



## JUDGEMENT SUMMARY

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## APPEALS CHAMBER

Arusha, 18 December 2014

# Appeal Judgement Summary for Augustin Ngirabatware

*Please find below the summary of the Judgement read out today by Judge Meron.*

1. The judgement in the case of *Augustin Ngirabatware v. The Prosecutor* is being delivered today in accordance with Rule 144(D) of the Mechanism's Rules of Procedure and Evidence. Not every point in the judgement will be mentioned in the summary, which focuses only on central issues. This summary does not constitute any part of the official and authoritative Judgement of the Appeals Chamber.

### **A. Background**

2. During the relevant period in 1994, Ngirabatware served as Minister of Planning in the Rwandan government.

3. On 20 December 2012, Trial Chamber II of the International Criminal Tribunal for Rwanda convicted Ngirabatware of direct and public incitement to commit genocide based on his speech at a roadblock in Nyamyumba Commune on 22 February 1994. It also found him guilty of instigating and aiding and abetting genocide based on his role in distributing weapons and his statements at two roadblocks in Nyamyumba Commune on 7 April 1994. The Trial Chamber also convicted Ngirabatware, under the extended form of joint criminal enterprise, of rape as a crime against humanity. It sentenced him to 35 years of imprisonment.

4. The Trial Judgement was issued in writing on 21 February 2013, and Ngirabatware filed an appeal before the Mechanism challenging his convictions and sentence. The Appeals Chamber heard the oral submissions of the parties on 30 June 2014.

### **B. Rule 98bis Motion**

5. Ngirabatware submits that the Trial Chamber erred in dismissing his motion under Rule 98bis of the ICTR Rules requesting a judgement of acquittal in relation to 45 paragraphs of the Indictment. The Appeals Chamber finds that the Trial Chamber did not err in dismissing Ngirabatware's Rule 98bis Motion in its entirety. The Appeals Chamber therefore dismisses Ngirabatware's Sixth Ground of Appeal.

### **C. Direct and Public Incitement to Commit Genocide**

6. The Trial Chamber convicted Ngirabatware for direct and public incitement to commit genocide based on his speech at a roadblock on the Cyanika-Gisa road in Nyamyumba Commune on 22 February 1994. Specifically, the Trial Chamber found that, following the murder of Martin Bucyana, the chairman of the CDR political party, Ngirabatware told a crowd of as many as 150 to 250 people assembled at the roadblock to kill

Tutsis. Ngirabatware challenges the Trial Chamber's findings in relation to his conviction for direct and public incitement to commit genocide.

7. In relation to Ngirabatware's arguments that he lacked notice of the charge, the Appeals Chamber finds that the Indictment provided Ngirabatware with sufficient notice as to his criminal conduct, the date of the commission of the crime and the presence of a crowd at the roadblock. In particular, in relation to the location of the roadblock where the crime was allegedly committed, the Appeals Chamber finds that the inconsistencies in the evidence as to the roadblock's precise location were minor and do not, as such, show that Ngirabatware lacked sufficient notice of the location where the crime was allegedly committed or that he suffered any prejudice as a result.

8. The Appeals Chamber also finds that Ngirabatware has failed to show that he had insufficient time to prepare for Witness ANAT's cross-examination.

9. With respect to Ngirabatware's challenges as to the legal elements of the crime, the Appeals Chamber finds that Ngirabatware has failed to demonstrate that the Trial Chamber erred in finding that the *actus reus* of the crime of direct and public incitement to commit genocide had been fulfilled. In relation to the public element of the crime, the Trial Chamber explicitly considered that the intended audience of Ngirabatware's speech was a group that may have been composed of as many as 150 to 250 people who had gathered at the roadblock, as opposed to only those manning it. Ngirabatware also has failed to demonstrate that the Trial Chamber did not make the necessary findings in relation to his *mens rea* for direct and public incitement to commit genocide.

10. As regards Ngirabatware's challenges to the Trial Chamber's assessment of the evidence, the Appeals Chamber concludes that Ngirabatware has failed to show that the Trial Chamber erred in finding that there was no collusion or tainting between Witnesses ANAN and ANAT. The Appeals Chamber therefore dismisses Ngirabatware's Fifth Ground of Appeal.

#### **D. Genocide**

11. The Trial Chamber convicted Ngirabatware for instigating and aiding and abetting genocide based on his role in distributing weapons and his statements at two roadblocks in Nyamyumba Commune on 7 April 1994. Specifically, the Trial Chamber found that, on 7 April 1994, Ngirabatware delivered weapons to the Bruxelles roadblock, where he told Faustin Bagango that he did not want any Tutsis alive in Bruxelles.

12. The Trial Chamber also concluded that, later the same day Ngirabatware returned to the Bruxelles roadblock and delivered more weapons. According to the Trial Judgement, Ngirabatware reprimanded the *Interahamwe* for only pretending to work and stated that he brought weapons because he did not want to see any Tutsis in Busheke cellule. Following this incident, Ngirabatware delivered weapons to the nearby Gitsimbi/Cotagirwa roadblock where he again told Bagango that he did not want to see any Tutsis in Nyamyumba Commune and ordered Bagango to work well. The Trial Chamber considered extensive evidence that people were attacked and killed after Ngirabatware delivered the weapons and that the *Interahamwe* who manned the Bruxelles and Gitsimbi/Cotagirwa roadblocks were notorious for their role in killing Tutsis and looting their property.

13. Ngirabatware submits that the Trial Chamber erred in convicting him of instigating and aiding and abetting genocide.

14. The Appeals Chamber finds that Ngirabatware has failed to demonstrate that he lacked sufficient notice of the timing of the distribution of the weapons and that he suffered material prejudice as a result of the defect

in the pleading of the location of the events in the Indictment. The Appeals Chamber considers that Ngirabatware has also failed to demonstrate that he lacked notice that he distributed weapons on three occasions at two separate locations and that he lacked notice of the underlying crimes, the perpetrators or the victims.

15. The Appeals Chamber also dismisses Ngirabatware's arguments that the Trial Chamber erred in relation to the *actus reus* and *mens rea* elements of instigating and aiding and abetting.

16. As regards the Trial Chamber's assessment of the evidence, the Appeals Chamber finds that a reasonable trier of fact could have found that the only reasonable inference from the evidence was that the *Interahamwe* used at least some of the weapons, distributed by Ngirabatware on 7 April 1994, during the subsequent attacks and killings of Tutsis. The Appeals Chamber therefore dismisses Ngirabatware's First Ground of Appeal.

#### **E. Alibi**

17. At trial, Ngirabatware advanced an alibi placing him in Kigali from 6 to 12 April 1994. The Trial Chamber found that Ngirabatware failed to give proper notice of his alibi and accordingly, took this into account in evaluating the alibi evidence. In this regard, the Trial Chamber considered that the manner and context in which Ngirabatware provided notice of his alibi indicated that there was a high probability that the alibi was tailored and fabricated to fit the Prosecution case. The Trial Chamber also noted the nature and proximity of the relationship between Ngirabatware and the Defence witnesses and considered that these witnesses might have had a motive to protect Ngirabatware. The Trial Chamber concluded that the alibi evidence was not credible and was insufficient to raise a reasonable doubt in the Prosecution's case with regards to Ngirabatware's presence in Nyamyumba Commune on 7 April 1994.

18. The Appeals Chamber finds that Ngirabatware has not demonstrated that the Trial Chamber erred in assessing the notice he provided for his alibi or in drawing negative inferences from it. The Appeals Chamber, Judge Moloto dissenting, also finds that Ngirabatware has not demonstrated that the Trial Chamber failed to assess the evidence as a whole, shifted the burden of proof, or erred in its evaluation of the feasibility of travel between Kigali and Gisenyi Prefecture. The Appeals Chamber, Judge Moloto dissenting, further finds that Ngirabatware has failed to demonstrate an error in the Trial Chamber's assessment of the alibi evidence.

19. Accordingly, the Appeals Chamber, Judge Moloto dissenting, dismisses Ngirabatware's Second Ground of Appeal.

#### **F. Joint Criminal Enterprise**

20. The Trial Chamber convicted Ngirabatware under Count 6 of the Indictment of rape as a crime against humanity, pursuant to the extended form of joint criminal enterprise, in relation to the repeated rape of Chantal Murazemariya in April 1994 by two members of the joint criminal enterprise.

21. Ngirabatware submits that the Trial Chamber erred in holding him responsible for the crime of rape on the basis of his participation in a joint criminal enterprise, because his contribution to the joint criminal enterprise was not pleaded in the Indictment. He further argues that he cannot be held responsible under Count 6 of the Indictment because the alleged common criminal purpose of the joint criminal enterprise under Count 6 was the extermination of the Tutsi civilian population and he was acquitted by the Trial Chamber of the crime of extermination charged under Count 5.

22. The Appeals Chamber observes that the nature of the common purpose under Count 5 (extermination) is identical to the common purpose pleaded under Count 6 (rape). A plain reading of the Indictment thus indicates that the common purpose of exterminating the Tutsi civilian population pleaded under Count 6 (rape) was linked to the charge of extermination contained in Count 5. The Appeals Chamber considers that Count 6 (rape) is narrowly tailored and alleges Ngirabatware's contribution to the common purpose to exterminate the Tutsis on the basis of his conduct pleaded under Count 5 (extermination). In relying on findings made in relation to Count 2 (genocide) to establish Ngirabatware's contribution to the joint criminal enterprise, the Trial Chamber impermissibly expanded the charge of rape as a crime against humanity.

23. The Appeals Chamber observes that Ngirabatware's contribution to the common purpose to exterminate the Tutsi civilian population was essential for establishing his responsibility for crimes committed beyond the common purpose, but which are nevertheless a natural and foreseeable consequence thereof. Since the Prosecution failed to prove Ngirabatware's contribution to the common purpose of exterminating the Tutsi civilian population pleaded under Count 5, Ngirabatware's conviction for rape pursuant to the extended form of joint criminal enterprise under Count 6 cannot be sustained. In the absence of an appeal by the Prosecution, the Appeals Chamber will not comment on Ngirabatware's acquittal under Count 5 of the Indictment.

24. The Appeals Chamber therefore grants, in part, Ngirabatware's Third Ground of Appeal, reverses his conviction for the rape of Chantal Murazemariya, and enters a verdict of acquittal under Count 6 of the Indictment.

25. As a consequence, Ngirabatware's Fourth Ground of Appeal challenging other aspects related to his conviction for the rape of Chantal Murazemariya is dismissed as moot.

#### **G. Sentencing**

26. The Appeals Chamber finds that Ngirabatware has not demonstrated any error in the Trial Chamber's assessment of his sentence.

27. As previously mentioned, the Appeals Chamber has reversed Ngirabatware's conviction for rape as a crime against humanity. Nonetheless, he remains convicted of very serious crimes, including direct and public incitement to commit genocide and genocide. The impact, if any, will be mentioned in the disposition.

#### **H. Disposition**

For the foregoing reasons, **THE APPEALS CHAMBER,**

**PURSUANT** to Article 23 of the Statute and Rule 144 of the Rules;

**NOTING** the written submissions of the parties and their oral arguments presented at the appeal hearing on 30 June 2014;

**SITTING** in open session;

**GRANTS** Ngirabatware's Third Ground of Appeal and **REVERSES** Ngirabatware's conviction for rape as a crime against humanity pursuant to the extended form of joint criminal enterprise;

**DISMISSES**, Judge Moloto dissenting in part, Ngirabatware's appeal in all other respects;

**AFFIRMS** Ngirabatware's convictions for committing direct and public incitement to commit genocide, and, Judge Moloto dissenting, instigating and aiding and abetting genocide;

**SETS ASIDE** the sentence of 35 years of imprisonment and **IMPOSES** a sentence of 30 years of imprisonment, subject to credit being given under Rules 125(C) and 131 of the Rules for the period Ngirabatware has already spent in detention since his arrest on 17 September 2007;

**RULES** that this Judgement shall be enforced immediately pursuant to Rule 145(A) of the Rules;

**ORDERS** that, in accordance with Rules 127(C) and 131 of the Rules, Ngirabatware is to remain in the custody of the Mechanism pending the finalization of arrangements for his transfer to the State where his sentence will be served.

Judge Bakone Justice Moloto appends a dissenting opinion.

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