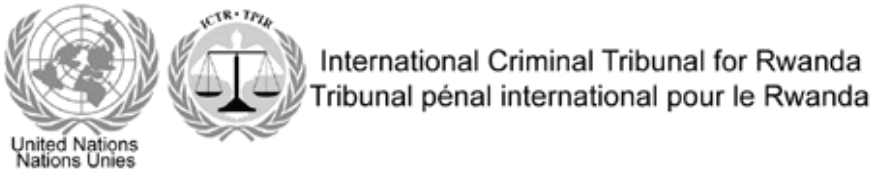

Before:
Judge Laïty Kama, Presiding Judge
Judge Lennart Aspegren
Judge Navanethem Pillay

Decision of: 4 September 1998

Registry: Mr. Agwu Okali

THE PROSECUTOR

VERSUS

JEAN KAMBANDA

Case no.: ICTR 97-23-S

JUDGEMENT and SENTENCE

Office of the Prosecutor:
Mr. Bernard Muna
Mr. Mohamed Othman
Mr. James Stewart
Mr. Udo Gehring

Counsel for the Defence:
Mr. Oliver Michael Inglis

I. The Proceedings

A. Background

1. Jean Kambanda was arrested by the Kenyan authorities, on the basis of a formal request submitted to them by the Prosecutor on 9 July 1997, in accordance with the provisions of Rule 40 of the Rules of Procedure and Evidence (the "Rules"). On 16 July 1997, Judge Laïty Kama, ruling on the Prosecutor=s motion of 9 July 1997, ordered the transfer and provisional detention of the suspect Jean Kambanda at the Detention Facility

of the Tribunal for a period of thirty days, pursuant to Rule 40 *bis* of the Rules. The provisional detention of Jean Kambanda was extended twice for thirty days, the first time under the provisions of Rule 40 *bis* (F) and the second time under the provisions of Rule 40 *bis* (G).

2. On 16 October 1997, an indictment against the suspect Jean Kambanda, prepared by the Office of the Prosecutor, was submitted to Judge Yakov Ostrovsky, who confirmed it, issued a warrant of arrest against the accused and ordered his continued detention.

3. On 1 May 1998, during his initial appearance before this Trial Chamber, the accused pleaded guilty to the six counts contained in the 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 Statute and crimes against humanity (extermination), punishable under Article 3 (b) of the Statute.

4. After verifying the validity of his guilty plea, particularly in light of an agreement concluded between the Prosecutor, on the one hand, and the accused and his lawyer, on the other, an agreement which was signed by all the parties, the Chamber entered a plea of guilty against the accused on all the counts in the indictment. During a status conference held immediately after the initial appearance, the date for the pre-sentencing hearing, provided for under Rule 100 of the Rules, was set for 31 August 1998. Later, at the request of the Prosecutor, this date was postponed to 3 September 1998. During that same status conference, the parties agreed to submit their respective briefs in advance of the above-mentioned pre-sentencing hearing. The submission date was later set for 15 August 1998. The Defence and the Prosecutor, in fact, filed their briefs before this date. The pre-sentencing hearing was held on 3 September 1998.

B. The guilty plea

5. As indicated *supra*, Jean Kambanda pleaded guilty, pursuant to Rule 62 of the Rules, to all the six counts set forth in the indictment against him. As stated earlier, the accused confirmed that he had concluded an agreement with the Prosecutor, an agreement signed by his counsel and himself and placed under seal, in which he admitted having committed all the acts charged by the Prosecution.

6. The Chamber, nevertheless, sought to verify the validity of the guilty plea. To this end, the Chamber asked the accused:

(i) if his guilty plea was entered voluntarily, in other words, if he did so 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 defence.

7. The accused replied in the affirmative to all these questions. On the strength of these answers, the Chamber delivered its decision from the bench as follows:

"Mr. Jean Kambanda, having deliberated and after verifying that your plea of guilty is voluntary, unequivocal and that you clearly understand its terms and consequences,

Considering the factual and legal issues contained in the agreement concluded between you and the Office of the Prosecutor and that you have acknowledged that both you and your counsel have signed, the Tribunal finds you guilty on the six counts brought against you,

Orders your continued detention; and Rules that a status conference will be held immediately after this hearing, with the Registrar, to set a date for the pre-sentencing hearing [...]".

II. Law and applicable principles

8. The Chamber will now summarize the legal texts relating to sentences and penalties and their enforcement, before going on to specify the applicable scale of sentences, on the one hand, and the general principles on the determination of penalties, on the other.

A. Applicable texts

9. The Chamber recalls below the statutory and regulatory provisions on sentencing, applicable to the accused.

Article 22 of the Statute: Judgment

" The Trial Chamber shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law."

Rule 100 of the Rules: Pre-sentencing procedure

"If the accused pleads guilty or if a Trial Chamber finds the accused guilty of a crime, the Prosecutor and the defence may submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence."

Article 23 of the Statute: Penalties

" 1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chamber shall have recourse to the general practice regarding prison sentences in the courts of Rwanda."

2. In imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

3. In addition to imprisonment, the Trial Chamber may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners."

Rule 101 of the Rules: Penalties

"(A) A person convicted by the Tribunal may be sentenced to imprisonment for a term up to and including the remainder of his life.

(B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 23 (2) of the Statute, as well as such factors as

(i) any aggravating circumstances;

(ii) any mitigating circumstances including the substantial co-operation with the Prosecutor by the convicted person before or after conviction;

(iii) the general practice regarding prison sentences in the courts of Rwanda;

(v) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9 (3) of the Statute.

(C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.

(D) The sentence shall be pronounced in public and in the presence of the convicted person, subject to Rule 102 (B).

(E) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending his surrender to the Tribunal or pending trial or appeal."

Article 26 of the Statute: Enforcement of sentences

"Imprisonment shall be served in Rwanda or any of the States on a list of States which have indicated to the Security Council their willingness to accept convicted person. Such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the Tribunal."

Rule 102 of the Rules: Status of the convicted person

"(A) The sentence shall begin to run from the day it is pronounced under Rule 101(D). However, as soon as notice of appeal is given, the enforcement of the judgment shall thereupon be stayed until the decision on the appeal has been delivered, the convicted person meanwhile remaining in detention, as provided for in Rule 64.

(B) If, by a previous decision of the Trial Chamber, the convicted person has been provisionally released, or is for any reason at liberty, and he is not present when the judgment is pronounced, the Trial Chamber shall issue a warrant for his arrest. On arrest, he shall be notified of the conviction and sentence, and the procedure provided in Rule 103 shall be followed."

Rule 103 of the Rules: Place of imprisonment

"(A) Imprisonment shall be served in Rwanda or any State designated by the Tribunal from a list of States which have indicated their willingness to accept convicted persons for the serving of sentences. Prior to a decision on the place of imprisonment, the Chamber shall notify the Government of Rwanda.

(B) Transfer of the convicted person to that State shall be effected as soon as possible after the time-limit for appeal has elapsed."

Article 27 of the Statute: Pardon or commutation of sentences

"If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the International Tribunal for Rwanda accordingly. There shall only be pardon or commutation of sentence if the President of the International Tribunal for Rwanda, in consultation with the judges, so decides on the basis of the interests of justice and the general principles of law."

Rule 104 of the Rules: Supervision of imprisonment

"All sentences of imprisonment shall be served under the supervision of the Tribunal or a body designated by it."

B. Scale of sentences applicable to the accused found guilty of one of the crimes listed in Articles 2, 3 or 4 of the Statute of the Tribunal.

10. As noted from a reading of all the above provisions on penalties, the only penalties the Tribunal can impose on an accused who pleads guilty or is convicted as such are prison terms up to and including life imprisonment, pursuant in particular to Rule 101 (A) of the Rules, whose provisions apply to all crimes which fall within the jurisdiction of the Tribunal, namely genocide, (Article 2 of the Statue), crimes against humanity (Article 3) and violations of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto (Article 4). The Statute of the Tribunal excludes other forms of punishment such as the death sentence, penal servitude or a fine.

11. Neither Article 23 of the Statute nor Rule 101 of the Rules determine any specific penalty for each of the crimes falling under the jurisdiction of the Tribunal. The determination of sentences is left to the discretion of the Chamber, which should take into account, apart from the general practice regarding prison sentences in the courts of Rwanda, a number of other factors including the gravity of the crime, the personal circumstances of the convicted person, the existence of any aggravating or mitigating circumstances, including the substantial co-operation by the convicted person before or after conviction.

12. Whereas in most national systems the scale of penalties is determined in accordance with the gravity of the offence, the Chamber notes that, as indicated *supra*, the Statute does not rank the various crimes falling under the jurisdiction of the Tribunal and, thereby, the sentence to be handed down. In theory, the sentences are the same for each of the three crimes, namely a maximum term of life imprisonment.

13. It should be noted, however, that in imposing the sentence, the Trial Chamber should take into account, in accordance with Article 23 (2) of the Statute, such factors as the gravity of the offence.

14. The Chamber has no doubt that despite the gravity of the violations of Article 3 common to the Geneva Conventions and of the Additional Protocol II thereto, they are considered as lesser crimes than genocide or crimes against humanity. On the other hand, it seems more difficult for the Chamber to rank genocide and crimes against humanity in terms of their respective gravity. The Chamber holds that crimes against humanity, already punished by the Nuremberg and Tokyo Tribunals, and genocide, a concept defined later, are crimes which particularly shock the collective conscience. The Chamber notes in this regard that the crimes prosecuted by the Nuremberg Tribunal, namely the holocaust of the Jews or the "Final Solution", were very much constitutive of genocide, but they could not be defined as such because the crime of genocide was not defined until later.

15. The indictment setting forth the charges against the accused in the Nuremberg trial, stated, in regard to crimes against humanity that Athese methods and crimes constituted violations of international law, domestic law as deriving from the criminal law of all civilised nations. According to the International Criminal Tribunal for the former Yugoslavia ("ICTY"):

"Crimes against humanity are serious acts of violence which harm human beings by striking what is most essential to them: their lives, liberty, physical welfare, health, and or dignity. They are inhumane acts that by their extent and gravity go beyond the limits tolerable to the international community, which must perforce demand their punishment. But crimes against humanity also transcend the individual because when the individual is assaulted, humanity comes under attack and is negated. It is therefore the concept of humanity as victim which essentially characterises crimes against humanity"

16. Regarding the crime of genocide, in particular, the preamble to the Genocide Convention recognizes that at all periods of history, genocide has inflicted great losses on humanity and reiterates the need for international cooperation to liberate humanity from this scourge. The crime of genocide is unique because of its element of *dolus specialis* (special intent) which requires that the crime be committed with the intent >to destroy in whole or in part, a national, ethnic, racial or religious group as such=, as stipulated in Article 2 of the Statute; hence the Chamber is of the opinion that genocide constitutes the crime of crimes, which must be taken into account when deciding the sentence.

17. There is no argument that, precisely on account of their extreme gravity, crimes against humanity and genocide must be punished appropriately. Article 27 of the Charter of the Nuremberg Tribunal empowered that Tribunal, pursuant to Article 6 (c) of the said Charter, to sentence any accused found guilty of crimes against humanity to death or such other punishment as shall be determined by it to be just.

18. Rwanda, like all the States which have incorporated crimes against humanity or genocide in their domestic legislation, has envisaged the most severe penalties in the criminal legislation for these crimes. To this end, the Rwandan Organic Law on the Organization of Prosecutions for Offences constituting the Crime of Genocide or Crimes against Humanity, committed since 1 October 1990, adopted in 1996, groups accused persons into four categories as follows:

"Category 1

a) persons whose criminal acts or those whose acts place them among planners, organizers, supervisors and leaders of the crime of genocide or of a crime against humanity;

b) Persons who acted in positions of authority at the national, prefectural, communal, sector or cell, or in a political party, the army, religious organizations, or militia and who perpetrated or fostered such crimes;

c) Notorious murderers who by virtue of the zeal or excessive malice with which they committed atrocities, distinguished themselves in their areas of residence or where they passed;

d) Persons who committed acts of sexual violence.

Category 2

Persons whose criminal acts or whose acts of criminal participation place them among perpetrators, conspirators or accomplices of intentional homicide or of serious assault against the person causing death.

Category 3

Persons whose criminal acts or whose acts of criminal participation make them guilty of other serious assaults against the person.

Category 4

Persons who committed offences against property."

19. According to the list drawn up by the Attorney General of the Supreme Court of Rwanda, pursuant to the afore-mentioned Organic Law, and attached to the Prosecutor=s brief, Jean Kambanda figures in Category 1. Article 14 of the Organic Law stipulates that :

" penalties imposed for the offences referred to in Article 1 shall be those provided for in the Penal Code, except that :

a) persons in Category 1 are liable mandatorily to the death penalty;

b) for persons in Category 2, the death penalty is replaced by life imprisonment (....)"

20. For persons in Category 3, the term of imprisonment shall be of shorter duration.

21. As indicated *supra*, in determining the sentence, the Chamber must, among other things, have recourse to the general practice regarding prison sentences in the courts of Rwanda (Article 23 of the Statute and Rule 101 of the Rules).

22. The Chamber notes that it is logical that in the determination of the sentence, it has recourse only to prison sentences applicable in Rwanda, to the exclusion of other sentences applicable in Rwanda, including the death sentence, since the Statute and the Rules provide that the Tribunal cannot impose this one type of sentence.

23. That said , the Chamber raises the question as to whether the scale of sentences applicable in Rwanda is mandatory or whether it is to be used only as a reference. The Chamber is of the opinion that such reference is but one of the factors that it has to take into account in determining the sentences. It also finds, as did Trial Chamber I of the ICTY in the Erdemovic case, that "the reference to this practice can be used for guidance, but is not binding". According to that Chamber, this opinion is supported by the interpretation of the United Nations Secretary-General, who in his report on the establishment of the ICTY stated that: "in determining the term of imprisonment, the Trial Chamber should have recourse to the general practice of prison sentences applicable in the courts of the former Yugoslavia."

24. Regarding the penalties, the Chamber notes that since the trials related to the events in 1994 began in this country, the death penalty and prison terms of up to life imprisonment have been passed on several occasions. However, the Chamber does not have information on the contents of these decisions, particularly their underlying reasons.

25. Also, while referring as much as practicable to the general practice regarding prison sentences in the courts of Rwanda, the Chamber will prefer, here too, to lean more on its unfettered discretion each time that it has to pass sentence on persons found guilty of crimes falling within its jurisdiction, taking into account the circumstances of the case and the standing of the accused persons.

C. General principles regarding the determination of sentences

26. In determining the sentence, the Chamber has to always have in mind that this Tribunal was established by the Security Council pursuant to Chapter VII of the Charter of the United Nations within the context of measures the Council was empowered to take under Article 39 of the said Charter to ensure that violations of international humanitarian law in Rwanda in 1994 were halted and effectively redressed. As required by the Charter in previous cases, the Council noted that the situation in Rwanda constituted a threat to international peace and security. And resolution 955 of 8 November 1994, which was passed by the Council in this connection, clearly indicates that the aim for the establishment of the Tribunal was to prosecute and punish the perpetrators of the atrocities in Rwanda in such a way as to put an end to impunity and thereby to promote national reconciliation and the restoration of peace.

27. It will be noted that the preamble of the Rwandan Organic Law, referred to above, states that :

"Considering that it is vital, in order to achieve national reconciliation, to forever eradicate the culture of impunity;

Considering that the exceptional situation facing the country requires the adoption of adequate measures to meet the need of the Rwandan people for justice."

28. That said, it is clear that the penalties imposed on accused persons found guilty by the Tribunal must be directed, on the one hand, at retribution of the said accused, who must see their crimes punished, and over and above that, on other hand, at deterrence, namely dissuading for good those who will attempt in future to perpetrate such atrocities by showing them that the international community was not ready to tolerate the serious violations of international humanitarian law and human rights.

29. The Chamber recalls, however, that in the determination of sentences, it is required by Article 23 (2) of the Statute and Rule 101 (B) of the Rules to take into account a number of factors including the gravity of the offence, the individual circumstances of the accused, the existence of any aggravating or mitigating circumstances, including the substantial co-operation by the accused with the Prosecutor before or after his conviction. It is a matter, as it were, of individualising the penalty, for it is true that "among the joint perpetrators of an offence or among the persons guilty of the same type of offence, there is only one common element: the target offence which they committed with its inherent gravity. Apart from this common trait, there are, of necessity, fundamental differences in their respective personalities and responsibilities : their age, their background, their

education, their intelligence, their mental structure....It is not true that they are *a priori* subject to the same intensity of punishment "[unofficial translation]

30. Clearly, however, as far as the individualisation of penalties is concerned, the judges of the Chamber cannot limit themselves to the factors mentioned in the Statute and the Rules. Here again, their unfettered discretion to evaluate the facts and attendant circumstances should enable them to take into account any other factor that they deem pertinent.

31. Similarly, the factors at issue in the Statute and in the Rules cannot be interpreted as having to be mandatorily cumulative in the determination of the sentence.

32. Recalling these factors, the Chamber would like to emphasise three of them, in particular. These are the aggravating circumstances, individual circumstances of Jean Kambanda (Article 23 (2) of the Statute) and the mitigating circumstances.

33. Regarding the aggravating circumstances, it will be noted that the gravity of crimes such as genocide and crimes against humanity which are particularly revolting to the collective conscience alone, is enough to merit lengthy elaboration. The Chamber will, however, come back to it when weighing the aggravating factors against the mitigating factor or factors in favour of the accused for the determination of the sentence.

34. As far as the "individual circumstances of Jean Kambanda" are concerned, the individualisation of the sentence, as the expression itself seems to suggest, is not possible unless facts about his "personality" are known, including his background, his behaviour before, during and after the offence, his motives for the offence and demonstration of remorse thereafter.

35. With regard to the mitigating circumstances, Article 6 (4) of the Statute states that the fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires. The problem should not arise in the instant case, since the accused was the Prime Minister. For its part, Rule 101 (B) (ii) of the Rules, as mentioned earlier stipulates as mitigating circumstances "the substantial co-operation by the convicted person with Prosecutor before or after the conviction." In this regard, when determining the sentence for Jean Kambanda, the Chamber will have to assess the extent of the co-operation by the accused referred to by the Prosecutor in the documents under seal entitled "Agreement on a guilty plea.", signed by herself, the accused and his counsel.

36. However, the wording of the above-mentioned Rule 101 (...any mitigating circumstances including the substantial .....) shows, in the opinion of the Chamber , that substantial co-operation by the accused with the Prosecutor could only be one mitigating circumstance, among others, when the accused pleads guilty plea or shows sincere repentance.

37. Having said that, the Chamber should, nevertheless, stress 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 offence. The aforementioned Rwandan Organic Law No. 8/96 of 30/8/96 goes further because under the Law, persons falling under Category 1 cannot benefit from a reduction of sentences even after a guilty plea.

III. Case on Merits

38. Having reviewed the principles set out above, the Trial Chamber proceeds to consider all relevant information submitted by both parties in order to determine an appropriate sentence in terms of Rule 100 of the Rules.

A. **Facts of the Case**

39. Together with his >guilty= plea, Jean Kambanda submitted to the Chamber a document entitled "Plea Agreement between Jean Kambanda and the OTP", signed by Jean Kambanda and his defence counsel, Oliver Michael Inglis, on 28 April 1998, in which Jean Kambanda makes full admissions of all the relevant facts alleged in the indictment. In particular:-

(i) Jean Kambanda admits that there was in Rwanda in 1994 a widespread and systematic attack against the civilian population of Tutsi, the purpose of which was to exterminate them. Mass killings of hundreds of thousands of Tutsi occurred in Rwanda, including women and children, old and young who were pursued and killed at places where they had sought refuge i.e. prefectures, commune offices, schools, churches and stadiums.

(ii) Jean Kambanda acknowledges that as Prime Minister of the Interim Government of Rwanda from 8 April 1994 to 17 July 1994, he was head of the 20 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 acknowledges that he participated in meetings of the Council of Ministers, cabinet meetings and meetings of *prefets* 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 acknowledges participation in the dismissal of the *prefet* of Butare because the latter had opposed the massacres and the appointment of a new *prefet* to ensure the spread of massacre of Tutsi in Butare.

(iv) Jean Kambanda acknowledges his participation in a high level security meeting at Gitarama in April 1994 between the President, T. Sindikubwabo, himself and the Chief of

Staff of the Rwandan Armed Forces (FAR) and others, which discussed FAR=s support in the fight against the Rwandan Patriotic Front (RPF) and its "accomplices", understood to be the Tutsi and Moderate Hutu.

(v) Jean Kambanda acknowledges that he issued the Directive on Civil Defence addressed to the *prefets* on 25 May 1994 (Directive No. 024-0273, disseminated on 8 June 1994). Jean Kambanda further admits that this directive encouraged and reinforced the *Interahamwe* who were committing mass killings of the Tutsi civilian population in the prefectures. Jean Kambanda further acknowledges that by this directive the Government assumed the responsibility for the actions of the Interahamwe.

(vi) Jean Kambanda acknowledges that before 6 April 1994, political parties in concert with the Rwanda 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 acknowledges that the Government headed by him distributed arms and ammunition to these groups. Additionally, Jean Kambanda confirms 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. Furthermore Jean Kambanda acknowledges 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 acknowledges the existence of groups within military, militia, and political structures which had planned the elimination of the Tutsi and Hutu political opponents.

(vii) Jean Kambanda acknowledges 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 acknowledges 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 including by congratulating the people who had committed these killings.

(ix) Jean Kambanda acknowledges that on 3 May 1994, he was personally asked totake steps to protect children who had survived the massacre at a hospital and he did not respond. On the same day, after the meeting, the children were killed. He acknowledges

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 acknowledges 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 acknowledges 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 acknowledges 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. Jean Kambanda admits that he was an eye witness to the massacres of Tutsi and also had knowledge of them from regular reports of prefets, and cabinet discussions.

Judgement

40. In light of the admissions made by Jean Kambanda in amplification of his plea of guilty, the Trial Chamber, on 1st May 1998, accepted his plea and found him guilty on the following counts:

(1) By his acts or omissions described in paragraphs 3.12 to 3.15, and 3.17 to 3.19 of the indictment, 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 6(3), and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

(2) By his acts or omissions described in paragraphs 3.8, 3.9, 3.13 to 3.15 and 3.19 of the indictment, Jean Kambanda did conspire with others, including Ministers of his Government, such as Pauline Nyiramasuhuko, Andre 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 Articles 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.

(3) By his acts or omissions described in paragraphs 3.12 to 3.14 and 3.19 of the indictment, 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 Article 6(1) and 6(3),which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

(4) By his acts or omissions described in paragraphs 3.10, 3.12 to 3.15 and 3.17 to3.19 of the indictment, which do not constitute the same acts relied on for counts 1,2 and 3 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 6(3), which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

(5) By his acts or omissions described in paragraphs 3.12 to 3.15 and 3.17 to 3.19 of the indictment, 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 6(3), which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

(6) By his acts or omissions described in paragraphs 3.12 to 3.15, and 3.17 to 3.19 of the indictment, 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 6(3), which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

B. <u>Factors relating to Sentence</u>

41. Article 23(1) of the Statute stipulates that penalties imposed by the Trial Chamber shall be limited to imprisonment and that in the determination of imprisonment, the Trial Chamber shall have recourse to the general practice regarding prison sentences in the Court s of Rwanda. The Trial Chamber notes that the Death sentence which is proscribed by the Statute of the ICTR is mandatory for crimes of this nature in Rwanda. Reference to the Rwandan sentencing practice is intended as a guide to determining an appropriate sentence and does not fetter the discretion of the judges of the Trial Chamber to determine the sentence. In determining the sentence, the Court shall, in accordance with the Rules of Procedure, take into account such factors as the gravity of the crime and the individual circumstances of Jean Kambanda.

(i) <u>Gravity of the Crime</u>

42. In the brief dated 10 August 1998 and in her closing argument at the hearing, the Prosecutor stressed the gravity of the crimes of genocide, and crimes against humanity. The heinous nature of the crime of genocide and its absolute prohibition makes its commission inherently aggravating. The magnitude of the crimes involving the killing of an estimated 500,000 civilians in Rwanda, in a short span of 100 days constitutes an aggravating fact.

43. Crimes against Humanity are as aforementioned conceived as offences of the gravest kind against the life and liberty of the human being.

44. The crimes were committed during the time when Jean Kambanda was Prime Minister and he and his government were responsible for maintenance of peace and security. Jean Kambanda abused his authority and the trust of the civilian population. He personally participated in the genocide by distributing arms, making incendiary speeches and presiding over cabinet and other meetings where the massacres were planned and discussed. He failed to take necessary and reasonable measures to prevent his subordinates from committing crimes against the population. Abuse of positions of authority or trust is generally considered an aggravating factor.

(ii) Individual circumstances of Jean Kambanda

Personal particulars

45. Jean Kambanda was born on 10 October 1955 at Mubumbano in the Prefecture of Butare. He has a wife and two children. He holds a Diploma d=Ingenieur Commercial and from May 1989 to April 1994, he worked in the Union des Banques Populaires du Rwanda rising to the position of Director of the network of those banks. He was Vice President of the Butare Section of the MDR and member of its Political Bureau. On 9 April 1994, he became Prime Minister of the Interim Government. The Prosecutor has not proved previous criminal convictions, if any, of Jean Kambanda.

(iii) Mitigating Factors

46. Defence Counsel has proffered three factors in mitigation:- Plea of guilty; remorse; which he claims is evident from the act of pleading guilty; and co-operation with the Prosecutor=s office.

47. The Prosecutor confirms that Jean Kambanda has extended substantial co-operation and invaluable information to the Prosecutor. The Prosecutor requests the Trial Chamber to regard as a significant mitigating factor, not only the substantial co-operation so far extended, but also the future co-operation when Jean Kambanda testifies for the prosecution in the trials of other accused.

48. The Plea Agreement signed by the parties expressly records that no agreements, understandings or promises have been made between the parties with respect to sentence which, it is acknowledged, is at the discretion of the Trial Chamber.

49. The Prosecutor however disclosed that Jean Kambanda=s co-operation has been recognised by significant protection measures that have been put in place to alleviate any concerns that he may have, about the security of his family.

50. According to the Prosecutor, Jean Kambanda had expressed his intention to plead guilty immediately upon his arrest and transfer to the Tribunal, on 18 July 1997. Jean 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 restoring national unity and reconciliation in Rwanda. Jean Kambanda condemned the massacres that occurred in Rwanda and considers his confession as a contribution towards the restoration of peace in Rwanda.

51. The Chamber notes however that Jean Kambanda has offered no explanation for his voluntary participation in the genocide; nor has 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.

52. Both Counsel for Prosecution and Defence have urged the Chamber to interpret Jean Kambanda=s guilty pleas as a signal of his remorse, repentance and acceptance of responsibility for his actions. The Chamber is mindful that remorse is not the only reasonable inference that can be drawn from a guilty plea; nevertheless it accepts that most national jurisdictions consider admissions of guilt as matters properly to be considered in mitigation of punishment.

"A prompt guilty plea is considered a major mitigating factor."

53. In civil criminal law systems, a guilt plea may be favourably considered as a mitigating factor, subject to the discretionary faculty of a judge.

"An admission of guilt demonstrates honesty and it is important for the International Tribunal to encourage people to come forth, whether already indicted or as unknown perpetrators."

54. The Chamber has furthermore been requested to take into account in favour of Jean Kambanda that his guilty plea has also occasioned judicial economy, saved victims the trauma and emotions of trial and enhanced the administration of justice.

55. The Trial Chamber finds that the gravity of the crime has been established and the mitigatory impact on penalty has been characterised.

56. The Trial Chamber holds the view that a finding of mitigating circumstances relates to assessment of sentence and in no way derogates from the gravity of the crime. It mitigates punishment, not the crime. In this respect the Trial Chamber adopts the reasoning of "Erdemovic" and the "Hostage" case cited therein.

"It must be observed however that mitigation of punishment does not in any sense of the word reduce the degree of the crime. It is more a matter of grace than of defence. In other words, the punishment assessed is not a proper criterion to be considered in evaluating the findings of the court with reference to the degree of magnitude of the crime."

57. The degree of magnitude of the crime is still an essential criterion for evaluation of sentence.

58. A sentence must reflect the predominant standard of proportionality between the gravity of the offence and the degree of responsibility of the offender. Just sentences contribute to respect for the law and the maintenance of a just, peaceful and safe society.

59. The Chamber recalls as aforementioned that the Tribunal was established at the request of the government of Rwanda; and the Tribunal was intended to enforce individual criminal accountability on behalf of the international community, contribute in ensuring the effective redress of violence and the culture of impunity, and foster national reconciliation and peace in Rwanda. (Preamble, Security Council resolution 955(1994)).

60. In her submissions, although the Prosecutor sought a term of life imprisonment for Jean Kambanda, she requested that the Tribunal, in the determination of the sentence, take into consideration the guilty plea and the cooperation of Jean Kambanda with her office. The Defence Counsel in his submissions emphasised that Jean Kambanda was only a puppet controlled by certain military authorities and that his power was consequently limited. He thus submitted that the Tribunal, taking into account the guilty plea, Jean Kambanda=s cooperation and willingness to continue cooperating with the Prosecutor, and the role Jean Kambanda could play in the process of national reconciliation in Rwanda, sentence him for a term of imprisonment not exceeding two years.

61. The Chamber has examined all the submissions presented by the Parties pertaining to the determination of sentence, from which it can be inferred:

(A) (i) Jean Kambanda has cooperated and is still willingly cooperating with the Office of the Prosecutor;

(ii) the guilty plea of Jean Kambanda is likely to encourage other individuals to recognize their responsibilities during the tragic events which occurred in Rwanda in 1994;

(iii) a guilty plea is generally considered, in most national jurisdictions, including Rwanda, as a mitigating circumstance;

(B) but that, however:

(v) the crimes for which Jean Kambanda is responsible carry an intrinsic gravity, and their widespread, atrocious and systematic character is particularly shocking to the human conscience;

(vi) Jean Kambanda committed the crimes knowingly and with premeditation;

(vii) and, moreover, Jean Kambanda, as Prime Minister of Rwanda was entrusted with the duty and authority to protect the population and he abused this trust.

62. On the basis of all of the above, the Chamber is of the opinion that the aggravating circumstances surrounding the crimes committed by Jean Kambanda negate the mitigating circumstances, especially since Jean Kambanda occupied a high ministerial post, at the time he committed the said crimes.

IV. VERDICT

TRIAL CHAMBER I,

FOR THE FOREGOING REASONS,

DELIVERING its decision in public, inter partes and in the first instance;

PURSUANT to Articles 23, 26 and 27 of the Statute and Rules 100, 101, 102, 103 and 104 of the Rules of Procedure and Evidence;

NOTING the general practice of sentencing by the Courts of Rwanda;

NOTING the indictment as confirmed on 16 October 1997;

NOTING the Plea of guilty of Jean Kambanda on 1 May 1998 on the Counts of:

COUNT 1: Genocide (stipulated in Article 2(3)(a) of the Statute as a crime, and attributed to him by virtue of Article 6(1) and 6(3), and punishable in reference to Articles 22 and 23 of the Statute of theTribunal);

COUNT 2: Conspiracy to commit genocide (stipulated in Articles 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: 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 Article 6(1) and 6(3), which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal);

COUNT 4: 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 6(3), which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal);

COUNT 5: Crime against humanity (murder) (stipulated in Article 3(a) of the Statute as a crime, and attributed to him by virtue of Article 6(1) and 6(3), which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal);

COUNT 6: Crime against humanity (extermination) (stipulated in Article 3(b) of the Statute as a crime, and attributed to him by virtue of Article 6(1) and 6(3), which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal);

HAVING FOUND Jean Kambanda guilty on all six counts on 1 May 1998;

NOTING the briefs submitted by the parties;

HAVING HEARD the Closing Statements of the Prosecutor and the Defence Counsel;

IN PUNISHMENT OF THE ABOVEMENTIONED CRIMES,

SENTENCES Jean Kambanda

born on 19 October 1955 in Gishamvu Commune, Butare Prefecture, Rwanda

TO LIFE IMPRISONMENT

RULES that imprisonment shall be served in a State designated by the President of the Tribunal, in consultation with the Trial Chamber and the said designation shall be conveyed to the government of Rwanda and the designated State by the Registry;

RULES that this judgement shall be enforced immediately, and that until his transfer to the said place of imprisonment, Jean Kambanda shall be kept in detention under the present conditions.

Arusha, 4 September 1998,

Laïty Kama (Presiding Judge)

Lennart Aspegren- (Judge)

Navanethem Pillay- (Judge)

(Seal of the Tribunal)