requirement
21 is that there should be a relationship
22 between these offences and the armed
23 conflict.

24
25 This Chamber is of the view that to hold

1 the accused responsible for serious
2 violations of Common Article 3 and
3 Additional Protocol II, it is important to
4 establish whether all the crimes committed
5 during the internal armed conflict should
6 be considered as crimes connected with
7 breaches of these instruments. This
8 Chamber finds that only offences, which
9 have a nexus with the armed conflict, fall
10 within this category. It is incumbent
11 upon the Prosecutor to present facts and
12 to prove beyond a reasonable doubt, that
13 such a nexus exists.

14

15 **Individual Criminal Responsibility,**
16 **Article 6.**

17

18 The Trial Chamber finds that any of the
19 modes of participation delineated in
20 Article 6(1), in line with the
21 jurisprudence of the *Tadic*, *Celebici* and
22 *Akayesu* judgments, is sufficient to
23 establish individual criminal
24 responsibility under the Statute. The
25 Trial Chamber is of the opinion that where

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1 the participation has a substantial effect
2 on the commission of the crime, and the
3 accused knew that his participation would
4 so contribute to the perpetration of the
5 crime, than individual criminal
6 responsibility would arise pursuant to
7 Article 6(1) of the Statute

8
9 Kayishema is also individually charged
10 with the criminal responsibility as a
11 superior for the acts of his subordinates,
12 pursuant to Article 6(3). The Chamber
13 finds that the application of criminal
14 responsibility to those civilians would
15 wield the requisite authority is not a
16 contentions one, the crucial question
17 being not the civilian status of the
18 accused, but the degree of authority he
19 exercised over his subordinates. Where it
20 can be shown that the accused was *de jure*
21 or *de facto* superior and that pursuant to
22 his orders the atrocities were committed,
23 the Chamber must then attribute command
24 responsibility. The Chamber need only
25 consider whether he knew or had reason to

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1 know that the crimes were about to occur
2 and failed to prevent or punish the
3 perpetrators of the crimes if he did not
4 in fact order those crimes. If the
5 Chamber is satisfied beyond a reasonable
6 doubt that the accused ordered the alleged
7 crimes then it becomes unnecessary to
8 consider whether he tried to prevent; and
9 irrelevant whether he tried to punish.

10

11 **Factual findings.**12 **Alibi**

13

14 In Part V of the judgment, the Trial
15 Chamber provides the factual findings.
16 Firstly, the Chamber evaluates the defence
17 of alibi raised by both Kayishema and
18 Ruzindana. Both accused assert that they
19 were not at the sites when any of the
20 massacres occurred.

21

22 The essence of Kayishema's alibi is that,
23 in fear of his life, he went into hiding
24 from the morning of Saturday, 16 April,
25 1994, to the morning of Wednesday, 20

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1 April, 1994. He also deposed that he was
2 not present at any of the massacre sites
3 in the Bisesro area.

4
5 In support of his testimony, Kayishema's
6 wife deposed that she was in hiding with
7 him and accounted for his movements on 13
8 May, a day of one of the major attacks in
9 Bisesro area. Additionally, witness DU
10 testified that from 4 May, 1994, when he
11 went to stay at the Kayishema house, and
12 when he began his job in the canteen
13 opposite the *Prefectorial* offices, the
14 accused was either at home or in his
15 office and could never have been in the
16 Bisesro area.

17
18 However, the Chamber is particularly
19 cognizant of the many contradictions
20 within Kayishema's own testimony; between
21 his testimony and the voluntary statements
22 he has made to the investigators in 1996;
23 and between his testimony and those who
24 testified on his behalf, including,
25 notably, his wife. Therefore, the trial

KAYISHEMA & RUZINDANA

1 Chamber does not find any merit in the
2 defence of alibi advanced by Kayishema.
3 Whilst the burden of proof rests upon the
4 Prosecution to prove the case against
5 Kayishema, the defence of alibi that has
6 been raised on his behalf has not been
7 sufficient to levy any doubt against the
8 Prosecution's case which we have set out
9 below.

10
11 With respect to Ruzindana's defence of
12 alibi, a total of 21 witness appeared on
13 behalf of Ruzindana alone and gave
14 testimony pertinent to his defence of
15 alibi. Most of these witnesses did not
16 give a comprehensive account of the
17 defendant's whereabouts during the period
18 when massacres were known to have occurred
19 in the Bisesro region. Nevertheless, a
20 picture was painted by the Defence of a
21 man continuing his business in the town of
22 Mugonero.

23
24 These witness cannot account for the
25 activities of Ruzindana even on a day to

1 day basis, let alone on twenty-four hours
2 a day. The Chamber is cognizant of the
3 difficulties raised in advancing this
4 defence due to the time period covered in
5 the indictment. The legal issues thus
6 raised have been dealt with at length in
7 the judgment. The burden of proof is, of
8 course, on the Prosecution to prove their
9 case beyond a reasonable doubt. In the
10 opinion of the Trial Chamber, however, the
11 alibi defence provided by Ruzindana does
12 not diminish the Prosecution case. Given
13 the proximity of Mugonero to the Bisesero
14 area then, even if the evidence proffered
15 by the Defence in support of alibi were
16 accepted in its entirety, it remains
17 insufficient to raise doubt in relation to
18 Ruzindana's presence in Bisesro area at
19 the times of the massacres. Accordingly,
20 the Trial Chamber rejects the defence of
21 alibi advanced by the accused and has set
22 out its factual findings below.

23

24

Genocide in Rwanda and Kibuye

25

1 At this point in the judgment, the Trial
2 Chamber considers the question whether
3 genocide occurred in Rwanda and Kibuye in
4 1994. This part only allows for a better
5 understanding of the context within which
6 the perpetrators committed the crimes
7 alleged in the indictment. The Trial
8 Chamber underscores that a finding that
9 genocide occurred in Rwanda is not
10 dispositive of the question of the
11 accused's innocence or guilt.

12
13 The Trial Chamber finds that there appears
14 to have been an unwritten plan to
15 exterminate the Tutsi population in
16 Rwanda. The existence of this plan was
17 confirmed by the following indicators:
18 (1) the dissemination of anti-Tutsi
19 propaganda; (2) the existence of death
20 lists; (3) the speed with which roadblocks
21 were set up to target the Tutsis through
22 the use of identification cards; and (4)
23 the use of militias and the civil defence
24 programme as well as other State
25 resources. These facts are supported by

KAYISHEMA & RUZINDANA

1 the expert witness, Dr. Rene Degni-Segui,
2 a Special Rapporteur for Rwanda. For some
3 time prior to the events, hate speech was
4 communicated to the Hutu masses via the
5 print and electronic media, the most
6 effective means being the radio. Through
7 this propaganda, the Hutu extremists
8 incited the Hutu population to believe
9 that all Tutsis were enemies of the
10 country because they were RPF supporters.

11

12 Once the killings began at the residence
13 of the Tutsis they started to flee to safe
14 havens, some went to churches and stadiums
15 as they had survived previous massacres in
16 these places. Others went to these places
17 because persons in positions of authority
18 told them to go there.

19

20 On their way to what turned out to be
21 massacre sites, victims were stopped at
22 roadblocks, which had been set up with
23 incredible speed after the crash of the
24 President's plane, and asked to produce
25 identification cards. Some who were

KAYISHEMA & RUZINDANA

1 identified as Tutsis were separated and
2 some were killed on the spot. Others went
3 on to the gathering places and faced
4 unspeakable horrors there. The cruelty
5 with which the attackers killed the
6 Tutsis, wounded and disfigured them
7 indicates that the propaganda unleashed on
8 Rwanda had the desired effect, namely the
9 destruction of the Tutsi population.

10
11 In conclusion, the Trial Chamber finds
12 that the massacre of the Tutsi population
13 indeed were "meticulously planned and
14 systematically coordinated" by top level
15 Hutu extremists in the former Rwandan
16 Government at the time in question. The
17 widespread nature of the attacks and the
18 sheer number of these who perished within
19 just three months is compelling evidence
20 of this fact. This plan could not have
21 been implemented without the participation
22 of the militias and the Hutu population
23 who had been convinced by these extremists
24 that the Tutsi population in fact was the
25 enemy and responsible for the downing of

KAYISHEMA & RUZINDANA

1 President Habyarimana's air plane.
2
3 The Trial Chamber turns to examine the
4 occurrences in Kibuye Prefecture. After
5 the death of the President on 6 April,
6 1994, the relatively calm co-existence of
7 the Hutus and Tutsis came to a halt in
8 Kibuye. According to the Prosecutor,
9 Kibuye was among the first of the
10 *Prefectures*, I quote, "to enter into this
11 dance of death." End of quote. A
12 pattern emerged in Kibuye similar to that
13 throughout Rwanda, for example
14 perpetrators set ablaze houses belonging
15 to the Tutsis, looted and killed their
16 herds of cattle; raped Tutsi women; and
17 set up roadblocks with the purpose of
18 targeting the Tutsis. In the face of such
19 suffering the Tutsis in Kibuye, like the
20 rest of Rwanda, sought refuge in
21 traditional safe havens.

22
23 In Kibuye, the first incidents took place
24 on 8 and 9 April, 1994 in various
25 *communes*. The Chamber heard testimony and

1 received documentary evidence to show that
2 the perpetrators of the genocide in Kibuye
3 acted with requisite intent to destroy the
4 Tutsi population in whole or in part and
5 that they in fact succeeded in achieving
6 this goal. Furthermore, the Trial Chamber
7 finds that in Kibuye Prefecture, the plan
8 of genocide was implemented under the
9 direction and participation of Kayishema
10 and other public officials. Persons in
11 positions of authority mobilized their
12 subordinates such as *gendarmes*, the
13 communal police, the militias, who in turn
14 assisted in the mobilization of the Hutu
15 population in the massacre sites where the
16 Tutsis had gathered. In Kibuye
17 *Prefecture*, tens of thousands of Tutsis
18 were killed based on their ethnicity.

19

20 **The four massacre sites.**

21

22 Having examined the reasons why Tutsis
23 gathered at the four massacre sites, the
24 Trial Chamber then examines the evidence
25 specific to these sites and the role, if

1 any, of the accused Kayishema and his
2 subordinates, as well as that of Ruzindana
3 in the alleged crimes. Chapter 5.2 of the
4 judgment is an introduction to the three
5 massacre sites. The section addresses the
6 occurrences common to the massacre sites
7 in the indictment, namely, the Catholic
8 Church and Home Saint Jean, (hereinafter
9 referred to as the Complex), located in
10 Kibuye, the Stadium in Kibuye Town
11 (Stadium), and the Church in Mubuga
12 (Mubuga Church), in Gishyita Commune.
13 This introduction does not include the
14 fourth massacre site, Bisesro area,
15 because the massacres in that area
16 followed a slightly different pattern and
17 took place over a much longer period of
18 time than the first three sites.
19 Additionally, under the indictment, the
20 Bisesro charges include both accused
21 persons, whereas the first three sites
22 concern Kayishema only

23

24 **The Massacre at the Complex.**

25

1 Paragraph 25 and 26 of the indictment
2 allege that by 17 April, 1994, thousands
3 of internally displaced Tutsi persons,
4 (hereinafter referred to as Tutsi
5 "refugees"), had gathered at the Complex,
6 some under the order of Kayishema. The
7 Trial Chamber finds that thousands of
8 unarmed and predominantly Tutsi men, women
9 and children had sought refuge at the
10 Complex. However, the Prosecution did not
11 prove that Kayishema ordered them to go
12 there. The trial Chamber finds that all
13 but one of the survivors who testified
14 went there on their own volition, some
15 because, in the past, such places were
16 seen as safe havens during times of
17 trouble.

18
19 Paragraph 27 alleges that people under
20 Kayishema's control, surrounded the
21 Complex and prevented people from leaving
22 at a time when Kayishema knew the attack
23 was going to occur. Witness D described
24 how attackers in boats surrounded the
25 peninsula on which the Complex is located.

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1 Witness B described how the Complex was
2 surrounded by members of the *Interahamwe*
3 carrying machetes and spears.
4 Additionally, Witness C testified that
5 *gendarmes* prevented persons from leaving
6 the Complex. The Trial Chamber finds that
7 the Complex was surround by people in
8 under Kayishema's order or control,
9 including *gendarmes* and members of the
10 *Interahamwe* and the Kayishema knew that
11 the attacks were about to occur.

12
13 Regarding the role of Kayishema at the
14 Complex, paragraph 28 of the indictment
15 alleges that on the 17th April, Kayishema
16 went to the Complex, ordered the
17 assailants to commence the attack and
18 participated personally. The evidence
19 adduced proves that Kayishema led the
20 attacks from *the Prefecture* office to the
21 massacre sites at the Complex, he
22 instigated and encouraged the attackers by
23 delivering a message from Kigali to
24 exterminate the Tutsis. Further, he
25 orchestrated the burning of the Church.

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1 After the massacres had subsided,
2 Kayishema entered the Church in order to
3 kill any survivor.

4
5 Witnesses A,B,C,D,E and F testified that,
6 notwithstanding the massive number of
7 refugees at the Complex, they clearly saw
8 Kayishema. The Trial Chamber finds the
9 identification of Kayishema convincing.
10 In making this finding, the Trial Chamber
11 is mindful that all the above mentioned
12 witnesses had known Kayishema prior to the
13 events and successfully identified
14 Kayishema at the trial.

15
16 Paragraph 29 of the indictment alleges
17 that the Complex attacks left thousands
18 dead or injured. The Trial Chamber finds
19 that this allegation is proved beyond a
20 reasonable doubt. Expert witnesses, Dr.
21 Haglund and Dr. Nizam Peerwani testified
22 about the dead bodies exhumed at the
23 Complex.

24

25

The Massacre at the Stadium

NOORJAHAN PIRANI-HIRJI - OFFICIAL REPORTER
ICTR - CHAMBER II

1

2

Paragraph 32 of the indictment which alleges that on or about April 18, 1994, unarmed Tutsi women, men and children gathered at the Stadium had been proved beyond a reasonable doubt.

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Paragraph 33, which alleges that most of the Tutsi refugees went to the Stadium on Kayishema's orders has not been proved.

Paragraph 34 alleges that people under Kayishema's control surrounded the Stadium and prevented the Tutsi from leaving knowing that an attack was about to occur. The Trial Chamber finds beyond reasonable doubt that the evidence adduced by witnesses I, K, L and M is sufficient to show that after the refugees had gathered in the Stadium it was surrounded by people under Kayishema's control. Witness I, K, L, M and O, testified that *gendarmes* prevented persons from leaving the Stadium from 16 April, 1994. The Chamber finds that this allegation also has been proven

1 beyond a reasonable doubt.

2

3 Paragraph 35 of the indictment alleges

4 that on 18 April, Kayishema went to the

5 Stadium, initiated, ordered and

6 participated in the attack. It further

7 alleges that during the night of 19 April,

8 Tutsis were killed if they tried to leave.

9 Witness, I,K,L, and M, testified that

10 notwithstanding the mass of refugees, they

11 clearly saw and (in relation to K and L)

12 heard Kayishema. The Trial Chamber finds

13 the evidence of Kayishema's identification

14 and participation convincing. The Trial

15 Chamber finds beyond a reasonable doubt

16 that on April 18, 1994, Kayishema went to

17 the Stadium and ordered members of the

18 *Gendarmerie Nationale*, communal police and

19 *Intrahamwe* to attack the Stadium.

20 Further, that Kayishema initiated the

21 attack by firing a gun into the Tutsi

22 refugees assembled in the Stadium that

23 struck two refugees. The evidence

24 indicates that tear gas, gas and grenades

25 were used on April 18 and that the

1 massacrés continued on 19 April.

2

3 The evidence relating to 19 April is not
4 sufficient to show which assailants were
5 attacking the Stadium, or to prove
6 Kayishema's presence. In any event, the
7 indictment covers only 18 April, 1994.

8 The Trial Chamber is also satisfied that
9 during the attacks some of the Tutsis who
10 attempted to flee were killed.

11

12 Paragraph 36 of the indictment alleges
13 that the Stadium attacks left thousands
14 dead or injured. The Trial Chamber is
15 convinced by the evidence that the two
16 days of attacks on the Stadium resulted in
17 thousands of deaths and numerous injuries
18 to the Tutsi men, women, and children.
19 Deaths that were caused by the Hutu
20 assailants.

21

22 In relation to paragraphs 30 and 37 of the
23 indictment with respect to both the
24 Complex and the Stadium, concerning
25 Kayishema's command responsibility, the

1 accusations in these paragraphs are
2 addressed in Part VI of the judgment.

3

4 **The Massacre at Mubuga Church**

5

6 The massacres at the Complex and the
7 Stadium unfolded in a similar fashion at
8 Mubuga Church. The Chamber accepted the
9 evidence of the five Prosecution
10 eyewitnesses to the events at Mubuga
11 Church and several Defence witnesses who
12 visited the site after the massacre, which
13 confirmed that indeed thousands of persons
14 lost their lives at this crime site.
15 Survivors testified that by 14 April,
16 between 4,000 to 5,500 predominantly Tutsi
17 persons, had gathered at this place of
18 worship with the hopes of escaping the
19 massacres occurring throughout Kibuye.
20 During the congregation, assailants,
21 including *gendarmes*, communal police,
22 local officials and Hutu civilians
23 attempted to attack those within the
24 Church. They prevented those seeking food
25 or water from leaving the Church, in the

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1 presence of the *gendarmes*. These
2 witnesses stated that they finally closed
3 the doors to the Church to avoid these
4 attacks. Witnesses saw Kayishema prior to
5 the major attacks at the Church conversing
6 with those gathered outside and the Hutu
7 Priest of that parish. Kayishema
8 testified that in fact he had visited the
9 Church on 14 April.

10
11 On 15 April, 1994, assailants, including
12 *gendarmes*, fired bullets and grenades
13 through the Church doors, windows and
14 roof, killing several persons inside. It
15 was not until 16 April, however, that the
16 assailants broke into the Church and
17 proceeded to kill the survivors inside,
18 using machetes and other traditional
19 weapons. By all accounts, only a handful
20 of persons survived this weekend massacre.
21 Once the Hutu attackers had completed
22 their "work", Kayishema was heard outside
23 the Church instructing local officials to
24 use their bulldozer to bury the dead.
25 Therefore, paragraphs 39 through 42 of the

KAYISHEMA & RUZINDANA

1 indictment have been proven beyond a
2 reasonable doubt.

3
4 Paragraph 43 of the indictment, regarding
5 the command responsibility of Kayishema,
6 will be addressed in Part VI of the
7 judgment.

8
9 The Trial Chamber is satisfied, beyond a
10 reasonable doubt, that Kayishema and his
11 subordinates, including local authorities,
12 the *gendarmes*, the communal police and the
13 *Intrahamwe* were present and participated
14 in the attacks at the Mubuga Church
15 between 14 and 16 April. As
16 aforementioned, Kayishema is not charged
17 with having been present during the
18 attacks under Paragraph 41 of the
19 indictment. In light of the testimony of
20 the five witnesses, the Chamber
21 nevertheless finds that Kayishema was
22 present during the actual attacks. The
23 trial Chamber further finds that
24 Kayishema's presence and the participation
25 and presence of other local authorities,

1 provided encouragement to the assailants
2 to carry out their task with impunity.

3

4 **The area of Bisesro.**

5

6 Additionally, the Trial Chamber in its
7 judgment considered the massacres in the
8 area of Bisesro. The evidence before the
9 Trial Chamber presents a picture of a
10 massive, horrific assault on the Tutsis
11 gathered in the Bisesro area by the
12 accused persons, Hutu soldiers, communal
13 police, *Intrahamwe* and armed civilians,
14 throughout April, May, and June, 1994.

15 The Bisesro area was home to many Kibuye
16 Tutsis and during the genocide, they and
17 many Tutsis from other regions, hid in
18 caves scattered through woods and bushes,
19 or gathered on the high hills in the area.
20 Some Tutsis took refuge in Bisesro because
21 they had heard that they would be
22 protected by the RPF. This was not the
23 case for they were relentlessly pursued by
24 Hutus, who shot or hacked to death Tutsis
25 they found in various hiding places.

1 Allegations in paragraph 45 of the
2 indictment therefore are proven beyond a
3 reasonable doubt.

4
5 Paragraph 46 of the indictment, that the
6 attacks occurred in Bisesro, was
7 uncontested and proven beyond a reasonable
8 doubt. Kayishema himself testified that
9 "major attacks" and "massacres" took place
10 in Bisesero. There is sufficient evidence
11 to show that attacks occurred at
12 approximately one dozen sites in the
13 Bisesro area, the attackers using various
14 types of weapons. In addition, witnesses
15 testified that on occasion, Tutsis
16 attempted to defend themselves with crude
17 weapons. The Chamber found that these
18 attempts were sadly futile.

19
20 The Prosecution's allegation in paragraph
21 47 of the indictment that at various
22 locations and times throughout April, May
23 and June and often in concert, Kayishema
24 and Ruzindana brought to the area of
25 Bisesero members of the *gendarmerie*

1 *nationale*, communal police of Gishyita and
2 Gisovu Communes, *Interahamwe* and armed and
3 civilians and directed them to attack the
4 Tutsis seeking refuge there is proven also
5 beyond a reasonable doubt. It was alleged
6 in addition that at various locations and
7 times, and often in concert, Kayishema and
8 Ruzindana personally attacked and killed
9 persons seeking refuge in Bisesro.

10
11 To illustrate the occurrences, the Trial
12 Chamber recounts some of the evidence
13 pertaining to this area. In the massacres
14 within the area of Bisesro, there are
15 locations where Kayishema and Ruzindana
16 acted in concert, and there are also those
17 where each played a primary role,
18 individually.

19

20 **Crime Sites where Kayishema and Ruzindana**
21 **acted in Concert**

22

23 The *modus operandi* at most of the crime
24 sites in Bisesero area was the same.

25 Kayishema and Ruzindana would arrive with

KAYISHEMA & RUZINDANA

1 Hutu attackers in their vehicles, some of
2 which were government owned. Next, the
3 leaders of the attack, including the
4 accused persons, would order that the
5 assailants surround the hill and begin to
6 hunt the Tutsis seeking refuge on there,
7 in the caves and the bushes. Kayishema
8 and Ruzindana, usually seen with firearms,
9 would fire into the fleeing Tutsi crowd
10 and send the assailants to "get to work" -
11 in other words, to ensure that no Tutsis
12 would survive.

13
14 The Trial Chamber is left with no doubt
15 that Kayishema and Ruzindana aided and
16 abetted in the killings through
17 orchestration and direction. Kayishema
18 further abetted, through his inciting
19 speeches to assailants, and Ruzindana by
20 his provision of transportation and
21 weapons. The evidence proves that
22 Kayishema and Ruzindana personally
23 assisted in attacks that resulted in the
24 killing of Tutsi civilians.

25

1 Cases of personal killing by Kayishema or
2 Ruzindana relating to specific individuals
3 are less certain. There is ample evidence
4 to show that both accused personally
5 attempted to kill or injure those seeking
6 refuge in the Bisesero area, generally by
7 shooting at them. However, in most
8 instances where a witness testified to one
9 or both of the accused shooting at a
10 refugee, the Prosecution failed to
11 establish a resulting death. This is not
12 surprising considering the circumstances
13 under which the witnesses observed the
14 events. One would not expect a fleeing
15 refugee to risk his or her life in order
16 to verify the death of a victim. However,
17 under the doctrine of common intention,
18 the Trial Chamber finds beyond reasonable
19 doubt, that the killings were done in
20 furtherance of a genocidal plan to which
21 the accused were a party.

22

23 Muyira Hill and Vicinity

24

25 The Trial Chamber finds that Kayishema and

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1 Ruzindana were present at the major
2 attacks on Muyira Hill and its vicinity
3 beginning around 13 May, 1994. Further,
4 the Trial Chamber finds that Kayishema and
5 Ruzindana helped transport other
6 assailants to Muyira Hill and vicinity,
7 some of whom arrived in government owned
8 buses, instigated them to attack the
9 Tutsis gathered there, orchestrated a
10 method of attack, led the attacks and
11 personally participated in them.
12 Additionally, with regard to Kayishema,
13 this Chamber finds that the Prosecution
14 has proved the participation in the
15 massacres of his subordinates, including
16 the *gendarmes*, communal police, THE
17 members of the Intrahamwe, and local
18 officials such as Bourgmestre Sikubwabo.

19

20 The Cave at Gishyita Commune

21

22 The Trial Chamber finds that a horrific
23 attack occurred at the Cave where scores
24 of Tutsis were killed. Kayishema and
25 Ruzindana ordered the Cave entrance

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1 blocked, thus preventing the Tutsis within
2 from leaving. Then a fire was lit by the
3 assailants and the smoke suffocated the
4 victims. Dr. Haglund testified that
5 during his visit to this site in 1995, he
6 saw the remains of dozens of men, women
7 and children protruding from the mud
8 inside the Cave. According to a survivor
9 witness, there was only one survivor of
10 this massacre. Further, both Kayishema
11 and Ruzindana were present at the attack
12 and played a leading role in directing the
13 perpetrators of this massacre: Ruzindana
14 of a particular group of attackers and
15 Kayishema in general. This Chamber finds
16 that *gendarmes*, members of the *Intrahamwe*
17 and various local officials were present
18 and participated.

19

20 **The attacks for which Kayishema alone is**
21 **charged**

22

23 In the Bisesero area, on various hills
24 like Karongi, and in various cellules,
25 like Gitwa, Kayishema was seen with those

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1 under his control orchestrating the
2 massacres. The Trial Chamber finds that
3 Kayishema was instrumental in bringing
4 Hutu assailants, including local
5 officials, *gendarmes*, the communal police,
6 members of the *Intrahamwe*, and armed
7 civilians to the massacre sites. Where
8 Kayishema did not arrive with the
9 attackers, they would wait for him to fire
10 the first shot that would signal the
11 commencement of the massacre. Kayishema
12 himself participated in the killings,
13 using his firearms or asking the nearby
14 *Intrahamwe* for a machete to complete his
15 task.

16
17 **The attacks for which Ruzindana alone is**
18 **charged**

19
20 One instance where Ruzindana participated
21 and led the attack was at the mine in
22 Nyiramurego Hill. Sufficient evidence has
23 been proffered in the killing of Beatrice,
24 a local sixteen-year old girl by
25 Ruzindana. Witnesses provided a gruesome

1 account of Ruzindana cutting off the
2 breasts of Beatrice before killing her by
3 slashing her stomach with a machete. The
4 witnesses deposed that Beatrice died as a
5 result of Ruzindana's actions. For these
6 reasons, the Trial Chamber is satisfied,
7 beyond reasonable doubt, that Ruzindana
8 mutilated and personally killed Beatrice.

9

10 **Conclusion - Bisesero Findings**

11

12 The Trial Chamber also finds that
13 Ruzindana participated in massacres at
14 Gitwa Cellule and the Muyira Hill vicinity
15 by transporting, encouraging and offering
16 to pay the Hutu attackers. Ruzindana also
17 participated directly by shooting at the
18 Tutsis and killing individuals.

19

20 The strength and reliability of this
21 evidence was not effectively challenged in
22 Court. Accordingly, the Trial Chamber is
23 satisfied that both Kayishema and
24 Ruzindana brought members of the
25 *gendarmarie nationale*, communal police,

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1 and the *Intrahamwe* and armed civilians to
2 the area of Bisesero and directed them to
3 attack those Tutsis seeking refuge.

4
5 In paragraph 48 of the indictment the
6 Prosecution alleges that the attacks
7 resulted in the deaths of thousands of
8 men, women and children. All survivor
9 witnesses attested to the fact that
10 thousands were killed in the Bisesero area
11 during April through June. Expert
12 witness, including Dr. Haglund and various
13 journalists confirmed this fact. Numerous
14 witnesses confirmed the mass murder of the
15 Tutsis in the Bisesero area.

16
17 (Pgs. 1 - 50 by Noorjahan Pirani-Hirji)

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19
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25

1 Expert witnesses, including Dr. Haglund
2 and various journalists, confirmed this
3 fact. Numerous witnesses confirmed the
4 mass murder of Tutsis in the Bisesero
5 area. For instance, Chris McGreal, a
6 journalist for the *London Guardian*
7 newspaper, testified that he had spoken to
8 Tutsis taking refuge on a hill in Bisesero
9 in June 1994. While there he saw evidence
10 of mass killing in the area. McGreal
11 affirmed that near a small river at the
12 foot of this hill, he saw corpses of
13 persons who had apparently descended the
14 hill in an attempt to drink water. The
15 Tutsis with whom he interviewed told him
16 that these bodies remained unburied
17 because the Tutsis feared -- feared
18 attacks by the armed Hutus near the water.
19
20 Another journalist who visited Bisesero
21 in June 1994 and testified before the
22 Trial Chamber was Patrick de Saint Exupery
23 of the *Le Figaro*, a French newspaper. He
24 confirmed that a "Bisesero hill was
25 scattered, literally scattered with

1 bodies, in small holes, in small
2 ditches, on the foliage, along the
3 ditches, there were bodies and there were
4 many bodies." Kayishema himself testified
5 that massive burial efforts had taken
6 place in this area.

7

8 **LEGAL FINDINGS**

9

10 The Trial Chamber pronounces its Legal
11 Findings by examining the law as it
12 applies to the Factual Findings finding.

13

14 *Criminal responsibility, Article 6*

15 With regard to criminal responsibility as
16 a superior and Article 6(3), only
17 Kayishema was charged. Accordingly, the
18 question of the control exercised by
19 Kayishema over the assailants has been
20 closely examined.

21

22 The Trial Chamber finds that it is beyond
23 question that the Prefect exercised *de*
24 *jure* authority over assailants such as the
25 *bourgmestres, gendarmes, and the communal*

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1 police. Rwandan law is clear in this
2 respect. The Trial Chamber also finds that
3 Kayishema enjoyed *de facto* control over
4 all classes of assailants between April
5 and July. The facts clearly reflect
6 Kayishema's pivotal role in organizing,
7 directing the attacks at all four massacre
8 sites.

9
10 The prosecution alleged that Kayishema did
11 not attempt to prevent this massacre and
12 failed to punish those responsible for the
13 massacre at the four crime sites.

14 Kayishema contended that the situation in
15 Rwanda had rendered the situation in
16 Kibuye uncontrollable during this period.
17 Furthermore, he claimed that he had very
18 little power in the *Prefecture* because
19 there was a mutiny by the *Gendarmes*. In
20 his testimony before the Trial Chamber, he
21 also stated that had he been able to stay
22 in the country past July 1994, he would
23 have "done his job" of punishing the
24 perpetrators of these crimes. The Trial
25 Chamber finds this line of defence

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1 untenable in view of his presence and
2 participation.

3

4 Kayishema not only knew, and failed to
5 prevent, those under his control from
6 slaughtering thousands of innocent
7 civilians, but he orchestrated and
8 invariably led these bloody massacres.

9

10 This Trial Chamber finds that in order to
11 reflect adequately his culpability for
12 these atrocities, Kayishema must be held
13 responsible, pursuant to Article 6(3), for
14 the crimes committed by *de jure* and *de*
15 *facto* subordinates at Home St. Jean, the
16 Catholic Church, the Stadium, Mubuga
17 Church, and in the Bisesero area.

17

18

Genocide

19

20

The Trial Chamber now pronounces its Legal
Finding on Genocide.

21

22

23

24

25

The Trial Chamber finds that both accused
persons undertook their criminal deeds
with the specific intent to destroy in
whole or in part an ethnic group, that is

1 the Tutsis of Kibuye. Because this degree
2 of intent -- because this degree of intent
3 is difficult to prove, the Trial Chamber
4 looked to the words and the deeds of the
5 accused persons to determine the existence
6 of intent. With regard to Kayishema, the
7 Chamber concludes that indeed he had the
8 requisite intent.

9
10 There are three factors which the Chamber
11 has taken into consideration in the
12 determination of the necessary intent
13 required for a finding of genocide under
14 the Statute. First, the numbers of Tutsis
15 killed, indiscriminate of age, gender or
16 social status, in Kibuye is in the tens of
17 thousands. These numbers are indicative
18 of the required intent. Second,
19 Kayishema's utterances before, during and
20 after the massacre show that he intended
21 to rid Kibuye of the Tutsi population.
22 The Chamber accepted the testimony of
23 witnesses who recounted having heard
24 Kayishema using provocative language such
25 as "kill those Tutsi dogs" and "clean the

KAYISHEMA & RUZINDANA

1 dirt" when referring to the Tutsis
2 gathered at the various sites. He also
3 thanked the assailants after their "work"
4 -- in the Rwandan sense of the term by
5 using machetes and axes -- was done.
6 Finally, Kayishema's persistent pattern of
7 conduct throughout his Prefecture also
8 convinces the Chamber that he had the
9 requisite intent.

10
11 The number of Tutsis who perished in the
12 Bisesero area and Ruzindana's utterances
13 and persistent pattern of conduct are
14 construed in the same manner. Witnesses
15 recounted having heard Ruzindana or other
16 assailants participating in the massacres
17 with him, saying that no Tutsis, including
18 babies, should be spared. Ruzindana's
19 persistent pattern of conduct is also
20 proof of his genocidal intent to destroy
21 the Tutsi population. The Trial Chamber
22 is satisfied beyond a reasonable doubt
23 that Ruzindana transported and offered
24 payment to the assailants for the
25 identification cards and the body parts of

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1 slaughtered Tutsis; he fired into the
2 crowd of fleeing Tutsis at numerous sites
3 in Bisesero; and personally took the lives
4 of Tutsis who may have survived initial
5 attacks.

6
7 The Prosecution alleged that the accused
8 violated -- yes, the Prosecution alleged
9 that the accused violated Article 2(3)(a)
10 of the Statute. Although Article 2(2)
11 includes a variety of acts, the
12 Prosecution, during the closing arguments,
13 only addressed the Trial Chamber on the
14 following acts, that is, Articles 2(2)(a)
15 (killings), Article 2(2)(b) (causing
16 serious bodily or mental harm) and Article
17 2(2)(c) (deliberately inflicting
18 conditions of life calculated to bring
19 about physical destruction in whole or in
20 part).

21
22 As a preliminary matter, the Chamber finds
23 that in implementing the policy of
24 genocide, the intent of Kayishema, those
25 under his control, and Ruzindana, was to

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1 kill members of the Tutsi group at the
2 four crime sites. Inherent in the act of
3 mass killing is the infliction of serious
4 bodily and mental harm. For example, the
5 Trial Chamber was presented with the
6 opportunity to view numerous healing
7 bullet and machete wounds. Furthermore,
8 the Chamber heard the testimony of many
9 witnesses who recounted having watched
10 their loved ones mutilated, raped, killed
11 in a heinous manner. The evidence
12 established that the genocidal act of the
13 accused persons was killing. The results
14 for which the Trial Chamber holds them
15 responsible are killings and serious
16 bodily harm and mental harm.

17
18 No evidence was proffered to show that the
19 accused persons, or Kayishema's *de facto*
20 and *de jure* subordinates, deliberately
21 inflicted on the Tutsi group in Kibuye,
22 conditions of life to bring about its
23 physical destruction in whole or in part.
24 The Chamber acknowledges that the
25 Prosecution argument that Tutsis seeking

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1 refuge at the four crime sites were
2 deprived of food, water and adequate
3 sanitary and medical facilities. However,
4 these deprivations were a result of the
5 persecution of the Tutsis, with the intent
6 to exterminate them within a short period
7 of time. These deprivations were not the
8 deliberate creation of conditions of life,
9 as defined in Chapter 4.1 of the
10 Judgement, intended to bring about their
11 destruction. Additionally, the Chamber
12 finds that the time periods during which
13 these deprivations occurred were not of
14 sufficient length and scale to bring about
15 the destruction of the group. Therefore,
16 the Trial Chamber examines the remaining
17 above-mentioned act only in the analysis
18 -- only in the analysis that follows, that
19 is the act of killing.

20

21 **COUNT 1:**

22 Count 1 charges Kayishema with Genocide in
23 violation of Article 2(3)(a) of the Statute
24 for the massacres at the Complex.

25 With respect to this site, the Trial

KAYISHEMA & RUZINDANA

1 Chamber finds, *inter alia*, that by about
2 17 April 1994, thousands of Tutsis had
3 gathered at the Complex of the Catholic
4 Church and Home St. Jean. People under
5 Kayishema's control, including *gendarmes*
6 and members of the *Interahamwe* surrounded
7 the complex. There were also boats
8 surrounding the peninsula in which the
9 complex was located. The attackers who had
10 surrounded the complex carried machetes,
11 spears and other traditional weapons and
12 prevented people from leaving. The Trial
13 Chamber is satisfied that those attempting
14 to flee were killed.

15
16 Kayishema led the attackers from the
17 *Prefecture* office to the complex. He then
18 ordered them to begin the attack on Tutsis
19 by relaying a message from Kigali, through
20 a megaphone, to kill the Tutsis. Thus,
21 Kayishema orchestrated and participated in
22 the attack that lasted hours. As a result
23 of the attack, thousands of Tutsis were
24 killed.

25

KAYISHEMA & RUZINDANA

1 The Trial Chamber finds that prior to the
2 attack, Kayishema knew that it was
3 imminent. Indeed, along with initiating
4 the attack, he was seen at the Complex
5 twice before the attacks of 17 April.

6

7

COUNT 7:

8

Count 7 charges Kayishema with the

9

Genocide in violation of Article 2(3)(a)

10

of the Statute for the massacres at the

11

Stadium in Kibuye.

12

13

The Trial Chamber finds that by 18 April,

14

1994, thousands of men, women and

15

children, unarmed Tutsis, sought refuge in

16

the Stadium located in Kibuye town. Once

17

the refugees had gathered, persons under

18

Kayishema's control, including *gendarmes*,

19

surrounded the Stadium and prevented

20

refugees from leaving. The Trial Chamber

21

is satisfied that during the attacks some

22

of the Tutsis who attempted to flee were

23

killed. Kayishema instigated the attacks

24

by ordering the attackers to 'shoot those

25

Tutsis dogs' and by firing the first shot

1 into the Stadium. As a result of the
2 attack, thousands of people were killed
3 and numerous sustained serious injuries.

4
5 The Chamber finds, beyond a reasonable
6 doubt, that at the time when the Tutsi
7 were prevented from leaving the Stadium,
8 Kayishema knew or had reason to know that
9 an attack was about to occur.

10
11 Count 13 charges Kayishema with Genocide
12 in violation of Article 2(3)(a) of the
13 Statute for the massacres at the Church at
14 Mubuga.

15
16 The Trial Chamber finds, *inter alia*, that
17 thousands of Tutsis had gathered at the
18 Mubuga Church seeking refuge from attacks
19 which were occurring throughout Kibuye
20 Prefecture. Only a few of those seeking
21 refuge survived the massacres that
22 occurred on 15 and 16 April. Kayishema
23 and his subordinates, including local
24 officials, *gendarmes*, communal police and
25 members of the *Interahamwe*, were present

1 and participated in the attacks. The
2 Trial Chamber finds that those who
3 initially attempted to leave the church in
4 search of food or water were forced to
5 retreat or beaten to death by armed
6 assailants outside the church.
7 Kayishema's presence to the major attack
8 and the participation of those under his
9 control legitimized the killings of the
10 Tutsi refugees assembled there. As a
11 result of the attack, thousands of people
12 were killed and numerous sustained serious
13 physical injuries.

14
15 The Chamber finds, beyond a reasonable
16 doubt, that at the time when the Tutsis
17 were prevented from leaving the Mubuga
18 Church, Kayishema knew or had reason to
19 know that an attack was about to occur.

20
21 *Kayishema's Criminal Responsibility for*
22 *Counts 1, 7 and 13.*

23 For the reasons stated above, pursuant to
24 Article 6(1) of the Statute, Kayishema is
25 individually responsible for instigating,

KAYISHEMA & RUZINDANA

1 ordering, committing or otherwise aiding
2 and abetting in the planning, preparation
3 and execution of genocide by the killing
4 and causing of serious bodily harm and
5 mental harm to the Tutsis in mid-April
6 1994 at the Complex, Stadium and Mubuga
7 Church.

8
9 Additionally, under Article 6(3) of the
10 Statute, Kayishema is responsible for
11 genocide, as a superior, for the mass
12 killing and injuring of the Tutsi at the
13 Complex, Stadium and Mubuga Church in
14 mid-April by his subordinates. The
15 assailants comprised *gendarmes*, members of
16 the *Interahamwe* and local officials,
17 including prison wardens, *conseillers* and
18 *bourgmestres*. The Trial Chamber has found
19 that Kayishema had *de jure* control over
20 most of the assailants and *de facto*
21 control over all the attackers. The
22 evidence proves that Kayishema was leading
23 and directing the massacre. It is clear
24 that Kayishema knew that an attack was
25 imminent by virtue of his presence before

1 the massacres. Accordingly, the Trial
2 Chamber finds, beyond a reasonable doubt,
3 that Kayishema knew that his subordinates
4 were about to attack the refugees in the
5 Complex, Stadium and Mubuga Church and
6 failed to take reasonable and necessary
7 measures to prevent them, when he had the
8 material ability to do so.

9
10 Count 19: *Charges Kayishema and Ruzindana*
11 *with Genocide in violation of Article*
12 *2(3)(a) of the Statute for the massacres*
13 *in the area of Bisesero.*

14
15 The Trial Chamber found that both
16 Kayishema and Ruzindana brought the
17 *gendarmerie nationale*, communal police,
18 members of the *Interahamwe* and armed
19 civilians to the area of Bisesero and
20 directed them to attack the Tutsis. Both
21 accused persons also personally
22 participated in the attacks. Furthermore,
23 the Trial Chamber found that Ruzindana
24 mutilated and personally killed a 16 year
25 old girl named Beatrice at the mine at

KAYISHEMA & RUZINDANA

1 Nyiramurego Hill. In short, Kayishema and
2 Ruzindana were responsible for the
3 killings at a number of massacre sites
4 during April, May and June in 1994. Hutu
5 assailants during these attacks killed and
6 injured thousands of Tutsi. The Chamber
7 outlines a selection of the factual
8 findings above.

9
10 In relation to the 13 and 14 May assaults
11 at Muyira Hill, Kayishema and Ruzindana
12 arrived at the head of a convoy of
13 vehicles, which transported soldiers,
14 members of the *Interahamwe*, communal
15 police and armed civilians. Some of the
16 vehicles in which the assailants arrived
17 belonged to the Rwandan government.
18 Kayishema signalled the start of the
19 attacks by firing a shot into the air,
20 directed the assaults by dividing the
21 assailants into groups, headed one of them
22 as it advanced up the hill, and verbally
23 encouraged the attackers through a
24 megaphone. Ruzindana also played a
25 leadering role, distributing traditional

KAYISHEMA & RUZINDANA

1 weapons, leading a group of attackers up
2 the hill and shooting at the refugees.
3
4 The Trial Chamber finds that both accused
5 persons also participated in other
6 massacres. At the Cave in Gishyita
7 Commune, Kayishema generally directed the
8 siege and Ruzindana commanded the
9 attackers from Ruhengeri - both were
10 giving instructions to the attackers and
11 orchestrating the attack. At Karonge
12 Hill, Kayishema arrived with the soldiers,
13 *gendarmes* and Hutu civilians and used a
14 megaphone to address the attackers, giving
15 them instructions. Ruzindana was seen
16 transporting members of the *Interahamwe* to
17 the mine at Nyiramurego and then directing
18 the attackers. At Bisesero Hill,
19 Ruzindana was seen transporting attackers
20 and giving orders to the assailants to
21 surround the hill and begin the assault.
22 Ruzindana orchestrated the massacre at the
23 Hole near Muyira Hill, and the assault
24 commenced on his instruction.
25

1 *Kayishema's criminal responsibility on*
2 *Count 19.*

3 In the light of the factual findings
4 outlined above, the Trial Chamber finds
5 that the killings that took place in
6 Bisesero during April, May and June, 1994,
7 were carried out with the intent to
8 destroy the Tutsi group in whole or in
9 part. Further, the Trial Chamber finds,
10 beyond a reasonable doubt, that Kayishema
11 caused the death of and serious bodily and
12 mental harm to Tutsis at numerous places
13 in the Bisesero area including Karonge
14 Hill at the end of April, Bisesero Hill on
15 11 May, Muyira Hill on 13 and 14 May, the
16 Cave in Gishyita Commune, Gitwa Cellule in
17 May, and Kucyapa in June. In particular:

18
19 Under Article 6) (1) of the statute,
20 Kayishema is individually responsible for
21 genocide for killing and injuring the
22 Tutsis, with the intent to destroy this
23 ethnic group, at the attacks in the
24 Bisesero area during April, May and June
25 1994. Kayishema's involvement varied from

KAYISHEMA & RUZINDANA

1 site to site within Bisesero. At the
2 sites where he was found to have
3 participated, Kayishema committed one or
4 more of the following acts: He headed the
5 convoy of assailants; transported
6 attackers in his vehicle; directed the
7 initial positioning of the attackers,
8 verbally encouraged them; initiated the
9 attacks by orders or gun shots; led the
10 groups of attackers; shot at the fleeing
11 Tutsis; and finally, thanked the Hutu
12 attackers for their "work". These facts
13 prove, beyond a reasonable doubt, that
14 Kayishema instigated, ordered, committed
15 and otherwise aided and abetted in the
16 preparation and execution of the massacre
17 that resulted in thousands of deaths and
18 serious bodily injuries with intent to
19 destroy the Tutsi ethnic group.

20
21 Additionally, under Article 6(3) of the
22 Statute, Kayishema is responsible as a
23 superior for genocide due to the killing
24 and injury that took place in Bisesero
25 area during April, May and June. The

1 assailants in Bisesero were identified as
2 *gendarmes*, soldiers, members of the
3 *Interahamwe*, and armed civilians. The
4 Trial Chamber has found that Kayishema had
5 *de jure* control over most of the
6 assailants and *de facto* control over them
7 all. The evidence proves that Kayishema
8 was leading and directing the massacres at
9 numerous sites throughout the period.

10

11 *Ruzindana's Criminal Responsibility*

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The Trial Chamber finds, beyond a reasonable doubt, that Ruzindana caused the death of Tutsis at numerous places in the Bisesero area including the mine at Nyiramurego Hill on 15 April, Gitwa Cellule in early May, Bisesero Hill on 11 May, Muyira Hill on 13 and 14 May, the Cave, Kucyapa in June, the Hole near Muyira Hill in early June.

In particular under Article 6(1) of the Statute, Ruzindana is individually responsible for the killings that took place within the attacks that the Trial

KAYISHEMA & RUZINDANA

1 Chamber has found he participated, in the
2 Bisesero area during April, May and June
3 1994. Ruzindana's involvement varied from
4 site to site and day to day. At the sites
5 where he was found to have participated,
6 Ruzindana committed one or more of the
7 following acts: He headed the convoy of
8 assailants; transported attackers in his
9 vehicle; distributed weapons, orchestrated
10 the assaults; led the groups of attacks;
11 shot at the Tutsi refugees; and offered to
12 reward the attackers with cash or beer.
13 The Trial Chamber further found that
14 Ruzindana personally mutilated and killed
15 individuals during the attacks. These
16 findings prove beyond reasonable doubt
17 that Ruzindana instigated, ordered,
18 committed or otherwise aided and abetted
19 in the preparation and execution of the
20 massacre that resulted in thousands of
21 murders with the intent to destroy the
22 Tutsi ethnic group.

23

24

Common Intention or Enterprise

25

The Trial Chamber finds further support

KAYISHEMA & RUZINDANA

1 for its position on individual criminal
2 responsibility, in the established
3 principle of common intention or
4 enterprise. The clear objective of the
5 atrocities occurring through Kibuye was to
6 destroy the Tutsi population. Kayishema,
7 Ruzindana and the other Hutu attackers in
8 this *Prefecture* knowingly participated in
9 the attacks with a common criminal intent.
10 Therefore, the Trial Chamber concludes
11 that the culpable individual, in this case
12 Kayishema and Ruzindana, are criminally
13 responsible either as direct perpetrators
14 of, or as aiders and abettors to, the
15 crimes in question.

16
17 In conclusion, Kayishema individually
18 participated in the massacres at the
19 Complex, Stadium and Mubuga Church. He
20 aided and abetted the perpetrators. This
21 Trial Chamber finds that he is responsible
22 for the acts of genocide at all the
23 massacre sites, pursuant to Article 6)1)
24 and Article 2(3)(a) of the Statute. In
25 addition, Kayishema is responsible for the

1 acts of his subordinates, namely the
2 *gendarmes*, the local officials such as
3 *bourgmestres*, *conseillers*, communal police
4 and prison guards, under Article 6(3) and
5 Article 2(3)(a) of the Statute.

6
7 Ruzindana personally participated in the
8 killings that took place in the Bisesero
9 area so he is responsible under Article
10 6(1) and Article 2(3)(a) of the Statute.

11

12 **Crimes against Humanity**

13 The Indictment charges Clement Kayishema
14 with crimes against humanity for murder in
15 Counts 2, 8, 14 and 20; crimes against
16 humanity for extermination in Counts 3, 9,
17 15 and 21, and crimes against humanity for
18 other inhumane acts in Counts 4, 10, 16
19 and 22. Kayishema is charged with
20 individual responsibility for the crimes
21 under Article 6(1) and, additionally or
22 alternatively, responsibility as superior
23 under Article 6(3) of the Statute.

24

25 The indictment charges Obed Ruzindana with

1 crimes against humanity for murder in
2 Count 20; crimes against humanity for
3 extermination in Count 21; and crimes
4 against humanity for other inhumane acts
5 in Count 22. Ruzindana is charged with
6 individual responsibility for the crimes
7 under Article 6(1) of the Statute.

8

9

Murder and Extermination

10 In this case, the criminal responsibility
11 of each accused for crimes against
12 humanity (murder) and crimes against
13 humanity (extermination) is fully subsumed
14 by the crime of genocide. The Prosecution
15 relied upon the same elements and the same
16 culpable conduct to prove these crimes in
17 which the victims were the same.

18 Therefore, the Trial Chamber finds that it
19 will be improper to convict the accused
20 persons for genocide as well as for crimes
21 against humanity based on murder and
22 extermination. In this case the three
23 crimes amount to the same offence. Due to
24 the particular factual circumstances of
25 the instant case, the crimes of genocide

1 and crimes against humanity/extermination
2 and murder are the same. This issue is
3 addressed in detail in Part VII of the
4 judgement, entitled Cumulative Charges.

5

6

Other Inhumane Acts

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The Trial Chamber finds that the attacks
were widespread, systematic and targeted
against the civilian population on the
grounds of ethnicity.

In relation to all four sites, the
Indictment did not particularize the
nature of the acts that the Prosecution
relied upon for the charge of 'other
inhumane acts'. Nor did the Indictment
specify the nature and the extent of the
accused's responsibility for the other
inhumane acts. This is true for both
Kayishema and Ruzindana. In relation to
the culpable acts for each site the
Indictment merely states little more than:
The attackers used certain weapons to kill
people at the site, the accused
participated, and the attacks resulted in

1 thousands of deaths and numerous injuries.
2 Not one act, allegedly perpetrated either
3 by Ruzindana or Kayishema or the other
4 assailants, was specified as an other
5 inhumane act. Therefore, it was incumbent
6 upon the Prosecution to rectify the
7 vagueness of the counts during its
8 presentation of evidence. Indeed, "the
9 question of knowing whether the
10 allegations appearing in the indictment
11 are vague will, in the final analysis, be
12 settled at Trial".

13
14 In the interest of justice and a fair
15 trial, the defence should be seized as
16 promptly as possible, and at any event
17 during the trial, of the conduct with
18 allegedly offends each individual count of
19 crimes against humanity or other inhumane
20 acts. The Indictment did not identify the
21 offending act or the nature and extent of
22 the accused's responsibility.

23
24 For all the above reasons, the Trial
25 Chamber finds that the Prosecution has not

KAYISHEMA & RUZINDANA

1 proved its case against Kayishema pursuant
2 to Counts 4, 10, 16, and 22, crimes
3 against humanity or other inhumane acts.

4
5 For all the above reasons, the Trial
6 Chamber finds that the Prosecution has not
7 proved its case against Ruzindana pursuant
8 to Count 22, crimes against humanity for
9 other inhumane acts.

10
11 *Common Article 3 and Additional Protocol*
12 *II*
13 Counts 5, 11 and 17 of the Indictment
14 charge Kayishema with violations of Common
15 Article 3 and Counts 6, 12 and 18 charge
16 with violations of Additional Protocol II.
17 Count 23 charges both Kayishema and
18 Ruzindana with violations of Common
19 Article 3 and Count 24 charges with
20 violations of Protocol II. All these
21 Counts are covered by Article 4 of the
22 ICTR Statute.

23
24 The Prosecutor considers the massacred
25 people at the four massacre sites referred

1 to in the Indictment as victims of the
2 armed conflict and charges Kayishema and
3 Ruzindana with serious violation of Common
4 Article 3 and additional Protocol II.

5
6 The Chamber finds that in order to
7 establish that there were serious
8 violations of Common Article 3 and
9 Additional Protocol II it should be shown
10 factually that: 1) there was a nexus
11 between the alleged crimes and the armed
12 conflict; and 2) there was a direct link
13 between the accused and armed forces; and
14 3) material provisions of Common Article 3
15 and Additional Protocol II have been
16 violated.

17
18 Considering the above, and based on all
19 the evidence presented in this case, the
20 Trial Chamber finds that it has not been
21 proved beyond a reasonable doubt that the
22 crimes alleged in the Indictment were
23 committed in direct conjunction with the
24 armed conflict. The Trial Chamber further
25 finds that the actions of Kayishema and

1 Ruzindana in the alleged period of time
2 had no direct connection with the military
3 operations or with the victims of the
4 armed conflict. It has not been shown
5 that there was a direct link between the
6 accused and the armed forces. Moreover,
7 it cannot be concluded *pleno jure* that the
8 material provisions of Common Article 3
9 and Additional Protocol II have been
10 violated in this particular case. Thus
11 both persons, *ipso facto* and *ipso jure*,
12 cannot be individually responsible for
13 violations of these international
14 instruments.

15
16 The Trial Chamber, therefore, finds that
17 Kayishema did not incur individual
18 criminal responsibility for breaches of
19 Article 4 of the Statute under Counts 5,
20 6, 11, 12, 17 and 18, and neither
21 Kayishema nor Ruzindana incurred liability
22 under Counts 23 and 24.

23

24 **Cumulative Charges**

25 The Indictment charges both accused

1 persons cumulatively, *inter alia*, for
2 Genocide, Crimes against Humanity/murder
3 and Crimes against Humanity/extermination.
4 Within each crime site, the three counts
5 are based on the same conduct, and the
6 Defence submitted that, in effect, these
7 crimes amounted to the same offence.

8
9 The Trial Chamber, by majority, finds
10 that, in the present case, the Prosecution
11 used the same elements and the same
12 culpable conduct to prove the crimes of
13 Genocide, Crimes against Humanity/murder
14 and Crimes against Humanity/extermination
15 within each of the four crime sites. The
16 culpable conduct, that is, premeditated
17 killing, relied upon to prove Genocide,
18 also satisfied the *actus reus* for Crimes
19 against Humanity/murder and Crimes against
20 Humanity/extermination. Additionally, all
21 the murders were part of the extermination
22 (the mass killing event) and were proved
23 by relying on the same evidence. Indeed,
24 extermination could only be established by
25 proving killing on a massive scale.

1
2 The Trial Chamber, by majority, finds that
3 the circumstances in this case, do not
4 constitute more than one of the offences
5 in question -- the Trial Chamber, by
6 majority, finds that the circumstances in
7 this case do not constitute more than one
8 of the offences in question. This
9 scenario only allows for a finding of
10 either Genocide or Crimes against
11 Humanity/murder and Crimes against
12 Humanity/extermination. Therefore because
13 the crime of Genocide is established
14 against the accused person, then they
15 cannot, simultaneously, be convicted for
16 Crimes against Humanity/murder and Crimes
17 Against Humanity/extermination in this
18 case. This would be improper as it would
19 amount to convicting an accused person
20 twice for the same offence. The Trial
21 Chamber deems this to be highly
22 prejudicial and untenable in law. If the
23 Prosecution intended to rely on the same
24 elements and evidence to prove all three
25 types of crimes, it should have charged in

1 the alternative. As such, the cumulative
2 charges are improper and untenable.

3

4 **THE VERDICT**

5

6 Could you stand up, please, accused?

7

8 For the foregoing reasons, having
9 considered all of the evidence and the
10 arguments of the parties, the Trial
11 Chamber finds as follows: By majority,
12 decides that the charges brought under
13 Articles 3(a) and 3(b) of the Statute,
14 Crimes against Humanity (murder) and
15 Crimes against Humanity (extermination)
16 were in the present case fully subsumed by
17 the Counts brought under Article 2 of the
18 Statute, that is Genocide, therefore
19 finding the accused, Clement Kayishema,
20 not guilty on Counts 2, 3, 8, 9, 14, 15,
21 and both accused persons, Clement
22 Kayishema and Obed Ruzindana, not guilty
23 on Counts 20 and 21.

24

25 Unanimously finds on the remaining charges

1 as follows:

2

3 In the case against Clement Kayishema:

4

5 Count 1: Guilty of genocide.

6 Count 4: Not guilty of Crimes against
7 Humanity/Other inhumane Acts.

8 Count 5: Not guilty of violation of
9 Article 3 Common to the Geneva

10 Conventions.

11 Count 6: Not guilty of a violation of
12 Additional Protocol II.

13 Count 7: Guilty of Genocide.

14 Count 10: Not guilty of Crimes against
15 Humanity/Other inhumane Acts.

16 Count 11: Not guilty of a violation of
17 Article 3 Common to the Geneva

18 Conventions.

19 Count 12: Not guilty of a violation of
20 Additional Protocol II.

21 Count 13: Guilty of Genocide.

22 Count 16: Not guilty of Crimes against
23 Humanity/Other Inhumane Acts.

24 Count 17: Not guilty of a violation of
25 Article 3 Common to the Geneva

KAYISHEMA & RUZINDANA

1 Conventions.

2 Count 18: Not guilty of a violation of

3 Additional Protocol II.

4 Count 19: Guilty of Genocide.

5 Count 22: Not guilty of Crimes against

6 Humanity/Other Inhumane Acts.

7 Count 23: Not guilty of a violation of

8 Article 3 Common to the Geneva

9 Conventions.

10 Count 24: Not guilty of a violation of

11 Additional Protocol II.

12

13 In the case of Obed Ruzindana:

14

15 Count 19: Guilty of Genocide.

16 Count 22: Not guilty of Crimes against

17 Humanity/Other Inhumane Acts.

18 Count 23: Not guilty of a violation of

19 Article 3 Common to the Geneva

20 Conventions; and

21 Count 24: Not guilty of a violation of

22 Additional Protocol II.

23

24 The accused persons are accordingly

25 convicted for the crimes of genocide under

1 each crime site respectively.

2

3 Judge Khan's Separate and Dissenting

4 Opinion:

5 Judge Khan completely agrees with and

6 shares in the Judgement with the exception

7 of the Majority's view that the charges of

8 Crimes Against Humanity/murder and Crimes

9 Against Humanity/extermination are

10 improper and untenable due to the

11 concurrence of these crimes with genocide.

12

13 He finds that the jurisprudence from the

14 International Criminal Tribunals holds

15 that matters of concurrence should be

16 addressed at the stage of sentencing - by

17 sentencing the accused concurrently for

18 the overlapping crimes - rather than at

19 the verdict. Accordingly, he finds that,

20 notwithstanding the concurrence of crimes,

21 the charges were proper and deserve full

22 consideration.

23

24 Having fully examined the criminal

25 responsibility of the accused under the

KAYISHEMA & RUZINDANA

1 Counts of murder and extermination, he
2 finds that, in addition to the crime of
3 genocide, Kayishema and Ruzindana are
4 guilty for all the counts of murder and of
5 extermination preferred against them.
6 That is, guilty for Crimes against
7 Humanity under Counts 2, 3, 8, 9, 14, 15,
8 20, and 21 for Clement Kayishema and
9 Counts 20 and 21 for Obed Ruzindana. In
10 order to ensure that the accused persons
11 would not suffer prejudice due to the
12 concurrence of their culpable conduct, he
13 would order that the sentences imposed in
14 relation to all the guilty verdicts be
15 served concurrently.

16
17 So this is the end of the decision. A
18 copy of this summary along later perhaps
19 with the sentencing order will be
20 available in English and French.

21
22 Clement Kayishema and Obed Ruzindana, do
23 you have anything to say before sentence
24 is cast on you for the counts or for the
25 crimes of which you have been convicted?

1 Mr. Ferran, you recall, I think, you had
2 already addressed the Trial Chamber at the
3 closing of this case, but is there
4 anything to be said before sentence is
5 passed?

6 MR. FERRAN:

7 I take due note of your decision, Mr.
8 President.

9 MR. PRESIDENT:

10 Okay, Mr. Besnier?

11 MR. BESNIER:

12 No observations, Mr. President.

13 MR. PRESIDENT:

14 In that case, we will take -- come back.
15 We will adjourn these proceedings at this
16 time and come back at 12:00 for
17 sentencing. So until 12:00 -- okay, we
18 will come here at 11:30 for sentencing.
19 Until then, these proceedings stand
20 adjourned.

21

22 (BRIEF RECESS)

23

24 (Pgs. 51 - 87 by K. Holm)

25

KAYISHEMA & RUZINDANA

1 MR. PRESIDENT:

2 Yes, the proceedings are called to order.

3

4 Sentence: In determining the sentences,

5 these chambers is mindful that the

6 Security Council passed Article 39 and

7 Chapter 7 of the United Nations Charter

8 established the tribunal to ensure the

9 effective redress of violations of

10 international humanitarian law in Rwanda

11 in 1994. The objective was to prosecute

12 and punish the perpetrators of the

13 atrocities in Rwanda in such a way as to

14 put an end to impunity and promote

15 national reconciliation and the

16 illustration of peace.

17

18 The chamber must impose sentence on

19 convicted persons for retribution,

20 deterrence, rehabilitation and protect

21 society.

22

23 As to deterrence, this chamber seeks to

24 dissuade for good those who will be

25 tempted in the future to perpetrate such

1 atrocities by showing them that the
2 international community is no longer
3 willing to tolerate serious violations of
4 international humanitarian law and human
5 rights.

6
7 General principles of sentencing and
8 applicable law.

9 Article 23 sub article 2 of the statute
10 and Rule 101(b), capital B, obliged this
11 chamber, in determining sentences, to take
12 into account a number of circumstances or
13 factors.

14
15 These circumstances include the general
16 practice regarding prison sentences in
17 Rwanda, the gravity of the offenses, the
18 individual circumstances of the convicted
19 persons, and any aggravating or mitigating
20 circumstances.

21
22 These enumerated circumstances, however,
23 are not necessarily mandatory or
24 exhaustive. It's a matter of
25 individualizing the penalty concerning the

1 totality of the circumstances.

2

3 Articles 22, 23, 26, and 27 of the statute
4 and Rules 86 c, capital C, 99, 100, 101,
5 102, and 103 and 104 generally represent
6 the applicable law for sentencing.

7 Article 22, sub article 1 of this statute
8 specifically authorizes a trial chamber to
9 impose a sentence and penalties on those
10 persons convicted of crimes under the
11 statute. This chamber also finds that it
12 possesses a further discretion to go
13 beyond the circumstances stated in the
14 statute and the rules to ensure justice in
15 matters of sentencing.

16

17 This chamber now tries to analyze this law
18 as it applies to the case at bench, impose
19 sentences and discuss the enforcement of
20 sentences.

21

22 Discussion of the circumstances to be
23 taken into account in sentencing.

24

25 General practice regarding prison

1 sentences in Rwanda.
2 Article 23 sub article 1 of the statute
3 and Rule 101 capital (B) (3) provide that
4 in determining the term of sentences, the
5 trial chamber should have recourse to the
6 general practice regarding prison
7 sentences in Rwanda.
8
9 Rwandan law empowers its courts to impose
10 a death penalty for persons convicted of
11 being a quote, planners, organizers,
12 instigators, supervisors and leaders of
13 the crime of genocide or persons who acted
14 in positions of authority at the national,
15 prefectorial, communal, sector, cell level
16 or notorious murders by virtue of the zeal
17 or excessive malice with which they
18 committed atrocities. This chambers notes
19 this law applies as committed after
20 October 1990.
21
22 Rwandan law also empowers its courts to
23 impose a life sentence for a person
24 convicted of being persons whose criminal
25 acts, whose acts of criminal participation

1 place them among perpetrators,
2 conspirators, accomplices of intentional
3 homicide or of serious assault against the
4 person, against a person causing death.

5
6 In the light of the findings of the
7 judgement against Kayishema and Ruzindana,
8 this chamber finds that the general
9 practice regarding prison sentences in
10 Rwanda represents one factor supporting
11 this chamber's imposition of the maximum
12 and very severe sentences respectively.

13
14 Gravity of offenses.
15 Article 23, sub article 2 of the statute
16 provides that the trial chamber should
17 take into account the gravity of the
18 offenses in determining the sentence.

19
20 This chamber finds that Kayishema and
21 Ruzindana have committed genocide, an
22 offense of the most extreme gravity, an
23 offense that shocks the conscience of
24 humanity. Trial Chamber 1 of this
25 tribunal has heard that genocide

1 constitutes the crime of crimes.

2

3 Article 2 of the statute defines the crime
4 of genocide and its unique element of
5 special intent to destroy, in whole or in
6 part, a national, ethnic, racial,
7 religious group as such.

8

9 For purpose of determining sentence this
10 chamber finds that Kayishema has four
11 convictions of genocide and Ruzindana's
12 one conviction of genocide constitute
13 offenses beyond human comprehension and of
14 the most extreme gravity.

15

16 Individual circumstances of the accused.
17 Article 23 sub article 2 of the statute
18 provides that the trial chamber should
19 take into account the individual
20 circumstances of the convicted person in
21 determining the sentence.

22

23 This chamber addresses, in turn, the
24 individual circumstances of Kayishema and
Ruzindana respectively.

25

Individual circumstances of Kayishema.

KAYISHEMA & RUZINDANA

1 Kayishema was born in 1954, in the
2 Bwishyura sector, Kibuye Prefecture, in
3 Rwanda. He's married and has two
4 children. He graduated from the National
5 University of Rwanda in medicine and
6 practiced general medicine and surgery.

7

8 In 1992 he was appointed prefect of Kibuye
9 Prefecture and in 1994 reappointed to this
10 post after the death of the president.

11

12 The prosecutor has not proved that
13 Kayishema had any previous convictions.

14

15 Individual circumstances of Ruzindana.

16 Ruzindana was born in 1962 in Gisovu

17 commune, Kibuye Prefecture, in Rwanda.

18 He's married and has two children. He was

19 a successful businessman in the transport

20 of merchandise and the import of goods.

21

22 The prosecution has not proved that
23 Ruzindana has any criminal conviction.

24

25 This chamber considers the relatively

1 young age of Ruzindana, 32 years old in
2 1994, and the possibility of his
3 rehabilitation.

4

5 Aggravating circumstances.

6 Rule 101 capital (B)(i)(1) requires that
7 the trial chamber take into consideration
8 any aggravating circumstances in
9 determining the sentence.

10

11 Both Kayishema and Ruzindana voluntarily
12 committed and participated in the offenses
13 and this represents one aggravating
14 circumstance.

15

16 This chamber now addresses, in turn, the
17 particular aggravating circumstance for
18 Kayishema and Ruzindana, respectively.

19

20 Aggravating circumstances for Kayishema.

21 The prosecution cites four aggravating
22 circumstances for Kayishema.

23

24 First, the prosecution cites Kayishema's
25 disregard of his obligation as a prefect

1 to protect the Rwandan people and maintain
2 peace and order in the use of his position
3 to effectuate the crimes in Kibuye.

4

5 Second, the prosecution cites the zeal
6 with which Kayishema executed his crimes.

7

8 Third, the prosecution cites Kayishema's
9 methodical and systematic execution of his
10 crimes; and, four, the prosecution cites
11 the behaviour of Kayishema after the
12 criminal act, notably his inaction to
13 punish the perpetrators. This chamber
14 finds the presence of these four
15 aggravating circumstances. This chamber
16 finds as an aggravating circumstance that
17 Kayishema, as a prefect, held a position
18 of authority. This chamber finds that
19 Kayishema was a leader in the genocide in
20 Kibuye Prefecture and this abuse of power
21 and betrayal of his high office
22 constitutes the most significant
23 aggravating circumstance.

24

25 To give but one example of the seriousness

1 of Kayishema's crimes, this chamber
2 recalls that Kayishema attacked places
3 traditionally regarded as safe havens,
4 such as Complex and Mubuga Church. The
5 harm suffered by victims and their
6 families represent an aggravating
7 circumstance and this chamber recalls the
8 irreparable harm that Kayishema inflicted
9 on his victims and their family.

10
11 Kayishema started an alibi defence and at
12 all times denied his guilt. This chamber
13 also finds this fact, in the light of the
14 conviction, represents an additional
15 aggravating circumstance.

16
17 Aggravating circumstance for Ruzindana.
18 The prosecution cited one aggravating
19 factor, Ruzindana's behaviour of the
20 criminal act, notably the fact that
21 Ruzindana smiled or laughed as survivors
22 testified during the trial. This chamber
23 finds that heinous means by which
24 Ruzindana committed killings constitute
25 one aggravating factor. To give but one

1 example, this chamber recalls the
2 viciousness of the murder of a 16 year old
3 girl named Beatrice. Ruzindana ripped off
4 her clothes and slowly cut off one of her
5 breasts with a machete. When he finished,
6 he cut off her other breast, was mocking,
7 telling her, look at the first one as she
8 lay on the ground, and finally he tore
9 open her stomach.

10

11 Mitigating factor.

12 Rule 101 capital (B) (2) of the rules of
13 provisional evidence requires that the
14 trial chamber take into consideration any
15 mitigating circumstance in determining
16 sentence.

17

18 This chamber addresses in turn the
19 mitigating circumstances of Kayishema and
20 Ruzindana.

21

22 Before turning to the particulars in this
23 case, this chamber wishes to help define
24 the term mitigating circumstances by
25 noting -- by noting some that were

1 present in area cases.

2

3 The chamber is of the opinion that
4 mitigating circumstances may include
5 cooperating with the prosecutor,
6 surrendering to authorities, admitting
7 guilt and demonstrating remorse for
8 victims.

9

10 Mitigating circumstances for Kayishema.
11 Kayishema's defence counsel in the portion
12 of his closing argument dedicated to
13 sentencing under Rule 86 c proffered
14 mitigating circumstances. First he asked
15 this chamber to consider the explosion of
16 the rule of law in Rwanda in 1994 based on
17 Professor Guibal's testimony.

18

19 Second, he advanced a mitigating
20 circumstance that his client was
21 overwhelmed by the events and the mob of
22 crowd psychology, based on Professor
23 Pouget's testimony, that existed in Rwanda
24 in 1994.

25 Kayishema's defence counsel also says that

1 this chamber should take into account that
2 Kayishema is a loyal and honest person.

3

4 The prosecution did not advance any
5 mitigating circumstances for Kayishema.

6

7 This chamber knows that Kayishema
8 voluntarily submitted to interviews by
9 members of the office of the prosecutor.

9

10 The chamber gives very little weight to
11 the mitigating circumstances for
12 Kayishema.

12

13 The two proposed mitigating circumstances
14 rely on testimony that this chamber finds
15 not particularly probative.

16

17 The chamber also is not convinced of
18 Kayishema's qualities of loyalty and
19 honesty in light of his conviction in this
20 case.

21

22 The chamber finds the presence of some
23 mitigating circumstances for Kayishema but
24 none of any significant weight in a case
25 of this gravity.

1

2

For Kayishema, the aggravating

3

circumstances outweigh the mitigating

4

circumstances.

5

6

Mitigating circumstances for Ruzindana.

7

Ruzindana's defence counsel in his portion

8

of his closing argument dedicated to

9

sentencing under Rule 86 c implored this

10

chamber to consider mitigating

11

circumstances, but did not mention any.

12

The prosecutor did not suggest any

13

mitigating circumstance for Ruzindana.

14

15

The chamber considers as a mitigating

16

circumstance the fact that Ruzindana was

17

not a *de jure* official. This chamber

18

finds the presence of some mitigating

19

circumstance for Ruzindana but none of any

20

significant weight in a case of this

21

gravity.

22

23

For Ruzindana, the aggravating

24

circumstances outweigh the mitigating

25

circumstances.

1

2

Sentencing recommendation. The defence

3

counsel for Kayishema in the alternative

4

to acquittal, recommended this chamber

5

impose a sentence with merely a symbolic

6

implication. This chamber takes this

7

recommendation to mean a sentence of time

8

already served in custody or a similar

9

short sentence.

10

11

Defence counsel for Ruzindana in the

12

alternative to acquittal declined to

13

suggest any sentence.

14

15

The prosecution on -- the prosecution on

16

the counts for which the chamber finds

17

Kayishema and Ruzindana guilty recommends

18

the following sentences. For Kayishema,

19

the prosecution recommends concurrent

20

sentence of life imprisonment for each of

21

the Counts 1, 7, 13 and 19.

22

23

And for Ruzindana, the prosecution

24

recommends a sentence of life imprisonment

25

for Count 19.

1

2

This chamber notes the fact that

3

distinguish between the different levels

4

of culpability of Kayishema and Ruzindana

5

for the purpose of sentencing, including

6

Count 19.

7

8

Considering the totality of the

9

circumstances, this chamber finds that

10

Kayishema deserves more punishment than

11

Ruzindana. First and foremost, Kayishema

12

held a position of high authority.

13

Ruzindana did not.

14

15

Second, Kayishema is guilty of four counts

16

of genocide; Ruzindana is guilty of one.

17

18

Third, this chamber considers Ruzindana's

19

relatively young age and the goal of

20

rehabilitation in this case.

21

22

Four: Evidence shows that with regard to

23

at least one criminal act, Kayishema

24

instructed, praised Ruzindana,

25

highlighting their different relative

1 levels of criminal responsibility.

2

3 Fifth: Kayishema is an educated medical
4 doctor who betrayed the ethical duty that
5 he owed to his community.

6

7 Sixth: This chamber, in the light of the
8 practical consideration, is of the opinion
9 that a 25 year sentence represents a term
10 of imprisonment just below that of
11 imprisonment for the remainder of his
12 life.

13

14 Seventh: This chamber finds these
15 considerations and other interests of
16 justice require that Kayishema and
17 Ruzindana receive different sentences in
18 regard to Count 19.

19

20 Imposition of sentence.

21 Sentence of Kayishema.

22 This chamber sentences Clement Kayishema
23 to imprisonment for the remainder of his
24 life for Count 1, genocide.

25

KAYISHEMA & RUZINDANA

1 Imprisonment for the remainder of his life
2 for Count 7, genocide.
3
4 Imprisonment for the remainder of his life
5 for count 13, genocide, and imprisonment
6 for the remainder of his life for Count
7 19, genocide.
8
9 This chamber sentences Obed Ruzindana to
10 25 years imprisonment for Count 19.
11
12 Enforcement.
13 Concurrent terms.
14 Rule 101, capital (c), provides that when
15 the trial chamber imposes multiple
16 sentences, these shall indicate whether
17 the convicted person shall serve their
18 sentences consecutively or concurrently.
19 Here this chamber is imposing multiple
20 sentences, namely, four
21 remainder-of-his-life sentences against
22 Kayishema. Accordingly, this chamber
23 orders that Kayishema shall serve his four
24 remainder-of-life sentences concurrently.
25

1 Custody credit under Rule 101 d, capital
2 D.
3 Rule 101, capital d of the rules of
4 procedure and evidence requires that the
5 tribunal give custody credit to the
6 convicted person for the period of time
7 during which he was detained. This
8 chamber finds that Ruzindana being in
9 custody has earned custody credit. This
10 chamber instructs the Registrar to take
11 the necessary steps to inform and ensure
12 proper custody credit in the state
13 imprisoning Ruzindana remainder of his
14 life sentence.
15
16 Rule 101 capital a authorize the trial
17 chamber to sentence a convicted person to
18 imprisonment for a fixed term or the
19 remainder of his life.
20
21 This chamber, in imposing four concurrent
22 remainder-of-his-life sentences for
23 Kayishema, finds that the
24 remainder-of-his-life sentence is distinct
25 from life sentence under the laws of most

1 national jurisdiction.

2

3 This chamber gives the phrase remainder of
4 his life and under Rule 101 capital A of
5 the Rules of Procedure and evidence is
6 plain meaning.

7

8 Disposition.

9

10 Trial Chamber II for the foregoing
11 reasons, delivering its judgment and
12 sentence in public, pursuant to the
13 articles of the statute and the rules
14 concerning all the evidence before it,
15 concerning the general principles of
16 sentencing and applicable law concerning
17 the general practice regarding prison
18 sentences in Rwanda, concerning the
19 gravity of the offenses, concerning the
20 individual circumstances of Kayishema and
21 Ruzindana, considering the aggravating and
22 mitigating circumstances, considering the
23 prosecutor's sentencing brief, having
24 heard from Kayishema and Ruzindana
25 regarding the sentencing, having heard the
prosecutor on Kayishema and Ruzindana in

1 punishment of the above mentioned crimes
2 sentences Clement Kayishema to, Count 1,
3 genocide, imprisonment for the remainder
4 of his life. Count 7, genocide,
5 imprisonment for the remainder of his
6 life. Count 13, genocide, imprisonment
7 for the remainder of his life. And Count
8 19, genocide, imprisonment for the
9 remainder of his life.

10
11 In the sentence of Obed Ruzindana to Count
12 19, 25 years imprisonment, decides that
13 such shall begin to run from day -- from
14 day and from day and shall run in
15 accordance with rule 102(a). Decided
16 Kayishema shall serve his multiple
17 sentences concurrently. Decided Kayishema
18 and Ruzindana shall serve their sentences
19 in a state designated by the President of
20 the tribunal, in consultation with the
21 Chamber. Order the registrar to convey,
22 via a letter or note, verbal information
23 regarding the designation to the
24 designated States and the government of
25 Rwanda. Order the Registrar to convey

1 information to the designated State
2 regarding the date of arrest, custody
3 credits of Ruzindana in accordance with
4 Rule 101 d.
5
6 Order the Register to execute these
7 sentences immediately, and order the
8 Registrar, in the event of Kayishema or
9 Ruzindana's appeals, to maintain the
10 appellant in custody of the Tribunal until
11 such a time as the Appeals Chamber has
12 determined the matter.

13
14 Delivered on this 21st day of May, 21st
15 day of May, 1999. This is the sentencing
16 order.

17
18 It is so decided.

19
20 Yes, the summary of the judgment and
21 sentencing brief can be available in
22 French as well as in English and this then
23 concludes our business with regard to this
24 case. It's so decided.

25

1 (Hearing adjourned)
2 (Pgs 88 - 109 by R. Lear)
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C E R T I F I C A T E

I, and Rex Lear, Karen Holm, Noorjahan Pirani-Hirji, Official Court Reporters for the International Criminal Tribunal for Rwanda, do hereby certify that the foregoing proceedings in the above-entitled cause were taken at the time and place as stated; that it was taken in shorthand (stenotype) and thereafter transcribed by computer under our supervision and control; that the foregoing pages contain a true and correct transcription of said proceedings to the best of our ability and understanding.

I further certify that we are not of counsel nor related to any of the parties to this cause and that we are in no way interested in the result of said cause.

Noorjahan Pirani-Hirji (pgs. 1 to 50)
Noorjahan Pirani-Hirji

Karen Holm (pgs. 51 to 87)
Karen Holm

Rex Lear (pgs. 88 to 109)
Rex Lear