

UNITED
NATIONS

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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Fausto Pocar
Judge Inés Mónica Weinberg de Roca

Registrar: Mr Adama Dieng

Judgement of: 20 May 2005

LAURENT SEMANZA

v.

THE PROSECUTOR

Case No. ICTR-97-20-A

JUDGEMENT

The Office of the Prosecutor:

Mr James Stewart
Ms Amanda Reichman
Mr Neville Weston

Counsel for the Appellant

Mr Charles Achaleke Taku

388. Despite the Trial Chamber's conscientious treatment of the Appellant's sentence, the Appeals Chamber is not satisfied that the 15-year sentences for complicity in genocide and aiding and abetting extermination that the Trial Chamber imposed are commensurate with the gravity of the Appellant's offences, as determined by the Appeals Chamber. The Appeals Chamber has concluded above that the Appellant's actions at Musha church amounted to perpetration in the form of ordering rather than mere complicity in genocide and aiding and abetting extermination.⁸⁰³ This form of direct perpetration entails a higher level of culpability than complicity in genocide and aiding and abetting extermination convictions entered by the Trial Chamber. The Appeals Chamber recently held in *Krstić* that "aiding and abetting is a form of responsibility which generally warrants lower sentences than responsibility as a co-perpetrator."⁸⁰⁴ The Appeals Chamber endorses this reasoning to the extent that a higher sentence is likely to be imposed on a principal perpetrator vis-à-vis an accomplice in genocide and on one who orders rather than merely aids and abets exterminations.

389. As the Prosecution notes, at the Tribunal, convictions for perpetrating genocide, at least those not reached after a guilty plea, have generally resulted in life sentences. The Trial Chamber's 15-year sentences (for aiding and abetting) are therefore inadequate in light of the Appellant's level of culpability. On the other hand, the Appeals Chamber in this case earlier determined that the length of the Appellant's sentence should be mitigated by violations of his pre-trial rights.⁸⁰⁵ On balance, the Appeals Chamber concludes, Judge Pocar dissenting, that the 15-year sentences for complicity in genocide and for aiding and abetting extermination should be increased by 10 years to reflect the Appellant's responsibility for ordering genocide and extermination at Musha church. Thus, the Appeals Chamber determines that the Appellant's sentence for these offences should be 25 years' imprisonment.

3. Inadequate Sentences for Instigating Rape and Murder

390. As a third error, the Prosecution submits that the Trial Chamber erred in imposing a 7-year sentence for instigating rape and an 8-year sentence for instigating the murder of 6 people. It argues that the sentences are manifestly disproportionate to the gravity of these crimes, do not accord with sentences imposed for similar crimes by the Tribunal, and that the Trial Chamber did not reasonably consider the appropriate penalty which would have been imposed under Rwandan law.

⁸⁰³ See *supra* para. 364.

⁸⁰⁴ *Krstić* Appeal Judgement, para. 268.

⁸⁰⁵ See *supra* section II. L. 4.