

"Legal issues: Trial of François Bazaramba in Finland"

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The accused:

Francois Bazaramba, born 1951, headmaster of a vocational college in Nyakizu, Butare province. In 1994 he was the leader of a Baptist youth training center.

Accusations

- Agitating the Nyakizu Hutu population to kill the Tutsis and to burn their houses, organizing anti –Tutsi meetings and giving speeches
- Leading the attacks against Tutsi civilians in Cyahinda Catholic church and on Mount Nyakizu
- Giving orders to murder 15 individual Tutsis in the village
- Supplying Interahamwe killing squads with traditional weapons, matches
- Organized the distribution of the property of the killed Tutsis, being member of the security committee in the commune

Response of the accused

- Denies all the accusations on genocide and murders
- He saved lives of several Tutsis, one of whom is now living in the U.S. and came to testify
- He admits being member of the security committee, but he became a member in May 1994 when there were no more killings of Tutsi in the area. The purpose of the security committee was to protect the population against RPF terror. The commune sold the fields of the dead Tutsis to ensure the food supplies and Mr. Bazaramba was in charge of organizing that.
- The defense considers that the evidence against Bazaramba has been fabricated.

Legal background

- Finland admitted universal jurisdiction on genocide and other international crimes in 1996
- This is the first time the universal jurisdiction is applied in Finland
- In March 2009 Finland refused to extradite Mr. Bazaramba to Rwanda. Sweden made in July 2009 the decision to extradite Mr. Sylvere Ahorugeze to Rwanda.

Finnish procedural law issues

- The Finnish law on evidence is very liberal. The court practices “free evaluation of evidence” which means that the parties are free to appoint as witnesses or as pieces of evidence generally what they like. There are only limitations on the evidence of medical professionals, lawyers, clergy and close family members - and the Convention against Torture.
- The defense eyewitnesses are mostly refugees. The District Court has accepted that they are heard behind closed doors and their names and addresses are not given to public. According to the Finnish Law on Publicity of Court Proceedings, the court can decide to prohibit the access of the public to the hearing of a refugee, if the publicity would endanger the security of the refugee or his / her family members.

Application of Convention against Torture

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

- The prosecutor has appointed 30 witnesses. All of them live in Rwanda. 20 of them are former or present prisoners. 9 are Tutsis who consider themselves as survivors. Many of them possess property that used to belong to Bazaramba family before 1994. There is only one Hutu witness who has never been in prison
- Some of them have told even in the court that they were beaten until they confessed their participation in genocide. The most serious violence has happened in 1997.
- Many of them have been released from prison after confessing their own guilt and testifying against Bazaramba and others in gacaca
 - o Prisoners with 20 years sentence have been released after serving 10 months
- The defense has made several motions to stop the hearing of former prisoners
 - o Clear connection between the beatings and the confessions
 - o Most of the evidence of ex-prisoners is based on their own confession. “ I killed a Tutsi because Bazaramba told me to do so”
 - o The distinction between the confession obtained by torture and the evidence against Bazaramba does not exist
 - o Can the prison conditions in Rwanda be considered as torture? If a Rwandan prisoner is released after giving testimony against Bazaramba, is the evidence obtained through torture?

- The District Court has overruled all the motions based on the Convention against torture
 - o “The purpose of the beating was not to obtain evidence against others but to force the prisoners to admit their own guilt. The beating of prisoners does not mean that their evidence against Mr. Bazaramba is a result of torture.”
 - o “Convention against torture speaks only about intentional torture. The shortcomings and partial inhumanity of the Rwandan prison conditions are result of lack of resources and they are not an intentional way to obtain evidence as a result of torture. “
- On 7th October 2009, the prosecutor was hearing as witness Mr. Celestin Nkeramihigo. The prosecution strategy was first to ask the witness about the prison conditions and why and how he gave the testimony, and to ask about the substance later. Mr. Nkeramihigo told in detail about the beatings and how he saw other prisoners being killed by the beating and that he admitted his guilt after been beaten.
- The defense asked the court to stop the hearing several times because the evidence was clearly obtained through torture. The Court overruled the motion without giving any reasons.
- The defense sent the same night a request to the Finnish Police to investigate if the judge and the prosecutor have violated the law and neglected their official duties through receiving evidence that was obtained through torture.
 - o The investigation against a judge is underway and is a very exceptional measure and was considered a sensation in the press and the legal community

The case is not over

- The prosecution evidence has been received in total
- The defense witnesses’ hearing is underway
 - o The defense has as witness a former prison gacaca secretary and a former investigator at African Rights, who can tell on the manipulation of prisoners’ testimonies. There will be 3 former prisoners as witnesses who will testify that they lied that they killed people during the genocide, just to get out of the prison. How will the court evaluate their testimonies?
- The District Court verdict is expected in February 2010
- In Finland, it is possible to appeal on all the aspects of the District Court verdict to the Appeals’ Court, and the Appeals’ Court can hear the witnesses and reconsider the evidence just like the District Court without any limitations
- It is possible to take the Appeals’ Court decision to the Supreme Court. The Supreme Court may decide if the take to case into consideration or not.