

ORAL SUMMARY - BAGOSORA ET AL.

1. Introduction

1. The judgement in this case, often called the Military I trial, is the result of several years of proceedings. Many of us in the courtroom today have been working with each other for most of its 409 trial days. We have considered the evidence of 242 witnesses from the Prosecution and Defence and poured through the more than 30,000 pages of transcripts, nearly 1,600 exhibits, and approximately 4,500 pages of the parties' final submissions. The amount of evidence in this case is nearly eight times the size of an average single-accused case heard by the Tribunal. Innumerable pages of pleadings have resulted in about 300 written decisions.

2. Like other multi-accused trials in the Tribunal, this case has been heard in segments with breaks in between. This has allowed the parties to prepare for the up-coming evidence. During the breaks, the Chamber has heard single-accused cases. Judges of this Chamber have been involved in nine such cases in parallel with this trial.

3. The case has not been without challenges. Much of the material has been translated or interpreted into three languages. Investigations were conducted and many witnesses were brought from throughout the world. Each of us in this courtroom today - the bench, the parties, the registry, the court reporters, the language section, the witness protection section, and the security officers - have at times endured late nights, long weekends and personal or professional sacrifice. The Chamber would like to extend its gratitude to each of you for your professionalism and contribution to international criminal justice.

4. The judgement amounts to several hundred pages. The Chamber will now read out a summary. Only the key findings can be highlighted here. The full text of the judgement will be available in the coming days, after the conclusion of the editorial process. It contains many incidents where the Prosecution did not prove its case. A French translation will be provided in due course. This summary is not binding. Only the written judgement is authoritative.

5. This case concerns Colonel Théoneste Bagosora, the *directeur de cabinet* of the Ministry of Defence, General Gratien Kabiligi, the head of the operations bureau (G-3) of the army general staff, Major Aloys Ntabakuze, the commander of the elite Para Commando Battalion, and Colonel Anatole Nsengiyumva, the commander of the Gisenyi operational sector. The Prosecution has charged each of them with conspiracy to commit genocide, genocide, crimes against humanity and war crimes, based on direct or superior responsibility, for crimes committed in Rwanda in 1994.

6. The Defence teams have challenged the credibility of the Prosecution's evidence. In particular, Bagosora and Kabiligi have contested that they had actual authority over members of the Rwandan military, and Nsengiyumva and Ntabakuze have disputed that soldiers under their command committed criminal acts. For some of the events the Accused have presented the defence of alibi, most notably Kabiligi. The Defence teams have also raised a number of procedural challenges, which are discussed in the judgement.

7. The evidence of this trial has reiterated that genocide, crimes against humanity and war crimes were perpetrated in Rwanda after 6 April 1994. The human suffering and slaughter were immense. These crimes were directed principally against Tutsi civilians as well as Hutus who were seen as sympathetic to the Tutsi-led Rwandan Patriotic Front (RPF) or as opponents of the ruling regime. The perpetrators included soldiers, gendarmes, civilian and party officials, *Interahamwe* and other militia, as well as ordinary citizens. Nevertheless,

as the evidence in this case and the history of the Tribunal show, not every member of these groups committed crimes.

8. Also other persons than Tutsis and moderate Hutus suffered in 1994. The process of a criminal trial cannot depict the entire picture of what happened in Rwanda, even in a case of this magnitude. The Chamber's task is narrowed by exacting standards of proof and procedure as well as its focus on the four Accused and the specific evidence placed before it in this case.

2. *Alleged Conspiracy to Commit Genocide*

9. The Prosecution alleges that the four Accused conspired amongst themselves and with others from late 1990 through 7 April 1994 to exterminate the Tutsi population. Reference is made to evidence - mostly circumstantial - which arguably forms links in a chain leading to a conspiracy to commit genocide in the months or years before April 1994.

10. The Defence teams dispute that there was a conspiracy. They argue in particular that the Prosecution relies on evidence lacking credibility and draws inferences from facts that have not been proven. Some teams have also advanced a number of alternative explanations for the events which unfolded. One of them is based on the view that it was the RPF which shot down President Juvénal Habyarimana's plane on 6 April, and that this event, together with other factors, triggered spontaneous killings.

11. These alternative explanations particularly relate to the count of conspiracy, but they have also been considered more generally. While some of them may provide a fuller picture of the events in Rwanda in 1994, they do not raise any doubt about the Chamber's overall characterisation of the events as genocide, or the key findings which form the basis of the judgement.

12. In relation to the Prosecution submissions about conspiracy, the Chamber points out, first, that the question is whether it is proven beyond a reasonable doubt, based upon the evidence in this case, that the four Accused committed the crime of conspiracy to commit genocide. Second, when confronted with circumstantial evidence, the Chamber may, according to established case law, only convict where conspiracy is the only reasonable inference. Third, the evidence implicates the Accused in varying degrees.

13. In its judgment, the Chamber has discussed the events referred to by the Prosecution, such as the work of the Commission which was set up in 1991 to define "the enemy"; subsequent meetings of soldiers discussing that definition; Bagosora's alleged utterance in 1992 that he was returning from the Arusha negotiations to prepare for the "apocalypse"; the four Accused's purported affiliation with certain clandestine organisations; an anonymous letter about a "Machiavellian plan"; warnings from an informant, Jean-Pierre, regarding a plan to kill large numbers of Tutsis; the preparation of lists of persons to be targeted; and the creation, arming and training of civilian militia.

14. With respect to the participation of Bagosora, Ntabakuze and Nsengiyumva in the Enemy Commission, the Chamber agrees that the over-emphasis on Tutsi ethnicity in the definition of the enemy was troubling. However, it has not found that the document or its circulation to soldiers in the Rwandan army by Ntabakuze in 1992 and 1993 in itself demonstrate a conspiracy to commit genocide.

15. The Chamber has found that some of the Accused played a role in the creation, arming and training of civilian militia as well as the maintenance of lists of suspected accomplices of the RPF or others opposed to the ruling regime. However, it was not proven

beyond a reasonable doubt that these efforts were directed at killing Tutsi civilians with the intention to commit genocide.

16. Several elements underpinning the Prosecution case about conspiracy were not supported by sufficiently reliable evidence, for instance Bagosora reference to preparing for the “apocalypse” in 1992, and the Accused’s alleged role in certain clandestine criminal organisations, including the AMASASU, the Zero Network or death squads. The testimony about a meeting in Butare in February 1994, where Bagosora and Nsengiumva allegedly drew up a list of Tutsis to be killed, was not considered credible. The Chamber has reached the same conclusion with respect to Kabiligi’s alleged speech about genocide in Ruhengeri in February 1994. There are also problematic aspects in connection with the anonymous letter outlining a “Machiavellian Plan” and the information provided by Jean-Pierre.

17. The Chamber certainly accepts that there are indications which may be construed as evidence of a plan to commit genocide, in particular when viewed in light of the subsequent targeted and speedy killings immediately after the shooting down of the President’s plane. However, the evidence is also consistent with preparations for a political or military power struggle and measures adopted in the context of an on-going war with the RPF that were used for other purposes from 6 April 1994.

18. Consequently, the Chamber is not satisfied that the Prosecution has proven beyond a reasonable doubt that the only reasonable inference to be drawn from the evidence is that the four Accused conspired amongst themselves or with others to commit genocide before it unfolded from 7 April 1994. The Chamber has acquitted them of Count 1 of each of their Indictments.

3. Kigali, 6-9 April 1994

19. Turning to the evidence supporting the other crimes, it is recalled that it was around 8.30 p.m. on 6 April 1994 that a surface-to-air missile fired from near the Kigali airport brought down the plane carrying President Habyarimana and other dignitaries. They were returning from peace negotiations in Dar es Salaam aimed at implementing the Arusha Accords. The blast heard across Kigali killed all onboard. As the plane fell to the earth, Rwanda descended into violence, and within 24 hours, armed hostilities resumed between the Rwandan military and the RPF.

20. In the evening of 6 April, shortly after the attack on the President’s plane, Bagosora chaired a meeting of the military Crisis Committee, which was composed of senior army and gendarmerie officers at Camp Kigali. General Roméo Dallaire, the force commander of UNAMIR, also participated. During the meeting, Dallaire proposed that the military contact Prime Minister Agathe Uwilingiyimana. He also suggested that she should address the country following the shooting down of the President’s plane. Bagosora refused. Later that night, Bagosora and Dallaire met with Jacques Roger Booh-Booh, the Special Representative of the Secretary General at his home. Bagosora again refused to consult with the Prime Minister.

21. After Bagosora’s return to Camp Kigali, he approved and signed a communiqué to be read over radio announcing the death of the President. It was issued on behalf of the Minister of Defence, who was abroad.

22. During the night, General Dallaire ordered that an UNAMIR escort be provided to the Prime Minister so that she could address the nation on Radio Rwanda in the morning. Around 5.00 a.m. on 7 April, 10 Belgian peacekeepers were dispatched to her residence. In the preceding hours, elements of the Reconnaissance Battalion and the Presidential Guard had surrounded the compound and at times fired on the gendarmes and Ghanaian peacekeepers

guarding the Prime Minister. After the Belgian peacekeepers arrived, the compound came under attack. The Prime Minister fled her home and hid at a neighbouring compound. She was found, killed and then sexually assaulted.

23. At approximately the same time, soldiers from the Presidential Guard killed four important opposition leaders or prominent personalities in the Kimihurura neighbourhood of Kigali, namely Joseph Kavaruganda, the President of the Constitutional Court; Frédéric Nzamurambaho, the Chairman of the *Parti Social Démocrate* and Minister of Agriculture; Landoald Ndasingwa, the Vice-chairman of the *Parti Libéral* and Minister of Labour and Community Affairs; and Faustin Rucogoza, an official of the *Mouvement Démocratique Républicain* and Minister of Information. The next day, soldiers killed Augustin Maharangari, the Manager of the *Banque Rwandaise de Développement*.

24. The Chamber simply cannot accept that elite units of the Rwandan army would spontaneously engage in sustained gun and grenade fire with Rwandan gendarmes and United Nations peacekeepers, murder and assault the Prime Minister of their country, and kill five prominent personalities, unless it formed part of an organised military operation pursuant to orders from superior military authorities.

25. The Belgian and Ghanaian peacekeepers were disarmed at the Prime Minister's residence and taken to Camp Kigali around 9.00 a.m. Shortly thereafter, a crowd of soldiers from the camp surrounded the Belgian peacekeepers and began assaulting them. Several Rwandan officers, including Colonel Nubaha, the camp commander, tried to verbally calm down the Rwandan soldiers.

26. While this was going on, around 10.00 a.m., Bagosora was chairing a meeting of high-ranking army and gendarmerie officers at an officer training school (ESM) close by. The participants were discussing the situation in the aftermath of the death of the President. Nubaha left the camp, entered the meeting, and informed Bagosora about the threat to the Belgian peacekeepers. The meeting proceeded but the participants later heard shots coming from the direction of the camp.

27. After the ESM meeting, Bagosora arrived at Camp Kigali. He saw the dead bodies of four Belgian peacekeepers and became aware that others were alive in the office. He claims that he was threatened and called a traitor by the mob of soldiers, and hence withdrew. The Chamber notes that no force was used to quell the volatile situation. Shortly after Bagosora's departure, camp soldiers killed the remaining peacekeepers with high powered weapons.

28. There were other organised killings involving the Rwandan military, at times working in conjunction with *Interahamwe* and other militiamen throughout Kigali, during the first 72 hours after the death of President Habyarimana. Roadblocks were established throughout the city, and soon became sites of open and notorious slaughter. At *Centre Christus*, soldiers killed 17 Rwandans with guns and grenades after locking them in a room. In Kabeza near Camp Kanombe, members of the Para Commando Battalion, went from house to house killing civilians. At the Kibagabago Mosque and the Church in the Remera area as well as the Saint Josephite Centre in Nyamirambo, soldiers in conjunction with militiamen attacked and killed Tutsis. The Chamber also finds convincing the testimony about a member of the Presidential Guard raping a Tutsi refugee during the attack at the Saint Josephite Centre, and that soldiers killed Tutsi civilians at a roadblock and a school in Karama.

29. During an attack on Gikondo parish on the morning of 9 April, the Rwandan army sealed off the Gikondo area and gendarmes moved systematically through the neighbourhood with lists, sending Tutsis to Gikondo parish. The gendarmes checked the identity cards of the Tutsis at the parish against their lists and then burned the identity cards. The *Interahamwe*

then proceeded to kill the more than 150 Tutsi refugees in an atrocious manner. The parish priests and UNAMIR military observers were forced to watch at gunpoint. Major Brent Beardsley of UNAMIR arrived shortly after the attack and described the terrible scene, which bore witness of killing, mutilation and rape. The *Interahamwe* returned later that night to finish off the survivors.

30. In its judgement, the Chamber has found that Bagosora was the highest authority in the Ministry of Defence and exercised effective control over the Rwandan army and gendarmerie from 6 until 9 April, when the Minister of Defence returned to Rwanda. For the legal reasons given in the judgment, he is therefore responsible for the murder of the Prime Minister, the four opposition politicians, the 10 Belgian peacekeepers, as well as the extensive military involvement in the killing of civilians in Kigali during this period. The same conclusion applies to Ntabakuze with respect to crimes committed by members of the Para Commando Battalion in Kabeza.

4. Subsequent Events in Kigali

31. On 11 April, thousands of Tutsi refugees fled from the *École Technique Officielle* (ETO) in Kigali after the Belgian peacekeepers withdrew from the position. They were stopped at the Sonatube junction by members of the Para Commando Battalion. Members of the battalion as well as *Interahamwe* then marched the refugees several kilometers to Nyanza hill. A pick-up truck filled with members of the Para Commando Battalion passed the refugees. At Nyanza, they were waiting. When the refugees arrived, the soldiers opened fire. The *Interahamwe* then killed the survivors with traditional weapons.

32. On 15 April, members of the Para Commando Battalion along with *Interahamwe* also participated in the killing of around 60 Tutsi refugees from *L'Institut Africain et Mauricien de Statistiques et d'Economie* (IAMSEA) in the Remera area of Kigali.

33. In view of Ntabakuze's command and control over members of the Para Commando Battalion, as well as the organisation of these crimes, the Chamber considers that he is responsible for the crimes committed by members of the Para Commando Battalion in Nyanza and at IAMSEA.

5. Gisenyi

34. In Gisenyi prefecture, soldiers, *Interahamwe* and other militiamen engaged in targeted killings of Tutsi civilians on the morning of 7 April in Gisenyi town and its surrounding area. In particular, one of the victims, Alphonse Kabiligi, had previously been identified as having ties with the RPF on a list maintained by the Rwandan army. On 8 April, at Mudende University, militiamen accompanied by a small group of soldiers separated Hutus from Tutsis and killed the Tutsi civilians. Nyundo parish was the site of repeated attacks by militiamen from 7 to 9 April.

35. Nsengiyumva's authority over these attacks is clear. The presence of soldiers, the systematic nature of the attacks, and the fact they were carried out nearly in parallel and almost immediately after the President's death reflect centralised coordination that would have come only through the highest operational authority in the prefecture. Moreover, at the time of these attacks, Bagosora was the highest authority in the Ministry of Defence with control over the army and gendarmerie. He is therefore also responsible for these killings.

36. In June 1994, Nsengiyumva sent militiamen from Gisenyi prefecture, whose training he oversaw, to participate in an operation in Bisesero in Kibuye prefecture in mid-June 1994. Once there, and joined by militia from Cyangugu, attacks were carried out against Tutsis refugees on Bisesero hill.

6. Kabiligi

37. With respect to Kabiligi, the Prosecution has alleged that on 28 January, he participated in a meeting in Cyangugu prefecture involving the distribution of weapons and another meeting to plan the genocide on 15 February in Ruhengeri prefecture. It is also alleged that he bears responsibility for crimes committed at various roadblocks in Kigali and its surrounding areas in April and June 1994.

38. Kabiligi has advanced an alibi for 28 January, 15 February and from 28 March until 23 April. The Prosecution's allegations are based on the evidence of single witnesses whose credibility is questionable. Furthermore, the Prosecution has not proven that the alibi is not true. This raises doubt about the specific crimes in which the Prosecution has implicated him.

39. The Prosecution also contends that Kabiligi bears criminal responsibility as a superior based on his rank, position, reputation and charismatic influence. It did not, however, present sufficient evidence to show the scope of his actual authority as a member of the army general staff. In contrast, the Defence's military expert and other witnesses reflected that this position did not entail command authority.

40. In the Chamber's view, some of the evidence reflected that Kabiligi played a more active role in the conduct of military operations than simply serving as a desk officer. However, the evidence is not clear as to the exact nature of his role, in particular whether it entailed command authority, or whether any of the operations, in which he may have participated, targeted civilians.

7. Findings

41. The Chamber has found that Théoneste Bagosora is responsible for the killings of Prime Minister Agathe Uwilingiyimana, Joseph Kavavuganda, Frédéric Nzamurambaho, Landoald Ndasingwa, Faustin Rucogoza, Augustin Maharangari, the 10 Belgian peacekeepers, Alphonse Kabiligi as well as the crimes committed at roadblocks in the Kigali area, *Centre Christus*, Kabeza, Kibagabaga Mosque, Kibagabaga Catholic Church, Karama school, the Saint Josephite centre, Gikondo Parish, Nyundo Parish, Mudende University and the targeted killings on the morning of 7 April in Gisenyi town. He is therefore guilty of genocide, crimes against humanity and war crimes.

42. The Chamber acquits Gratién Kabiligi of all counts.

43. The Chamber has found that Aloys Ntabakuze is responsible for the killings at Kabeza, Nyanza and IAMSEA. Based on these factual findings, he is guilty of genocide, crimes against humanity and war crimes.

44. The Chamber has found that Anatole Nsengiyumva is responsible for the targeted killings in Gisenyi town on the morning of 7 April, including Alphonse Kabiligi, as well as at Mudende University and Nyundo Parish. He also is responsible for sending militia to the attacks in the Bisesero area of Kibuye prefecture. Nsengiyumva is guilty of genocide, crimes against humanity and war crimes.

45. Finally, it is important to recall that Bagosora, Ntabakuze and Nsengiyumva have not been found guilty in relation to a considerable number of allegations with which they were charged. This is discussed in the judgement.

8. Sentencing

46. The Chamber has considered the gravity of each of the crimes for which Bagosora, Ntabakuze and Nsengiyumva have been convicted as well as aggravating and mitigating circumstances. The Chamber has the discretion to impose a single sentence and chooses to do so. Considering the relevant circumstances discussed in the judgement, the Chamber sentences Bagosora, Ntabakuze and Nsengiyumva each to a single sentence of life imprisonment.

47. In accordance with Rules 102 (A) and 103, Bagosora, Ntabakuze and Nsengiyumva shall remain in the custody of the Tribunal pending transfer to the state where they will serve their sentence.

48. The Chamber orders the immediate release of Kabiligi and requests the Registry to make the necessary arrangements.

49. This was the summary of the judgement. The trial proceedings in the Military I case have come to an end. The court is adjourned.

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