

The U.N. Criminal Tribunal for Rwanda Concludes its First Case: A Monumental Step Towards Truth

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INTRODUCTION

Over the past year, the UN International Criminal Tribunal for Rwanda (ICTR) has made significant progress in apprehending and prosecuting high ranking persons responsible for the 1994 genocide of Tutsi and moderate Hutu in Rwanda¹. The first case to be concluded at the ICTR, the case against Rwandan ex-premier Jean Kambanda, is extremely important for learning the truth about what happened in Rwanda during those fateful 100 days in 1994. Kambanda's extensive admissions of guilt should dispel forever any doubts about the occurrence of an intentionally orchestrated genocide in Rwanda. Kambanda's confession, and his willingness to offer testimony in other cases, is significant because it will probably influence the pleas of the other thirty Rwandan defendants in ICTR custody.

Kambanda is the first person in history to accept responsibility for genocide before an international court. He did so fifty years after the UN adopted the Convention on the Prevention and Punishment of the Crime of Genocide (1948). His case is of monumental significance not only to Rwandans, but to all those concerned with this most dreadful of crimes.

THE KAMBANDA CASE

On 4 September 1998, the ICTR sentenced Jean Kambanda, Rwanda's former prime minister, to the maximum penalty of life in prison for his role in the 1994 massacre of more than 800,000 Rwandans, most of them ethnic Tutsi. A panel of three judges constituting the trial chamber concluded that the shocking and abominable nature of Kambanda's crimes warranted the maximum sentence the court could impose. "The chamber is of the opinion that genocide represents the crime of crimes, which must be taken into account when delivering the sentence," presiding Judge Laity Kama told Kambanda². Kama went on to say that although Kambanda had cooperated with the prosecution, voluntarily confessing in May 1997 to six genocide-related crimes and crimes against humanity, the gravity of his actions negated any mitigating circumstances.

Kambanda is the highest-ranking former political leader in the tribunal's custody. He was born on 10 October 1955 at Mubumbano in the Prefecture of Butare³. He has a wife and two children. He holds a Diploma d'Ingenieur Commercial. From May 1989 to April 1994, he worked in the Union des Banques Populaires du Rwanda, rising to the position of Director of

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<http://www.africa.ufl.edu/asq/v2/v2i3a5.pdf>

the network of those banks. He was Vice President of the Butare Section of the MDR (Mouvement Democratique Republicain) and a member of its Political Bureau. He became Prime Minister of the Interim Government on 9 April 1994, two days after the mysterious downing of the plane carrying then-President Juvenal Habyarimana and Burundian President Cyprian Ntayamira. Habyarimana's death signaled the beginning of three months of carnage. Kambanda's predecessor, Agathe Uwilingiyamana, and the dozen Belgian UN troops protecting her were slaughtered by extremist Hutu shortly after Habyarimana's plane crash.

THE ARREST

At the request of the ICTR, Kenyan authorities arrested Kambanda along with six other Rwandan genocide suspects on 18 July 1997. All seven suspects were arrested in Nairobi, where many former Rwandan officials have lived since the genocidal regime was overthrown by the Rwandese Popular Front (RPF) in July 1994. Another former Cabinet minister, Pauline Nyiramasuhuko, the interim family welfare minister, was also arrested with Kambanda, as was her son, Arsene Shalom Ntahobali. The four other suspects seized included two senior military officials, Col. Gratien Kabiligi and Commander Aloys Ntabakuze, Sylvain Nsabimana, prefect of Butare, the site of many anti-Tutsi massacres, and Hassan Ngeze, a prominent media figure accused of distributing materials inciting violence against the Tutsi⁴. The suspects were transferred to the ICTR's detention center in Arusha, Tanzania, where they are being held.

The sudden arrests signaled a change in Kenya's policy toward Rwanda's RPF-led government and the ICTR. Kenyan President Daniel arap Moi had previously done little to transfer any suspected Rwandan war criminals who sought shelter in his country. International pressure and Moi's political problems at home, however, seem to have caused a change. The arrests meant that the ICTR, after a slow start, now has more high ranking suspects in custody than does its sister institution, The UN International Criminal Tribunal for the Former Yugoslavia (ICTY) at the Hague. Genocide, as defined in the Convention for the Prevention and Punishment of the Crime of Genocide and in the Statute of the ICTR, is an "intent crime." It includes intentionally killing or causing serious physical or mental harm to members of a national, racial, or religious group with the intent to destroy that group, in whole or in part. Kambanda admitted that extermination of Tutsi was a policy of his government. A potential defense for many Rwandan genocide suspects is that the 1994 killings were part of an ordinary war or civil upheaval, without any intent to destroy a particular ethnic group, in whole or in part. Kambanda's confession will affect all ICTR suspects as well as the over 100,000 suspects imprisoned in Rwanda. Those who are actually guilty of participating in the genocide will have little choice but to admit their crimes or modify their defenses in the hope of receiving more lenient sentences.

Kambanda is also expected to offer answers to major questions surrounding the mysterious downing of the plane that carried both Rwandan President Juvenal Habyarimana and Burundian President Cyprian Ntayamira to their deaths. Kambanda should be able to offer intricate details of the planning and execution of the genocide.

KAMBANDA'S ADMISSIONS

On 1 May 1998, during his initial appearance before an ICTR Trial Chamber in Arusha, Tanzania, Jean Kambanda pleaded guilty to the six counts contained in his indictment, namely genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, complicity in genocide, crimes against humanity (murder), punishable under Article 3 (a) of the ICTR Statute, and crimes against humanity (extermination), punishable under Article 3 (b) of the ICTR Statute⁵.

Together with his guilty plea, on 28 April 1998 Jean Kambanda submitted to the Chamber a document entitled "Plea Agreement between Jean Kambanda and the Office of the Prosecutor," signed by himself and his defense counsel, Oliver Michael Inglis of Cameroon. In his plea, Jean Kambanda admitted all the relevant facts alleged in the indictment.

In particular, (i) he admitted that there was in Rwanda in 1994 a widespread and systematic attack against the civilian population of Tutsi, with the intent to exterminate them. Mass killings of hundreds of thousands of Tutsi occurred in Rwanda, including women and children, old and young. They were pursued and killed at places where they had sought refuge, such as prefectures, commune offices, schools, churches and stadiums.

(ii) Jean Kambanda acknowledged that as Prime Minister of the Interim Government of Rwanda from 8 April 1994 to 17 July 1994, he was head of the twenty member Council of Ministers and exercised de jure authority and control over the members of his government. The government determined and controlled national policy and had the administration and armed forces at its disposal. As Prime Minister, he also exercised de jure and de facto authority over senior civil servants and senior officers in the military.

(iii) Jean Kambanda acknowledged that he participated in meetings of the Council of Ministers, cabinet meetings, and meetings of prefects where the course of massacres were actively followed, but no action was taken to stop them. He was involved in the decision of the government for visits by designated ministers to prefectures as part of the government's security efforts and in order to call on the civilian population to be vigilant in detecting the enemy and its accomplices. Jean Kambanda also acknowledged participation in the dismissal of the prefect of Butare because the latter had opposed the massacres and the appointment of a new prefect to ensure the spread of massacre of Tutsi in Butare.

(iv) Jean Kambanda acknowledged his participation in a high level security meeting at Gitarama in April 1994 between the President, T. Sindikubwabo, Kambanda himself, and the Chief of Staff of the Rwandan Armed Forces (FAR) and others. FAR's support in the fight against the Rwandan Patriotic Front (RPF) and its "accomplices" (understood to be the Tutsi and moderate Hutu) was discussed.

In addition, (v) Jean Kambanda acknowledged that he issued the Directive on Civil Defense addressed to the prefects on 25 May 1994 (Directive No. 024-0273, disseminated on 8 June 1994). He further admitted that this directive encouraged and reinforced the Interahamwe who were committing mass killings of the Tutsi civilian population in the prefectures. Jean

Kambanda further acknowledged that by this directive the Government assumed the responsibility for the actions of the Interahamwe.

(vi) Jean Kambanda acknowledged that before 6 April 1994, political parties in concert with the Rwandan Armed Forces organized and began the military training of the youth wings of the MRND and CDR political parties (Interahamwe and Impuzamugambi, respectively) with the intent to use them in the massacres that ensued. Furthermore, Jean Kambanda acknowledged that the Government headed by him distributed arms and ammunition to these groups. Additionally, Jean Kambanda confirmed that roadblocks manned by mixed patrols of the Rwandan Armed Forces and the Interahamwe were set up in Kigali and elsewhere as soon as the death of President J.B. Habyarimana was announced on the radio. He also acknowledged the use of the media as part of the plan to mobilize and incite the population to commit massacres of the civilian Tutsi population. That apart, Jean Kambanda acknowledged the existence of groups within military, militia, and political structures which had planned the elimination of the Tutsi and Hutu political opponents.

(vii) He acknowledged that, on or about 21 June 1994, in his capacity as Prime Minister, he gave clear support to Radio Television Libre des Mille Collines (RTLM), with the knowledge that it was a radio station whose broadcasts incited killing, the commission of serious bodily or mental harm to, and persecution of Tutsi and moderate Hutu. On this occasion, speaking on this radio station, Jean Kambanda, as Prime Minister, encouraged the RTLM to continue to incite the massacres of the Tutsi civilian population, specifically stating that this radio station was "an indispensable weapon in the fight against the enemy."

(viii) Jean Kambanda acknowledged that following numerous meetings of the Council of Ministers between 8 April 1994 and 17 July 1994, he as Prime Minister, instigated, aided and abetted the Prefets, Bourgmestres, and members of the population to commit massacres and killings of civilians, in particular Tutsi and moderate Hutu.

Furthermore, between 24 April 1994 and 17 July 1994, Jean Kambanda and Ministers of his Government visited several prefectures, such as Butare, Gitarama (Nyabikenke), Gikongoro, Gisenyi, and Kibuye to incite and encourage the population to commit these massacres. He congratulated the people who had committed these killings.

(ix) Jean Kambanda acknowledged that on 3 May 1994, he was personally asked to take steps to protect children who had survived the massacre at a hospital, but he did not respond. On the same day, after the meeting, the children were killed. He acknowledged that he failed in his duty to ensure the safety of the children and the population of Rwanda.

(x) Jean Kambanda admits that in his particular role of making public engagements in the name of the government, he addressed public meetings, and the media, at various places in Rwanda directly and publicly inciting the population to commit acts of violence against Tutsi and moderate Hutu. He acknowledged uttering the incendiary phrase which was subsequently repeatedly broadcast, "you refuse to give your blood to your country and the dogs drink it for

nothing" (Wima igihugu amaraso imbwa zikayanywera ubusa).

(xi) Jean Kambanda acknowledged that he ordered the setting up of roadblocks with the knowledge that these roadblocks were used to identify Tutsi for elimination, and that as Prime Minister he participated in the distribution of arms and ammunition to members of political parties, militias and the population knowing that these weapons would be used in the perpetration of massacres of civilian Tutsi.

(xii) Jean Kambanda acknowledged that he knew or should have known that persons for whom he was responsible were committing crimes of massacre upon Tutsi and that he failed to prevent them or punish the perpetrators. He admitted that he was an eye witness to the massacres of Tutsi and also had knowledge of them from regular reports of prefects, and cabinet discussions.

THE SENTENCE

In order to verify the validity of the guilty plea, the Chamber asked Kambanda: (i) if his guilty plea was entered voluntarily, freely and knowingly, without pressure, threats, or promises; (ii) if he clearly understood the charges against him as well as the consequences of his guilty plea; and (iii) if his guilty plea was unequivocal; in other words, if he was aware that the said plea could not be refuted by any line of defense⁶. Kambanda replied in the affirmative to all these questions. On the strength of these answers, the Chamber found Kambanda guilty on the six counts brought against him and sentenced him to life in prison. In determining the sentence, the Trial Chamber took note of Rwandan law and its own Statute, which proscribes the death sentence. The Trial Chamber issued its Judgment and Sentence on 4 September 1998.

Both Kambanda and his attorney, Michael Inglis, were surprised and disappointed by the court's life sentence. Inglis had sought a sentence of two years for Kambanda and said he thought his client might receive between ten and fifteen years. The defense lawyer argued that the former prime minister had been forced to take office and was merely a puppet who was trapped and acted under duress with diminished responsibility.

Kambanda's defense counsel offered three factors in mitigation: Kambanda's plea of guilty; his remorse, which he claims is evident from the act of pleading guilty; and co-operation with the Prosecutor's office. The Prosecutor confirmed that Kambanda had extended substantial co-operation and invaluable information to the Prosecutor. The Prosecutor had asked the Trial Chamber to regard as a significant mitigating factor not only the substantial co-operation so far extended, but also future co-operation when Jean Kambanda testifies for the prosecution in the trials of other accused. The Plea Agreement signed by the parties contained no promises with respect to sentence. That is solely at the discretion of the Trial Chamber.

According to the Prosecutor, Kambanda had expressed his intention to plead guilty immediately upon his arrest and transfer to the Tribunal, on 18 July 1997. Kambanda declared in the Plea Agreement that he had resolved to plead guilty even before his arrest in Kenya and that his prime motivation for pleading guilty was the profound desire to tell the truth, as the truth was the only way to restore national unity and reconciliation in Rwanda. Kambanda

condemned the massacres that occurred in Rwanda and considers his confession as a contribution toward the restoration of peace in Rwanda.

The Chamber maintained, however, that Jean Kambanda had offered no explanation for his voluntary participation in the genocide; nor had he expressed contrition, regret or sympathy for the victims in Rwanda, even when given the opportunity to do so by the Chamber, during the hearing of 3 September 1998. Both the Prosecution and Defense had urged the Chamber to interpret Kambanda's guilty pleas as a signal of his remorse, repentance and acceptance of responsibility for his actions. They also requested the Chamber to favorably consider that Kambanda's guilty plea had also occasioned judicial economy, saved victims the trauma and emotions of trial, and enhanced the administration of justice.

The Trial Chamber, however, was apparently unmoved by these arguments. It stressed that the principle must always remain that the reduction of the penalty stemming from the application of mitigating circumstances must not in any way diminish the gravity of the offense. It noted that under Rwandan law, Kambanda would have qualified for the death sentence, and Rwandan law would not have permitted any leniency.

On 7 September 1998, Kambanda's defense attorney filed an intent to appeal his sentence to the five judge Appellate Chamber, which the ICTR shares with the ICTY⁷. In late September, Kambanda wrote a letter to the clerk of the ICTR accusing the Tribunal of failing to protect his family as it had promised. He also released his lawyer, Inglis, accusing him of having failed to properly prepare a defense⁸.

CONCLUSION

Kambanda's appeal for a review of his sentence will have to be prepared by another attorney and will most probably be reviewed by the Tribunal Appellate Chamber. The review will place the judges in a difficult position. On the one hand, they might like to be able to offer those who confess and cooperate with the Tribunal the incentive of a reduced sentence. On the other hand, the Tribunal's and the UN's relationship with Rwanda's RPF-led government has been strained from the start. Rwandan officials have complained about the Tribunal's slow pace and its inability to sentence to death those most responsible for the genocide. Should the Appellate Chamber decide to reduce former Premier Kambanda's sentence from the Tribunal's maximum of life in prison, the Rwandan government and many Rwandan citizens will become even more resentful.

Regardless of the final determination of sentence, Kambanda's extensive confession concerning his government's intentional policy of genocide constitutes the fundamental fact upon which future ICTR prosecutions will rest. His confession also destroys the creditability, if it existed, of revisionist historians, who claim a genocide never took place.

Notes

1. For background to the ICTR, see Paul J. Magnarella, "Judicial Responses to Genocide: The International Criminal Tribunal for Rwanda and the Rwandan Genocide Courts,"

African Studies Quarterly, Vol. 1, Issue 1, n. pag., (May 1997). Online. Internet. Available <http://web.africa.ufl.edu/asq/>

2. Ann M. Simmons, "Rwandan Ex-Premier Gets Life Term," *Los Angeles Times*, 5 September 1998, P. A4, Lexis-Nexis News File.
3. The facts in this section come from: THE PROSECUTOR VERSUS JEAN KAMBANDA, Case no.: ICTR 97-23-S, JUDGMENT and SENTENCE (ICTR, 4 Sept. 1998).
4. "Rwanda: Top Figures of Former regime Arrested," ICTR/INFO-9-2, 18 July 1997, Inter Press Service; "Rwanda-UN: Tribunal Nabs Former Prime Minister, Six Others," 18 July 1997, Lexis-Nexis News File.
5. The information in this section comes from: THE PROSECUTOR VERSUS JEAN KAMBANDA, Case no.: ICTR 97-23-S, JUDGMENT and SENTENCE (ICTR, 4 Sept. 1998).
6. Ibid.
7. ICTR Update No. 12, 10 Sept. 1998, Arusha, TZ.
8. Agence France Presse, "Rwandan Ex-Premier Slams UN War Crimes Tribunal Over Lack Of Protection," 24 Sept. 1998, Lexis-Nexis News File.