

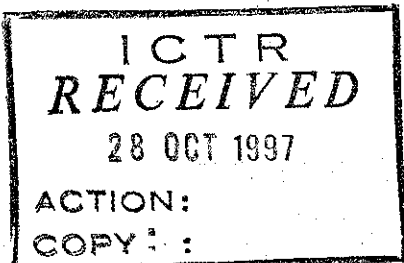
ICTR-97-23-I
28.10.1997
(18-12)

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INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO : ICTR-97-23-DP

THE PROSECUTOR



v.

JEAN KAMBANDA

INDICTMENT

1. The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to his authority under Article 17 of the Statute of the International Criminal Tribunal for Rwanda ("the Statute of the Tribunal") charges:

JEAN KAMBANDA

with **GENOCIDE, CONSPIRACY TO COMMIT GENOCIDE, DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE, COMPLICITY IN GENOCIDE, and CRIMES AGAINST HUMANITY**, by virtue of Articles 2 and 3 of the Statute of the Tribunal.

2. THE ACCUSED

2.1 **Jean Kambanda** was born on 19 October 1955 in Gishamvu commune, Butare Prefecture, Republic of Rwanda. The accused was Prime Minister of the Government of the Republic of Rwanda from 8 April 1994 until he left the country on or about 17 July 1994.

3. CONCISE STATEMENT OF FACTS

3.1 The violations of international humanitarian law referred to in this indictment took place in Rwanda between 1 January and 31 December 1994.

3.2 During the events referred to in this indictment, the Tutsis, the Hutus and the Twas were identified as ethnic or racial groups.

3.3 During the events referred to in this indictment, there were in Rwanda

widespread or systematic attacks directed against a civilian population on political, racial or ethnic grounds.

3.4 During the said events, there was a non-international armed conflict in the territory of Rwanda. The victims referred to in this indictment were protected persons under the provisions of the Geneva Conventions of 12 August 1949 and Additional Protocol II of 1977.

3.5 Jean Kambanda was Prime Minister of the Interim Government of the Republic of Rwanda established on 8 April 1994. He was officially sworn in on 9 April 1994. The Council of Ministers, which was headed by the Prime Minister, Jean Kambanda, was composed of 19 Ministers from five different political parties, namely the *Mouvement républicain national pour la démocratie et le développement (MRND)*, the *Mouvement démocratique républicain (MDR)*, the *Parti Social-démocrate (PSD)*, the *Parti libéral (PL)*, and the *Parti démocrate chrétien (PDC)*. All of the cabinet Ministers of this Government also took office on 9 April 1994.

3.6 From 8 April 1994 to around 17 July 1994, Jean Kambanda, as Prime Minister, exercised "de jure" authority and control over the members of his government. Under the Constitution of 10 June 1991, executive power is exercised by the President of the Republic, who is assisted by the Government, composed of the Prime Minister and Ministers. Members of the Government are nominated by the Prime Minister and appointed by the President of the Republic. The Prime Minister is responsible for directing Government activities. The Government determines and controls national policy and has the administration and the armed forces at its disposal. The duties of Ministers as well as the nature and scope of government departments under their authority are determined by the Prime Minister. The resignation or cessation of duties of the Prime Minister, for any reason whatsoever, results in the resignation of the Government.

3.7 During the same period, Jean Kambanda, as Prime Minister, also exercised *de jure* and *de facto* authority and control over senior civil servants and senior officers in the military, including the *Préfets*. The *Préfets* are the highest-level Government officials in the Prefecture. Their mandatory duties include maintaining peace, public order and security of persons and property. Their duties also include implementing government programmes and informing the central government of the situation in the Prefecture and of any event worthy of interest. As Prime Minister, Jean Kambanda had the power to intervene in the appointment, supervision and dismissal of the *Préfets*. He had the power to issue directives to the *Préfets* and he indeed used this power.

3.8 Jean Kambanda, as Prime Minister, presided over meetings of the Council of Ministers, attended by Pauline Nyiramasuhuko, Eliezer Niyitegeka and André Ntagerura, among others. The first such meetings of his Government was held in Kigali on 8 April 1994. Between this date and on or around 17 July 1994, numerous meetings of the Council of Ministers were held, bringing together all or most of the Ministers, including Pauline Nyiramasuhuko, Eliezer Niyitegeka, Edouard Karemera and André Ntagerura. During these meetings, the massacres committed against the civilian population were discussed. In his capacity as Prime Minister, **Jean Kambanda** failed in his duty to ensure the security of the Rwandan population.

3.9 Among the items on the agenda and decisions taken at the first cabinet meeting, held on 8 April 1994, were the development of a Government work schedule, and the immediate convening of all the *Préfets* in Kigali for a joint meeting of the Ministers and *Préfets*. This crisis meeting, with all the *Préfets*, was held on 11 April 1994 in Kigali, and was attended by all the Government Ministers and most of the *Préfets* (except the ones from Ruhengeri, Cyangugu and Butare). During this meeting, the topic of the massacres committed against the civilian population was raised. In his capacity as Prime Minister, **Jean Kambanda** failed in his duty to ensure the security of the Rwandan population.

3.10 Jean-Baptiste Habyalimana was the only *Préfet* of Tutsi origin. He had opposed the massacres in his prefecture and had succeeded in preserving the peace there. On or around 19 April 1994, the Government of Prime Minister **Jean Kambanda** dismissed Jean-Baptiste Habyalimana in order to promote the massacres of the Tutsi civilian population and to enable the massacres to spread to Butare prefecture. Jean-Baptiste Habyalimana was subsequently arrested and later disappeared. The appointment of the new *Préfet* of Butare by the Government of **Jean Kambanda**, in the presence of the latter, on 19 April 1994, encouraged and made possible the start of the massacres of civilians in Butare.

3.11 Between 8 April and 17 July 1994, Jean Kambanda officially visited a number of prefectures in the country, such as Butare, Kibuye and Gitarama, in order to monitor the implementation of Government instructions, directives and policies on civil defence, security and other matters. During these numerous visits, **Jean Kambanda** knew, or should have known, that massacres against the Tutsi civilian population were being committed. In his capacity as Prime Minister, **Jean Kambanda** failed in his duty to ensure the security of the Rwandan population.

3.12 In addition, on or about 21 April 1994, in his capacity as Prime Minister, **Jean Kambanda**, clearly gave his support to the *Radio Télévision Libre des Mille*

Collines (RTL), with the knowledge that it was a radio station whose broadcasts incited the killing, serious bodily or mental harm to, and persecution of Tutsis and moderate Hutus. On this occasion, speaking on this radio station, Prime Minister **Jean Kambanda** encouraged the RTL 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".

3.13 Following the numerous meetings of the Council of Ministers between 8 April and 17 July 1994 in Kigali, Gitarama and Gisenyi, **Jean Kambanda** and Ministers of his Government incited, aided and abetted the *Préfets, Bourgmestres*, and members of the population to commit massacres and killings of civilians, in particular Tutsis and moderate Hutus. Furthermore, between 24 April and 17 July 1994, **Jean Kambanda** and Ministers of his Government visited several prefectures, such as Butare, Gitarama (Nyabikenke), Gisenyi, Kibuye, and Cyangugu, to incite and encourage the population to commit these massacres, including by congratulating the people who had committed these killings.

3.14 **Jean Kambanda** and Ministers, including Pauline Nyiramasuhuko, attended in a large rally in Butare on 19 April 1994, during which the President of the interim Government, Theodore Sindikubwabo, delivered an inflammatory speech, that incited the population to begin the killings. By personally taking the floor at this rally, **Jean Kambanda** showed that he agreed with the inflammatory remarks made by the President.

3.15 On 3 May 1994, in Kibuye, **Jean Kambanda** attended a meeting of heads of Government departments to consider security matters. Others who participated in the meeting included Clement Kayishema, *Préfet* of Kibuye; Edouard Karemera, Vice President of the MRND (later appointed Minister of the Interior); Emmanuel Ndinabahizi, Minister of Finance; Eliezer Niyitegeka, Minister of Information and Donat Murengo, Executive Secretary of the MDR. At this occasion, a participant directly asked the Prime Minister how to secure the protection of children who had survived the massacres and were at the hospital. Jean Kambanda gave no response, and no other Minister from his cabinet offered satisfactory and necessary measures to secure the security of the survivors. In his capacity as Prime Minister, **Jean Kambanda** failed in his duty to ensure the security of the Rwandan population. On that same day, after the meeting, the children were killed.

3.16 Between 8 April and 17 July 1994, at public meetings and in the media, in various places in the territory of Rwanda, **Jean Kambanda** directly and publicly incited the population to commit acts of violence against the Tutsis and moderate Hutus, namely to kill and to cause serious bodily or mental harm to members of

those groups. For example, Prime Minister **Jean Kambanda** declared on Radio Rwanda that the "population had to seek out the enemy and that the enemy was the Tutsi or Hutu who does not share our [the Government's] opinion". Following some of the meetings, massacres of the civilian population were committed.

3.17 Between 8 April and 31 May 1994, or around that time, **Jean Kambanda** ordered the setting up of roadblocks, with the knowledge that these roadblocks were used to identify the Tutsis and moderate Hutus, to separate them from members of other ethnic groups and to eliminate them. **Jean Kambanda** was seen near a roadblock located in front of the house of Pauline Nyiramasuhuko, Minister of Women and Family Affairs, in Butare in April/May 1994. With **Jean Kambanda's** knowledge, Pauline Nyiramasuhuko, a Minister in **Jean Kambanda's** Government, actively participated in the genocide in Butare. **Jean Kambanda's** presence at the roadblock in front of Pauline Nyiramasuhuko's residence showed his support for the acts she was committing. Again, in his capacity as Prime Minister, **Jean Kambanda** failed in his duty to ensure the security of the Rwandan population.

3.18 Between 8 April and 17 July 1994 in Butare and Gitarama prefectures, **Jean Kambanda** distributed arms and ammunition to members of political parties, militias and the population, with the knowledge that these arms would be used in the perpetration of the massacres of civilians - the majority of whom were members of the Tutsi population.

3.19 Between 8 April and 17 July 1994, in several prefectures, such as Butare, Kibuye, Kigali, Gitarama and Gisenyi, many Ministers, *Préfets*, *Bourgmestres*, Government civil servants and military personnel ordered, incited, aided and actively engaged in actions wilfully intended to massacre and exterminate the Tutsis and moderate Hutus. **Jean Kambanda** knew or should have known that his subordinates were about to commit crimes or had done so and failed to prevent or punish the perpetrators thereof.

3.20 Between April and July 1994, hundreds of thousands of persons, mostly Tutsi and moderate Hutus, were killed and massacred throughout Rwanda.

CHARGES

The violations of international humanitarian law to which reference is made in the present counts were committed between 1 January 1994 and 31 December 1994, in the territory of the Republic of Rwanda and are supported by the facts described in paragraphs 3.1 to 3.20 above.

For all the acts described in the specified paragraphs in each count,

the accused either planned, incited, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of the said acts, within the meaning assigned by Article 6(1) of the Statute of the Tribunal;

and/or alternately,

the accused knew, or had reason to know, that his subordinates were about to commit the said acts, or had done so, and failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof, within the meaning assigned by Article 6(3) of the Statute of the Tribunal;

COUNT 1 :

By his acts or omissions described in paragraphs 3.12 to 3.15, and 3.17 to 3.19 above, **Jean Kambanda** is responsible for the killing of and the causing of serious bodily or mental harm to members of the Tutsi population with intent to destroy, in whole or in part, an ethnic or racial group, as such, and has thereby committed **GENOCIDE**, stipulated in Article 2(3)(a) of the Statute as a crime, and attributed to him by virtue of Article 6(1) and/or 6(3), and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 2 :

By his acts or omissions described in paragraphs 3.8, 3.9, 3.13 to 3.15 and 3.19 above, **Jean Kambanda** did conspire with others, including Ministers of his Government, such as Pauline Nyiramasuhuko, André Ntagerura, Eliezer Niyitegeka and Edouard Karemera, to kill and to cause serious bodily or mental harm to members of the Tutsi population, with intent to destroy in whole or in part, an ethnic or racial group as such, and has thereby committed **CONSPIRACY TO COMMIT GENOCIDE**, stipulated in Article 2(3)(b) of the Statute as a crime, and attributed to him by virtue of Article 6(1) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 3 :

By his acts or omissions described in paragraphs 3.12 to 3.14, 3.16 and 3.19 above, **Jean Kambanda** did directly and publicly incite to kill and to cause serious bodily

or mental harm to members of the Tutsi population, with intent to destroy, in whole or in part, an ethnic group as such, and has thereby committed **DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE**, stipulated in Article 2(3)(c) of the Statute as a crime, and attributed to him by virtue of to Article 6(1) and/or 6(3), which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 4 :

By his acts or omissions described in paragraphs 3.10, 3.12 to 3.15, and 3.17 to 3.19 above, **Jean Kambanda** was complicit in the killing and the causing of serious bodily or mental harm to members of the Tutsi population, and thereby committed **COMPLICITY IN GENOCIDE** stipulated in Article 2(3)(e) of the Statute as a crime, and attributed to him by virtue of Article 6(1) and/or 6(3), which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 5 :

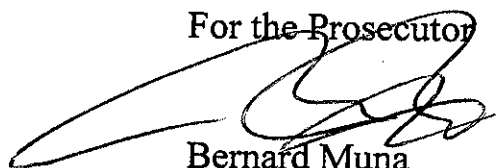
By his acts or omissions described in paragraphs 3.12 to 3.15 and 3.17 to 3.19 above, **Jean Kambanda** is responsible for the murder of civilians, as part of a widespread or systematic attack against a civilian population on ethnic or racial grounds, and has thereby committed a **CRIME AGAINST HUMANITY**, stipulated in Article 3(a) of the Statute as a crime, and attributed to him by virtue of Article 6(1) and /or 6(3), which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 6 :

By his acts or omissions described in paragraphs 3.12 to 3.15, and 3.17 to 3.19 above, **Jean Kambanda** is responsible for the extermination of civilians, as part of a widespread or systematic attack against a civilian population on ethnic or racial grounds, and has thereby committed a **CRIME AGAINST HUMANITY**, stipulated in Article 3(b) of the Statute as a crime, and attributed to him by virtue of Article 6(1) and /or 6(3), which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

Kigali, 16 October 1997

For the Prosecutor



Bernard Muna
Deputy Prosecutor