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FULGENCE NIYONTEZE

31.05.2016 (Last modified: 10.06.2016)

FACTS

Fulgence Niyonteze was born on 1 March 1964 in Mushubati into a farming family. With a first degree in telecommunications already in his possession, he obtained a second degree in economics and statistics. After serving in various positions in both the Ministry of the Interior and Education, he was elected mayor of Mushubati. He took up this office in April 1993.

After a trip to Europe lasting several weeks, he returned to Mushubati on 19 May 1994. By this date the most serious massacres were over and there was almost no Tutsis left in the commune whereas, beforehand, they had represented 15 % of the population.

Upon his return, he resumed the position of mayor. Even though he had been a member of the opposition party, the Republican Democratic Movement, since 1991, he entered into an accommodation with the authorities in office and maintained close contacts with the government. By so doing, the latter did not think of him as a member of the opposition.

Despite the civil war and the ongoing genocide, Niyonteze always maintained an influence, which was not to be underestimated, over his subordinates, the military and the militia.

On 31 May 1994, or thereabouts, Fulgence Niyonteze allegedly called the inhabitants of his commune to be assembled on Mount Mushubati. Around 200 persons were in attendance. Niyonteze was accompanied by the military. In his speech he was said to have pointed out that the Mushubati commune was badly thought of by the government. Whereas during his absence the Tutsis' cattle had indeed been slaughtered and their houses burned down, nevertheless it had been



At that point in time there were scarcely any Tutsis in the region and those who were, had gone into hiding in the forest surrounding Mount Mushubati. The aim of the gathering on the mountainside was to seek out the surviving Tutsis and to push the attendees into committing acts of hatred against them. Niyonteze reportedly called upon the participants to kill the Tutsis. Hutu women who were pregnant from Tutsis also had to be murdered.

The participants in the assembly on Mount Mushabati obeyed these orders and call to action, which resulted in the death of a large unknown number of people.

On several occasions, Niyonteze, accompanied by the military, paid a visit to the Kabgayi camp. He allegedly called upon the villagers of his commune who had taken refuge in the camp to return home. He explained that the situation was now calm and there was no longer any danger for them. In reality they were being enticed away from the camp to be murdered and dispossessed of their belongings.

Furthermore, Niyonteze, reportedly gave the specific command, amongst others, to kill two brothers. One of them was struck forcibly on the chest with the butt of a rifle and an attempt made to stab him repeatedly with a bayonet. He was then thrown into the gutter. He pretended to be dead and was left lying there. His brother died in these same circumstances.

Niyonteze was also said to have used his position of authority to issue falsified Hutu identity documents to Tutsis, thus allowing them to escape. Thanks to his intervention, his family, accompanied by nuns, was able to leave the commune. He also helped the former prime minister, Nsengiyaremie to escape.

Niyonteze stayed in Mushabati until 11 or 12 June 1994, the date when the troops of the Rwandan Patriotic Front (RPF) arrived and took over the village. He left the country on 23 July 1994, arriving on 12 October 1994 with his family in Switzerland, where he was granted asylum in May 1995. He lived with his family in Villars-sur-Glâne. It was his intent to undertake further studies in the autumn of 1996. Niyonteze was arrested on 28 August 1996 in Switzerland and placed in detention to await trial.



The Niyonteze trial was the first legal action by a non-Rwandan foreign court to result in a conviction.

The accused, Fulgence Niyonteze, had to present his case before a Swiss Military Court, since only the latter is competent to prosecute war crimes.

The military prosecutor, responsible for the hearings drew up the bill of indictment on 3 July 1998. Niyonteze was charged with the following crimes: murder, attempted murder, incitement to murder, instigating murder, various war crimes, (violations of the Geneva Conventions and Additional Protocol II), genocide and crime against humanity.

The proceedings against Niyonteze were opened up on 12 April 1999, before the Division II Military Tribunal in Lausanne (Switzerland). The counts of genocide and crime against humanity were dropped by the Tribunal at the outset of the trial, because, at that time, Swiss Criminal Law did not (yet) legally recognise both crimes.

On 30 April 1999, after hearing more than 70 witnesses and experts, Niyonteze was condemned to life imprisonment. A sentence of 15 years' exclusion from the territory of Switzerland was also delivered.

Niyonteze lodged an appeal in full against the sentence. The appeals process was heard between the 15 and 26 May 2000 before the Military Appeals Tribunal in Geneva. The Tribunal issued a declaration of non-competence concerning the murder indictment, since it involved the action of a foreigner against foreigners outside of the Swiss territory at a time when Switzerland was not in a state of war.

Nevertheless the Military Appeals Tribunal confirmed the conviction for war crimes and instigation of war crimes, on the grounds of the Geneva Conventions and Additional Protocol II.

On 26 May 2000, Niyonteze was sentenced by the Military Appeals Tribunal to 14 years' imprisonment and 15 years' expulsion from the territory of Switzerland.

Niyonteze, as well as the military prosecutor, both lodged an appeal against this sentence with the High Military Appeals Court. The latter handed down its decision on both appeals on 27 April 2001 in Yverdon-les-Bains. Only the question of



On December 29, 2005, Niyonteze was given conditional release.

The immigration authorities s having decided to expel Niyonteze from Switzerland after his release from prison, the Swiss Supreme Court by decree dated 11 September 2006, validated the decision to deport Niyonteze from Switzerland.

SPOTLIGHT

The Niyonteze trial was the first, by a foreign court, following the Rwandan genocide, to result in a guilty verdict.

Furthermore, the verdict represents the first time that a Swiss court has handed down a sentence for a violation of international humanitarian law.

CONTEXT

Rwanda has been historically inhabited by three distinct social groups, known as Hutu, Tutsi and Twa. Between April and July 1994 the country was torn apart by a bloody genocide, during which extremist Hutu people targeted Tutsis and moderate Hutus. The United Nations Assistance Mission for Rwanda (UNAMIR) was powerless against those committing the genocide, as the peacekeeping troops were outnumbered.

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (ICTR)

In hopes of facilitating the process of national reconciliation and to promote peace in the country, on 8 November 1994 the United Nations Security Council adopted Resolution 955, establishing the International Criminal Tribunal for Rwanda (ICTR), located in Arusha, Tanzania.

The Tribunal's function is to prosecute perpetrators of crimes of genocide, crimes against humanity and war crimes committed between 1 January and 31 December 1994 in Rwanda. Since its inception, 92 persons have been indicted in front of the ICTR. Some proceedings are however still ongoing.

The ICTR is primed to close down in 2015.



over the remaining functions of both the ICTR and the International Criminal Tribunal for the former Yugoslavia (ICTY). The Mechanism, which has been functioning since 1 July 2012, has already taken over some of the ongoing functions of the ICTR, including the enforcement of sentences of those convicted and sentenced by the Tribunal, the tracking, arrest and prosecution of fugitives earmarked for trial at the Mechanism, and the care and protection of witnesses.

THE GACACA COURTS

In 1998, discussions began under the direction of the President of the Republic of Rwanda about the possible use of traditional courts to support the ordinary Rwandan judicial system and the ICTR. A commission was created to study this possibility, and its report provided the basis of the Organic Law of 26 January 2001, which created the Gacaca Courts.

These courts were in charge of trying the low and middle-level perpetrators of the genocide, apart from the “planners” who should have been tried before national courts. The Gacaca courts were composed of elected popular assemblies, made up of non-professional judges. The composition and functioning of such courts raised several concerns about the respect of fair trial guarantees.

According to Rwandan authorities, during their functioning, the Gacaca courts tried almost two million people. On 18 June 2012 Rwandan President Paul Kagame announced the official end of Gacaca courts’ activity.



FACT SHEET

Name: Fulgence Niyonteze

Nationality: Rwanda

Context: Rwanda

Charges: War crimes, Protection of civilians

Status: Sentenced