

11 June 2010

Judgement in a criminal case of genocide **Prosecutor > Francois BAZARAMBA (R 09/404)**

1. ABOUT THE TRIAL AND HOW TO OBTAIN THE JUDGEMENT

Porvoo District Court detained Francois Bazaramba on 6 April 2007 on the request of the National Bureau of Investigation. The prosecutor has brought charges for genocide on 29 May 2009, and the main hearing at the Porvoo District Court began on 1 September 2009. The last court session was held on 26 April 2010.

During the trial, the District Court has heard 68 witnesses, of whom only one has lived in Finland. Two witnesses arrived in Porvoo from the United States of America, one from Canada, three from Belgium, one from Switzerland, one from Kenya, one from Germany, one from Holland, and four from Zambia. In addition, the District Court has been to Kigali, Rwanda to hear 38 witnesses and to Dar es Salaam, Tanzania to hear 15 witnesses. A site visit was also conducted in the community of Nyakizu, Rwanda.

The entire judgement (115 pages) can be ordered from the Court either as a PDF file (free) or in print (copy fee) by e-mail (petra.spring-reiman@oikeus.fi). French and English translations of the judgement will be given out later.

2. INDICTMENT AND DEFENCE

The indictment relates to the Rwandan genocide that took place between April and July 1994. In the genocide, some of the Rwandans belonging to the ethnic Hutu group killed 800,000 Rwandan people belonging to the ethnic Tutsi group and some moderate Hutus.

The primary charges concern acts of genocide committed in Rwanda, prefecture of Butare, community of Nyakizu between 1 January 1993 and 31 May 1994. According to the charges, Bazaramba has, with intent to destroy in whole or in part the Rwandan Tutsis as a group, killed Tutsis and ordered them to be killed as well as made their living conditions worse. The specifics of the charges concern inflicting on Tutsis conditions of life calculated to bring about their physical destruction, provision of training on killing and violent acts, as well as acquisition of weapons, killing of Tutsis and giving of orders to kill Tutsis and leading attacks to the Cyahinda Church and its surroundings and to Mount Nyakizu.

Bazaramba has denied his complicity in any of the acts referred to in the indictment. According to his own account, he has not even had such an ascendancy

or authority in the local community that he could have ordered or incited anyone to commit violent acts. As Bazaramba had been adopted by a Tutsi family, he had been forced to hide himself at his friends' place in Kibangu at the time of the killings. Bazaramba had also helped many Tutsis during the genocide, inter alia by hiding them at his home.

According to Bazaramba, the prosecution witnesses have been pressured and tortured in Rwanda to give false statements on Bazaramba's complicity in the genocide. Behind this lie the political interests of the Tutsi administration which ascended to power after the genocide. Tutsi administration wants to get the educated and wealthy Hutus living both in Rwanda and abroad convicted so that the Tutsi minority could still remain in power in Rwanda.

3. JURISDICTION OF THE DISTRICT COURT AND THE INTERNATIONAL CRIMINAL COURTS

The Porvoo District Court (now District Court of Itä-Uusimaa, hereafter: the Court) has been obliged to deal with the charges brought against Bazaramba since Finland dismissed the request to extradite Bazaramba to Rwanda for a trial. The charges have been brought and the matter has been investigated in the Court by virtue of universal jurisdiction provided in the Criminal Code of Finland. Criminalisation of genocide in Finland is based on the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the UN in 1948, which Finland has acceded to in 1959. The provision on genocide was laid down in the Criminal Code of Finland in 1974, and this is the first time that the said provision has been applied.

It would not have been possible to deal with the charges against Bazaramba in the international criminal courts. The International Criminal Tribunal for Rwanda (ICTR), established by the UN Security Council, has dealt with the most serious crimes committed during the Rwandan genocide for more than 10 years. However, ICTR has no longer admitted any new cases due to its backlog of cases. Neither the International Criminal Court (ICC), established in The Hague in 2002, could have dealt with Bazaramba's case, because the ICC cannot, by virtue of its statute, deal with any events that have taken place before the statute entered into force on 1 July 2002.

4. ACCUSATIONS OF TORTURE OF WITNESSES AND OTHER CHALLENGES IN THE EVALUATION OF EVIDENCE

During the trial, Bazaramba's defence has demanded that the Court remove testimonies of 19 prosecution witnesses from the evidence material. The demand is based on an accusation that the persons in question have been tortured in Rwanda.

The Court considers that in respect of two witnesses, such facts have come up which lead to establishing that these witnesses' testimonies have been obtained as a result of torture or another comparable procedure with the aim of receiving information as referred to in Article 15 of the UN Convention against Torture. Invoking the testimonies of these witnesses as evidence in any proceedings would be against the prerequisites for a fair trial, which is why they have not been taken into consideration. In respect of other witnesses, instead, no such facts have come up that would require that their testimonies could not be invoked as evidence.

The reliability of testimonies must always be evaluated in a normal Finnish criminal procedure and the trial concerning genocide has not made an exception in this respect. The linguistic and cultural differences and the political nature of the events under investigation have, however, made the evaluation exceptionally challenging in this trial. When evaluating the reliability of the testimonies, especially the significance of relay interpretation, the special characteristics of the African culture, the subordinate position of the witnesses in prison as well as the influence of conceptions formed in the gacaca proceedings and the influence of general political factors must have been taken into account.

4. DECISION OF THE COURT

Bazaramba's social position and alibi

Based on Bazaramba's own testimony and testimonies of several witnesses, it has been considered to be established in the case that Bazaramba has, due to his wealth and high education, had a relatively high social position in the local community. Although this kind of position has not created such a position for Bazaramba where his orders would have been obeyed without qualification, it has nevertheless been considerably easier for him than for others to bring out his ideas and to make others to act according to them.

The position of Bazaramba as a Hutu who had been adopted by a Tutsi family has been controversial and potentially very dangerous. On one hand, it can be regarded as plausible that Bazaramba had been forced to hide himself after the violence started. On the other hand, however, it can also be plausible that Bazaramba had felt, due to his background, a need to draw a clear distinction between himself and the Tutsi people by taking part in the persecution. The testimonies by both prosecution and defence witnesses about Bazaramba's whereabouts and movements during the period of the most intense violence between 15 and 21 April 1994 have provided evidence against the alibi provided by Bazaramba. Based on the testimonies, the Court has come to a conclusion that merely on the grounds of the alibi provided by Bazaramba, it has not been possible to exclude the possibility that Bazaramba has been involved in the acts according to the indictment.

Bazaramba's complicity in the acts of genocide

Inflicting on Tutsis that lived in the Maraba sector and its surroundings conditions of life calculated to bring about the physical destruction of the group

The District Court considers that Bazaramba has, with intent to destroy in whole or in part the Rwandan Tutsis as a group, inflicted on Tutsis that lived in the Maraba sector and its surroundings conditions of life calculated to bring about the physical destruction of the group through the following acts:

- Bazaramba has, by giving a speech of incitement against Tutsis in Birambo market place on 15 April 1994, spread anti-Tutsi propaganda and incited Hutus to killings through fomenting anger and contempt towards Tutsis. (Here, the Court did not find Bazaramba guilty in all of the points of the original charge.);
- Bazaramba has organised road blocks and night patrols set up in order to control Tutsis as well as led these activities;

- Bazaramba has forced Tutsis to leave their homes;
- Bazaramba has been responsible for acquiring and distributing equipment, such as matches, needed for setting residential and other buildings owned by Tutsis on fire and incited and ordered Hutus to burn these buildings;
- Bazaramba has distributed the movable and immovable property that had been left behind by Tutsis or that Tutsis had violently been robbed of.

Training on killing and violent acts and acquisition of weapons

The Court found Bazaramba not guilty on these charges.

Killings in the Maraba sector and its surroundings

Five unidentified Tutsi men

The Court found Bazaramba not guilty on these charges.

Emmanuel Habonimana, Dina, Agnes Mukamutesi and an unidentified Tutsi woman

In the middle of April 1994, Bazaramba has ordered and incited Hutus to kill Emmanuel Habonimana, his Tutsi wife Dina and a Tutsi woman named Agnes Mukamutesi as well as an unidentified Tutsi woman in their company. As a consequence of the order and the incitement, the victims have been killed with different kinds of weapons, such as maces and swords. The orders have been given in a situation where there has been an intent to destroy in whole or in part the Rwandan Tutsis as a group.

Bellansilla Mugagashugi

The Court found Bazaramba not guilty on this charge.

Approx. 12-year old Tutsi boy named Mujemana

The Court found Bazaramba not guilty on this charge.

A Tutsi woman named Agnes and her infant

The Court found Bazaramba not guilty on this charge.

A Tutsi man named Anderea

The Court found Bazaramba not guilty on this charge.

A Tutsi woman named Beatrice

Bazaramba has, after the middle of April 1994, with intent to destroy in whole or in part the Rwandan Tutsis as a group, ordered Hutus to search for the hiding Tutsis and to kill them. As a result of the order given by Bazaramba, a Tutsi woman named Beatrice, who was the wife of a man called Gedeon, was killed with a mace.

Cyahinda Church and its surroundings

Bazaramba has, with intent to destroy in whole or in part the Rwandan Tutsis as a group, participated in some of the attacks against Tutsis conducted between 15 and 18 April 1994 to a church and its surroundings located in the Cyahinda sector. (Here, the Court did not find Bazaramba guilty in all of the points of the original charge.)

Mount Nyakizu and its surroundings

Bazaramba has, with intent to destroy in whole or in part the Rwandan Tutsis as a group, led some of the attacks conducted between 15 and 18 April 1994 to Mount Nyakizu and its surroundings and given orders and instructions that have led to the killings of Tutsis. (Here, the Court did not find Bazaramba guilty in all of the points of the original charge.)

By acting in the manner described above, Bazaramba has been found guilty of committing genocide.

(Finnish Criminal Code, Chapter 13, section 4, subsection 1, Act 987/1974)

5. PUNISHMENT

The punishment for genocide is imprisonment for at least four years, or for life. The reason for such a large penal scale is that genocide can be committed not only by killing members of a group, as in extreme cases, but also by pettier forms of offence, for example by inflicting on the group conditions of life calculated to bring about its physical destruction through destroying homes of the group or through hindering their nourishment supply.

The Court has found Bazaramba guilty of an offence which without a genocidal intent would be judged as a murder or incitement to murder. For those crimes, the only possible punishment is life imprisonment. Because of this, the Court considers that the sentence of life imprisonment is in fair proportion to the dangerous and damaging nature of the offence that Bazaramba has been found guilty of.

Bazaramba is sentenced to life imprisonment.

6. DECISION ON FEES AND EXPENSES OF THE DEFENCE

The Court has given a separate decision concerning the claims for fees and expenses of the defence. The decision has been given the same day as the judgement.

7. NATURE OF THIS PRESS RELEASE

This is an unofficial press release and only the main points of the judgement have been covered here. More detailed reasoning can be found in the official judgement.