

## SUMMARY OF JUDGEMENT

### (I) Introduction

1. The Case before this Chamber concerns Yussuf Munityakazi, who hails from Rwamatamu *commune*, Kibuye *préfecture*, Rwanda. In 1994, he was a farmer in Bugarama *commune*, Cyangugu *préfecture*. Based on his alleged acts in Cyangugu *préfecture*, the Prosecution charged Munityakazi with three counts: genocide, or alternatively, complicity in genocide and extermination as a crime against humanity. The Defence disputed all the charges.

2. The trial commenced on 22 April 2009 and ended on 15 October 2009, after 19 trial days. The Prosecution called 11 witnesses over the course of seven trial days, and the Defence called 20 witnesses, including the Accused, over 12 trial days. The Closing Briefs were submitted on 16 December 2009, and the closing arguments were heard on 28 January 2010.

3. The Chamber will now give a summary of its findings concerning the allegations against Yussuf Munityakazi, while noting that only the written judgement is authoritative.

### (II) Alibi

4. Munityakazi offered two alibis, one for 16 April 1994, the day he is alleged to have participated in the attack on Nyamasheke Parish; the second for 29 and 30 April 1994, the days on which he is alleged to have participated in attacks on Shangi and Mibilizi Parishes. The Trial Chamber found that both alibis were not credible.

### (III) Munityakazi as a leader with *de facto* authority over the Bugarama *Interahamwe*

5. The Indictment alleges that Munityakazi was a leader with *de facto* authority over the Bugarama MRND *Interahamwe* militia.

6. Prosecution witnesses testified that Munityakazi was the leader of the Bugarama *Interahamwe*. He went to political rallies accompanied by *Interahamwe*; used members of the *Interahamwe* as bodyguards; housed and fed members of the *Interahamwe*, and provided one of his homes to the group for use as a headquarters. In addition, they testified that Munityakazi led the Bugarama *Interahamwe* during specific attacks on Nyamasheke Parish, Shangi Parish and Mibilizi Parish. Defence witnesses described Munityakazi as an old man, with no interest in politics, who was devoted to farming and to his religion. Although the Chamber has not found that Munityakazi was the *de jure* leader of the Bugarama *Interahamwe*, it has found that he was a leader with *de facto* authority over the *Interahamwe* during the attacks at Shangi and Mibilizi Parishes on 29 and 30 April 1994.

**(IV) Recruitment and Training**

7. The Indictment alleges that Munyakazi, along with several other men, helped recruit and train the Bugarama *Interahamwe*.

8. Prosecution Witness BWW was the only witness to testify that Munyakazi was involved in recruiting members of the *Interahamwe*. According to this witness, Munyakazi toured the region in 1990 in his capacity as a member of the MRND, urging local youths to join the youth wing of the party. The Chamber notes that the Indictment does not cover the year 1990 and that the Prosecution adduced no evidence that the *Interahamwe* was already in existence at that time. Witness BWW, an accomplice witness, was inconsistent regarding the date that he himself joined the MRND, and provided no evidence about recruitment during the Indictment period. The Chamber finds that the witness' evidence is therefore of limited evidentiary value, and observes that it is uncorroborated in all respects.

9. Three Prosecution witnesses testified that the *Interahamwe* in Bugarama received some form of military training. According to these witnesses, a certain Athanase Ndutiye, also known as Tarek Aziz, who lived in one of Munyakazi's houses, was either one among several trainers, or the chief instructor, of this group of *Interahamwe*. One of these witnesses testified that Munyakazi and Tarek Aziz were present together during a training session. Apart from this testimony, the Prosecution adduced no evidence linking Munyakazi to the training. In addition, the Prosecution failed to show that the relationship between Munyakazi and Tarek Aziz was more than one of landlord and tenant. The Trial Chamber has concluded that the Prosecution did not prove beyond reasonable doubt that Munyakazi either recruited or trained the Bugarama *Interahamwe*.

**(V) Weapons: Storage and Distribution**

10. The Indictment alleges that Munyakazi armed the Bugarama *Interahamwe* with weapons that were regularly stored at his house.

11. One Prosecution witness testified that Munyakazi stored arms in his house. This was an accomplice witness, and his evidence was, at times, inconsistent and exaggerated. Another Prosecution witness testified that Munyakazi distributed arms during the attack on Shangi Parish. This witness was also an accomplice witness and did not know Munyakazi very well. The Chamber views the testimony of these two witnesses with caution and has only accepted their evidence where corroborated. Given the issues regarding the credibility of these witnesses, the Trial Chamber has concluded that the prosecution did not prove beyond reasonable doubt that Munyakazi armed the *Interahamwe* or that he stored weapons for the *Interahamwe* in any of his houses.

**(VI) Food and Transport**

12. The Indictment alleges that Munyakazi was among those who provided food and regularly transported the Bugarama *Interahamwe* to and from various massacre sites.

13. Two Prosecution witnesses testified that the *Interahamwe* ate meals at Munyakazi's house. The Chamber has found that the evidence of these two witnesses was contradictory. Thus, the Trial Chamber concludes that the Prosecution did not prove beyond reasonable doubt that Munyakazi provided food to the Bugarama *Interahamwe*, or that he participated in a common plan to provide food to the *Interahamwe*.

14. Several Prosecution witnesses testified that Munyakazi led the attacks on Shangi Parish on 29 April 1994 and on Mibilizi Parish on 30 April 1994. They further testified that Munyakazi arrived at the crime sites with two vehicles carrying *Interahamwe*. Defence witnesses denied that Munyakazi was involved in these attacks. As will be discussed in more detail, the Trial Chamber has found that Munyakazi was the leader of these attacks, and that he arrived with two vehicles carrying groups of *Interahamwe* from outside the Shangi and Mibilizi areas. The Trial Chamber has therefore concluded beyond reasonable doubt that Munyakazi facilitated the transportation of the Bugarama *Interahamwe* to the two crime sites.

#### **(VII) Nyamasheke Parish**

15. The Indictment alleges that Munyakazi transported the Bugarama *Interahamwe* to Nyamasheke Parish, located in Kagano *commune*, Cyangugu *préfecture*; where the Accused personally assisted the *Interahamwe* in killing hundreds of Tutsi civilian refugees.

16. The Prosecution presented two witnesses with regard to the killings at Nyamasheke Parish on 16 April 1994. These witnesses testified that Munyakazi led a group of *Interahamwe*, who attacked the parish on the morning of 16 April 1994. The Defence submitted that a major attack took place on 15 April 1994, in which Munyakazi did not participate, but that there was no attack the following day. Indeed, there was no need for such an attack because all the refugees at the parish were killed on 15 April 1994. The Trial Chamber has found that the Prosecution did not prove beyond reasonable doubt that Munyakazi was involved in an attack on 16 April 1994 at Nyamasheke Parish.

#### **(VIII) Shangi Parish**

17. The Indictment alleges that Munyakazi transported the Bugarama *Interahamwe* to Shangi Parish, located in Gafunzo *commune*, Cyangugu *préfecture*; where the Accused personally assisted the *Interahamwe* in killing hundreds of Tutsi civilian refugees.

18. Six prosecution witnesses testified about the attack on 29 April 1994 at Shangi Parish. These witnesses alleged that Munyakazi led a group of *Interahamwe*, who attacked Shangi Parish during the afternoon of 29 April 1994. They testified that approximately 5,000 Tutsi civilians were killed during the attack. The Trial Chamber has found this evidence to be credible. The Chamber accorded little weight to the evidence of Defence witnesses who were not eyewitnesses. These witnesses testified that they had not heard that Munyakazi was involved in the attack.

19. Accordingly, the Chamber has found that Munyakazi was the leader of this attack, and that he intended to eliminate the Tutsi civilians who sought refuge at the Parish. Munyakazi is therefore liable for “committing”, pursuant to Article 6 (1) of the Statute, and as further elaborated by the *Seromba* Appeals Chamber, for the killing of approximately 5000 Tutsi civilians at Shangi Parish on 29 April 1994.

#### **(IX) Mibilizi Parish**

20. The Indictment alleges that Munyakazi transported the Bugarama *Interahamwe* to Mibilizi Parish, located in Cyimbogo *commune*, Cyangugu *préfecture*; where the Accused ordered the *Interahamwe* to kill only Tutsi males.

21. Four Prosecution witnesses testified that Munyakazi led a group of *Interahamwe* that attacked Mibilizi Parish on 30 April 1994, and that 60 to 100 Tutsi civilians were killed during the attack. The Chamber has found this evidence credible. The Chamber accorded little weight to the testimony of the one Defence witness who stated that no attack took place on 30 April 1994, and other Defence witnesses who were not eyewitness but said that they had not heard that Munyakazi was involved in the attack.

22. Accordingly, the Chamber has found that Munyakazi was a leader of this attack, and that he intended to eliminate the Tutsi civilians who had sought refuge at the Parish. He is therefore liable for committing the killing of between 60 and 100 Tutsi civilians at Mibilizi Parish on 30 April 1994.

#### **(X) Legal Findings**

23. The Trial Chamber has found that the Prosecution did not prove beyond reasonable doubt that the Accused participated in a Joint Criminal Enterprise, as alleged in paragraph 4 of the Indictment. However, it has found that he is liable for “committing”, pursuant to Article 6 (1), the mass killings at Shangi Parish on 29 April 1994 and at Mibilizi Parish on 30 April 1994. While there was no direct evidence that Munyakazi harboured any animosity towards Tutsi civilians, the Trial Chamber was able to infer, on the basis of circumstantial evidence, that Munyakazi intended to destroy, in whole or in part, the Tutsi civilian group. The Prosecution has further established the *chapeau* elements of crimes against humanity.

#### **(XI) Verdict**

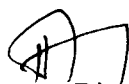
24. Munyakazi is, therefore, guilty of genocide (Count 1) and extermination as a crime against humanity (Count 3).

25. He is not guilty of complicity in genocide (Count 2).

**(XII) Sentencing**

26. The Chamber has considered the gravity of each of the crimes for which Munyakazi has been convicted, as well as aggravating and mitigating circumstances. The Chamber sentences Munyakazi to a single sentence of 25 years of imprisonment. He shall remain in the custody of the Tribunal pending transfer to the State where he will serve his sentence.

Arusha, 30 June 2010, done in English.



Florence Rita Arrey



Mparany Mamy Richard  
Rajohnson



Aydin Sefa Akay

Presiding Judge

Judge

Judge

[Seal of the Tribunal]