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I. The Proceedings

A. Background

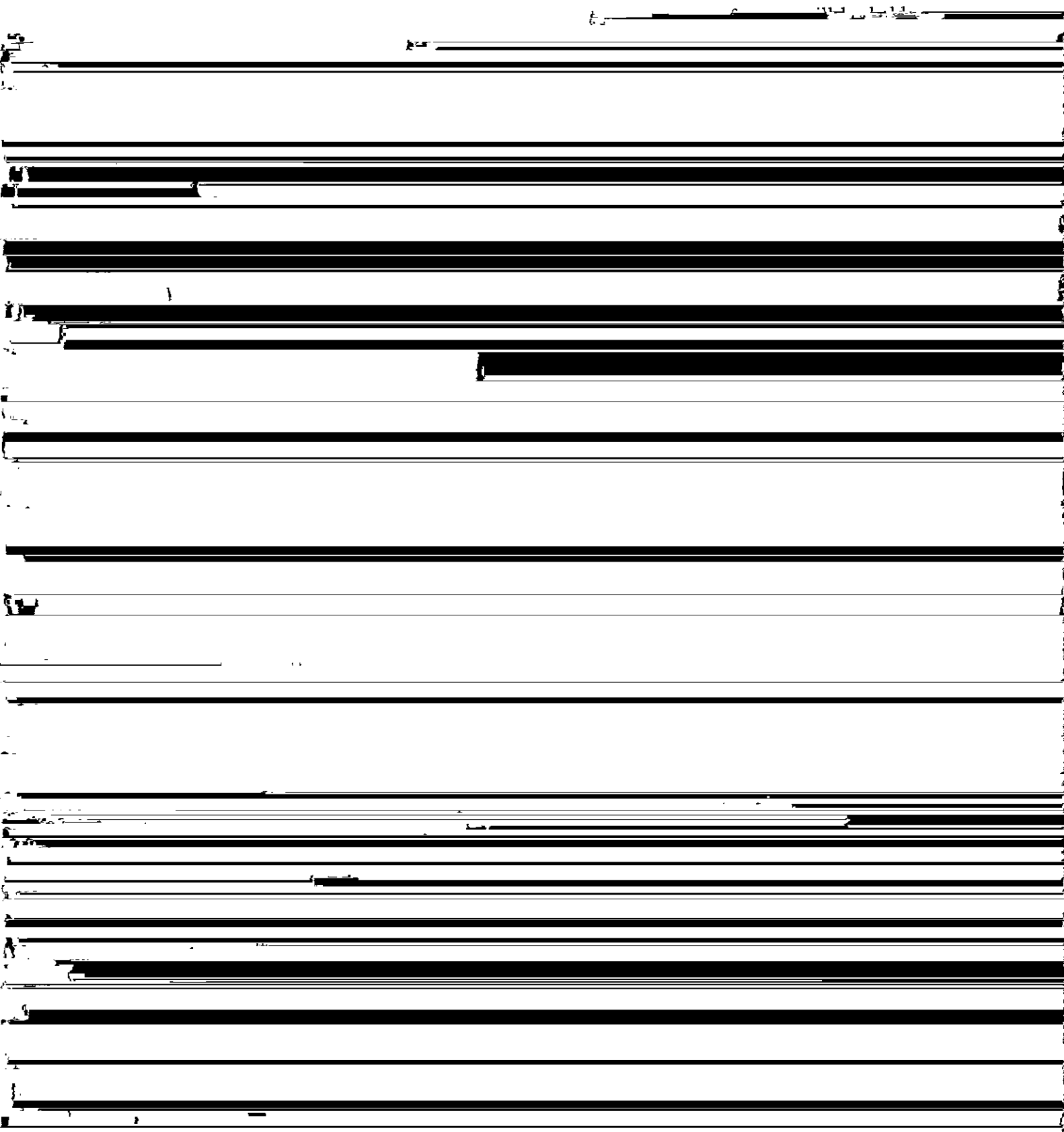
1. Jean Kambanda was arrested by the Kenyan authorities, on the basis of a formal request submitted to them by the Prosecutor on 9 July 1997. [REDACTED]

40 of the Rules of Procedure and Evidence (the "Rules"). On 16 July 1997, Judge Lester Kambanda

ruling on the Prosecutor's motion of 9 July 1997 ordered the transfer and provisional detention

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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,



- 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

(C) The Trial Chamber shall indicate whether multiple sentences shall be served

consecutively or concurrently.

(D) The sentence shall

(B) If by a previous decision of the Trial Chamber

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

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 Statute), 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

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

committed by the Nuremberg Tribunal, namely the holocaust of the Jews, or the "Final Solution"

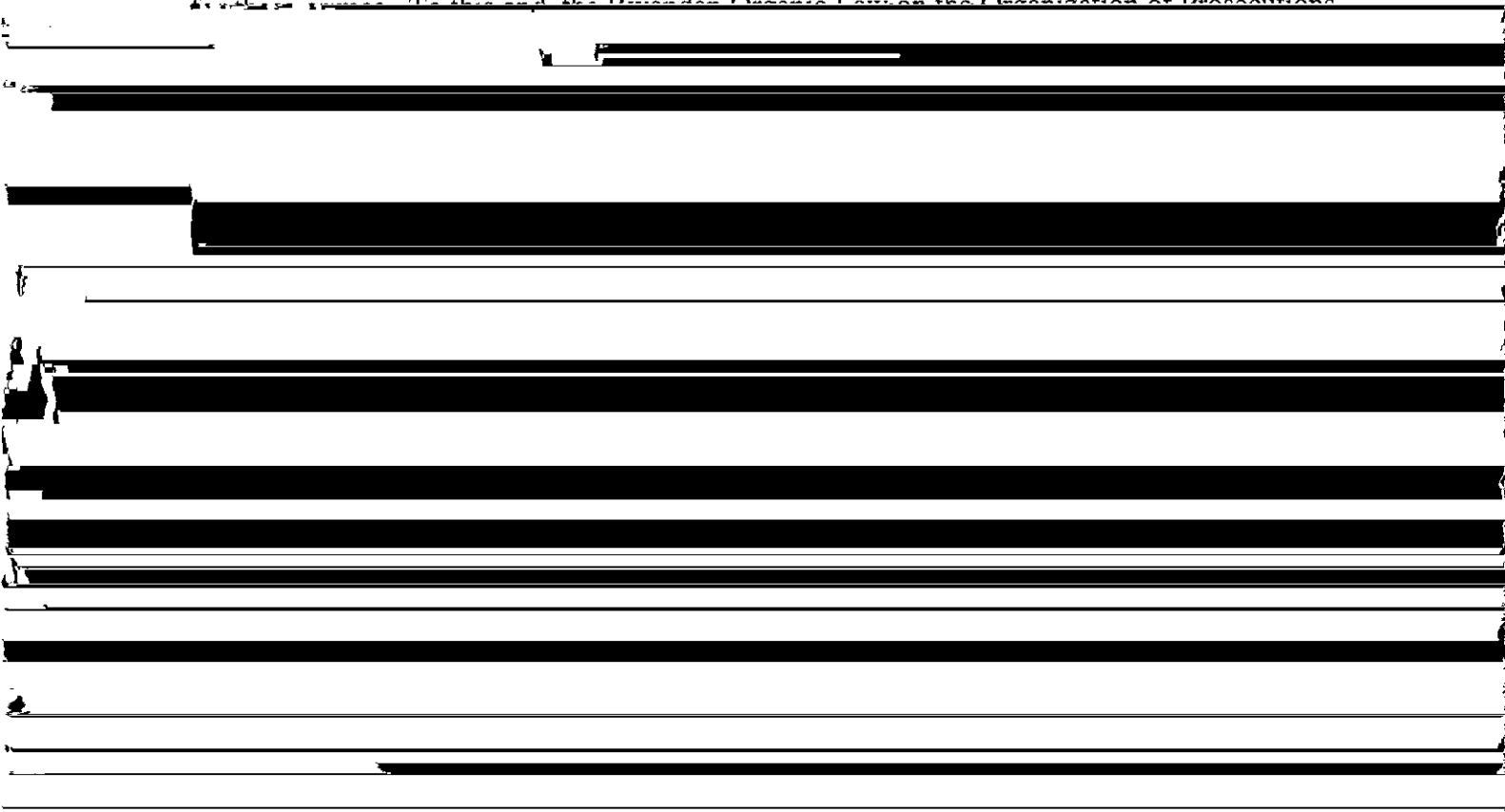
were very much constitutive of genocide, but they could not be defined as such because the crime of genocide was not defined until later.

15. The indictment setting forth the charges against the accused in the Nuremberg trial, stated,

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



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who perpetrated or fostered such crimes;

c) Notorious murderers who by virtue of the zeal or excessive malice with which they

~~perpetrated distinguished themselves in their areas of residence or where~~



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- 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 (....)"⁶

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

21. [REDACTED]

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

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 bear in mind that the trial chamber

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

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 Kambanda¹⁰ (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 examining the aggravating factors...

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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

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

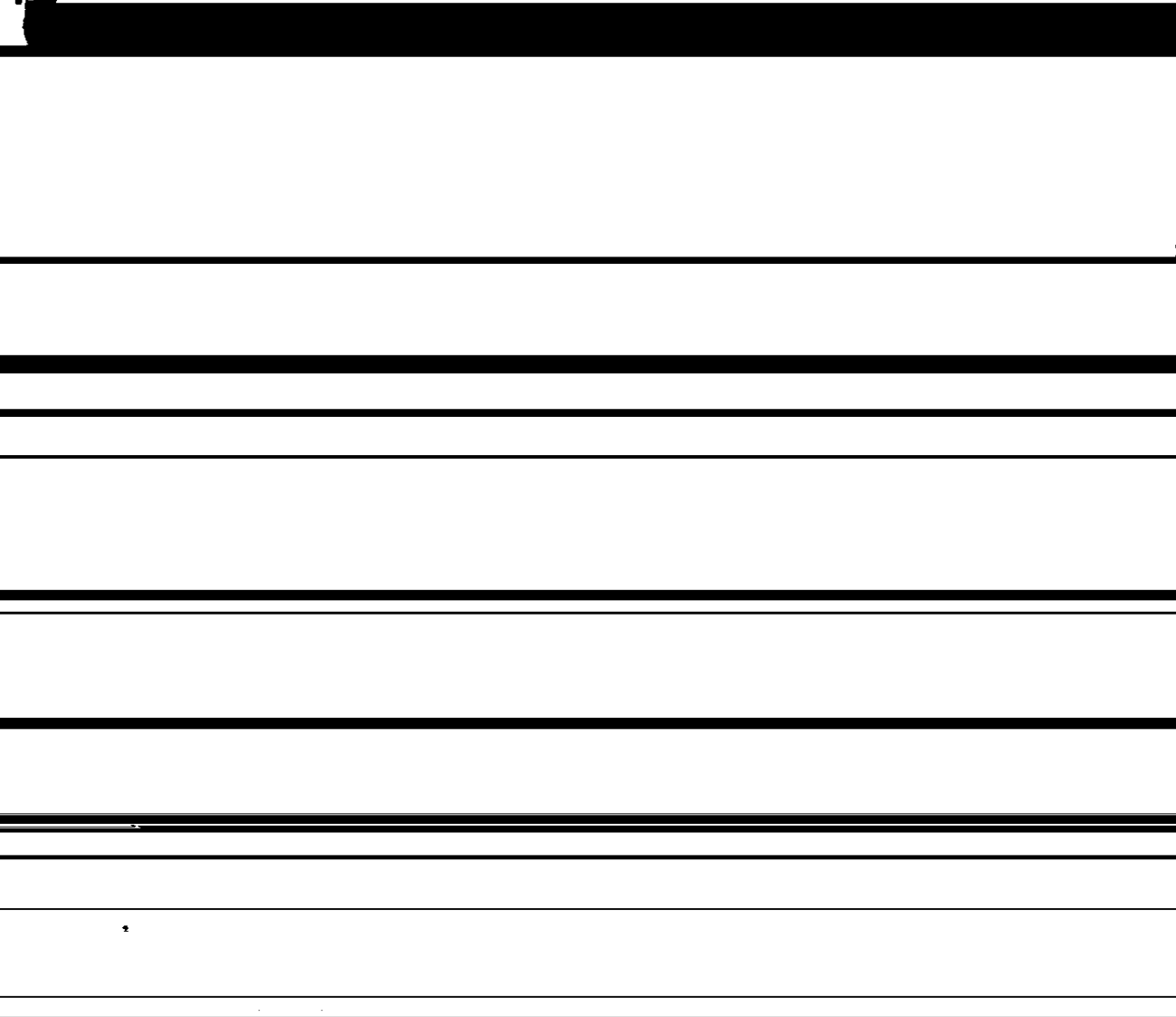
stadiums.

(ii) Jean Kambanda acknowledges that as Prime Minister of the Interim Government

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

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.

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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 to

take 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.

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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

[REDACTED]

is mandatory for crimes of this nature in Rwanda. Reference to the Rwandan sentencing practice

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(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

position of Director of the network of those banks. He was Vice President of the Butare Section of the MDP, and member of its Political Bureau. On 9 April 1994 he became Prime Minister

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may have about the security of his family.

... 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

Tribunal to encourage people to come forth, whether already indicted or as unknown perpetrators.”¹⁴

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.”

59. The Chamber recalls as aforementioned that the Tribunal was established at the request

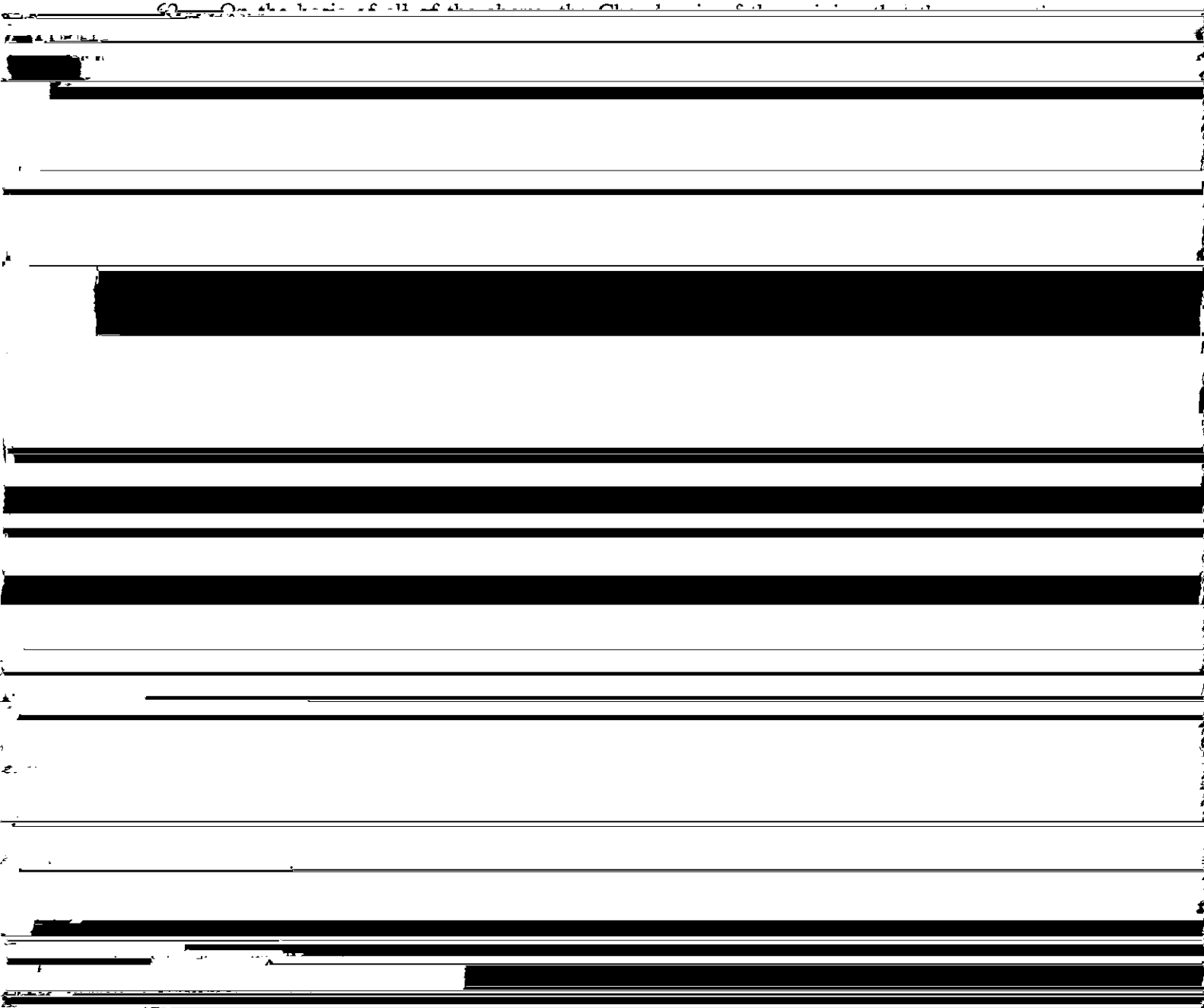
accountability on behalf of the international community, contribute in ensuring the effective redress of violence and the culture of impunity, and foster national reconciliation and peace in Rwanda. (Preamble, Security Council resolution 955(1994)).

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

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(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.



IV. VERDICT

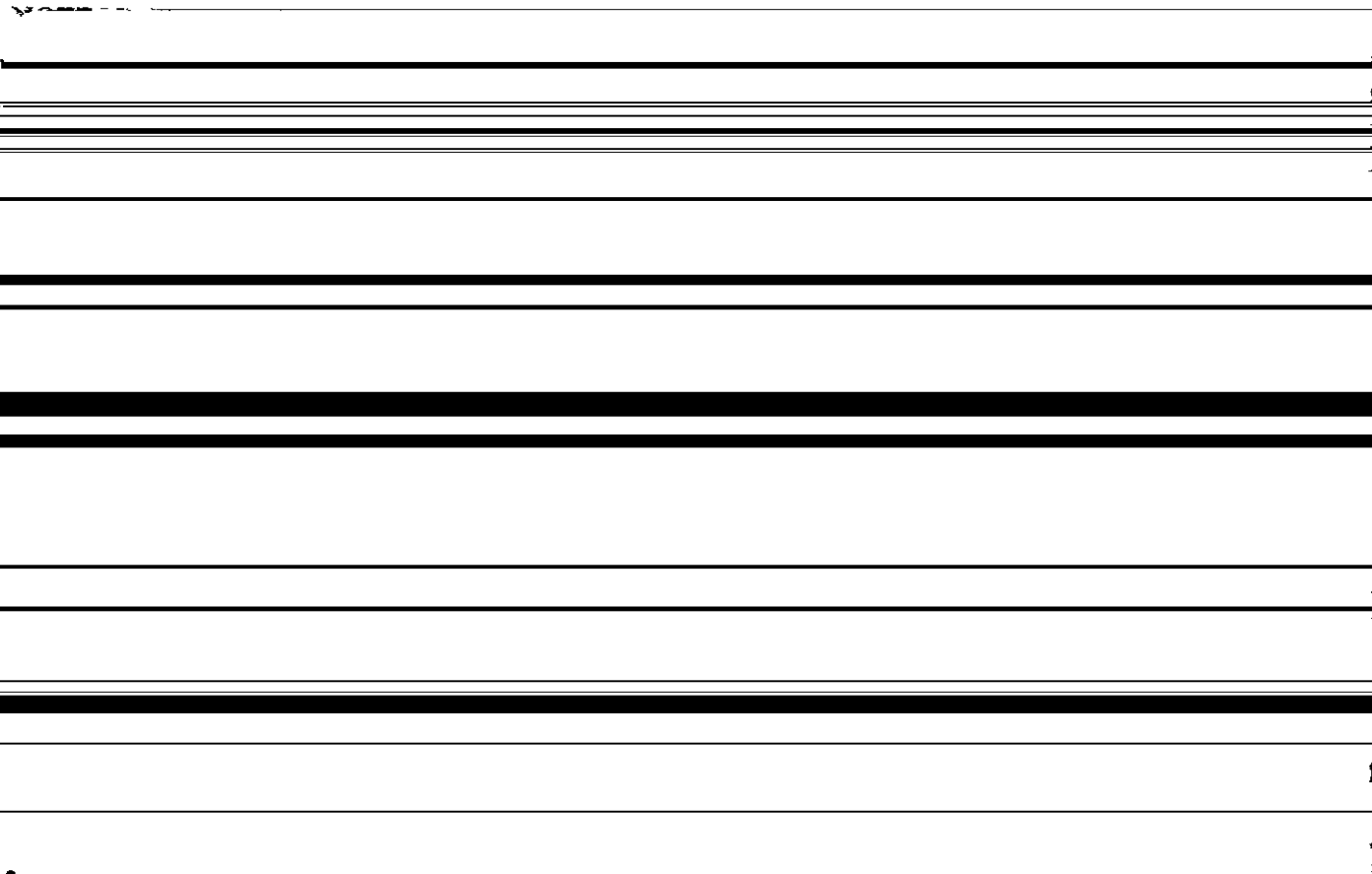
TRIAL CHAMBER I,

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

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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

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

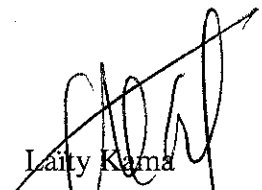
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RULES that imprisonment shall be served in a State designated by the President of the Tribunal,
in consultation with the Trial Chamber and the said designation shall be conveyed to the

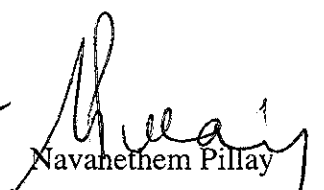
government of Rwanda and the designated State by the Registry;

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,


Laity Kama
Presiding Judge


Lennart Aspegren
Judge


Navanethem Pillay
Judge