

Rwandan war criminal handed life sentence in Quebec

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When Justice André Denis of the Quebec Superior Court condemned Désiré Munyaneza to life in prison with no chance of parole for 25 years after being convicted of genocide, war crimes and crimes against humanity for his role in the Rwandan genocide of 1994, it put a cap - for the moment - on a costly trial that took place over two years on three continents, while serving notice that the legal obstacles surrounding war crime trials are not insurmountable.

Followed closely by international legal observers, the precedent-setting case may have to put to rest a widely-held perception that Canada is a haven for war criminals and may go so far as to even set the stage for future prosecutions of war criminals in Canada and abroad.

"Canada's willingness to go the extra mile, collecting evidence and hearing witnesses in Rwanda, culminating in a well-written judgment by Justice Denis and a strong sentence, sends a clear message to genocidaires, past, present and future, that you will not find sanctuary in Canada," said Frank Chalk, the director of the Montreal Institute for Genocide and Human Rights Studies at Concordia University and co-author of *The History and Sociology of Genocide*. "The judge clearly delineated the difference between waging war amidst a civil war and committing mass atrocity crimes. His distinctions provide useful boundaries for future prosecutions."

Munyaneza, a 42-year-old son of a wealthy businessman, moved to Canada with his family in 1997, was arrested by the Royal Canadian Mounted Police in 2005 and became the first person to be tried and convicted under Crimes Against Humanity and War Crimes Act 2000, which provides a judicial framework for the prosecution of Canadian residents suspected of war crimes and genocidal acts committed abroad.

In a 210-page ruling rendered last May, Judge Denis found Munyaneza guilty of seven counts of genocide, war crimes and crimes against humanity in and around Butare, Rwanda's second-largest city, after evidence showed beyond a reasonable doubt that he was one of the "driving forces" of the genocidal movement. Last week, Justice Denis handed Munyaneza the maximum possible sentence

because "there exists no greater crime than genocide" and because he did not provide any extenuating circumstances.

"The evidence shows that many Rwandans, from all ethnic backgrounds, were courageous during the genocide - some of them paying for it with their lives," Justice Denis said during sentencing. "The accused, an educated and privileged man, chose to kill, rape and pillage, vaunting the superiority of his ethnic group, reminding us again that every time a man claims to be part of a superior race, a chosen people, humanity is in danger."

Widely expected to eventually wind its way to the nation's highest court, Munyaneza's three-person legal team, whose tab is being picked up by the federal government, is now in the midst of writing a factum - including a 41-page annex of alleged errors and omissions by the judge of first instance - after filing a notice to appeal before the Quebec Court of Appeal. Munyaneza's appeal will maintain that the judge set aside the usual standards for assessing the credibility of witnesses, misapprehended or did not take into account defense evidence and did not deal with objections raised by defence counsel, said Paul Skolnik, one of Munyaneza's lawyers.

"I think it will eventually be heard by the Supreme Court of Canada. If we win, the Crown will appeal; if we lose before the Court of Appeal, we'll try to go to the SCC," said Skolnik, a Montreal criminal lawyer who represented three individuals before the International Criminal Tribunal for Rwanda, one of whom was acquitted.

The case was fraught with complexities and challenges that few jurists ever face on Canadian soil. Language barriers and cultural differences were issues. So was security as most, if not all, witnesses feared for their safety. And then there is the fact that the crimes took place more than a decade ago in a country as far removed from Canada as imaginable.

"There is a real challenge in prosecuting in Canada before a Canadian judge a Rwandan man for events that took place in Rwanda, in a different language and different cultural settings in a situation that is far removed in space and time," noted McGill law professor Rene Provost and author of International Human Rights and Humanitarian Law.

It is equally daunting to ensure that the usual standards and protections for defendants are not watered down in order to get a conviction, pointed out Nick Rodrigo, a Montreal lawyer with Davies Ward Phillips & Vineberg LLP in Montreal who gave multi-day seminars in trial advocacy techniques for prosecutors at the International Criminal Tribunal for Rwanda. "The idea here is to conduct trials that would universally be considered fair with all of the evidentiary and procedural protections."

Munyaneza may even go so far as to prod other nations, particularly Western countries, to follow in Canada's footsteps, particularly since it was able to clearly demonstrate that a solid case can lead to a conviction while ensuring the legal system maintains high standards, said Stéphane Beaulac, a law professor at the Université de Montréal who teaches public international law and statutory

interpretation.

"The goal is not to merely condemn," said Beaulac. "One must be careful. This is a case that was handled very competently and has become precedent-setting. It demonstrates that the Canadian legal system functions."

It functioned in this case because there was a political will within the Canadian political establishment to undertake the prosecution of Munyaneza, added Provost. Until Munyaneza, Provost argues that Canada demonstrated indifference and limited itself to merely expelling alleged criminals living in Canada who committed international crimes abroad.

"Canada was not pulling its weight to the idea of an international criminal legal system that is functional," said Provost. "The Munyaneza case stood as a crucial test for whether there was political will within the Canadian political establishment to undertake such prosecutions on the basis of universal jurisdiction, and whether the Canadian judicial system is capable of handling such cases. In that respect, people should applaud because it is possible to do it within Canada.

Reasons: R. c. Munyaneza, [2009] J.Q. no 12271.

Quotes of Stéphane Beaulac and the judgment translated from French by the author.