



# ICTR NEWSLETTER

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United Nations International Criminal Tribunal for Rwanda

## 15 Years Imprisonment for Bisengimana

On 13 April 2006 Trial Chamber II of the United Nations International Criminal Tribunal for Rwanda sentenced Paul Bisengimana (58), former Bourgmestre of Gikoro Commune, Kigali-Rural Prefecture, to 15 years in prison after it convicted him of extermination as a crime against humanity. The Chamber ruled that the accused was entitled to credit for the time served since the start of his detention on 4 December 2002.

For purposes of sentencing, the Chamber composed of Judges Arlete Ramarosan, presiding, William H. Sekule and Solomy Bossa, considered as aggravating factors, the gravity of the

crimes committed, the official position of the accused as Bourgmestre of Gikoro commune during the events, and the fact that he was an educated person.

The Chamber also found the following factors to be mitigating: the Accused's guilty plea with publicly expressed remorse, his individual and family situation in the sense it offers him chances of rehabilitation, his good character prior to the events, his lack of prior criminal conviction, his good conduct in detention, and his age and ill health.



Chamber considered that in light of the official position of Bisengimana and the number of persons killed, more than a thousand in his presence at Musha Church, a stiffer sentence was appropriate.

On 17 November 2005, during his further appearance, the Accused pleaded guilty to the counts of murder and extermination as crimes against humanity. However the Chamber rejected the joint motion for a guilty plea because it contained some discrepancies and the plea was not unequivocal. On 7 December 2005 Bisengimana pleaded guilty to aiding and abetting murder and extermination as crimes against humanity. The Chamber accepted his plea and found him guilty of murder and extermination as crimes against humanity.

Bisengimana was arrested in Mali on 4 December 2001 and transferred to the United Nations Detention Facility in Arusha on 11 March 2002. At his initial appearance on 18 March 2002, he pleaded not guilty to all 12 counts against him. On 19 October 2005, the Parties filed a joint motion for a guilty plea.

He was represented by Catherine Mabile from France. The Prosecution was led by Senior Trial Attorney, Charles A. Adeogun-Phillips.

As to the form of participation by the Accused, alleged as a mitigating circumstance by the Defence, the Chamber noted that even if Bisengimana did not personally commit any violent act, he was aware that an attack would be launched against the refugees at Musha church using weapons that had been previously distributed, and that he had the means to challenge the killings but chose not to. Moreover, the Chamber recalled that the Accused was present when the attack was launched and more than a thousand people were murdered at Musha Church, and that he knew that his presence would encourage the perpetrators of the crimes. The Chamber also noted that the accused was a person of authority with an obligation to protect the refugees. Therefore, the Chamber rejected this as a mitigating circumstance.

The Chamber also rejected the alleged assistance to victims pleaded by the Defence.

During the Pre-sentencing Hearing on 19 January 2006, the Defence pleaded for a sentence of 12 years imprisonment whereas the Prosecutor pleaded for a sentence of not less than 14 years in prison. Because the Accused was not being sentenced for the count of murder as a crime against humanity, the

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## Final Submissions Presented in Rwamakuba's Trial

The Prosecution and the Defence in the case of André Rwamakuba, former Minister of Primary and Secondary Education, on Friday 21 April 2006, presented their final submissions before Trial Chamber III of the United Nations International Criminal Tribunal for Rwanda.

The Prosecution called for the conviction of the Accused and the imposition of a life imprisonment sentence. It argued that evidence presented in court proved that the accused committed genocide, "the crime of crimes."

It added that evidence shows that the accused conspired with other government officials in developing a plan to remain in power by exterminating the civilian Tutsi population and members of the Hutu opposition.

The Prosecution further argued that Rwamakuba took part in numerous cabinet meetings between 9 April and 14 July 1994 in which he was briefed on the situation with regard to the massacres of the civilian population. According to the Prosecution, on several occasions during these meetings, those present demanded weapons to distribute in the home prefecture of Rwamakuba, the latter knowing that the weapons would be used in the massacres.

During the same period, the Prosecution argued, the Accused traveled, either on his own or with others, to several prefectures where he urged the population to commit massacres and commended the perpetrators thereof.

The Defence called for his acquittal arguing that evidence it presented proves that Rwamakuba never committed the crimes and to the contrary he saved several people who could have been killed.

The trial is before judges Charles Michael Byron, presiding, Karin Hökberg, and Gberdao Gustave Kam. It began on 9 June 2005. The Prosecution finished its case on 13 September 2005 after calling 18 witnesses over 39 trial days. The Defence finished its case on 9 February 2006 after presenting 29 witnesses over 39 trial days.

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**Excerpts from a paper "Criminalizing and Penalizing Genocide: The Experience of the International Criminal Tribunal for Rwanda; presented by Alex Obote-Odora, Special Assistant to the Prosecutor, ICTR on 7 April 2006 at the African Union Headquarters Addis Ababa, Ethiopia Commemorating the 12th Anniversary of the Rwanda Genocide"**

Most perpetrators of genocide never stand trial for their crimes before international tribunals. According to United Nations Security Council Resolutions 1503 (2003) and 1534 (2004), the ICTR shall conclude all trial activities by 2008 and appeals by 2010.

Considering the vast numbers who are alleged to have taken part in the genocide, these cut-off dates have the potential of leaving many perpetrators free and unpunished. However, partly because of the jurisprudence developed by the ICTR, and partly because of the role of human rights organisations, the perpetrators who will escape prosecution by the ICTR may remain fugitives for the remainder of their natural life. It is necessary to acknowledge that law does not cease to exist because it is broken or even because it is broken in a large scale. Neither does the escape of some criminals undermine international criminal justice. What is important is that all efforts must be made by the international community, including the African Union, to prevent genocide. Prosecution must be the last resort and only as an acknowledgement of the failure of the international community to protect the victims of genocide.

Since the ICTR will cease all activities by 31 December 2010, the importance and relevance of domestic prosecution of international crimes must be given special attention and encouraged at this early stage. The ICTR is designed to prosecute only those responsible for the most serious violations of international humanitarian law, and not every perpetrator of genocide, crimes against humanity or war crimes. Many perpetrators will not therefore have been investigated or prosecuted by the Prosecutor when the ICTR closes down in 2010. It appears that Rwanda is also not ready to try all the perpetrators it has apprehended.

However, for the perpetrators investigated by the Prosecutor, there are two options: first, to transmit the files to a national jurisdiction and, second, to transfer the cases under Rule 11 *bis* of the Rule of Procedure and Evidence. In the first instance, the Prosecutor may transmit, to a national jurisdiction, case files of the cases investigated, with or without an indictment. The Prosecutor does not need an order of a Trial Chamber to effect the transfer. Instead, the Prosecutor transmits the file directly to the Prosecutor General, or the Minister of Justice of a given State. To date, the Prosecutor has transmitted thirty case files to the Rwanda government.

The second option is the use of Rule 11 *bis* of the ICTR Rules of Procedure and Evidence. This procedure allows the Prosecutor, with the approval of a Trial Chamber, to refer cases to national jurisdictions for trial. Relying on Rule 11 *bis*, the Prosecutor has, so far, filed one motion to transfer a case to a national jurisdiction, and there are ongoing negotiations with member states of the United Nations to accept and prosecute other cases.

The experience of international criminal investigation and prosecution informs us that the enormous amount of money spent on investigation, tracking fugitives, looking for and interviewing witnesses, and conducting these complex trials could have been effectively spent in preventing the genocide. By preventing genocide, no victims would be killed and the money spent on criminal investigation and prosecution could be used



on development projects and other useful and beneficial socio-economic activities.

The ICTR experiences further tell us of the failure of the international community to protect the most vulnerable members of society. In Rwanda, instead of reinforcing UNAMIR, and thus protecting the Tutsi civilian population, the United Nations Security Council withdrew its troops. The money spent on the ICTR could have provided more than adequate number of troops not only stop to, but also to prevent, the genocide.

Prevention of genocide is the first line of defence. The ICTR experience informs us that genocide in Rwanda occurred during civil war. A study of the history of genocide shows that all recorded genocides took place during, or alongside wars. War propaganda tends to influence even tolerant individuals and provides the rationale for killing people one does not identify with. War propaganda demonises the 'enemy' and encourages the deliberate killing of the enemy, particularly when whole communities are designated as the enemy.

The African Union, with the support of the international community, must create, develop or strengthen capacity of the state to prevent conflict at local and national levels. Because prevention mechanisms are not always effective, it is necessary to establish modalities for the protection of civilian populations, especially women, children, the elderly and the infirm. This is a legal obligation imposed on states by Article 3 Common to the 1949 Geneva Conventions and its Additional Protocol II of 1977. Many Tutsi civilians would have been saved had there been a process in place for protecting the civilian population, including women and children, during the civil war in Rwanda.

## News from Kigali

### • ICTR Facilitates Visit of S. African Students Rwanda

Thirteen law students from the Human Rights Centre of the University of Pretoria visited the Umusanzu Information Centre from 4 to 13 April 2006. This is an ongoing programme of the ICTR since 2002 for students from South Africa to Rwanda. Other students have also been undergoing internship programmes at the Tribunal's Headquarters in Arusha, Tanzania.

The students were researchers on Human Rights and Conflict Management. They were interested in the work of the ICTR, the causes of genocide, the operation of the Rwandan judiciary and the achievements in Rwanda as regards unity and reconciliation.

During their stay in Rwanda, they received briefings from the:

- OIC of Investigations (OTP), Kigali, Mr. Alfred Kwende on the ICTR, its objectives, and achievements so far, problems experienced and



issues concerning the Tribunal's completion strategy for finishing trials in 2008 and appeal cases by 2010;

- Vice President of the supreme court, M. Sam Rugege on the operation of the Rwandan judiciary prior to and after the genocide;
- Gacaca Secretariat on the operation of traditional justice and the achievements and problems faced by this form of local justice;
- Deputy Prosecutor General, Mr. Martin Ngoga, about the operation of the Prosecutor and the existing cooperation between the ICTR and the Rwandese judiciary;
- Officials from the Centre of Conflict Management of the University of Rwanda in Butare;
- Secretariat of the Belgian Civil organization that deals with advocates and lawyers called "Lawyers Without Borders", on the objectives of this organization and its role and support to the Rwandan judicial sector;
- Executive Secretary of the National Unity and Reconciliation Commission, Fatuma Ndingiza, on the current situation in the country as regards unity and reconciliation; and
- Officials of the Umusanzu Information Centre, about the ICTR'S Outreach Programme



Various documentaries on the Rwanda genocide and some of the trials at the Tribunal in Arusha were screened for the visitors.

The students visited the major genocide memorial sites in the country and had a chance to visit the TIG (Community Service of the General Interest) Centre, in Gitarama.





## News from The Hague

### • Activity of the Appeals Chamber

The Appeals Chamber disposed of three interlocutory appeals in the *Karemera et al.* case and rendered nine pre-appeal orders or decisions during April. The *Cyangugu* and *Gacumbitsi* appeal judgements are presently under deliberation as are three interlocutory appeals in the *Karemera et al.* case, a request for review in the *Niyitegeka* case, and a request for reconsideration in the *Rutaganda* case. The Appeals Chamber is also preparing the *Ndindabahizi* and *Media* appeals for hearings and is considering pre-appeal matters in the *Simba* and *Muhimana* cases.

### • Testimony of a Witness by Video-Link from The Hague to Arusha

Following the issuance of an Order on 15 February 2006 by Trial Chamber II, composed of Judges William H. Sekule (Presiding), Arlette Ramarosan and Solomy Balungi Bossa, the ICTR Appeals Chamber Support Unit organised and covered the taking of a testimonies of a witness by video-link in the *Nyiramasuhuko et al.* case from 03 to 04 April 2006 in The Hague pursuant to Rules 71(A) and (D) of the Rules of Procedure and Evidence of the Tribunal.

### • Visitors to the ICTR, The Hague

Mr. Daouda Niang, Chief, LSS, visited The Hague from 10 to 13 April 2006, where he held working sessions with members of the Language Services Sub-Unit in The Hague. He also held discussions with Mr. Koffi Afande, OIC, ICTR Appeals Chamber Support Unit, a team of the ICTR Appeals Chamber staff led by Ms. Catherine Marchi-Uhel, Head of Chambers, and Mr. Marc Dubuisson, Head of the Division of Court Services of the ICC. Mr. Niang held meetings on best



Mr. Daouda Niang, Chief, LSS, Ms. Fatou Fall, Translator, and Mr. Charles Zama, Coordinator, LS Sub-Unit, The Hague

practices and inter-tribunal co-operation with Mr. Edaly Gassama, Head of the Department of Linguistic Services of the ICJ, Ms. Christina Zorich, Chief of the Language and Conference Services Section of the ICTY and Ms. Alexandra Oliver-Tomic, Head of the Conference Interpretation and Translation Section of the ICC. Mr. Niang was accompanied in these meetings by Mr. Charles Zama, Coordinator, and Ms. Fatou Fall, Translator, Language Services Sub-Unit in The Hague.

### Visitors to the ICTR During the Month of April 2006

1. 1 April 2006: 2 NGO VIPs from ARCT, Ruhuka  
One Counsellor from AVEGA
2. 3 April 2006: Ambassador of Palestine to Tanzania,  
H.E. Mr. Yusuf, El Habab  
45 Students from the school of International  
Training
3. 4 April 2006: 40 Managers from Arusha Cuttings;  
VIP visit from Mr. Tony Brennan, Deputy High  
Commissioner from the UK
4. 5 April 2006: 7 officials attending the 7<sup>th</sup> summit of  
the EAC headed by Amb. Lawrence Ishengoma,  
the Director of Water supplies  
Visit by 11 volunteers from Cross Cultural Solutions
5. 6 April 2006: Visit by the Development Director of  
the Irish Embassy, Mr. Paul Sherlock
6. 7 April 2006: 35 students from the Arusha Meru  
School, including 7 teachers
7. 10 April 2006: Mr. Kulwa, General Manager of  
AICC
8. 11 April 2006: 19 students from the Danderyds  
Gymnasium in Sweden including 3 teachers
9. 11-12 April 2006: Director, Department of Security  
and Safety Section in New York H/Qs - Mr. Bani  
Faris
10. 13 April 2006: 2 footballers from the Kenyan AFC  
Leopards team
11. 27 April 2006: Students from Ms TCDC, Arusha;  
2 Students from University of Minnesota  
Students from ESAMI, led by the Director of  
Management Training, Mr. Bachu
12. 28 April 2006: 4 tourists.

### Judicial Decisions of the ICTR between 1 March and 31 March 2006

Date	Case	Record Number	Title	TC
28/04/2006	Karemera et al.	ICTR-98-44-2333	DECISION ON JOSEPH NZIRORERA'S INTERLOCUTORY APPEAL	TC 3
27/04/2006	Karemera et al.	ICTR-98-44-2332	DECISION ON DEFENCE MOTIONS FOR DISCLOSURE OF INFORMATION OBTAINED FOR JUVENAL UWILINGIYIMANA	TC 3



Date	Case	Record Number	Title	TC
27/04/2006	Zigiranyirazo	ICTR-01-73-0275	DECISION ON THE DEFENCE MOTION FOR DISCLOSURE OF VOIR DIRE EVIDENCE	TC 3
26/04/2006	Muhimana	ICTR-95-1B-0180	DECISION ON APPELLANT'S REQUEST FOR EXTENSION OF TIME TO FILE ADDITIONAL EVIDENCE MOTION	TC 3
26/04/2006	Karemera et al.	ICTR98-44-2330	DECISION ON DEFENCE MOTION FOR DISCLOSE OR INSPECTION OF HAND-WRITTEN NOTES FROM OTP INVESTIGATOR	TC 3
26/04/2006	Muvunyi	ICTR-00-55A-0225	DECISION ON THE PROSECUTOR'S MOTION PURSUANT TO TC'S DIRECTIVES OF 7 DECEMBER 2005 FOR THE VERIFICATION OF THE AUTHENNTICITY OF EVIDENCE OBTAINED OUT OF COURT PURSUANT TO RULES 89 (C) & (D)	TC 2
25/04/2006	Karera	ICTR-01-74-0077	DECISION ON MOTION FOR FURTHER PARTICULARS OF DEFENCE WITNESSES AND FOR CONTINUANCE OF TRIAL	TC 1
25/04/2006	Seromba	ICTR-01-66-0250/1	DECISION ON MOTION FOR DISQUALIFICATION OF JUDGES	TC 3
24/04/2006	Bizimungu et al.	ICTR-99-50-1504	34 PAGE JUDGMENT FROM THE KIBUGO COURT OF FIRST INSTANCE IN KIBUGO	TC 2
24/04/2006	Bizimungu et al.	ICTR-99-50-1505	62 PAGE JUDGMENT FROM THE KIBUNGO COURT OF FIRST INSTANCE IN KIBUNGO	TC 2
21/04/2006	[Military I] Bagosora et al.	ICTR-98-41-1142	DECISION ON REQUEST TO THE KINGDOM OF BELGIUM FOR ASSITANCE PURSUANT TO ARTICLE 28 OF THE STATUTE	TC 1
21/04/2006	Nchamihigo	ICTR-01-63-0093	DECISION ON DEFENCE MOTION TO SET A DATE FOR TRIAL	TC 1
21/04/2006	Military I] Bagosora et al.	ICTR-98-41-1143	[DECISION RELATIVE A LA DEMANDE TENDANT A OBTENIR L'ASSISTANCE DU ROYAUME DE BELGIQUE EN VERTU DE L'ARICLE 28 DU STATUT	TC 1
20/04/2006	Nahimana et al.	ICTR-99-52-1581	DECISION SUR LA REQUETE DE FERDINAND NAHIMANA AUX FINS D'EXTENSION DU NOMBRE DE PAGES AUTORISEES POIUR LA REPLIQUE DE LA DEFENSE	AC
20/04/2006	Bisengimana	ICTR-00-60-0079	CORRIGENDUMJUDGEMENT AND SENTENSE	TC 2
20/04/2006	Karemera et al.	ICTR-98-44-2329	DECISION ON DEFENCE MOTIONS TO EXCLUDE TESTIMONY OF PROFESSOR ANDRE GUICHAOUA	TC 3
20/04/2006	Seromba	ICTR-01-66-0239	DECISION RELATIVE A LA REQUETE DE LA DEFENSE AUX FINS DE RECUEILLIR LES DEPOSITIONS DU TEMOIN PS2 PAR VOIE DE VIDEO CONFERENCE	TC 3
18/04/2006	Karemera et al.	ICTR-98-44-2325	DECISION ON RECONSIDERATION OF THE SCHEDULING ORDER FOR THE NEXT TRIAL SESSION (ARTICLE 30 OF THE STATUTE OF THE TRIBUNAL, RULE 73 OF THE RULES OF PROCEDURE AND EVIDENCE)	TC 3
13/04/2006	Bisengimana	ICTR-00-60-0078	JUDGEMENT AND SENTENCE	TC 2
13/04/2006	Ndindilyimana et al.	ICTR-00-56-0602	DECISION ON THE PROSECUTOR'S EX-PARTE MOTION FOR THE TRANSFER OF WITNESSES DETAINED OR PLACED UNDER COURT SUPERVISION PURSUANT TO RULES 54 AND 90bis OF THE RULES OF PROCEDURE AND EVIDENCE	TC 2
12/04/2006	Muvunyi	ICTR-00-55A-0217	DECISION ON THE PROSECUTOR'S MOTION REQUESTING A REVIEW OF THE SCHEDULING ORDER AND FOR AN EXTENSION OF TIME TO FILE CLOSING BRIEFS AND PRESENT ORAL ARGUMENTS	TC 2
07/04/2006	Nyiramasuhuko et al.	ICTR-97-21-0863	DECISION ON NYIRAMASUHUKO'S MOTION FOR SEPARATE PROCEEDINGS, A NEW TRIAL, AND STAY OF PROCEEDINGS (Rule 82 (B) and 72(D) , Rules of Procedure and Evidence	TC 2
07/04/2006	Nahimana et al.	ICTR-99-52-1573	DECISION ON "PROSECUTOR'S MOTION FOR RECONSIDERATION OF THE AC'S DECISION REGARDING THE TIMELINESS OF THE FILING OF THE PROSECUTOR'S RESPONSE TO 'APPELLANT HASSAN NGEZE'S MOTION FOR THE APPROVAL OF FURTHER INVESTIGATION OF T	AC



Date	Case	Record Number	Title	TC
07/04/2006	Kamuhanda	ICTR-99-54A-0598	DECISION ON JEAN DE DIEU KAMUHANDA'S REQUEST RELATED TO PROSECUTION DISCLOSURE AND SPECIAL INVESTIGATION	AC
07/04/2006	Seromba	ICTR-01-66-0237	DECISION RELATIVE A LA REQUETE DU PROCUREUR AUX FINS DE COMMUNICATION DES DECLARATIONS SIGNEES DES TEMOINS DE LA DEFENSE	TC 3
07/04/2006	Zigiranyirazo	ICTR-01-73-0268	DECISION ON DEFENCE MOTION TO EXCLUDE THE TESTIMONY OF WITNESS SGM	TC 3
07/04/2006	Zigiranyirazo	ICTR-01-73-0267	DECISION ON PROSECUTION MOTION FOR CONDITIONAL DISCLOSURE OF WITNESS STATEMENTS	TC 3
06/04/2006	Zigiranyirazo	ICTR-01-73-0266	DECISION ON THE DEFENCE MOTION CONCERNING A MEETING WITH WITNESS BPP	TC 3
06/04/2006	Muvunyi	ICTR-00-55A-0214	DECISION OF WITHDRAWAL OF THE ASSIGNMENT OF MR. MARTIN JOLY, CO-COUNSEL FOR THE ACCUSED PERSON MR. THARCISSE MUVUNYI	TC 2
06/04/2006	Karemera et al.	ICTR-98-44-2318	DECISION ON EDOUARD KAREMERA'S REQUEST FOR FOR EXTENSION OF TIME TO RESPOND TO JOSEPH NZIRORERA'S INTERLOCUTORY APPEAL	TC 3
05/04/2006	Karemera et al.	ICTR-98-44-2320	DECISION GRANTING EXTENSION OF TIME FOR FILING INFORMATION AND MATERIAL EX PARTE AND UNDER SEAL REGARDING WITNESS ADE	TC 3
05/04/2006	Bizimungu et al.	ICTR-99-50-1499	DECISION ON PROSPER MUGIRANEZA'S EMERGENCY MOTION TO VARY CONDITIONS ON INTERVIEW OF JEAN KAMBANDA RULE 73 (B) OF THE RULES OF PROCEDURE AND EVIDENCE	TC 2
05/04/2006	Rwamakuba	ICTR-98-44C-0135	DECISION ON ADMISSION OF EXHIBITS	TC 3
04/04/2006	Ntahobali	ICTR-98-42-0539	DECISION ON ARSENE SHALOM NTAHOBALI'S MOTION FOR CERTIFICATION TO APPEAL THE "DECISION ON NTAHOBALI'S STRICTLY CONFIDENTIAL MOTION TO RECALL WITNESSES TN, QBQ, AND QY FOR ADDITIONAL CROSS-EXAMINATION"	TC 2
04/04/2006	Ntahobal	ICTR-98-42-0538	DECISION ON ARSENE SHALOM NTAHOBALI'S MOTION FOR CERTIFICATION TO APPEAL THE "DECISION ON ARSENE NTAHOBALI'S EXTREMELY URGENT STRICTLY CONFIDENTIAL-UNDER SEAL-MOTION TO HAVE WITNESS NMBMP TESTIFY BY VIDEO-LINK"	TC 2
04/04/2006	Ndindabahizi	ICTR-01-71-0239	DECISION ON THE ADMISSION OF ADDITIONAL EVIDENCE	AC
04/04/2006	Karemera et al.	ICTR-98-44-2319/2	DECISION RELATIVE A LA REQUETE D'EDOUARD KAREMERA EN EXTENSION DE DELAI POUR REpondre A L'APPEL INTERLOCUTOIRE DU PROCUREUR	TC 3
04/04/2006	Karemera et al.	ICTR-98-44-2319/1	DECISION ON EDOUARD KAREMERA'S REQUEST FOR EXTENSION OF TIME TO RESPOND TO THE PROSECUTIO'S INTERLOCUTORY APPEAL	TC 3