



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

TRIAL CHAMBER III

OR: ENG

Before Judges: Vagn Joensen, Presiding
Judge Bakhtiyar Tuzmukhamedov
Judge Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 5 November 2009

THE PROSECUTOR

v.

Michel BAGARAGAZA

Case No. ICTR-05-86-S

SENTENCING JUDGEMENT - SUMMARY

Office of the Prosecutor:

Mr. Wallace Kapaya
Mr. Patrick Gabaake
Mr. Moussa Sefon
Mr. Iskander Ismail

Counsel for the Defence:

Mr. Geert-Jan Alexander Knoops
Mr. Wayne Jordash
Ms. Anne-Marie Verwiël

1. Today, the Chamber delivers its Sentencing Judgement in the case of the Prosecutor versus Michel Bagaragaza. A summary of the Judgement will now be read out. The written reasoning for the Judgement will follow shortly and will be the only authoritative statement of the Chamber's findings and reasoning in this case.
2. Michel Bagaragaza was initially charged with conspiracy to commit genocide, genocide, and in the alternative, complicity in genocide. Another charge was later added to the Indictment.
3. On 15 August 2005, Bagaragaza voluntarily surrendered to the Tribunal and made his first initial appearance the next day where he pleaded not guilty to each of the three counts set forth in the Initial Indictment.
4. After failed attempts to transfer the case to a national jurisdiction and failed attempts to proceed with the case before the Tribunal on the basis of a guilty plea agreement between Bagaragaza and the Prosecution, the Parties filed another guilty plea agreement in August of this year. This time the Trial Chamber accepted the agreement after being satisfied that Bagaragaza's acceptance of the plea agreement was made freely and voluntarily and that it was informed and unequivocal. With leave from the Chamber, the Prosecutor filed an amended Indictment charging Bagaragaza with one count of complicity in genocide to which Bagaragaza pleaded guilty.
5. On 3 November 2009, the Chamber heard one character witness. On the following day, the Chamber admitted 12 written character statements into evidence as well as the Parties' joint statement on agreed facts concerning Bagaragaza's cooperation with the Prosecution. On that day, the Chamber also heard the Parties' submission on sentencing and Michel Bagaragaza's personal address expressing remorse for his actions.

The Accused

6. Michel Bagaragaza was born in 1945 in Bushiru region, Giciye *commune*, Gisenyi *préfecture*, in Rwanda. He is married and the father of eight children.
7. Before the genocide, Bagaragaza had become the Director General of OCIR/Thé, the government office that controlled the tea industry in Rwanda. In this capacity, he controlled eleven tea factories, which employed approximately 55,000 persons. He was also the vice-president of *Banque Continentale Africaine au Rwanda* ("BACAR") and a member of the *comité préfectoral* of the MRND political party in Gisenyi *préfecture*.

8. He has also confessed to being part of a powerful and tightly-knit group of people known as the *Akazu* that exercised substantial political and financial power in Rwanda and included the family members of the President of Rwanda.

Findings

9. In accordance with Bagaragaza's guilty plea, the Chamber has found him guilty of complicity in genocide for having substantially contributed to the killings of more than one thousand Tutsis who sought refuge at Kesho Hill and at Nyundo Cathedral. Thus, he aided and abetted the planners and principal perpetrators of the killings, including military and civilian leaders and members of the *Interahamwe* militia, members of the Presidential Guard, military personnel, and the staff of the Rubaya and Nyabitu Tea Factories. Bagaragaza knew that the planners and the principal perpetrator had the special genocidal intent to destroy, in whole or in part, the Tutsi ethnic group, but he did not himself share that special intent.

10. As to the particulars of Bagaragaza's actions, the Chamber, in accordance with his confession, has found that, on or about 8 April 1994, he participated in a meeting with the *bourgmestre* and the chief of the *Interahamwe* and assistant *bourgmestre* of Giciye *commune*, Thomas Kuradusenge, and learned that the two men had agreed that Kuradusenge would organise and lead attacks against Tutsis who had sought refuge at Kesho Hill and Nyundo Cathedral, and that reinforcements would continue to be sent to the attackers. Further, Bagaragaza authorised that vehicles and fuel from the Rubaya and Nyabihu Tea Factories be used to transport members of the *Interahamwe* for the attacks, that the attackers be provided with weapons, which he had allowed the army to conceal at the tea factories in 1993, and that personnel from the factories participate in the attacks. Moreover, he met with Kuradusenge two or three times between 9 and 13 April 1994 and on Kuradusenge's request gave him a substantial amount of money to buy alcohol for the *Interahamwe* in order to motivate them to continue with the killings in the Kabaya and Bugoyi areas.

DETERMINATION OF SENTENCE

11. In determining the sentence, the Chamber has considered a number of factors that will be addressed in the written reasons for the Judgement. In this summary, the Chamber will only address the most decisive factors for its sentencing decision.

12. Bagaragaza's offence relates to genocide which is the most heinous of crimes known to mankind. In this case, more than a thousand Tutsis who were fleeing their attackers were

killed indiscriminately, only because of their ethnicity. With respect to Bagaragaza's mode and degree of participation in that crime, however, the Chamber notes that Bagaragaza is not charged with participating in the planning or execution of the killings or with aiding and abetting the planners and principal perpetrators while sharing their genocidal intent. His offence is aiding and abetting the genocidaires to a substantial degree with knowledge of their genocidal intent. Further, there is no basis in the agreed facts presented to the Chamber to assume that Bagaragaza consented to the military's concealment of weapons at the tea factories in 1993 so that they could be used for genocidal acts, or that he otherwise acted with premeditation when he complied with the requests of the local political and *Interahamwe* leaders. The Defence has led credible evidence that Bagaragaza in his personal and professional life showed no bias against the Tutsis and was on excellent terms with them. Therefore, and considering the circumstances, it is likely that, when agreeing to provide assistance to the genocidaires, he was motivated by concern for the safety of his family and himself. However, there is no sufficient basis in the agreed facts or the evidence of character witnesses to conclude that Bagaragaza, being a very resourceful person, would have faced imminent danger, had he not complied with the requests of the local political and *Interahamwe* leaders.

13. With respect to aggravating and mitigating factors, the Chamber notes that the Prosecution has not made any submissions on particular aggravating factors and that it has concurred with the Defence's submissions on particular mitigating factors.

14. The Chamber acknowledges as particularly important mitigating factors that Bagaragaza surrendered voluntarily to the Tribunal in August 2005, that he pleaded guilty when the charges were amended to comport with his confession, and that he thereby and in his public address to the Court has shown genuine remorse for his actions.

15. Even more important, however, is the fact that Bagaragaza has provided invaluable assistance to the Prosecution in its investigations. His assistance started before he was indicted without concern for self-incrimination, continued without reservation after he was indicted and detained, and he has indicated his willingness to also assist in the future. Bagaragaza has thereby, to a remarkable degree, contributed to the process of truthfinding with respect to the Rwandan tragedy and to national reconciliation. This warrants a substantial reduction of the sentence that the gravity of his offence would otherwise carry.

16. The Parties have made a joint recommendation for a prison term of six to ten years. The Chamber is not bound by the joint recommendation, but has taken it into due consideration.

17. Mr. Bagaragaza, will you please stand up while your sentence is pronounced.

18. The Court sentences Michel Bagaragaza to a prison term of 8 years with credit for the time he has spent in detention since his arrest on 15 August 2005 and will spend in detention until he can start serving his sentence.

19. Mr. Bagaragaza, you may sit down. It seems to follow from the terms of the Joint Guilty Plea Agreement that there will be no appeal from either side against this Judgement. If that is the case, the President of the Tribunal will as soon as possible in accordance with his practice direction on this issue, designate in which State Bagaragaza shall serve his sentence.

20. At the conclusion of this case, the Bench wishes to commend Counsel on both sides and their teams for the exemplary way in which they have cooperated to have this case completed in an expeditious and just manner.

21. Thanks to staff.