

The Prosecutor v. Elizaphan Ntakirutimana & Gérard Ntakirutimana
SUMMARY OF JUDGEMENT¹

1. Trial Chamber I, comprising Judge Erik Møse (presiding), Judge Navanethem Pillay and Judge Andréia Vaz, is today delivering its judgement in the joint trial involving Elizaphan and Gérard Ntakirutimana, which began on 18 September 2001. The Prosecution called 19 witnesses during 27 trial days. The Defence case opened on 4 February 2002 and lasted 30 trial days, during which 24 witnesses were heard, including the two Accused. Closing arguments were heard on 21 and 22 August 2002. The entire trial lasted 59 days. During the period of judgement preparation the Trial Chamber has been hearing two other trials.

2. First a few words about the two Accused: Elizaphan Ntakirutimana (who is now 78 years old) was the Pastor of the Seventh Day Adventist Church at the Mugonero Complex in Ngoma, Kibuye prefecture in Rwanda. Gérard Ntakirutimana (now 45) was a Medical Doctor at the hospital there. The Mugonero Complex was run by the Seventh Day Adventist Association and comprised many buildings, including a nursing school, hospital and residential quarters.

3. The two Accused face charges on counts of genocide, or, alternatively, complicity in genocide, conspiracy to commit genocide, crime against humanity (murder), crime against humanity (extermination) and crime against humanity (other inhumane acts) and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II. They are charged for their alleged participation in killings in the areas of Mugonero and Bisesero from April to June 1994. There are two Indictments, one which addresses events in the Mugonero Complex (“the Mugonero Indictment”), and the other which relates mainly to events in the Bisesero area (“the Bisesero Indictment”). To some extent, the two Indictments overlap. In pursuance of Article 6 (1) of the Statute, the two Accused are charged with five counts under the Mugonero Indictment and seven counts under the Bisesero Indictment. In addition, it follows from the Mugonero Indictment that Gérard Ntakirutimana is charged with superior criminal responsibility under Article 6 (3) of the Statute.

4. The judgement will be available in English shortly. A French translation will be provided later. A summary of the judgement in English, French and Kinyarwanda will be available on the Tribunal’s web-site. The judgement consists of five chapters. I will now read out the summary.

5. The first Chapter of the judgement contains the history and procedural background of the case. Let me simply recall that Elizaphan Ntakirutimana was arrested on 29 September 1996 in Texas, USA, released, and then re-arrested on 26 February 1998. He

¹ This summary does not bind the Chamber. The authoritative text follows from the judgement.

was transferred to the Tribunal's detention facility in Arusha on 24 March 2000, after having been denied a writ of certiorari by the United States' Supreme Court. During his initial appearance on 31 March 2000, he pleaded not guilty to all counts. Gérard Ntakirutimana was arrested on 29 October 1996 in the Ivory Coast and was transferred to the detention facility in Arusha on 30 November 1996. During his initial appearance on 2 December 1996, he pleaded not guilty to all counts.

6. The second Chapter of the judgement contains the factual findings of the Chamber. For the purposes of this summary they can be divided into three main sections:

- The alleged criminal conduct of the two Accused before 16 April 1994;
- Their alleged criminal conduct during the attack at the Mugonero Complex on 16 April 1994;
- The allegations against the two Accused in the Bisesero area, from 17 April through June 1994.

7. Prior to its factual findings, the Chamber found it necessary to consider a general issue. In *The Prosecutor v. Kupreskic et al.* the Appeals Chamber of the two ad hoc Tribunals laid down principles concerning the specificity of indictments, and the extent to which defects in an indictment can be cured. The *Kupreskic* judgement was delivered after the commencement of the present trial but it is still relevant to the present trial. Accordingly, the task for the Trial Chamber has been to apply the principles enunciated in *Kupreskic* yet to take into account the issues which distinguish this trial from the *Kupreskic* case. The Trial Chamber has found that the factual allegations in the Mugonero Indictment, read with the charges, provide the Accused with reasonable notice of the Prosecution's case against them. With respect to the Bisesero Indictment, the Chamber recalls that, according to *Kupreskic*, the degree of specificity required in indictments depends on the nature of the alleged criminal conduct of the Accused. The Chamber also notes that the sheer scale of attacks in Bisesero may well make it impracticable for the allegations to be very specific. The Chamber finds that the Prosecution Pre-trial Brief, in particular the summaries of the anticipated evidence (Annex B), and prior witness statements may cure defects in the Indictments. A concrete assessment, however, is required to establish whether the Accused received sufficient notice in relation to each allegation. The Chamber has proceeded to make such an assessment in connection with each alleged event.

Alleged Criminal Conduct Before 16 April 1994

8. Turning to the events in Mugonero predating 16 April, it is recalled that after the downing, on 6 April 1994, of the plane of President Juvénal Habyarimana of Rwanda, violence in Kibuye prefecture escalated. Around 9 April 1994, refugees and injured people began to arrive at the Seventh Day Adventist Mugonero Complex. At least two gendarmes also arrived. A large number of men, women and children sought shelter from the attacks at the Complex. Based on the evidence, there were many hundreds, even thousands of refugees. The evidence suggests that the great majority, although not all, of the refugees at the Complex were Tutsi civilians, who were unarmed.

9. The Mugonero Indictment alleges that “many” of the refugees went to the Complex because they were “instructed” to do so by Elizaphan Ntakirutimana. However, the evidence of the Prosecution witnesses suggests that most of the refugees sought refuge at the Complex because they believed, or had been told by relatives, that they would be safe there, because they had used it as a refuge previously or because they did not know what else to do at the time. The Chamber found that perhaps half a dozen or so Tutsi, not “many”, sought refuge there upon the advice, though not the “instruction” of the Accused, as alleged. The Chamber therefore finds that the allegation has not been established. The evidence does not support a finding that Elizaphan Ntakirutimana wanted refugees to return to the Complex so that they would be killed, and there is not sufficient evidence to conclude that the gendarmes were used by the Accused to lure Tutsi to the Complex.

10. There is no evidence that the Accused participated in meetings with persons who were later seen during the attack of 16 April 1994. It is also recalled that the Prosecution conceded during its closing arguments that there was no evidence that either Accused had engaged in any political activity or had any political affiliation. Finally, the Chamber observes that there is no evidence that the refugees were prevented from leaving the Mugonero Complex by the two Accused.

11. According to the Mugonero Indictment, Gérard Ntakirutimana and others separated the Tutsi from other individuals at the Complex. This separation allegedly took three forms. The first relates to the attempted confinement of Tutsi in the Ngoma Adventist Church, which is about one kilometer north of the Complex. The Chamber finds beyond a reasonable doubt that Gérard Ntakirutimana did request the refugees to leave the hospital for the Ngoma Church, but that, in view of the large numbers of refugees at the Complex filling the hospital and the church, the Accused’s reasons for seeking to move the refugees out of the Complex are plausible. The Prosecution’s case is that Gérard Ntakirutimana made this request for the purpose of separating the Tutsi from the Hutu with a view to preparing the attack of 16 April against the Tutsi at the Mugonero Complex. The Chamber cannot make this inference on the existing evidence.

12. The second method of separation alleged by the Prosecution is that Gérard Ntakirutimana evacuated Hutu families from the Mugonero Complex some days before 16 April. The Chamber observes that it is true that Gérard Ntakirutimana and some Hutu employees at the Complex evacuated their own families from the Complex, but finds that the Accused also evacuated Tutsi individuals. The Prosecution alleges that Gérard Ntakirutimana advised Hutu personnel of the Complex to leave. Yet the Chamber does not find the evidence sufficient to conclude that the aim of the Accused was to separate the Hutu from the Tutsi as part of the preparations for the attack.

13. A third method of separation, according to the Prosecution, was that Gérard Ntakirutimana discharged the non-Tutsi from the hospital, separated the Tutsi from the non-Tutsi patients and confined the Tutsi patients to the basement of the hospital. The Chamber finds beyond a reasonable doubt that Gérard Ntakirutimana encouraged Hutu patients to leave the hospital. The Chamber notes, however, that there is little evidence

that Gérard Ntakirutimana and others confined the Tutsi patients to the basement of the hospital and considers that it is not in a position to make any findings against the Accused in this respect.

14. Consequently, the Chamber finds that it has not been proved beyond a reasonable doubt that the Accused separated Tutsi individuals from others.

15. The Prosecution further alleges that Gérard Ntakirutimana denied treatment to wounded Tutsi individuals at the hospital and claimed that there was no medicine to treat the Tutsi. The Chamber finds that it is unclear from the evidence if Gérard Ntakirutimana denied treatment to Tutsi patients by locking away the medical supplies. There is also no evidence before the Chamber as to the actual amount of stock remaining in the pharmacy and surgery. Therefore, the Chamber has not made a finding against the Accused that he denied treatment or medical supplies to Tutsi patients.

16. This being said, the Chamber observes that Gérard Ntakirutimana departed from the hospital and left the Tutsi patients, creating the impression that he had abandoned them.

17. Another allegation made by the Prosecution is that Gérard Ntakirutimana cut off the utility supplies to the Complex, leaving several thousands of refugees without water, electricity and other basic sanitary supplies. The Chamber finds that this allegation is not supported by sufficient evidence.

18. It is the Prosecution case that Gérard Ntakirutimana procured gendarmes and ammunition for the attack against the Tutsi persons at the Mugonero Complex. Evidence was led that the Accused met at the Kibuye Gendarmerie Camp twice and left with gendarmes and ammunition. The Defence case is that the Accused was at his father's residence at the time of these alleged meetings and that he never left the residence.

19. The Chamber found the evidence presented by the main Prosecution witness on this allegation to be credible and gave no credence to the Accused's alibi for this allegation, which is uncorroborated by any witness other than his father, the co-Accused Elizaphan Ntakirutimana. The Chamber therefore finds that it has been proved beyond a reasonable doubt that Gérard Ntakirutimana attended a meeting with the commander of the gendarmerie camp and Obed Ruzindana in Kibuye town on the afternoon of 15 April. The Chamber also finds that on the morning of 16 April, between 6.30 and 7.30 a.m., Gérard Ntakirutimana returned to the camp. In his vehicle he was carrying Interahamwe, who told the witness that they were in need of arms and ammunition. Gérard Ntakirutimana announced that he had an appointment with the commander of the camp to go "to beat the Tutsis who were in the hospital, in the church". The Accused departed shortly thereafter from the camp, taking with him the Interahamwe with whom he arrived, and accompanied by a number of gendarmes in two other vehicles, who had been provisioned with boxes of ammunition. Later that day, one of the gendarmes reported to the witness that he and Gérard Ntakirutimana had taken part in an attack against Tutsi persons at the Mugonero Complex.

Attack at the Complex on 16 April 1994

20. Before addressing the attack at the Mugonero Complex the Chamber recalls that on 15 April 1994, six pastors and another prominent Tutsi, wrote a letter to Elizaphan Ntakirutimana. In this letter they informed the Accused that they had heard that “tomorrow we shall die with our families” They requested Elizaphan Ntakirutimana to intervene by contacting the bourgmestre as soon as possible.

21. The Defence case is that after receiving the letter from the gendarmes between 5.00 a.m. and 6.30 a.m. on 16 April, both the Accused went to Gishyita to plead with the bourgmestre on behalf of the refugees. They returned to the Complex before 8.00 a.m., when Elizaphan Ntakirutimana wrote his reply to the letter from the Tutsi pastors, saying that nothing could be done for them. According to the Defence, gendarmes advised both the Accused to leave the Mugonero Complex. Feeling that they had to comply, Elizaphan and Gérard Ntakirutimana then left for Gishyita at about 8.00 a.m. and stayed in a building there.

22. The Prosecution does not dispute that Elizaphan Ntakirutimana went to see the bourgmestre on the morning of 16 April 1994 but argues that the purpose of the meeting with the bourgmestre was not to transmit the message of the Tutsi pastors, but to arrange for the evacuation and accommodation of Hutu colleagues and relatives and to convey attackers to the Mugonero Complex. Moreover, it is the Prosecution case that Elizaphan Ntakirutimana was alone and not accompanied by his son, who was then involved at the Kibuye gendarmerie camp.

23. The Chamber accepts that Elizaphan Ntakirutimana met with the bourgmestre on the morning of 16 April 1994. Only these two persons are said to have been present during this meeting. The only evidence at trial was Elizaphan Ntakirutimana’s testimony. Consequently, the Chamber has accepted his version. The Chamber has also accepted that Elizaphan Ntakirutimana wrote his reply to the pastors after his return from Gishyita. According to the Accused, he wrote that he could not do anything because the bourgmestre refused to assist the refugees at the Complex. The Chamber has found that the evidence about the contents of Elizaphan Ntakirutimana’s reply is unclear, and that the reply as such does not provide a sufficient basis to conclude that Elizaphan Ntakirutimana condoned or supported the attack of 16 April 1994.

24. This being said, the Chamber notes that Elizaphan Ntakirutimana sent his reply through gendarmes instead of answering the Tutsi pastors in person. When asked about this matter he answered that in view of the angry, armed refugees in the vicinity he did not dare to deliver his reply personally. The Chamber does not find this explanation plausible. The Accused was a person of high authority in the Mugonero Complex and had occupied several important positions, including the post he held in April 1994 as President of the North Rwandan Field of the Seventh Day Adventists. The tone of the

letter written to him indicated great respect. A person with the Accused's authority and responsibility would be expected to visit his flock in such a time of distress and to convey an answer directly. Regarding the possibility that the negative message might have provoked aggression towards the Accused, the Chamber observes that he had, at that juncture, at least one or two armed gendarmes available to protect him and would have had little to fear. The Chamber finds Elizaphan Ntakirutimana distanced himself from the pastors and his congregation.

25. The Mugonero Indictment alleges that Gérard Ntakirutimana also conveyed attackers to the Complex on the morning of 16 April 1994. The evidence, however, does not provide a sufficiently detailed or coherent picture to conclude beyond a reasonable doubt that Gérard Ntakirutimana conveyed attackers to the Complex.

26. The Prosecution also alleges that Elizaphan Ntakirutimana conveyed armed attackers to the Complex on the morning of 16 April 1994. The Chamber finds that there is considerable evidence in support of this allegation. Both the Accused raised the defence of alibi for the period of 8.00 a.m. to 9.00 a.m. on 16 April. However, the Chamber does not find that this evidence, considered together with that given by the Prosecution witnesses, raises a reasonable possibility that the Accused was not present at the Complex at that time. Consequently, the Chamber finds beyond a reasonable doubt that Elizaphan Ntakirutimana conveyed armed attackers to the Complex on the morning of 16 April 1994, and accepts the evidence that these armed attackers, along with others, participated in the attack at the Mugonero Complex on that date, killing a large number of Tutsi civilians.

27. Another allegation in the Indictment is that the Accused and others took part in an attack on the refugees in the Complex, which lasted throughout the day. The Chamber finds beyond a reasonable doubt that the attack on the refugees in the Complex lasted throughout the day and night, and left hundreds dead and a large number wounded. The Chamber also finds beyond a reasonable doubt that the majority of the refugees at the Complex up to 16 April were Tutsi, and that the overwhelming majority of those killed or wounded during the attack were Tutsi.

28. The Prosecution alleges that during the events on 16 April the two Accused were involved in an attack on the refugees at the so-called ESI Chapel within the Complex. The evidence reveals problems as to the exact timing of this incident, and there is no corroboration of the allegation. Therefore, the Chamber has not found beyond a reasonable doubt that the two Accused were involved in the attack at the ESI Chapel.

29. It is part of the Prosecution's case that, during his involvement in the attack on 16 April, Gérard Ntakirutimana shot and killed Charles Ukobizaba, a Tutsi accountant at the hospital. The Defence submits that the Prosecution witnesses are not credible and form part of a propaganda campaign. The Defence also submits that the Accused was in Gishyita at the time. The Chamber finds the testimonies led on this allegation to be credible and to possess overwhelming and convincing similarities. As for Gérard Ntakirutimana's alibi, there is no reliable supporting evidence to raise a reasonable

possibility that he was not in the Complex at the time of the shooting. Therefore, the Chamber finds beyond a reasonable doubt that Gérard Ntakirutimana killed Charles Ukobizaba by shooting him from a short distance in the chest in the Mugonero Hospital courtyard around midday on 16 April 1994.

30. The Prosecution alleges that on the afternoon of 16 April 1994 Gérard Ntakirutimana shot at Witness SS in a forest near the ESI Chapel. The Chamber observes that the witness did not claim to have seen Gérard Ntakirutimana shoot him. The Chamber, therefore, is not convinced beyond a reasonable doubt that the evidence showed that the Accused shot at Witness SS. However, the Chamber accepts that Gérard Ntakirutimana participated in the attack against Witness SS, that he was armed, and that he was in the company of armed attackers.

31. According to the Prosecution, Gérard Ntakirutimana also shot at other refugees, namely Kagemana and Macantaraga. The Chamber finds that the Accused participated in attacks on 16 April and that he shot at refugees. However, there is insufficient evidence to conclude that Gérard Ntakirutimana personally killed these two persons.

32. The Prosecution submits that Gérard Ntakirutimana was at the Complex at nightfall on 16 April, taking stock of the persons killed at the hospital. The Chamber has noted significant differences among the testimonies of the witnesses who allegedly saw the Accused at the Complex that night and cannot overlook the extreme conditions under which they made their observations. It was dark and the witnesses were lying under dead bodies. Under these circumstances, the Chamber must exercise caution in its assessment of the evidence. It has not found it established beyond a reasonable doubt that Gérard Ntakirutimana took stock of dead bodies in the hospital basement at nightfall on 16 April 1994.

33. The Chamber will now address the allegation of Gérard Ntakirutimana's superior criminal responsibility, under Article 6(3) of the Statute of the Tribunal, for the actions of his subordinates. The Prosecution's case is that Gérard Ntakirutimana took charge of the hospital when its Director, Mr Giordano, was evacuated and until July 1994. In particular, it is argued that he had effective control over Mathias Nginshuti, the director of personnel at the hospital, and is therefore responsible for the crimes allegedly committed by him.

34. Some evidence suggests that Gérard Ntakirutimana assumed responsibility for the hospital after Giordano's departure. However, there is very little evidence concerning Gérard Ntakirutimana's relationship with Mathias Nginshuti, and certainly not enough to establish beyond a reasonable doubt that the director of personnel was under the effective control of the Accused. In view of the fact that the Prosecution's failure to prove that Gérard Ntakirutimana had effective control over any person, the Chamber does not find beyond a reasonable doubt that Gérard Ntakirutimana incurs superior criminal responsibility under Article 6(3).

Allegations in the Bisesero Area from 17 April to June 1994

35. I will now turn to the last set of allegations against the two Accused, which relate to their alleged criminal conduct in the area of Bisesero from 17 April onwards.

36. The Chamber has made some general findings about events at Bisesero at the time. The evidence supports the contention that many persons sought refuge in the Bisesero area. Most witnesses, both from the Mugonero Complex and elsewhere, testified that they arrived in Bisesero in the days following 16 April 1994. It is difficult to estimate the total number of refugees. However, on the basis of the evidence, the Chamber finds it established that a large number of men, women and children, who were predominantly Tutsi civilians, sought refuge in the area of Bisesero from April through June 1994.

37. The evidence in the present case also supports the findings that there was widespread killing or massacres in the area of Bisesero between April and June 1994, and that the attacks against Tutsi occurred almost on a daily basis. Several of the witnesses testified that the numbers of victims of the attacks were high. The attackers consisted of Interahamwe, gendarmes, soldiers, and civilians. The Interahamwe, gendarmes, and soldiers were usually armed with guns and wore uniforms. Some of the civilians were usually armed with clubs, machetes, bows, arrows, spears, hoes, knives, sharpened bamboo sticks, and other traditional weapons. Some of the attackers arrived in vehicles; others came on foot.

38. It is the Prosecution's case that on more than 20 occasions, one or both of the Accused were seen participating in attacks against Tutsi civilians in the Bisesero area. It is not possible to summarize the Chamber's findings in relation to all these allegations. Here I have to refer to the detailed discussions in the judgement. However, the findings may be divided into three groups: dismissal because of insufficient notice to the Defence; facts found not proved; and facts found beyond reasonable doubt.

39. As mentioned previously, *insufficient notice* of the allegations against the Accused can lead to dismissal. For instance, it is the Chamber's view that the Defence for Elizaphan Ntakirutimana did not receive sufficient notice of the allegation that he shot and killed Thomas Habayo at Mubuga Primary School in mid-May 1994. Another example relates to Gérard Ntakirutimana. The Chamber found that the Defence did not receive sufficient notice that Gérard Ntakirutimana would be alleged to have been present at Murambi Church, or that it would be alleged that he killed someone there.

40. The Chamber has also found *insufficient evidence* in respect of several events. In relation to Elizaphan Ntakirutimana, it did not find beyond a reasonable doubt that the Accused was present during attacks or conveyed attackers to group of refugees at some of the attacks at Gitwe Primary School; Gitwa Cellule; Mubuga Primary School; and Muyira Hill School.

41. Moreover, the Chamber did not find it proved beyond a reasonable doubt that Gérard Ntakirutimana shot and killed Ignace Rugwizangoga on 17 April 1994 in Murambi; that he was present during a certain attack at Kabatwa Hill; or that he participated during an attack at Mubuga Primary School.

42. Having now mentioned some events where the Accused were not proved culpable, I will turn to events where the Chamber made *findings of guilt*. It found that Elizaphan Ntakirutimana conveyed attackers to Murambi Church and ordered the removal of the church roof so that it could no longer be used as a shelter for the Tutsi. In so doing, he facilitated the hunting down and the killing of the Tutsi refugees hiding in Murambi Church in Bisesero.

43. The Chamber also found that Elizaphan Ntakirutimana transported armed attackers to various locations to pursue and kill Tutsi; and that he participated in vehicle convoys carrying armed attackers to locations in Bisesero, including Murambi Hill, Kabatwa Hill, Gitwa Hill, Ku Cyapa, and Nyarutovu Hill.

44. The evidence does not reveal that Elizaphan Ntakirutimana killed anyone. Rather the Prosecution witnesses described him as transporting attackers in his vehicle, or as pointing out to attackers the whereabouts of Tutsi refugees. The Chamber has accepted several testimonies of this character and finds that Elizaphan Ntakirutimana thus participated in massacres of Tutsi civilians in the area of Bisesero.

45. Turning now to Gérard Ntakirutimana, the Chamber has established beyond a reasonable doubt that Gérard Ntakirutimana shot at refugees at Gitwe Hill, Mubuga Primary School, Mutiti Hill and Kidashya Hill, where he also transported attackers. The Chamber also finds that Gérard Ntakirutimana took part in attacks on refugees at Murambi Hill and Muyira Hill on various dates. The Chamber finds beyond reasonable doubt that during an attack at Gitwe Primary School Gérard Ntakirutimana shot and killed a Tutsi civilian called Esdras.

46. The Defence led evidence on the good character of both Accused, although the Prosecution submits that this information is irrelevant. The Chamber accepts that until the events in April 1994, Elizaphan Ntakirutimana was considered a trusted and respected religious leader, who did not show any ethnic bias and was not engaged in politics. As for Gérard Ntakirutimana, the Chamber accepts that he was a person of good character prior to the events of 1994.

47. The Defence has stressed that it is unthinkable that these persons could commit the crimes with which they are charged. The Chamber has found otherwise. In relation to the Defence submission that they were religious persons the Chamber recalls a statement by one of the Defence witnesses, that thousands of religious persons committed crimes during the events in Rwanda in 1994.

48. Throughout the case, the Defence submitted that the two Accused are victims of an organized propaganda effort to falsely incriminate them for political gain, and this

campaign was conceived and directed by persons close to the new, RPF-controlled government. In the Chamber's view, this is not supported by the evidence. The Chamber considers that the arguments of the Defence and the evidence led fail to create a reasonable possibility that the two Accused were subject to a campaign of false incrimination, bearing on the present case. It is not clear why persons who had never exercised any political activity should be targets of such a campaign.

Legal Findings

49. In the third Chapter of the Judgement, the Chamber makes its legal findings based on the factual findings in the second Chapter. These discussions are not reproduced here.

50. The Defence has raised some legal issues including the competence of the Tribunal and the principle of fair trial. They are considered in the judgement but will not be dealt with here.

51. The Chamber will now read out from the unanimous *verdict*.

In respect of Elizaphan Ntakirutimana:

Count 1A Mugonero & Count 1 Bisesero: Guilty of Genocide

[Count 1B Mugonero & Count 2 Bisesero: Alternative Count of Complicity in Genocide is inapplicable]

Count 2 Mugonero & Count 3 Bisesero: Not Guilty of Conspiracy to Commit Genocide

Count 3 Mugonero & Count 4 Bisesero: Not Guilty of Crimes Against Humanity (Murder)

Count 4 Mugonero & Count 5 Bisesero: Not Guilty of Crimes Against Humanity (Extermination)

Count 5 Mugonero & Count 6 Bisesero: Not Guilty of Crimes Against Humanity (Other Inhumane Acts)

Count 7 Bisesero: Not Guilty of Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II

In respect of Gérard Ntakirutimana:

Count 1A Mugonero & Count 1 Bisesero: Guilty of Genocide

[Count 1B Mugonero & Count 2 Bisesero: Alternative Count of Complicity in Genocide is inapplicable]

Count 2 Mugonero & Count 3 Bisesero: Not Guilty of Conspiracy to Commit Genocide

Count 3 Mugonero & Count 4 Bisesero: Guilty of Crimes Against Humanity (Murder)

Count 4 Mugonero & Count 5 Bisesero: Not Guilty of Crimes Against Humanity (Extermination)

Count 5 Mugonero & Count 6 Bisesero: Not Guilty of Crimes Against Humanity (Other Inhumane Acts)

Count 7 (Bisesero): Not Guilty of Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II

Sentence

The Chamber will now address the sentencing which is found in the fifth Chapter of the judgement. Having recalled the purposes and principles of sentences, the Chamber notes the gravity of the crimes for which the two Accused were found guilty.

Elizaphan Ntakirutimana

In relation to Elizaphan Ntakirutimana, the Chamber takes into account as *mitigating circumstances* that the Accused was a highly respected personality within the Seventh Day Adventist Church of the West Rwanda. The evidence until 1994 described the pastor's exemplary life as a church leader. He was a highly religious and tolerant person, who showed no ethnic bias, including in times of unrest and ethnic tension, for over half a century. His family situation was noted. During the events of 1994, he did not personally participate in killings, nor was he found to have fired on refugees or even carried a weapon.

Aged 78 years at the time of sentencing, the Accused has spent more than four years in detention. His frail health was testified to by witnesses and was evident throughout the trial proceedings. These are important mitigating circumstances in Elizaphan Ntakirutimana's case.

Aggravating circumstances are the fact that, as a highly respected personality and a man wielding certain authority within the Seventh Day Adventist Church he abused the trust placed in him. The letter, written to him by the pastors was a symbol of his perceived authority. Many of the refugees at the Complex were faithful Seventh Day Adventists. On his way back from Gishyita, he distanced himself from his Tutsi pastors and his flock in the hour of their need. Moreover, his presence at the scenes of attack could only be construed by attackers as an approval of their actions.

Having regard to all mitigating and aggravating circumstances in the Accused case, the Chamber sentences Elizaphan Ntakirutimana to imprisonment for a period of *ten years*. He will be given credit for time spent in custody awaiting trial.

Gérard Ntakirutimana

The Chamber will now turn to Gérard Ntakirutimana, who is 45 years old, married with three children. Among the mitigating circumstances, it is noted that the Accused was a person of good character and that he did not profess or show any ethnic bias until April 1994. It is accepted that he was until the events a person of good character. Gérard Ntakirutimana provided or offered shelter to several Tutsi, including a colleague and friends, a house-help and orphaned children.

Among the aggravating circumstances, the Chamber notes that Gérard Ntakirutimana was a prominent personality, one of the few individuals in his area of origin to have achieved a higher education. As a medical doctor, he took lives instead of saving them. He abused the trust placed in him in committing the crimes he was found guilty of.

Other aggravating circumstances are that his crimes were committed over a lengthy period of time; that he personally shot at Tutsi refugees; and that he participated in the attack against a safe haven such as the Mugonero Complex. Furthermore, in several instances the Accused was found to have led attackers against Tutsi refugees.

Having regard to all mitigating and aggravating circumstances in the Accused's case, the Chamber sentences Gérard Ntakirutimana to imprisonment for a period of *25 years*. He will be given credit for time spent in custody awaiting trial.
