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JUDGMENT SUMMARIES: INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

WAR CRIMES RESEARCH OFFICE: COVERAGE OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

The Prosecutor v. Augustine Ngirabatware, Case No. **ICTR-99-54-T**

On December 20, 2012, Trial Chamber II of the International Criminal Tribunal for Rwanda (ICTR) issued its judgment against Augustine Ngirabatware, who had served as the Minister of Planning in the Interim Government during the 1994 Rwandan genocide, as a member of the technical committee of Nyamyumba commune, and as a high-ranking member of the Mouvement Révolutionnaire National pour la Développement (MRND) party. The prosecution charged Ngirabatware with several crimes, including genocide, complicity in genocide, direct and public incitement to genocide, conspiracy to commit genocide, and rape and extermination as crimes against humanity. However, in its closing arguments, the prosecution withdrew the charge of conspiracy to commit genocide. In its judgment, the Trial Chamber found the accused guilty of genocide, direct and public incitement to commit genocide, and rape as a crime against humanity, while dismissing the charge of complicity in genocide as subsumed within the genocide conviction. It also found Ngirabatware not guilty of extermination as a crime against humanity. The Chamber sentenced Ngirabatware to thirty-five years' imprisonment.

The prosecution alleged that under Article 6(1) of the Statute of the ICTR, Ngirabatware bore individual criminal responsibility for "planning, instigating, ordering, committing or otherwise aiding and abetting" the commission of genocide. The prosecution cited a number of facts to support its theory. First, according to the prosecution, in early 1994 Ngirabatware attended a meeting at Kanyabuhombo School with a few hundred people in attendance and spoke for at least an hour about protecting Hutu interests by fighting against the Tutsis. Ngirabatware promised to provide weapons to youths for this fight. The prosecution further alleged that in February

1994, following the murder of Coalition pour la Défense de la République (CDR) Chairman Martin Bucyana, Ngirabatware went to the Electrogaz and Cyanika-Gisa roadblocks to address hundreds of people. At the Cyanika-Gisa roadblock, he told the crowd to "kill Tutsis." In addition, the prosecution alleged that, following the death of President Habyarimana on April 7, 1994, Ngirabatware distributed weapons including machetes, firearms, and grenades on two separate occasions at the Bruxelles and Gitsimbi/Cotagirwa roadblocks, where members of the Interahamwe were present. Ngirabatware stated that he did not want to see any Tutsis in Nyamyumba commune. While at the Bruxelles roadblock, Ngirabatware also allegedly told Bagango, the Bourgmestre of Nyamyumba commune, to find and kill an individual Tutsi named Safari Nyambwega, who was in fact attacked and killed later that evening by Interahamwe.

Taken together, the prosecution asserted, these facts established that the accused had participated in a joint criminal enterprise whose purpose was to carry out genocide against Tutsis in the Nyamyumba commune, or that he otherwise bore direct responsibility for acts of genocide in that locale. Furthermore, the prosecution alleged that Ngirabatware bore responsibility for the rape of a Tutsi named Chantal Murazemariya by members of the Interahamwe, which was carried out as part of a larger attack targeting the Tutsi population.

The defense denied all of the charges and argued that from April 6 to 12, 1994, Ngirabatware was in Kigali and that, when he learned of the President's plane crash, soldiers escorted him and his family to the Presidential Guard Camp (PGC) in that city. The defense further argued that Ngirabatware never visited Kanyabuhombo School after its inauguration in 1992 and did not distribute weapons there in 1994. Defense also asserted that no women were raped in the Rushubi secteur during the genocide. Finally, the defense disputed the allegations relating to the in Electrogaz and Cyanika-Gisa,

stating that Ngirabatware was not present at these locations, nor did he encourage the crowd to kill Tutsis.

Dismissing the defense's arguments, the Chamber found Ngirabatware guilty for instigating and aiding and abetting genocide under Article 2 of the ICTR Statute, which states that a person is guilty of genocide where, *inter alia*, he or she commits acts such as killing members of an ethnic group with specific intent to destroy the group. Notably, although the prosecution put forward a series of acts that allegedly constituted direct participation in the crime of genocide, the Chamber found that the prosecution only proved one instance beyond a reasonable doubt, namely the distribution of weapons at the Bruxelles and Gitsimbi/Cotagirwa roadblocks on April 7, 1994. Thus, although the Chamber found that, as a general matter, the prosecution had successfully established that Ngirabatware participated in a joint criminal enterprise aimed at destroying the Tutsi population, because the prosecution had only alleged in relation to the particular events of April 7 that the accused instigated and/or aided and abetted genocide, the Chamber convicted Ngirabatware for genocide only on the basis of these modes of liability.

As to the charge of direct and public incitement to genocide, the Chamber declined to find the accused guilty in relation to a speech he delivered at the Electrogaz roadblock to nearly 400 persons, in which Ngirabatware stated, "I have just told the people present here that this roadblock is not enough. We need another one because Tutsis may easily cross this roadblock." While the Chamber determined that this speech was "public" in that it was delivered to the 400 people gathered at the roadblock and addressed to this public audience, the Chamber declined to find that the speech constituted "direct" incitement to commit genocide, determining that the "context surrounding Ngirabatware's speech and evidence of how the audience understood the speech [was] insufficient to establish that it was a direct incitement to commit genocide."

In contrast, the Chamber did convict Ngirabatware of direct and public incitement to genocide on the basis of a speech he gave at the Cyanika-Gisa roadblock. In that incident, the accused addressed a group of 150 to 250 people, telling them to “kill Tutsis.” Once again, the Chamber determined that the instruction was “public,” given the large group to which it was delivered. It also determined that the incitement was “direct,” as the “instruction to ‘kill Tutsis’ objectively and unambiguously called for an act of violence prohibited by” the ICTR Statute. Lastly, the Chamber observed that it had “no doubt” that Ngirabatware made the statement with the requisite intent to directly incite genocide.

Turning to the rape charge, the Chamber found Ngirabatware guilty of rape as a crime against humanity based on his participation in a joint criminal enterprise formed with the purpose of destroying the Tutsi population in Nyamyumba commune. Although the Chamber found that the rape of Chantal Murazemariya by members of the Interahamwe was not part of the initial joint criminal enterprise, it determined that the rape was a natural and foreseeable consequence of the enterprise. The Chamber further concluded that Ngirabatware significantly contributed to the enterprise by distributing weapons and encouraging Interahamwe to kill Tutsis and, in so doing, willingly took the risk that rape would be committed. Finally, the Chamber found Ngirabatware not guilty of extermination as a crime against humanity after determining that the Prosecution had failed to establish beyond a reasonable doubt the accused’s responsibility for any of the incidents alleged in support of the charge of extermination in the indictment.

Jacqueline Niba, a J.D. candidate at the American University Washington College of Law, wrote this summary for the Human Rights Brief. Katherine Cleary Thompson, Assistant Director of the War Crimes Research Office, edited this summary for the Human Rights Brief.

**THE PROSECUTOR V. CALLIXTE
NZABONIMANA, CASE NO.
ICTR-98-44D-T**

On May 31, 2012, Trial Chamber III of the International Criminal Tribunal for Rwanda (ICTR) issued its judgment in the *Nzabonimana* case. The prosecution

charged Callixte Nzabonimana with five counts – genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, and extermination and murder as crimes against humanity – in relation to events occurring from April to July 1994 in Gitarama prefecture in Rwanda. The Trial Chamber found Nzabonimana guilty of four of the five charged counts: genocide, for instigating the killing of Tutsis taking refuge at the Nyabikenke Commune Office; conspiracy to commit genocide, for entering into an agreement with members of the Interim Government on April 18, 1994 to kill Tutsis in Gitarama prefecture and for entering into an agreement with Jean Damascene Ukirikyeyezu in May 1994 to kill Tutsis in Gitarama prefecture; direct and public incitement to commit genocide, for statements inciting the killing of Tutsis at the Butare Trading Centre, at Cyayi Centre, and at a meeting at the Interim Government’s headquarters in Murambi; and extermination as a crime against humanity for instigating the killing of Tutsis taking refuge at the Nyabikenke Commune Office. The Chamber dismissed the charge of murder as a crime against humanity based on a finding that the charge was cumulative to the charge of extermination as a crime against humanity. The Chamber sentenced Nzabonimana to life imprisonment.

During the relevant time, Nzabonimana was the Rwandan Minister of Youth and Associative Movements, and also served as the chairman of Mouvement Révolutionnaire National pour la Développement (MRND) party in Gitarama prefecture. According to the prosecution, Nzabonimana used his positions of authority within the Interim Government and in Gitarama prefecture to wield influence over the local population by planning, instigating, ordering, or committing the alleged crimes, or otherwise aiding and abetting in the planning, preparation, and execution of the crimes. The defense disputed the charges by challenging the credibility of the prosecution’s evidence and pointing to alleged contradictions, omissions, and untruthful statements in the prosecution’s witnesses’ testimonies.

While the Chamber did note several instances in which a factual allegation was supported solely by the uncorroborated testimonial evidence of one witness, the defense arguments failed to persuade the Chamber. Where evidence was uncorroborated, the Chamber dismissed the evidence

upon finding that the evidence of the single witness was either not credible or was insufficient to support a finding beyond a reasonable doubt.

The defense also raised an alibi in relation to allegations by the prosecution that Nzabonimana participated in meetings and distributed weapons in Nyabikenke Commune between April 8 and 12, 1994. Specifically, the defense countered these allegations by stating that Nzabonimana could not have committed the crimes with which he was charged because he was in Kigali from April 6 to 12, 1994. The prosecution submitted that the alibi evidence was not credible and did not show that Nzabonimana was not actually present during the crimes alleged. It also provided a witness who placed testified that Nzabonimana was at or near the scene of the alleged crimes.

While the Chamber determined that Nzabonimana was in fact in Kigali during certain intervals between April 6 and 12, it had doubts as to the credibility of key parts of Nzabonimana’s alibi. Further, the Chamber determined that the defense had failed to comply with Rule 67(A) (ii) of the ICTR’s Rules of Procedure and Evidence, which requires that an accused provide notice of an alibi defense to the prosecution in a timely manner. Although Rule 67(B) makes clear that the defense cannot be precluded from presenting a defense of alibi on the basis of untimely disclosure, it does allow the Chamber to consider the failure of an accused to file his notice of alibi within the prescribed time limit when assessing the credibility of the alibi. In light of this provision, and the Chamber’s doubts as to the overall credibility of alibi defense, the Chamber dismissed Nzabonimana claim that he was in Kigali continuously from April 6 to 12, 1994.

As noted above, one of the charges against the accused was that he was responsible for genocide. Specifically, the prosecution alleged, *inter alia*, that Nzabonimana bore responsibility for the crime of genocide based on events that occurred on April 14, 1994 at the Cyayi Centre, just before an attack on Tutsi refugees, who had gathered to seek shelter at the Nyabikenke Commune Office. According to the Prosecution, the accused held a meeting at this location on the afternoon of April 14, which was attended by approximately thirty to forty people. At

the meeting, Nzabonimana told his audience they should not “continue to eat the cows of Tutsis who have sought refuge at the communal office. What really matter[s] are . . . the owners of the cows.” That night, between 3:00 a.m. and 4:00 a.m., Hutu civilians and Commune policemen launched an attack upon the Commune Office, which resumed during the day on April 15. The Chamber found beyond a reasonable doubt that, during these attacks, between fifteen and sixty Tutsis were killed. The Chamber also found that the prosecution proved beyond a reasonable doubt that, through his words and actions at Cyayi Centre the day before, Nzabonimana had instigated this attack upon the office, and that he acted with genocidal intent in doing so, convicting him on the charge of genocide.

The prosecution also successfully proved the charge of conspiracy to commit genocide. In particular, the Chamber found that, beginning on April 18, 1994 at a meeting at the Interim Government’s headquarters in Murambi and through subsequent discussions, Nzabonimana agreed with other members of the Interim Government to encourage the killing of members of the Tutsi population, with the specific intent to destroy the Tutsi population, in whole or in part, in Gitarama prefecture. The Chamber further considered that, in late April or early May 1994, Nzabonimana worked with Jean Damascene Ukirikyeyezu who was in charge of training members of the

Civil Defense in Gitarama prefecture to distribute weapons in Tambwe Commune. In addition, the Chamber found that in May, the two men encouraged the killing of members of the Tutsi population in Tambwe Commune through the creation of a “Crisis Committee” for the commune. As the Chamber explained, the Interim Government adopted a policy throughout Rwanda of creating such Crisis Committees in an attempt to “disguise” the killing of Tutsis from the international community. Considering the concerted and coordinated actions of Nzabonimana and Ukirikyeyezu, the Chamber was convinced beyond a reasonable doubt that an agreement between Nzabonimana and Ukirikyeyezu materialized in May 1994, with the specific intent to destroy the Tutsi population, in whole or in part, in Gitarama prefecture, and that this finding supported the charge of conspiracy to commit genocide.

The Chamber found beyond a reasonable doubt that the accused committed direct and public incitement of genocide. As an initial matter, the Chamber reiterated that, to establish the crime, the prosecution must establish that the accused engage in “direct” incitement, meaning that it must be “a direct appeal to commit an act” of genocide, as opposed to a “vague or indirect suggestion.” Furthermore, the Chamber explained, the incitement must be “public,” recalling that the Appeals Chamber has noted that “all convictions before the Tribunal for direct and public

incitement to commit genocide involve speeches made to large, fully public assemblies, messages disseminated by the media, and communications made through a public address system over a broad public area.” Among the incidents found by the Chamber to meet the definition of direct and public incitement to genocide in this case was a speech made by the accused on or about April 12, 1994 at the Butare Trading Centre in Rutobwe Commune. Specifically, the Chamber found that, at an impromptu meeting attended by about twenty people, Nzabonimana told those gathered to kill Tutsis and to take the Tutsis’ belongings. He also instructed those gathered at the meeting to pursue two specific Tutsis who had fled the scene in fear after the accused asked if anyone present was a Tutsi. Although the prosecution failed to prove that any Tutsis were in fact killed as a result of the words spoken by Nzabonimana at this meeting, direct and public incitement is an inchoate crime, and thus the accused could be convicted on his words and intent alone.

Davina Ugochukwu, a L.L.M. candidate at the American University Washington College of Law, wrote this summary for the Human Rights Brief. Katherine Cleary Thompson, Assistant Director of the War Crimes Research Office, edited this summary for the Human Rights Brief. HRB

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