

Prosecutor v. André Rwamakuba
Case No. ICTR-98-44C-I

Summary of Judgement
20 September 2006, 10.00 a.m.
Laïty Kama Courtroom

The Chamber today pronounces its Judgment in the case of *The Prosecutor v. André Rwamakuba*. The full text of the Judgment, which will be available at the close of this hearing, is the exclusive and unanimous statement of the Chamber's findings and reasoning in the present case.

The Accused, André Rwamakuba, was born in 1950 in Nduba, Gikomero *commune*, Kigali rural *prefecture*, Rwanda. He is qualified as a doctor and was a public health specialist. In 1994, after the death of Rwandan President Juvénal Habyarimana, he was appointed Minister of Primary and Secondary Education in the Interim Government. He was also a member of the *Mouvement Démocratique du Rwanda*, MDR party.

The Accused was arrested in 1998 at the Tribunal's request. A first trial against him and three co-accused persons commenced in November 2003. In 2005, however, the Prosecution requested and obtained his severance and separate trial under an Amended Indictment.

The effective **Indictment** filed on 10 June 2005 charges André Rwamakuba **with genocide, or alternatively, complicity in genocide, and crimes against humanity for specific acts allegedly committed between 6 and 30 April 1994 in Gikomero commune and at Butare University Hospital**. The Accused pleaded not guilty to all counts. His Defence did admit that genocide occurred in Rwanda in 1994 but disputed the Accused's involvement in any of the crimes alleged in the Indictment. Between June 2005 and February 2006, 49 Prosecution and Defence witnesses were heard over 78 trial days.

Before turning to the facts of the case, the Chamber must first address a **point of law concerning the charges against the Accused**.

1. CHARGES AGAINST THE ACCUSED

At the closure of the case, the Prosecution submitted **in its Closing Brief** that as Minister of Primary and Secondary Education, André Rwamakuba “did nothing, either to denounce the crimes committed against the Tutsi, or to dissociate himself from the Interim Government”. It alleged that by these omissions, Rwamakuba directly failed to discharge the duties entrusted to him, which he had sworn to fulfil, and that he encouraged the genocidal activities. The Prosecution concluded that “a Trial Chamber may find an accused guilty when it is satisfied that the accused participated in a crime by committing any one of the acts covered by the Statute, *even if the Chamber does not endorse the Prosecution’s case*”. It added that “as a Tribunal of fact and law, the Chamber may accept any argument that it finds relevant to the facts of the case, on condition that the said argument is consistent with the provisions of Article 6(1) of the Statute”.

This submission raises the question whether the Accused was given adequate notice of these alleged charges against him and was therefore in a reasonable position to confront the Prosecution’s case.

The Chamber notes that nowhere in the Indictment, Pre-Trial Brief or Opening Statement is there any charge against the Accused which included a criminal responsibility as a Minister of the April 1994 Interim Government for not having denounced the crimes committed against the Tutsi, for not dissociating himself from the Government and for failure to discharge duties entrusted to him as a member of the Government. There is no allegation of any criminal responsibility of the Accused as superior for crimes committed by subordinates, nor is there any indication of any legal duty under which he was mandated to act and which failure to do so would constitute a criminal act.

On the contrary, when the Prosecution requested the severance of the Accused in 2005 and as the trial proceeded, it gave clear and consistent information both to the Accused and the Chamber that its case was limited to Rwamakuba’s direct participation in criminal activities in two specific locations within a specific time-frame. The

Prosecution explicitly stated that “any pleading of common purpose implicating Rwamakuba as co-perpetrator of crimes committed throughout Rwanda in furtherance of a government conspiracy to commit genocide *had been removed from the Indictment.*” It must be noted that the Accused agreed to the severance and a separate trial, and conducted his defence on the basis of these assertions. The Chamber also reviewed the suggested Amended Indictment in the light of this Prosecution’s stated position.

It would therefore be contrary to the fundamental right of the Accused to a fair trial, including his right to defend himself and to know the charges against him, if the Chamber were to accede to a Prosecution request to find André Rwamakuba criminally responsible for omissions which were neither set forth in the Indictment nor subsequently notified by timely, clear, and consistent information from the Prosecution.

The Chamber therefore considers that in the present case, the Prosecution charges André Rwamakuba, pursuant to Article 6(1) of the Statute, with genocide, or alternatively, complicity in genocide, and crimes against humanity for acts allegedly committed between 6 and 30 April 1994 in Gikomero *commune* and at Butare University Hospital. Any factual allegation related to André Rwamakuba’s political activities or role as a member of the MDR party or as Minister of the Interim Government must be considered as context or background from which inferences could be drawn concerning, for instance, his intent, disposition or other elements of the crimes.

The Chamber turns now to the **facts of the case.**

2. FACTUAL FINDINGS

The case against the Accused revolves around **two sets of events in Gikomero *commune* and at Butare University Hospital between 6 and 30 April 1994.**

The presumption of innocence requires the Prosecution to prove the accused’s guilt beyond reasonable doubt. According to this principle, the Defence does not have to adduce rebuttal evidence to the Prosecution’s case. If a reasonable doubt is raised in the Judges’ minds, the Prosecution would have failed to discharge its persuasive burden of proof.

The Chamber will not here review the evidence in detail. It must be noted that it has been assessed as a whole and for each allegation, the identification of the Accused, the credibility and reliability of the witnesses and the alibi evidence were discussed. In the assessment of the evidence, various criteria were used, such as internal discrepancies in the witness' testimony, inconsistencies with other witnesses' testimony, inconsistencies with the witness' prior statements, relationship between the witness and the Accused and other witnesses, the criminal record of the witness, the impact of trauma on a witness' memory, discrepancies in translation, social and cultural factors, and the demeanour of the witness.

The Prosecution's case consisted mainly of hearsay evidence concerning both the content of the allegations and also the identification of André Rwamakuba. Five of the 18 Prosecution witnesses claimed to have direct knowledge of Rwamakuba. Two witnesses also gave uncorroborated evidence to support specific allegations in the Indictment. The Prosecution did not specify why this was the case and it must be presumed that this was the best evidence available. The Defence called 31 witnesses who had both direct and indirect knowledge of Rwamakuba, many of them claimed to have been eyewitnesses to events alleged in the Indictment, and some of them to be victims of the genocide.

The Chamber now turns to the first set of *events which allegedly took place in Gikomero commune*.

The Indictment alleges **two main sets of events** in Gikomero *commune*, which can be described as follows:

- The **first set** took place **from 26 July 1993 until June 1994**, when André Rwamakuba conducted **sensitization campaigns** in the Gikomero *commune* organizing and participating in various *secteurs* of the *commune* in meetings calling upon the Hutu majority to exterminate the Tutsi, recruiting members for the extremist anti-Tutsi wing of the MDR, "MDR-Hutu Power", and supporting the "Hutu Power";
- The **second set** includes **four events over a period of few days in April 1994**, as follows:

- between 10 and 11 April 1994, Rwamakuba **delivered machetes** that were to be used to kill the Tutsi to the homes of, on the one hand, André **Muhire** and, on the other, **Etienne Kamanzi** located in two different *secteurs* of Gikomero *commune* five kilometres apart;

- between 10 and 20 April 1994, **at the Gikomero secteur office**, he **ordered the killing of three Tutsi** and encouraged the beginning of the massacres against Tutsi in the *commune*;

- and between 13 and 15 April 1994, Rwamakuba went to **the Kayanga Health Centre** where he signalled the beginning of the massacres against Tutsi refugees and witnessed their killing committed by soldiers and *Interahamwe*.

With respect to the allegations on the sensitization campaigns, six Prosecution witnesses, including two hearsay witnesses, testified to eleven instances between 1992 and March 1994 during which André Rwamakuba allegedly participated in meetings, political rallies and gatherings or came to Gikomero *commune* to call for the extermination of the Tutsi and to recruit members of the MDR extremist wing. The Chamber has considered this evidence as circumstantial evidence that could be relevant concerning the alleged crimes committed by the Accused in the Gikomero *commune* in April 1994.

The Chamber notes that some of this evidence was inconsistent with the allegations set forth in the Indictment and no evidence was adduced on certain allegations.

The identification of André Rwamakuba at the time and place of the events described by the witnesses raises serious concerns. The Chamber finds for reasons detailed in its Judgment that the Prosecution witnesses could not be found reliable because of internal inconsistencies and vagueness in their testimonies or contradictions with testimony given by other Prosecution witnesses. This conclusion was supported by the Defence evidence that the Accused was not in Rwanda. A reasonable probability has been shown that between 23 September 1993 and 10 March 1994, Rwamakuba attended a training course at the Institute of Tropical Medicine in Antwerp, Belgium, and that between 17 and 29 March 1994, he attended an international colloquium organized by the WHO in Egypt.

The Chamber therefore finds that the Prosecution failed to prove beyond reasonable doubt that the Accused participated in sensitization campaigns from 26 July 1993 until June 1994.

With respect to the events in Gikomero *commune* in April 1994, both parties gave evidence that attacks and massacres took place against Tutsi in that *commune*, and specifically in Ndatemwa Trading Centre, at Gikomero Protestant School, Gishaka Parish and Kayanga Health Centre. The Prosecution called six witnesses, including two uncorroborated witnesses, to support its allegations that during a period of five days between 10 and 15 April 1994, André Rwamakuba went to four different locations in Gikomero *commune* to deliver machetes that were to be used in killings against the Tutsi, to encourage and give instructions to kill Tutsi, and to launch the beginning of the attacks against Tutsi in the *commune*.

Again, the Prosecution's evidence was, in some instances, inconsistent with the allegations set forth in the Indictment, but mainly the testimony of the Prosecution witnesses were tainted by major deficiencies which could not be justified by the time elapsed, translation discrepancies, the manner in which the prior statements were taken or the impact of trauma inflicted upon the witnesses. These inconsistencies, which are detailed in the full text of the Judgement, undermined the witnesses' credibility or reliability. Furthermore, at the outset, the Defence disputed that the Accused could have been present in Gikomero *commune* at the time of the alleged events. The parties agreed and the Chamber accepted that André Rwamakuba was sworn in as a Minister of the Interim Government on 9 April 1994, attended a governmental meeting held in Kigali at the *Hotel des Diplomates* on 11 April 1994, and was living in Kigali until 12 April 1994 when he went to Gitarama with the convoy of the Interim Government. The admission of these facts had a major impact on the Prosecution's case since the Defence challenged the accessibility from and to Gikomero *commune* in April 1994. The Prosecution did not provide a chronological account of the Accused's alleged activities in Gikomero in April 1994, and seemed to suggest that on each event alleged, the Accused commuted between Kigali or Gitarama and the various locations in Gikomero *commune*. There was, however, reliable evidence on the potential hazards to travel to and from Gikomero *commune* after 7 April 1994. Reliable testimonies were also given that Rwamakuba's

name was not mentioned before Rwandan local courts in relation to the crimes committed in Gikomero *commune* in April 1994 and that he was not present at the scene of the crimes. This evidence was not satisfactorily rebutted by the Prosecution.

In the Chamber's view, the absence of any reliable identification of André Rwamakuba at the time and location of the alleged events, the lack of credibility or reliability of the Prosecution witnesses, the admitted facts that the Accused participated in other activities during the period alleged in the Indictment, the potential hazards of travel to the locations of the alleged crimes, cumulatively contribute to raise a reasonable doubt on the Prosecution's case.

The Chamber therefore finds that the Prosecution failed to prove at all or beyond reasonable doubt the charges against the Accused in Gikomero *commune*.

The Chamber now turns to the second set of *events concerning André Rwamakuba's alleged participation in the killings at Butare University Hospital in April 1994*.

The Indictment alleges that between 18 and 25 April 1994, the Accused came to Butare University Hospital. During that period, along with Dr. Gatera, soldiers and militiamen, he conducted the identification of Tutsi patients and refugees, removed drips from Tutsi patients, injured others with an axe and directly caused the death of other Tutsi refugees and patients, and gave orders to *Interahamwe* and soldiers to kill or take away to kill Tutsi patients on board a vehicle. Many Tutsi refugees and patients were massacred in Butare University Hospital as a result of the Accused's orders and instigation.

The existence of a massacre against Tutsi at Butare University Hospital in April 1994 was not a contentious matter in the present case and both parties adduced evidence on that event.

The Prosecution called six witnesses who asserted their presence at Butare University Hospital and testified to criminal acts committed by the Accused on different dates between 21 and 25 April 1994, and eventually in May 1994. Again, the Prosecution did

not adduce evidence on some allegations against the Accused and adduced evidence inconsistent with some allegations in the Indictment.

In the Chamber's view, the **identification of the Accused** at the scene of the crimes was a core issue regarding the Butare University Hospital event and raised serious doubts. Apart from Witness XV who claimed to have personally known André Rwamakuba, the identification of the Accused was either based on untested hearsay evidence or on Witness XV's identification. Specifically, Witness XV pointed out Rwamakuba to Witnesses HF and RJ, who in turn identified him to Witness GIO. In that respect, it is remarkable that Witness XV was confusing Rwamakuba with a man named Rekeraho. This confusion was also entertained by Witness GIO. As developed in detail in the Judgement, Witness XV's evidence contained many inconsistencies that could not be reasonably explained or reconciled. His personal knowledge and identification of Rwamakuba was therefore unreliable.

In addition to these identification issues, the **credibility and reliability** of the Prosecution witnesses as to the Butare Hospital event also raised serious concerns. In the Chamber's view, the major inconsistencies between the witnesses' testimonies and their prior statements and testimonies in other cases could not be explained by the time elapsed, translation discrepancies, the manner in which the prior statements were taken or the impact of trauma inflicted upon the witnesses. They undermined the credibility and reliability of the Prosecution witnesses. In addition, the Prosecution did not satisfactorily rebut the six Defence witnesses who testified that Rwamakuba did not participate in the killings at Butare University Hospital and that, during the considered period, he was staying in Gitarama and Gisenyi, and could not have been in Butare to the extent suggested by the Prosecution witnesses.

The absence of any reliable identification of André Rwamakuba at the time and location of the event, the lack of credibility and reliability of the Prosecution witnesses and the Defence alibi evidence, cumulatively contribute to levy reasonable doubt on the Prosecution's case.

Consequently, the Chamber finds that the Prosecution failed to prove at all or beyond a reasonable doubt the allegations against the Accused at the Butare University Hospital.

The Chamber now turns to the *remaining allegations in the Indictment*.

In addition to the charges pertaining to events in Gikomero and Butare events, the Indictment contains allegations regarding André Rwamakuba's political status and related political activities.

As the Chamber explained at the beginning of the delivery of this Judgement, André Rwamakuba was not alleged to be criminally responsible as a member of the Interim Government for failing to denounce the crimes committed against the Tutsi, for not dissociating himself from the Government or for failing to discharge his duties as Minister. In view of the charges against the Accused set forth in the Indictment and according to the clear and consistent notice given by the Prosecution, the allegations pertaining to Rwamakuba's political role and activities are considered as context or background from which inferences concerning his intent and disposition may be drawn.

In any case, the Chamber notes that **no evidence** was adduced concerning what the Accused could or should have done as Minister or what he failed to do. The Prosecution also did not bring any evidence to prove its contentions regarding the structures of the MDR "Hutu Power", André Rwamakuba's alleged authority over local administrative officials, his alleged mobilization of the physical and logistical resources of the other parties that were allied with MRND and "Hutu Power", the Interim Government ministries controlled by these parties and the military to execute the campaign of destruction of the Tutsi throughout Rwanda. No direct evidence was adduced concerning the responsibilities of Rwamakuba with regard to the program of civilian self defence or how he might have used it to kill Tutsi.

Since the Prosecution failed to prove beyond reasonable doubt the charges against the Accused pertaining to Gikomero *commune* and Butare University Hospital as detailed above, the Chamber need not to discuss the allegations and evidence concerning his criminal intent or disposition in relation to these alleged incidents.

Before concluding, the Chamber recalls that the **Appeals Chamber** recently held that genocide against Tutsi and widespread or systematic attacks against a civilian population based on Tutsi ethnic identification occurred in Rwanda between April and July 1994 are notorious facts not subject to reasonable dispute, and nor were they disputed by the Defence in the present case. This Tribunal was established to contribute to the process of reconciliation and to the restoration of peace and security in Rwanda. The Tribunal's contribution in this area is by conducting impartial criminal proceedings where the burden of proving the guilt of an individual accused is on the Prosecution. In the present case, the parties agreed that massacres against Tutsi took place in Gikomero *commune* and at Butare University Hospital in April 1994. However, having considered the totality of the evidence, the Chamber finds that the Prosecution failed to discharge its burden of proof and to establish the charges against the Accused beyond a reasonable doubt.

One last issue related to the **rights of the Accused** will be addressed by the Chamber before pronouncing its verdict.

3. RIGHTS OF THE ACCUSED

In a prior decision, another Chamber of this Tribunal found that there was a violation of Rwamakuba's right to legal assistance during the first months of his detention at the UNDF, from 22 October 1998 until 10 March 1999, and that the delay in assigning him duty Counsel further caused a delay in his initial appearance. According to the jurisprudence of the Appeals Chamber of this Tribunal, any violation of the accused's rights entails the provision of an effective remedy.

Accordingly, André Rwamakuba will be at liberty to file an application seeking an appropriate remedy for the above-mentioned violation, within the time-limits set out in the Judgment. The Prosecution and the Registry will also be at liberty to file any submission on this matter.

The Chamber now concludes with the **verdict**.

4. VERDICT

Having considered all the evidence and the arguments of the parties, the Chamber finds André Rwamakuba, **unanimously not guilty on all counts in the Indictment**. He is, accordingly, **acquitted**.

The Chamber orders his **immediate release** and **requests** the Registrar to make all necessary arrangements in the implementation of this decision.