



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

ORIGINAL: ENGLISH

TRIAL CHAMBER III

Before: Judge Solomy Balungi Bossa, Presiding
Judge Bakhtiyar Tuzmukhamedov
Judge Mparany Rajohnson

Registrar: Adama Dieng

Date: 31 May 2012

THE PROSECUTOR

v.

Callixte NZABONIMANA

Case No. ICTR-98-44D-T

SUMMARY OF JUDGEMENT AND SENTENCE

Office of the Prosecutor

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Paul Ng'arua
Memory Maposa
Simba Mawere
Mary Diana Karanja
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Defence Counsel

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Philippe Larochelle

INTRODUCTION

1. The Accused in this case is Callixte Nzabonimana. Nzabonimana was born in 1953 in Kavumu *secteur*, Nyabikenke *commune*, Gitarama *préfecture*. He was the Rwandan Minister of Youth and Associative Movements during the events of April to July 1994 and previously served as Minister of Planning. Nzabonimana also served as the chairman of the MRND party in Gitarama *préfecture* during the events.

2. The Prosecution has charged Nzabonimana with Genocide, Conspiracy to Commit Genocide, Direct and Public Incitement to Commit Genocide and Extermination and Murder as Crimes Against Humanity. All charges stem from allegations concerning his activities in Gitarama *préfecture* during the events. The Defence disputes all charges. In addition, the Defence presents an alibi for the period of 6 to 12 April 1994 and alleges that Prosecution witnesses fabricated their evidence against Nzabonimana.

3. The trial commenced on 9 November 2009 and closed on 12 September 2011. The Prosecution presented 19 witnesses during its case-in-chief and the Defence brought 40 witnesses. The Prosecution called one witness in rebuttal. The Chamber heard closing arguments on 20 and 21 October 2011.

4. The Chamber will now give a summary of its findings concerning the allegations against Nzabonimana. The Prosecution has withdrawn 16 of the 44 operative paragraphs of the Indictment, namely paragraphs 18, 22, 27, 29, 31, 32, 34, 36, 39, 42, 43, 50, 53 and 55 through 57. In addition, the Chamber has considered that paragraphs 15, 25 and 38 of the Indictment are general in nature, and will not make findings thereon. A number of decisions pertaining to the fairness of the proceedings, including those pertaining to notice of charges, are discussed in the written Judgement and will not be read here. Only the written Judgement is authoritative. It will be available as soon as possible.

FACTUAL AND LEGAL FINDINGS

Nzabonimana's Influence

5. The Chamber heard extensive evidence regarding Nzabonimana's influence in Gitarama *préfecture* during the events of April to July 1994. The Chamber has concluded that because of his

position as a Minister in the Interim Government, his previous tenure as Minister of Planning and his chairmanship of the MRND in Gitarama *préfecture*, Nzabonimana was an influential political personality in Gitarama *préfecture*.

Training of *Interahamwe*

6. Two Prosecution witnesses testified that in May or June 1992, Nzabonimana attended a meeting of approximately 60 Hutu youths in Kigina *secteur*, Nyakabanda *commune*, Gitarama *préfecture*, and recruited them to become members of the *Interahamwe*. The Chamber notes, and the Prosecution acknowledges, that the allegation falls outside the temporal jurisdiction of the Tribunal. However, the Prosecution asserts that the evidence helps to establish Nzabonimana's intent. The Chamber has found that the allegation has not been proven beyond a reasonable doubt.

Meeting at Nzabonimana's House

7. One Prosecution witness testified that in March 1994, Nzabonimana held a meeting for dancers from Kavumu and Mahembe *secteurs*, Nyabikenke *commune*, at his house in Nyabikenke *commune* and told them to kill Tutsis. The Chamber has doubts about the witness's account of this meeting, and therefore finds that the Prosecution has not proven this allegation beyond a reasonable doubt.

Gasenyi *Cellule* Meeting

8. In support of its allegation that on or about 8 April 1994, Nzabonimana told the assembled population at Gasenyi *cellule* in Nyabikenke *commune* to kill Tutsis, the Prosecution relied upon the testimony of a single witness. The Chamber has found the testimony of this witness insufficient to support this allegation.

Military Training at Nzabonimana's House

9. One Prosecution witness testified that on 8 and 9 April 1994, Nzabonimana planned and ordered youths to undergo military training at his house in Nyabikenke *commune* with the intention that the trainees would kill Tutsis. The Chamber doubts the credibility of the Prosecution witness and has therefore found that this allegation was not proven beyond a reasonable doubt.

Kigali Cellule Meeting

10. The Prosecution presented a single witness to support the allegation that on or about 9 April 1994, in Kigali *cellule*, Nyabikenke *commune*, Nzabonimana told the Hutu population to kill Tutsis. The Prosecution alleged that following the meeting, Nzabonimana ordered and supervised the distribution of weapons to the population and killings of Tutsis intensified that night. The Chamber has not found the Prosecution witness credible as to this allegation. Accordingly, this allegation has not been proven beyond a reasonable doubt.

Ntarabana Parish Attack

11. The evidence presented at trial established that between 10 and 12 April 1994, Tutsis sought refuge at Ntarabana Parish, located in Nzabonimana's home *commune* of Nyabikenke. Prosecution and Defence witnesses provided consistent evidence that those seeking refuge at the parish came under attack by people using traditional weapons. In light of the evidence, however, the Chamber does not find that Nzabonimana bears criminal responsibility for this attack.

12. The evidence also established that following the attack upon Ntarabana Parish, Tutsis in Nyabikenke *commune* began seeking refuge at the Nyabikenke *commune* office. Among the Tutsis seeking refuge at the *commune* office were Prosecution Witnesses CNAI and CNAX, and a man named Evariste Munyagatare.

Kabimbura Centre Meeting

13. One Prosecution witness testified that on 11 April 1994, Nzabonimana addressed a meeting at Kabimbura centre in Nyabikenke *commune*, and said that the problem of Tutsis who had sought refuge at Ntarabana Parish had been solved. Nzabonimana then said that the problem of Tutsis who had sought refuge at the Nyabikenke *commune* office remained and told the attendees to attack the Tutsis at the *commune* office before taking their property. Given the hearsay nature of the Prosecution witness's testimony, the Chamber finds the evidence insufficient to support a finding beyond a reasonable doubt.

Butare Trading Centre Meeting

14. On or about 12 April 1994, at the Butare trading centre in Rutobwe *commune*, Nzabonimana held an impromptu meeting with approximately 20 members of the population. The Chamber has found that the Prosecution proved beyond a reasonable doubt that during this meeting, Nzabonimana

told the population to kill Tutsis and take their belongings. He then instructed those gathered to pursue two Tutsis who fled the scene in fear. The Chamber has found that on this occasion, Nzabonimana directly and publicly incited the commission of genocide against the Tutsis.

15. The Prosecution alleged that following this meeting, many Tutsis were killed by Hutu civilians, *Interahamwe* and soldiers. However, the Chamber has concluded that the evidence failed to establish that Nzabonimana's conduct at the Butare trading centre contributed to subsequent killings.

Cyayi Centre Meeting and Nyabikenke Commune Office Attack

16. On 13 April 1994, in Nyabikenke *commune*, assailants armed with traditional weapons attempted to attack the Tutsis who sought refuge at the Nyabikenke *commune* office. Credible evidence established that the Nyabikenke *bourgmestre*, *commune* policemen and members of the population fought back the attackers at the Nyagahondo forest, before they were able to reach the Nyabikenke *commune* office. One of the assailants was killed after being shot by those protecting the Tutsis.

17. The Chamber has found that the evidence established beyond a reasonable doubt that on 14 April 1994 in the afternoon, Nzabonimana went to Cyayi centre, located about 250 to 300 metres from the Nyabikenke *commune* office. Approximately 30 to 40 people were present at the centre, including Prosecution Witnesses CNAI and CNAX, Evariste Munyagatare, Isaac Kamali and Defence Witness T193. On this occasion, Nzabonimana told those gathered: "Do not continue to eat the cows of Tutsis who have sought refuge at the *communal* office. What really matter[s] is not the cows; it is rather, the owners of the cows that matter." Nzabonimana also issued a threat to Evariste Munyagatare. The Chamber has found that at Cyayi centre Nzabonimana directly and publicly incited the commission of genocide.

18. That night, at between 3.00 a.m. and 4.00 a.m., Hutu civilians and *commune* policemen launched a successful attack upon the Nyabikenke *commune* office. Unlike the attack upon Ntarabana Parish and the unsuccessful attack upon the *commune* office on 13 April 1994, the attackers used not only traditional weapons, but also firearms and grenades. The attack on the Nyabikenke *commune* office resumed during the day on 15 April 1994. The Chamber has found beyond a reasonable doubt that, during these attacks on the Nyabikenke *commune* office, between

15 and 60 Tutsis were killed, including Evariste Munyagatare. The Chamber has also found that the Prosecution proved beyond a reasonable doubt that through his words and actions at Cyayi centre the day before, Nzabonimana instigated this attack upon the Nyabikenke *commune* office.

Meeting at Witness T34's House

19. The Prosecution presented the testimony of a single witness to support the allegation that on or about 14 April 1994, at the home of Defence Witness T34 in Kavumu *secteur*, Gitarama *préfecture*, Nzabonimana rewarded the perpetrators of the killing of Tutsis with money and told them to intensify the massacres. The Chamber did not find the Prosecution witness credible as to this allegation.

Visit to Kabgayi Parish

20. Credible evidence established that while violence flared in Nyabikenke *commune*, Tutsis sought refuge at Kabgayi Parish. One Prosecution witness testified as to the allegation that on or about 16 April 1994, Nzabonimana went to Kabgayi Parish with Defence Witness T24 and told the Tutsis seeking refuge there to return home because the situation was peaceful, in order to lure them out and kill them. The Chamber has doubts about the Prosecution witness's account and has not relied on his evidence as to this allegation.

Nyabikenke Commune Megaphone Announcement

21. The Prosecution relied on two eyewitnesses to establish that on or about 16 April 1994, Nzabonimana travelled around Nyabikenke *commune* speaking through a megaphone, and told Hutu civilians and *Interahamwe* to kill Tutsis before taking their property. One of the eyewitnesses testified that he witnessed the megaphone announcement from his hiding place in a coffee plantation. Having visited the location of the alleged incident during its site visit to Rwanda, the Chamber doubts this witness's ability to have observed Nzabonimana making such an announcement. In addition, the Chamber has found that the two Prosecution witnesses contradicted each other's testimony as to the material facts of the allegation. Accordingly, this allegation has not been proven beyond a reasonable doubt.

Release of Killers in Rutobwe Commune

22. The evidence presented at trial established that on or about 17 April 1994, attackers crossed the Bakokwe River from Nyabikenke into Rutobwe *commune*. When attackers from Nyabikenke *commune* began to kill Tutsis in Rutobwe *commune*, *Bourgmestre* Jean-Marie Vianney Mporanzi did the best he could to protect the *commune*.

23. The Prosecution alleged that Nzabonimana encouraged the killing of Tutsis and those protecting them by causing the release of the perpetrators of killings in Rutobwe *commune*. The Chamber has found that the Prosecution proved beyond a reasonable doubt that Nzabonimana encouraged the killing of Tutsis by orchestrating the release of killers of Tutsis in Rutobwe *commune*, who had been imprisoned by Mporanzi.

24. The Chamber has also found that killings in Rutobwe *commune* intensified after the release of prisoners. However, the Prosecution did not present specific evidence of crimes committed by these persons after their release. The Chamber has therefore found that the Prosecution failed to prove beyond a reasonable doubt that the release of killers substantially contributed to the commission of a crime.

Murambi Meeting

25. Amid the atmosphere of escalating violence against the Tutsis and those protecting them in Gitarama *préfecture*, Nzabonimana, other Ministers of the Interim Government and Prime Minister Jean Kambanda held a meeting with the *bourgmestres* of the *préfecture* at Murambi on 18 April 1994. A reporter from Radio Rwanda was also present at the meeting. The Prosecution proved beyond a reasonable doubt that at this meeting, Nzabonimana and the other Ministers threatened the *bourgmestres* present, including Mporanzi and the *bourgmestre* of Nyabikenke *commune*, both of whom had previously taken steps to protect Tutsis in their respective *communes*. Nzabonimana and the Ministers threatened to remove the *bourgmestres* from their posts if they did not stop supporting the Tutsi population. The Chamber has found that the Prosecution failed to prove beyond a reasonable doubt that the Murambi meeting substantially contributed to the deaths of the three officials named in paragraph 26 of the Indictment. However, the Chamber has found that Nzabonimana directly and publicly incited the commission of genocide against the Tutsis at this meeting.

Reinstatement Ceremony of the *Bourgestre* of Musambira Commune

26. The Chamber has found that the evidence established beyond a reasonable doubt that at a meeting in May 1994, during the reinstatement ceremony of the *bourgestre* of Musambira commune, Nzabonimana again accused the *bourgestres* of not being supportive of the killings of Tutsis. In addition, he warned the *bourgestres* that they could be replaced by *Interahamwe* and he refused to denounce the killings of Tutsis. However, the Prosecution did not establish beyond a reasonable doubt a causal link between Nzabonimana's involvement in the Musambira meeting and the subsequent dismissal of any officials.

Weapons Distribution in Nyakabanda Commune

27. A single Prosecution witness testified that in May 1994 Nzabonimana was present at a meeting in Kibangu *secteur*, Nyakabanda commune along with Prime Minister Kambanda, where weapons were distributed. At the meeting, Kambanda told the attendees that the weapons were to be used to kill the "enemy", meaning the Tutsis. Defence witnesses corroborated material facts of this allegation. However, while the Prosecution proved beyond a reasonable doubt that Nzabonimana was present at the meeting, the evidence did not prove beyond a reasonable doubt that Nzabonimana spoke at the meeting or actively participated in the weapons distribution.

Conspiracy to Commit Genocide at the Murambi Meeting

28. The Chamber has found that Nzabonimana is not guilty of genocide for his actions at the Murambi meeting, the reinstatement ceremony of the *bourgestre* of Musambira commune or the weapons distribution in Nyakabanda commune. However, the Chamber has concluded that this evidence proves beyond a reasonable doubt that beginning on 18 April 1994 at the Murambi meeting, Nzabonimana agreed with other members of the Interim Government to encourage the killing of members of the Tutsi population. At the Murambi meeting, the Ministers directed their threats to the assembled *bourgestres*, some of whom were actively protecting Tutsis. Nzabonimana was also present when Prime Minister Kambanda distributed weapons and encouraged the population to fight the Tutsis, and reinforced the message of the Murambi meeting to the *bourgestres* at the Musambira commune reinstatement ceremony. Considering the concerted and coordinated actions of Nzabonimana and other members of the Interim Government, the Chamber is convinced beyond a reasonable doubt that the only reasonable inference based on the totality of the evidence is that an agreement between Nzabonimana and other members of the

Interim Government materialised on 18 April 1994, with the specific intent to destroy the Tutsi population, as such, in whole or in part, in Gitarama *préfecture*.

Fina Petrol Station Killing

29. One Prosecution witness testified that in April 1994, at the Fina petrol station in Nyamabuye *commune*, Gitarama *préfecture*, a soldier shot dead a young Tutsi man in the presence and with the support of Nzabonimana. The Chamber has found that although the evidence established that a young Tutsi man was shot and killed one afternoon in April 1994 close to the Fina petrol station, the Prosecution failed to establish that Nzabonimana was present at the location during the incident.

Bwiza Cellule Killings

30. The Prosecution relied upon a single witness to support its allegation that in April 1994 Nzabonimana came across *Interahamwe* who were assaulting two Tutsis and encouraged them to continue to “work”. The Chamber has doubts about the credibility of the Prosecution witness and does not find his testimony sufficient to support the allegation beyond a reasonable doubt.

Meeting at Marianne’s House

31. The Prosecution cited two witnesses in support of its allegation that in April 1994, Nzabonimana addressed a meeting at the residence of Marianne, located in Ruhango *cellule* in Tambwe *commune*. At this meeting, Nzabonimana allegedly delivered a speech where he said that the Tutsi enemy had started a war and that all Hutus should unite to fight the enemy. The Chamber doubts whether one of the witnesses was actually present at the meeting and does not find the evidence of the remaining witness sufficient to sustain the allegation.

Destruction of Houses in Masango and Nyamabuye Communes

32. The Prosecution also presented evidence in support of the allegation that in May 1994, Nzabonimana ordered people in Masango *commune* to destroy the houses abandoned by Tutsis and to plant crops in order to wipe out all signs of the massacre. The Prosecution relied upon a single witness’s hearsay evidence. The Chamber has found that the Prosecution failed to meet its burden of proof.

33. Credible evidence, however, established that in May 1994, Nzabonimana visited the Nyamabuye *commune* office and told the Hutu civilians present to destroy the house of a dead Tutsi,

named Jean de Dieu Mpambara, and to cover it up, so that in the event of an enquiry, the death of the Tutsi would not be known. The Chamber has found that the Prosecution failed to establish that Nzabonimana's encouragement to destroy Mpambara's house substantially contributed to the commission of any crime for which Nzabonimana was charged.

Weapons Distribution in Tambwe Commune

34. The Chamber has found beyond a reasonable doubt that in late April or early May 1994, Nzabonimana, Jean Damascene Ukirikyeyezu and Witness T92 brought a lorry full of weapons to the Tambwe *commune* office, in Gitarama *préfecture*. Nzabonimana spoke and said that they had brought the weapons so that the population could take charge of its own protection and ensure the security of the country from the Tutsis. The weapons were then distributed to the population. The Chamber has found that the Prosecution failed to prove beyond a reasonable doubt that the weapons distributed were used to kill Tutsis in Tambwe *commune*.

Tambwe Commune Crisis Committee

35. The Chamber has found beyond a reasonable doubt that in May 1994, as a way of concealing the killings from the international community, Nzabonimana, in the company of Jean Damascene Ukirikyeyezu, presided over a meeting where the crisis committee of Tambwe *commune* was established. The meeting was convened to address the issue of Hutus fighting over the property of Tutsis. The Chamber has concluded that the Prosecution has not proven beyond a reasonable doubt that Tutsis caught at roadblocks, including those named in the Indictment, were killed on the orders of this committee.

36. The Chamber also considers that in May 1994, Nzabonimana entered into an agreement with Jean Damascene Ukirikyeyezu to encourage the killing of members of the Tutsi population in Tambwe *commune*, through their creation of the crisis committee. In late April or early May 1994, the two also distributed weapons in Tambwe *commune*. Considering the concerted and coordinated actions of Nzabonimana and Ukirikyeyezu, the Chamber is convinced beyond a reasonable doubt that the only reasonable inference based on the totality of the evidence is that an agreement between Nzabonimana and Ukirikyeyezu materialised in May 1994, with the specific intent to destroy the Tutsi population, as such, in whole or in part, in Gitarama *préfecture*.

Killing of Prosecution Witness CNAQ's Children

37. The Prosecution presented two witnesses in support of the allegation that on or about 4 June 1994, Nzabonimana told the *Interahamwe*, *commune* policemen and Hutu civilians to kill the children of Witness CNAQ, and that shortly thereafter, six of Witness CNAQ's children were killed. The Chamber has concluded that six of Witness CNAQ's children were killed on 6 June 1994 by *Interahamwe* and Hutu civilians. However, the evidence was insufficient to establish that Nzabonimana played a role in the killings.

VERDICT

38. For the reasons set out in the written Judgement, and having considered all the evidence and submissions of the Parties, the Trial Chamber finds unanimously in respect of Callixte Nzabonimana as follows:

39. On Count One of the Indictment, Genocide, the Chamber finds Callixte Nzabonimana GUILTY for instigating the killing of Tutsis taking refuge at the Nyabikenke *commune* office.

40. On Count Two of the Indictment, Conspiracy to Commit Genocide, the Chamber finds Callixte Nzabonimana GUILTY for entering into an agreement with members of the Interim Government on 18 April 1994 to kill Tutsis in Gitarama *préfecture* and for entering into an agreement with Jean Damascene Ukirikyeyezu in May 1994 to kill Tutsis in Gitarama *préfecture*.

41. On Count Three of the Indictment, Direct and Public Incitement to Commit Genocide, the Chamber finds Callixte Nzabonimana GUILTY for statements inciting the killing of Tutsis at the Butare trading centre, at Cyayi centre and at the Murambi meeting.

42. On Count Four of the Indictment, Extermination as a Crime Against Humanity, the Chamber finds Callixte Nzabonimana GUILTY for instigating the killing of Tutsis taking refuge at the Nyabikenke *commune* office.

43. On Count Five of the Indictment, Murder as a Crime Against Humanity, the Chamber DISMISSES the charge because it is cumulative of Extermination as a Crime Against Humanity.

SENTENCING

44. In considering sentencing, the Chamber has taken into account the individual, aggravating, and mitigating circumstances of the Accused. The Chamber also recalls that the gravity of the offences is the deciding factor in the determination of the sentence, which has been fully detailed in the Judgement. The Chamber has the discretion to impose a single sentence and chooses to do so.

45. Mr. Nzabonimana, would you please rise while your sentence is pronounced.

46. Callixte Nzabonimana, the Chamber has found you guilty of Genocide, Conspiracy to Commit Genocide, Direct and Public Incitement to Commit Genocide and Extermination as a Crime Against Humanity. For these crimes, and considering all relevant circumstances, the Chamber sentences you to life imprisonment.

47. The Chamber invites Mr. Nzabonimana to sit.

48. Nzabonimana shall be kept in detention under the present conditions until transfer to his designated place of imprisonment.

CONCLUSION

49. This has been the summary of the Judgement, and the trial proceedings in this case have now come to a close. The Chamber thanks all those involved in this case.