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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

UNITED  
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OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Judge Dennis C. M. Byron, Presiding  
Judge Gberdao Gustave Kam  
Judge Vagn Joensen

**Registrar:** Mr. Adama Dieng

**Date:** 11 February 2010

**THE PROSECUTOR**

v.

**Tharcisse MUVUNYI**

*Case No. ICTR-00-55A-T*

JUDICIAL RECORDS ARCHIVES  
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**JUDGEMENT**

**Office of the Prosecutor:**

Charles Adeogun-Phillips  
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William E. Taylor III  
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1155

## TABLE OF CONTENTS

<b>CHAPTER I – INTRODUCTION.....</b>	<b>4</b>
<b>CHAPTER II – EVIDENTIARY ISSUES.....</b>	<b>6</b>
<b>CHAPTER III – FINDINGS.....</b>	<b>11</b>
1. THE CHARGE.....	11
2. APPLICABLE LAW.....	12
3. THE ACCUSED.....	14
4. DELIBERATIONS.....	17
4.1. <i>The Meeting</i> .....	18
4.1.1. Whether the Witnesses Testified Regarding the Same Meeting.....	22
4.1.2. Whether More than One Public Meeting Took Place in Gikore in May 1994.....	23
4.2. <i>The Speeches</i> .....	23
4.2.1. Evidence.....	23
4.2.2. Deliberations.....	29
4.3. <i>The Use of Proverbs</i> .....	39
<b>CHAPTER IV – THE VERDICT.....</b>	<b>42</b>
<b>CHAPTER V – THE SENTENCE.....</b>	<b>43</b>
1. INTRODUCTION.....	43
2. DETERMINATION OF THE SENTENCE.....	44
2.1 <i>Gravity of the Offence</i> .....	44
2.2 <i>Individual Circumstances</i> .....	45
2.2.1. Aggravating Circumstances.....	45
2.2.2. Mitigating Circumstances.....	46
2.3 <i>Credit for Time Served</i> .....	46
3. CONCLUSION.....	47
<b>ANNEX I – PROCEDURAL HISTORY.....</b>	<b>48</b>
1. RETRIAL.....	48
2. PROSECUTION CASE.....	51
3. DEFENCE CASE.....	52
<b>ANNEX II – CITED MATERIALS AND DEFINED TERMS.....</b>	<b>54</b>
1. JURISPRUDENCE.....	54
1.1 <i>International Criminal Tribunal for Rwanda</i> .....	54
1.2 <i>International Criminal Tribunal for the Former Yugoslavia</i> .....	56

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2. DEFINED TERMS AND ABBREVIATIONS.....56

1153

**CHAPTER I - INTRODUCTION**

1. This case concerns Tharcisse Muvunyi, who was convicted by Trial Chamber II of this Tribunal on 12 September 2006 for several acts of genocide, direct and public incitement to commit genocide, and other inhumane acts and sentenced to 25 years imprisonment.<sup>1</sup> On 29 August 2008, the Appeals Chamber set aside all convictions and the sentence, but ordered a retrial of one allegation of direct and public incitement to commit genocide.<sup>2</sup>

2. This is the retrial of that allegation. The Indictment alleges that Muvunyi spoke at a meeting at the Gikore Centre in Nyaruhengeri *commune*, Butare *préfecture*, in early May 1994 and incited the killing of Tutsis by using Kinyarwanda proverbs that were understood by the local population as a call to exterminate the Tutsis, in contravention of Article 2(3)(c) of the Statute.<sup>3</sup>

3. The Defence disputes that Muvunyi attended a meeting in Gikore “in early May 1994”, but concedes that he attended a meeting in Gikore in mid to late May 1994. However, the Defence contends that his speech at the latter meeting did not incite the killing of Tutsis. Rather, the Defence asserts that Muvunyi apprised the population of the security and military situation and called on it to be vigilant in defending the country and to provide intelligence to the authorities.<sup>4</sup>

4. Muvunyi’s retrial commenced on 17 June 2009. The Prosecution closed its case on 22 June 2009, after calling 6 witnesses and tendering 21 exhibits. The Defence commenced its case on 24 August and closed on 17 September 2009, after calling 7 witnesses and tendering 11 exhibits.<sup>5</sup>

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<sup>1</sup> *Prosecutor v. Muvunyi*, Case No. ICTR-2000-55A-T, Judgement (TC), 12 September 2006, para. 531, (“*Muvunyi Trial Judgement*”).

<sup>2</sup> *Muvunyi v. Prosecutor*, Case No. ICTR-2000-55A-A, Judgement (AC), 29 August 2008, para. 171, (“*Muvunyi Appeal Judgement*”).

<sup>3</sup> *Prosecutor v. Muvunyi*, Case No. ICTR-2000-55A-T, Indictment, filed on 23 December 2003, paras. 3.24, 3.25, (“*Indictment*”); The Prosecutor’s Pre-Trial Brief, 4 May 2009, paras. 14-17, (“*Prosecution Pre-Trial Brief*”); T. 17 Jun. 2009, p. 2 [Prosecution opening statement]; The Prosecutor’s Closing Brief, 23 September 2009, paras. 51-54, (“*Prosecution Closing Brief*”).

<sup>4</sup> Accused Tharcisse Muvunyi’s PreDefence Brief, 6 July 2009, paras. 8, 9, (“*Defence Pre-Trial Brief*”); T. 24 Aug. 2009, pp. 6, 7 [Defence opening statement]; Accused Tharcisse Muvunyi’s Final Trial Brief, 23 September 2009, paras. 53-56 (“*Defence Closing Brief*”).

<sup>5</sup> A full procedural history is set out in Annex I to this Judgement.

**1152**

5. Having deliberated on the totality of the evidence, the Chamber finds Muvunyi guilty of direct and public incitement to commit genocide and sentences him to fifteen years imprisonment.

1151

## CHAPTER II - EVIDENTIARY ISSUES

### *Burden and Standard of Proof*

6. Article 20(3) of the Statute guarantees the presumption of innocence of each accused person. The burden of proving the guilt of the accused person beyond a reasonable doubt rests solely on the Prosecution and never shifts to the Defence. The Chamber must be satisfied beyond a reasonable doubt that the accused is guilty before a verdict can be entered against him or her.<sup>6</sup>

7. Muvunyi chose not to testify in this retrial, as he was entitled to do, and no adverse inference can be drawn from that fact.<sup>7</sup> While the Defence does not have to adduce evidence to rebut the Prosecution's case, the Prosecution will fail to discharge its burden of proof if the Defence presents evidence that raises a reasonable doubt regarding the Prosecution's case.<sup>8</sup> An accused person must be acquitted if there is any reasonable explanation for the evidence other than his or her guilt.<sup>9</sup> Refusal to believe or rely upon Defence evidence does not automatically amount to a guilty verdict. The Chamber must still satisfy itself that the Prosecution proved every element of the crime charged and the mode of liability, and any fact indispensable to a conviction, beyond a reasonable doubt.<sup>10</sup>

### *Viva Voce Evidence*

8. When evaluating *viva voce* evidence, the Chamber may consider a variety of factors, including the witness's demeanour in court, the plausibility and clarity of the witness's testimony, and whether there were contradictions or inconsistencies within the witness's testimony, between the witness's testimony and the witness's prior statements relied upon in court or admitted as exhibits, or between the witness's testimony and that of other witnesses.<sup>11</sup> The Trial Chamber may also consider the individual circumstances of the

<sup>6</sup> *Prosecutor v. Rukundo*, Case No. ICTR-2001-70-T, Judgement (TC), 27 February 2009, para. 36 (“*Rukundo* Trial Judgement”); *Prosecutor v. Nchamihigo*, Case No. ICTR-01-63-T, Judgement (TC), 12 November 2008, para. 12; Rule 87(A) of the Rules of Procedure and Evidence.

<sup>7</sup> *Prosecutor v. Niyitegeka*, Case No. ICTR-96-14-T, Judgement (TC), 16 May 2003, para. 46; Article 20(4)(g) of the Statute of the International Criminal Tribunal for Rwanda (“Statute”).

<sup>8</sup> *Niyitegeka v. Prosecutor*, Case No. ICTR-96-14-A, Judgement (AC), 9 July 2004, paras. 60, 61, (“*Niyitegeka* Appeal Judgement”); *Prosecutor v. Kayishema and Ruzindana*, Case No. ICTR-95-1-A, Judgement (AC), 1 June 2001, para. 117, (“*Kayishema and Ruzindana* Appeal Judgement”).

<sup>9</sup> *Prosecutor v. Mucić, Delić, and Landžo*, Case No. IT-96-21-Abis, Judgement (AC), 8 April 2003, para. 458 (“*Čelebići* Appeal Judgement”).

<sup>10</sup> *Rukundo* Trial Judgement, para. 37.

<sup>11</sup> *Prosecutor v. Bikindi*, Case No. ICTR-01-72-T, Judgement (TC), 2 December 2008, para. 31 (“*Bikindi* Trial Judgement”).

**1150**

witnesses, including their role in the events in question, their relationship with the accused and other witnesses, their criminal record, the impact of trauma on their memory, social and cultural factors, and whether they would have an underlying motive to give a certain version of the events.<sup>12</sup>

9. As a significant period of time has elapsed between the events alleged in the Indictment and the testimonies given in court, discrepancies attributable to the passage of time or the absence of record-keeping do not necessarily affect the credibility or reliability of witnesses.<sup>13</sup>

10. The Trial Chamber has broad discretion to assess inconsistencies between a witness's pre-trial statements and his or her evidence in court and to determine the appropriate weight to be attached to such discrepancies.<sup>14</sup> In light of the time lapse between the statements and the presentation of evidence at trial, the difficulties of recollecting precise details several years after the occurrence of the events, the difficulties of translation, and the fact that witnesses may be illiterate or have not read their written statement, the Chamber may decide that an alleged inconsistent statement has considerably less probative value than direct sworn testimony before the Chamber, the truth of which has been subjected to the test of cross-examination.<sup>15</sup>

11. This is particularly the case when a witness is confronted with a prior statement he gave to an investigator of the Tribunal in another case. The Chamber considers that such statements often have considerably less probative value than direct sworn testimony before the Chamber because they are frequently made in direct response to discrete questions that concern an entirely different factual context. Moreover, the Chamber acknowledges that an investigator may summarize or selectively record aspects of a witness's statement in order to focus on the testimony that is relevant to the case he is investigating. While this is an entirely appropriate practice, it reduces the probative value of the statement as a tool for assessing the credibility of the witness in another case because there is an increased risk that the prior statement will be presented out of context.

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<sup>12</sup> *Id.*

<sup>13</sup> *Ibid.*, para. 32.

<sup>14</sup> *Gacumbitsi v. Prosecutor*, Case No. ICTR-2001-64-A, Judgement (AC), 7 July 2006, para. 74.

<sup>15</sup> *Prosecutor v. Akayesu*, Case No. ICTR-96-4-A, Judgement (AC), 1 June 2001, paras. 131, 132.

1149

12. While direct evidence is preferred, hearsay evidence is not *per se* inadmissible before the Trial Chamber.<sup>16</sup> The Trial Chamber has the discretion to treat such hearsay evidence with caution, depending on the circumstances of the case.<sup>17</sup> In certain circumstances, hearsay evidence may require other credible or reliable evidence adduced by the Prosecution in order to support a finding of fact beyond a reasonable doubt.<sup>18</sup>

13. Finally, it is not unreasonable for a trier of fact to accept some, but reject other parts of a witness's testimony.<sup>19</sup>

#### *Accomplice and Detained Witnesses*

14. Accomplice witnesses, who are associates in guilt or partners in crime with the accused, may have motives or incentives to implicate the accused in order to gain some benefit in regard to their own case or sentence.<sup>20</sup> When an accomplice witness testifies in accordance with a prior statement implicating the accused, a Trial Chamber must be mindful that the witness may have had a motive or incentive to implicate the accused when he gave the prior statement, even if he has already been sentenced or has served his sentence.

15. The jurisprudence of this Tribunal has established that accomplice witness evidence is neither inadmissible, nor unreliable *per se*, especially when an accomplice is thoroughly cross-examined.<sup>21</sup> However, when weighing the probative value of such evidence, a Chamber is bound to carefully consider the totality of the circumstances in which it was tendered and, when necessary, must approach such evidence with caution in order to ensure a fair trial and guard against the exercise of a possible underlying motive on the part of the witness.<sup>22</sup> As a corollary, a Trial Chamber should at least briefly explain why it accepted the evidence of witnesses who may have had motives or incentives to implicate the accused; in this way, a Trial Chamber demonstrates its cautious assessment of this evidence.<sup>23</sup>

16. In addition and depending on the circumstances of the case, it may also be necessary to employ a cautious approach towards witnesses who are merely charged with crimes of a

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<sup>16</sup> *Prosecutor v. Rutaganda*, Case No. ICTR-96-3-A, Judgement (AC), 26 May 2003, para. 34, (“*Rutaganda Appeal Judgement*”).

<sup>17</sup> *Id.*

<sup>18</sup> *Prosecutor v. Kalimanzira*, Case No. ICTR-05-88-T, Judgement (TC), 22 June 2009, para. 75.

<sup>19</sup> *Karera v. Prosecutor*, Case No. ICTR-01-74-A, Judgement (AC), 2 February 2009, para. 88, (“*Karera Appeal Judgement*”).

<sup>20</sup> *Niyitegeka Appeal Judgement*, para. 98.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*; *Muvunyi Appeal Judgement*, para. 128.

<sup>23</sup> *Prosecutor v. Krajišnik*, Case No. IT-00-39-A, Judgement (AC), 17 March 2009, para. 146.



1148

similar nature. However, in most cases, these witnesses will not have the same tangible motives for giving false evidence as witnesses who were allegedly involved in the same criminal acts as the accused. Therefore, as long as no special circumstances have been identified, it is reasonable for a Trial Chamber to employ a lesser degree of caution towards the testimony of witnesses charged with similar crimes as opposed to accomplices.<sup>24</sup>

17. The Appeals Chamber has explained that two testimonies corroborate each other when one *prima facie* credible testimony is compatible with another *prima facie* credible testimony regarding the same fact or a sequence of linked facts.<sup>25</sup> Further, corroboration may exist even when some details differ between testimonies, provided that no credible testimony describes the facts in question in a way which is not compatible with the description given in another credible testimony.<sup>26</sup>

18. It is well-established that a Trial Chamber has the discretion to consider a material fact proven by the uncorroborated testimony of a single witness if that testimony is otherwise credible.<sup>27</sup> However, such evidence must be assessed with appropriate caution.<sup>28</sup> Nevertheless, if the Trial Chamber finds that a witness's testimony is inconsistent or otherwise problematic, it may still accept the evidence if it is corroborated by other evidence.<sup>29</sup> Whether it is necessary to rely on several witnesses' evidence to establish proof of a material fact depends on various factors that must be assessed in light of the circumstances of each case.<sup>30</sup> Where there is conflicting testimony, it is the duty of the Trial Chamber to decide which evidence it deems more probative.<sup>31</sup>

#### *Previous Trial*

19. In the first trial, the Prosecution relied on the evidence of two factual witnesses with respect to the alleged meeting at the Gikore Centre. In the retrial, the Prosecution again called these witnesses, YAI and CCP, and also called Witnesses FBX, AMJ and CCS. The Defence also relied on additional witnesses in the retrial. Defence Witness MO78 testified in both

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<sup>24</sup> *Prosecutor v. Ntagurera, Bagambiki, and Imanishimwe*, Case No. ICTR-99-46-A, Judgement (AC), 7 July 2006, para. 234, (“*Cyangugu Appeal Judgement*”).

<sup>25</sup> *Karera Appeal Judgement*, para. 173.

<sup>26</sup> *Id.*

<sup>27</sup> *Ibid.*, para. 45.

<sup>28</sup> *Id.*

<sup>29</sup> *Prosecutor v. Ntakirutimana and Ntakirutimana*, Cases Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004, para. 132.

<sup>30</sup> *Rutaganda Appeal Judgement*, para. 29.

<sup>31</sup> *Id.*

**1147**

trials, and in the retrial, the Defence also called Sixbert Iryivuze, Juvénal Bimenyimana, MO69, MO31, MO103 and MO99 with respect to the Gikore allegation. Calling additional witnesses in the retrial was authorised by the Appeals Chamber in a March 2009 decision.<sup>32</sup>

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<sup>32</sup> *Prosecutor v. Muvunyi*, Case No. ICTR-2000-55A-AR73, Decision on the Prosecutor's Appeal Concerning the Scope of Evidence to be Adduced in the Retrial (TC), 24 March 2009.

1146

**CHAPTER III – FINDINGS****1. THE CHARGE**

20. Under Count 3 of the Indictment, the Prosecution charges Muvunyi with direct and public incitement to commit genocide pursuant to Article 2(3)(c) of the Statute and with individual criminal responsibility under Article 6(1).<sup>33</sup> The only allegation at issue in this retrial is charged in paragraphs 3.24 and 3.25 of the Indictment:

3.24 During the events referred to in this indictment, Lieutenant Colonel **MUVUNYI**, in the company of the chairman of the civil defence program for Butare who later became the *Prefet* of Butare *préfecture*, and other local authority figures, went to various communes all over Butare *préfecture* purportedly to sensitize the local population to defend the country, but actually to incite them to perpetrate massacres against the Tutsis. These sensitization meetings took place in diverse locations throughout Butare *préfecture*, such as:

...

*-at the Gikore Center sometime in early May 1994; ...*

3.25. At the meetings referred to in paragraph 3.24 above, which were attended almost exclusively by Hutus, Lieutenant Colonel **MUVUNYI**, in conjunction with these local authority figures, publicly expressed virulent anti-Tutsi sentiments, which they communicated to the local population and militiamen in traditional proverbs. The people understood these proverbs to mean exterminating the Tutsis and the meeting nearly always resulted in the massacre of Tutsis who were living in the commune or who had taken refuge in the commune.

21. The Chamber recalls that it is undisputed that there was a variance between the pleading and the evidence regarding the date of the Gikore meeting. The Prosecution acknowledges that paragraph 3.24 of the Indictment pleads the relevant timeframe incorrectly as it should have alleged that the meeting occurred in late May or early June 1994, rather than early May.<sup>34</sup>

22. Therefore, the Chamber must consider whether the variance between the date pleaded in the Indictment and the evidence set forth by the Prosecution is material enough to prevent

<sup>33</sup> Indictment, paras. 3.23-3.25; pp. 16, 17.

<sup>34</sup> Prosecutor's Response to Tharcisse Muvunyi's Motion for Judgement of Acquittal Pursuant to Rule 98bis, filed 9 July 2009, para. 26.

1145

the Accused from being clearly informed of the meeting to which the charges are related.<sup>35</sup> The Chamber will address this issue in Chapter III, Section 4.1 below.

## 2. APPLICABLE LAW

23. A person may be found guilty of direct and public incitement to commit genocide if he or she directly and publicly incited the commission of genocide (the *actus reus*) and had the intent to directly and publicly incite others to commit genocide (the *mens rea*).<sup>36</sup>

24. In order to be direct, the incitement must be a specific appeal to commit an act referred to in Article 2(2) of the Statute and must be more than a vague or indirect suggestion.<sup>37</sup> As an inchoate crime, direct and public incitement to commit genocide is punishable even if no act of genocide has resulted from the incitement.<sup>38</sup> The crime is completed as soon as the discourse in question is uttered or published, even though the effects of the incitement may extend in time.<sup>39</sup>

25. However, implicit language may be ‘direct’ because incitement does not have to involve an explicit appeal to commit genocide. In order to determine whether a speech is direct, it should be viewed in light of its cultural and linguistic context, its audience, and the political and community affiliations of the inciter. The Chamber will therefore consider whether, in light of Rwandan culture, including the nuances of the Kinyarwanda language, certain acts of incitement can be viewed as direct, the principal consideration being the meaning of the words used in the specific context. An important factor for determining the true message of a speech is how it was understood by its intended audience.<sup>40</sup>

26. In some circumstances, the fact that a speech leads to acts of genocide could be an indication that in that particular context the speech was understood to be an incitement to commit genocide, and that this was indeed the intent of the author of the speech. This cannot,

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<sup>35</sup> *Prosecutor v. Muvunyi*, Case No. ICTR-00-55A-T, (“*Muvunyi*”), Decision on Appeals Chamber Remand of Decision Denying the Motion for Judgement of Acquittal (TC), 25 November 2009, paras. 11, 12, (“*Muvunyi* Remand Decision”).

<sup>36</sup> *Nahimana, Barayagwiza, and Ngeze v. Prosecutor*, Case No. ICTR-99-52-A, Judgement (AC), 28 November 2007, para. 677, (“*Nahimana et al. Appeal Judgement*”).

<sup>37</sup> *Ibid*, para. 692.

<sup>38</sup> *Ibid*, paras. 678, 720.

<sup>39</sup> *Ibid*, para. 723.

<sup>40</sup> *Ibid*, paras. 698-701; *Bikindi* Trial Judgement, para. 387; *Kalimanzira* Trial Judgement, para. 514.

1144

however, be the only evidence adduced to conclude that the purpose of the speech, and of its author, was to incite the commission of genocide.<sup>41</sup>

27. The public element of incitement to commit genocide may be appreciated by looking at the circumstances of the incitement, such as the place where the incitement occurred and whether or not the audience was selective or limited. Incitement is ‘public’ when conducted through speeches, shouting or threats uttered in public places or at public gatherings, or through the sale or dissemination, offer for sale or display of written material or printed matter in public places or at public gatherings, or through the public display of placards or posters, or through any other means of audiovisual communication.<sup>42</sup>

28. The *mens rea* required for the crime of direct and public incitement to commit genocide presupposes a genocidal intent.<sup>43</sup> That is, the person who is inciting to commit genocide must have him or herself the specific intent to commit genocide, namely, to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.<sup>44</sup> There is no numeric threshold of victims necessary to establish genocide, nor is it necessary to prove that a perpetrator intended the complete annihilation of a protected group. However, in order to establish genocidal intent, it is necessary to prove that the perpetrator intended to destroy at least a substantial part thereof.<sup>45</sup>

29. By its nature, intent is not always susceptible to direct proof. In the absence of direct evidence, a perpetrator’s genocidal intent may be inferred from relevant facts and circumstances that can lead beyond reasonable doubt to the existence of the intent, provided that it is the only reasonable inference that can be made from the totality of the evidence.<sup>46</sup> Genocidal intent may be inferred from certain facts or indicia, including but not limited to: (a) the general context; (b) the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others; (c) the scale of atrocities committed; (d) their general nature; (e) their execution in a region or a country; (f) the fact that the victims were deliberately and systematically chosen on account of their membership in a particular group; (g) the exclusion, in this regard, of

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<sup>41</sup> *Nahimana et al.* Appeal Judgement, para. 709.

<sup>42</sup> *Kalimanzira* Trial Judgement, para. 515.

<sup>43</sup> *Nahimana et al.* Appeal Judgement, para. 677.

<sup>44</sup> *Rutaganda* Appeal Judgement, para. 524; *Gacumbitsi* Appeal Judgement, para. 39.

<sup>45</sup> *Prosecutor v. Simba*, Case No. ICTR-01-76-T, Judgement (TC), 13 December 2005, para. 412, (“*Simba* Trial Judgement”).

<sup>46</sup> *Nahimana et al.* Appeal Judgement, para. 524.

**1143**

members of other groups; (h) the political doctrine which gave rise to the acts referred to; (i) the repetition of destructive and discriminatory acts; and (j) the perpetration of acts which violate the very foundation of the group or are considered as such by their perpetrators.<sup>47</sup>

30. The Chamber recalls that it is firmly established that the Tutsi ethnicity is a protected group.<sup>48</sup>

### 3. THE ACCUSED

31. Tharcisse Muvunyi was born on 19 August 1953, in Mukarange *commune*, Byumba *préfecture*.<sup>49</sup> He is a soldier by profession.<sup>50</sup>

32. Both parties agree that in 1994, Muvunyi was a Lieutenant Colonel in the Rwandan army and was stationed at the *École des Sous-Officiers* (“ESO”) in Butare *préfecture*.<sup>51</sup> The Prosecution did not lead any further evidence concerning Muvunyi’s particular position in the ESO at that time.

33. The Defence called four witnesses, Juvénal Bimenyimana, MO69, MO31, and MO103, who gave evidence concerning Muvunyi’s character.

34. Juvénal Bimenyimana testified that he fled Kigali on 12 April 1994 to his sister-in-law’s home in Butare *préfecture*.<sup>52</sup> Upon arrival, Bimenyimana was told that Muvunyi was amongst the authorities that had succeeded in maintaining peace and security in the *préfecture*.<sup>53</sup> His sister-in-law lived below the bishopric, and Bimenyimana testified that he was told by the Bishop, Jean-Baptiste Gahamanyi, a Tutsi, that Colonel Muvunyi had promised him protection, and had posted soldiers at his residence and at the bishopric.<sup>54</sup> There were sixteen Tutsis and two Hutus living in Bimenyimana’s sister-in-law’s home, and when the *Interahamwe* attacked, he would alert the Bishop, who would in turn call Muvunyi who would send soldiers. Soldiers were sent on three occasions.<sup>55</sup> The residents of the house left on 4 July, when the city of Butare fell, and the residents and the Bishop survived the

<sup>47</sup> *Kalimanzira* Trial Judgement, para. 731; *Gacumbitsi* Appeal Judgement, paras. 40-41.

<sup>48</sup> *Prosecutor v. Renzaho*, Case No. ICTR-97-31-T, Judgement (TC), 14 July 2009, para. 762. Moreover, the Chamber notes that every Judgement rendered by this Tribunal concerning genocide has recognized that the Tutsi ethnicity is a protected group.

<sup>49</sup> Indictment, para. 2.1.

<sup>50</sup> Prosecution Pre-Trial Brief, para. 6.

<sup>51</sup> *Id.*; Defence Pre-Trial Brief, paras. 6, 7; Prosecution Closing Brief, para. 38.

<sup>52</sup> T. 24 Aug. 2009, p. 36 [Witness Juvénal Bimenyimana].

<sup>53</sup> T. 24 Aug. 2009, pp. 37-39 [Witness Juvénal Bimenyimana].

<sup>54</sup> T. 24 Aug. 2009, p. 37 [Witness Juvénal Bimenyimana].

<sup>55</sup> T. 24 Aug. 2009, pp. 37, 38 [Witness Juvénal Bimenyimana].

1142

massacres.<sup>56</sup> The witness also testified that Muvunyi sent children whose parents had been killed to an orphanage in Karubanda in order to protect them.<sup>57</sup> Bimenyimana testified that he returned to Kigali when the new government was installed and left Rwanda in 1998.<sup>58</sup>

35. Witness MO69 also sought refuge in Butare *préfecture*, leaving Kigali on 17 April 1994.<sup>59</sup> About three weeks after arriving, the witness testified that she became associated with five Tutsi children who were under threat. The children had to change their place of residence on a daily basis, and they hid in sorghum farms and fields. The father of the children had been killed and the attackers came to Witness MO69's home on a daily basis to find the children. According to the witness, they gave the attackers some money, but during the second or third week of May, or June, she decided to try to contact Muvunyi to see if he could assist them in saving the children.<sup>60</sup>

36. Witness MO69 testified that it was extremely difficult for her to leave her village, but she and the children eventually found Muvunyi in Butare. Muvunyi arranged for the children to be placed in an orphanage and, once the situation became unbearable in Butare town, they were moved to Burundi. The children survived the massacres and were reunited with their families a year later.<sup>61</sup> The witness testified that she also eventually fled Rwanda, but returned to Kigali in 1997.<sup>62</sup> She briefly conducted business with Muvunyi's wife in 1989, and has exchanged letters with her after the war.<sup>63</sup>

37. Witness MO31 was a soldier in the Rwandan armed forces in April 1994.<sup>64</sup> He testified that he was suspected of being an accomplice of the enemy and therefore requested a transfer to an area with fewer extremists. He was sent to Butare around late April 1994.<sup>65</sup> In his new position, the witness was stationed about two to three kilometres away from the ESO, and knew that Muvunyi worked there in May 1994.<sup>66</sup> Witness MO31 recalled that, at some point in early June 1994, Muvunyi was transferred and replaced by François Munyangango.

<sup>56</sup> T. 24 Aug. 2009, p. 38 [Witness Juvénal Bimenyimana].

<sup>57</sup> T. 24 Aug. 2009, p. 40 [Witness Juvénal Bimenyimana].

<sup>58</sup> T. 24 Aug. 2009, p. 39 [Witness Juvénal Bimenyimana].

<sup>59</sup> T. 24 Aug. 2009, pp. 47 [closed], 51 [Witness MO69].

<sup>60</sup> T. 24 Aug. 2009, p. 48 [closed], 51 [Witness MO69].

<sup>61</sup> T. 24 Aug. 2009, pp. 51-53 [Witness MO69].

<sup>62</sup> T. 24 Aug. 2009, pp. 48, 49 [closed] [Witness MO69].

<sup>63</sup> T. 24 Aug. 2009, pp. 46, 47 [closed], 56-57 [Witness MO69].

<sup>64</sup> T. 27 Aug. 2009, p. 4 [closed] [Witness MO31].

<sup>65</sup> T. 27 Aug. 2009, pp. 5-6 [closed] [Witness MO31].

<sup>66</sup> T. 27 Aug. 2009, pp. 6 [closed], 9 [Witness MO31].

1141

The witness testified that he heard that Muvunyi was not very much liked in Butare, and was accused of being an accomplice of the Rwandan Patriotic Front (“RPF”).<sup>67</sup> Muvunyi subsequently told the witness that the Minister of Defence had explained his transfer to him by stating that the Minister in charge of family and gender affairs, Pauline Nyiramasuhuko, had suggested that both Muvunyi and Witness MO31 should be transferred because they were RPF accomplices.<sup>68</sup> The witness left Rwanda in mid-July 1994 and has not returned.<sup>69</sup>

38. Witness MO103 is Muvunyi’s daughter. When President Habyarimana’s plane was shot down, she was living in Kigali with her family, although Muvunyi was on temporary assignment in Butare *préfecture*.<sup>70</sup> All three of her uncles on her mother’s side had Tutsi wives, and on the morning after the plane went down, she learned that one uncle, along with his wife and child, had been killed.<sup>71</sup> The next day, the family moved to a neighbour’s house, who was a colonel in the army, because people were at their gate shouting abuse at her aunts and calling them *Inyenzi*; there were shots fired through the gate.<sup>72</sup> Approximately four days later, Muvunyi sent people from Butare to get the family.<sup>73</sup> The witness testified that her family stayed in the ESO and the children were able to play outside for about a week, until some soldiers referred to them as children of an *Inkotanyi*, and then Muvunyi would no longer allow them to play outside. Approximately three weeks later, the witness left Butare for Burundi.<sup>74</sup> She testified that her family socialised with a lot of Tutsis when she was growing up and that her godparents were Tutsis.<sup>75</sup>

39. The Prosecution did not significantly impeach the credibility of these witnesses during cross-examination. The Chamber notes that Witness MO69’s relationship with Muvunyi’s wife may give her an incentive to testify favourably on his behalf, but it nonetheless found her to be a credible witness and believed her testimony. Although the Chamber found Witness MO103 to be truthful, it considers that the probative value of her evidence is undermined by her relationship with Muvunyi and her young age at the time of the events in question. The Chamber found Bimenyimana and Witness MO31 to be credible

<sup>67</sup> T. 27 Aug. 2009, p. 9 [Witness MO31].

<sup>68</sup> T. 27 Aug. 2009, p. 13 [closed] [Witness MO31].

<sup>69</sup> T. 27 Aug. 2009, p. 10 [Witness MO31].

<sup>70</sup> T. 27 Aug. 2009, pp. 21, 22 [Witness MO103].

<sup>71</sup> T. 27 Aug. 2009, p. 23 [Witness MO103].

<sup>72</sup> T. 27 Aug. 2009, pp. 23, 24 [Witness MO103].

<sup>73</sup> T. 27 Aug. 2009, p. 25 [Witness MO103].

<sup>74</sup> T. 27 Aug. 2009, pp. 30, 31 [Witness MO103].

<sup>75</sup> T. 27 Aug. 2009, p. 33 [Witness MO103].



and accepts their evidence. Although the Prosecution submits that character evidence should be accorded little or no weight by the Chamber,<sup>76</sup> the Chamber will consider the impact of this evidence on the Prosecution's case in light of all of the evidence adduced and deliver its conclusion on the matter below in Chapter III, Section 4.3.

#### 4. DELIBERATIONS

40. The Chamber notes that the Parties agree that Muvunyi spoke at a public meeting in Gikore in May.<sup>77</sup> However, the parties disagree regarding the purpose of the meeting and the general theme of the speakers, particularly with respect to the content of Muvunyi's speech.

41. To prove its case, the Prosecution called five factual witnesses: FBX, AMJ, CCS, YAI, and CCP. The Chamber notes that witnesses FBX, AMJ, and CCS are accomplices<sup>78</sup> who testified that they were convicted and sentenced for their role in killings that occurred after the meeting in Gikore in mid to late May 1994.<sup>79</sup> Witness FBX was released from prison in October 2007,<sup>80</sup> Witness AMJ pled guilty and is currently in prison,<sup>81</sup> and Witness CCS has been released on community service for the last eleven years of his sentence.<sup>82</sup> Accordingly, the Chamber will analyze the evidence of witnesses FBX, AMJ, and CCS with caution in order to ensure a fair trial and guard against the exercise of a possible underlying motive on their part, noting however that Witness AMJ pled guilty and that witnesses FBX and CCS are no longer detainees.<sup>83</sup>

42. The Chamber also notes that witnesses YAI and CCP are currently imprisoned, having been sentenced to thirty years and life imprisonment, respectively, for their role in the genocide although their convictions were unrelated to killings that occurred after the alleged meeting in Gikore.<sup>84</sup> However, because Witnesses YAI and CCP were merely charged with

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<sup>76</sup> Prosecution Closing Brief, para. 185.

<sup>77</sup> Defence Closing Brief, paras. 53, 56.

<sup>78</sup> T. 18 Jun. pp. 24, 25; Prosecution Exhibits P6-R [under seal] and P11-R [under seal]; Prosecution Exhibit P12-R (Witness AMJ was shown two names, which appeared on Prosecution Exhibits P6-R and P11-R. He then confirmed that these individuals were his accomplices during the killings).

<sup>79</sup> T. 17 Jun. 2009, p. 11 [Witness FBX, a Hutu, was convicted and sentenced to eight years in prison]; T. 18 Jun. 2009, p. 28 [Witness AMJ, a Hutu, was convicted and sentenced to twenty-five years in prison]; T. 22 Jun. 2009, p. 8 [Witness CCS, a Hutu, was convicted and sentenced to twenty-two years in prison].

<sup>80</sup> T. Jun. 17, p. 11 [Witness FBX].

<sup>81</sup> Prosecution Exhibit P10-R [under seal].

<sup>82</sup> T. 22 Jun. 2009, p. 8 [Witness CCS].

<sup>83</sup> *Niyitigeka* Appeal Judgement, para. 98; *Muvunyi* Appeal Judgement, para. 128.

<sup>84</sup> T. 19 Jun. 2009, p. 21; Prosecution Exhibit P12-R, T. 19 Jun. 2009, p. 26 [YAI sentenced to thirty years in prison, had heard of killings after the alleged Gikore meeting, but did not take part in them]; T. 18 Jun. 2009, p. 58, Prosecution Exhibit P12-R, T. 18 Jun. 2009 [closed] pp. 66, 67 [CCP sentenced to life imprisonment for rape, unaware of attacks that occurred after the alleged Gikore meeting].

1139

crimes of a similar nature, the Chamber recalls that it is reasonable not to employ the same cautious approach towards them as to the testimony of accomplices in the ordinary sense of the word.<sup>85</sup> The Chamber considers that witnesses YAI and CCP are even less likely than witnesses FBX, AMJ, and CCS to have a motive to falsely implicate Muvunyi.

43. While the Parties do not cite, and the Chamber is not aware of, any jurisprudence requiring the testimony of siblings to be viewed with additional caution, the Chamber notes that witnesses FBX, CCS, and CCP are brothers<sup>86</sup> and will be sensitive to the possibility of collusion in their testimony, in the interests of justice.

44. The Defence called three factual witnesses in support of its case: Sixbert Iryivuze, MO78, and MO99, none of whom are accomplices, imprisoned, or related.

#### 4.1 The Meeting

45. The Defence claims that the extent of the inconsistencies in the Prosecution evidence, as well as the poor credibility of the Prosecution witnesses, suggests that the Prosecution witnesses colluded and were not even present at the meeting in Gikore in mid to late May 1994.<sup>87</sup>

46. However, each of the Prosecution's factual witnesses testified that they attended a meeting in Gikore during which Muvunyi gave a speech, and witnesses FBX, AMJ, CCP, and CCS testified that the meeting took place in mid to late May 1994.<sup>88</sup> Witness YAI was not asked about the date of the meeting.<sup>89</sup>

47. Moreover, each of the Defence's factual witnesses testified that Muvunyi attended a meeting in Gikore in mid to late May 1994 where he spoke to an audience.<sup>90</sup> Therefore, the

<sup>85</sup> *Cyangugu* Appeal Judgement, para. 234.

<sup>86</sup> T. 17 Jun. 2009, pp. 13, 14; Prosecution Exhibit P6-R; Prosecution Exhibit P8-R. (Witness FBX was shown Prosecution Exhibits P6-R and P8-R and confirmed that the individuals named therein are his brothers).

<sup>87</sup> Defence Closing Brief, para. 51; T. 2 Oct. 2009, pp. 8, 9 [Closing arguments].

<sup>88</sup> FBX, T. 17 Jun. 2009, pp. 5, 6 (Muvunyi came to Gikore in mid-May); AMJ, T. 18 Jun. 2009, p. 22 (meeting held at the Gikore Centre, between the 22<sup>nd</sup> and 24<sup>th</sup> of May 1994); CCP, T. 18 Jun. 2009, p. 60 (meeting in Gikore, if not in May, then in June); CCS, T. 22 Jun. 2009, pp. 9, 27 [closed] (meeting towards the middle of May).

<sup>89</sup> YAI, T. 19 Jun. 2009, p. 25 (not asked about the date of the meeting but did state that it took place in Gikore).

<sup>90</sup> Iryivuze, T. 24 Aug. 2009, pp. 12-14, 16-18, (towards the end of the month of May, he took a trip to see his parents and was able to hitch a ride in a convoy; Muvunyi was part of the delegation being transported in the convoy; the convoy went to Gikore and according to Iryivuze, Muvunyi took the floor); MO78, T. 25 Aug. 2009, pp. 12 [closed], 13 (meeting held in Gikore between the 23<sup>rd</sup> and the 24<sup>th</sup> of May); MO99, T. 17 Sep. 2009, p. 10 (meeting in Gikore in late May 1994).

1138

Defence's evidence is consistent with that of the Prosecution regarding the approximate date of the meeting, its location, and Muvunyi's participation.

48. The Chamber notes that the testimony of the Prosecution and Defence factual witnesses concerning the Gikore meeting is consistent in several respects, which go beyond their agreement on the approximate date of the meeting, its location, and Muvunyi's participation. For instance, witnesses FBX, AMJ, and MO99 testified that the meeting was convened by the *conseiller*;<sup>91</sup> witnesses FBX, AMJ, Iryivuze, MO78, and MO99 testified that the meeting was held in the afternoon;<sup>92</sup> and witnesses FBX, Iryivuze, MO78, and MO99 testified that the meeting was held outside, at a junction of roads.<sup>93</sup> Furthermore, the witnesses demonstrated a general consistency regarding the number of people attending the meeting,<sup>94</sup> and witnesses FBX, AMJ, Iryivuze, and MO99 testified that the dignitaries arrived by vehicle.<sup>95</sup>

49. In addition, nearly all witnesses gave evidence that violence began in the area on or about 22 April, but had largely stopped by the time of the meeting.<sup>96</sup> The Chamber further

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<sup>91</sup> FBX, T. 17 Jun. 2009, p. 7 (the *conseiller* Narcisse Gakwaya invited members of the public to the meeting); AMJ, T. 18 Jun. 2009, p. 22 (meeting was convened by the *conseiller*, Narcisse Gakwaya); MO99, T. 17 Sep. 2009, p. 10 (*conseiller* of *secteur* informed people about the meeting).

<sup>92</sup> FBX, T. 17 Jun. 2009 p. 6 (meeting held in the afternoon at about 2:00 p.m.); AMJ, T. 18 Jun. 2009 p. 22 (meeting held in the afternoon, after 2:00 p.m.); Iryivuze, T. 24 Aug. 2009 pp. 16, 17, 20 (arrived at Gikore about an hour after leaving Kibayi at 2:00 p.m.; Gikore meeting concluded between 4:30 and 5:00 p.m.); MO78, T. 25 Aug. 2009 p. 13 (meeting took place in the afternoon); MO99, T. 17 Sep. 2009 pp. 10, 11 (meeting held in the middle of the afternoon, at about 3:00 p.m.).

<sup>93</sup> FBX, T. 17 Jun. 2009 p. 5 (meeting was held at the junction of two roads, one going to Kansi and the other going to Kibayi *commune*, in front of the house of Venuste Nkulikiyukuri); Iryivuze, T. 24 Aug. 2009 p. 17 (venue of meeting was a junction of roads leading to Gikore and clinic); MO78, T. 25 Aug. 2009 p. 13 (meeting took place in a courtyard); MO99, T. 17 Sep. 2009 p. 10 (meeting held at market square, on the road going from Kibaye to Butare).

<sup>94</sup> FBX, T. 17 Jun. 2009 p. 6 (about 300 people); AMJ, T. 18 Jun. 2009 p. 22 (there were many people, more than 80); CCS, T. 22 Jun. 2009 p. 34 [closed] (between 250 and 300 persons); Iryivuze, T. 24 Aug. 2009 p. 17 (between 100 and 150 persons); MO78, T. 25 Aug. 2009 p. 13 (attended by some 300 people or so); MO99, T. 17 Sep. 2009 p. 11 (attended by about 400 people).

<sup>95</sup> FBX, T. 18 Jun. 2009 p. 2 (the dignitaries arrived on board less than ten vehicles); AMJ, T. 18 Jun. 2009 p. 40 (Muvunyi and Nteziryayo arrived in a Pajero, the *sous-préfet* Ntawukulilyayo arrived in a Toyota, the *bourgmestre* arrived in his own personal vehicle); Iryivuze, T. 24 Aug. 2009 p. 13 (convoy made up of five to six vehicles); MO99, T. 17 Sep. 2009 pp. 10, 11 (the delegation came from Kibayi *commune*, in a convoy of vehicles.)

<sup>96</sup> FBX, T. 17 Jun. 2009 pp. 21, 22 (massacres began on 22 April); AMJ, T. 18 Jun. 2009 p. 32 (Tutsis began to be systematically killed on 19 April); CCP, T. 18 Jun. 2009 p. 67 [closed], T. 19 Jun. 2009 p. 7 (killings began on 22 April; by the time of the meeting, killings had stopped in Gikore); YAI, T. 19 Jun. 2009 p. 23 (security situation changed for the worse on 20 April); Iryivuze, T. 24 Aug. 2009 p. 28 (by time of Gikore meeting, killings had already stopped); MO78, T. 25 Aug. 2009 p. 31 [closed] (situation changed two weeks after 12 April; attacks started towards the end of April); MO99, T. 17 Sep. 2009 pp. 14, 26 (situation deteriorated during last two weeks of April; did not understand why speech was delivered in May when massacres happened in late April).

**1137**

notes that the witnesses were largely consistent regarding the authorities in attendance,<sup>97</sup> and the order in which they spoke.<sup>98</sup>

50. While the Prosecution and the Defence led evidence that Alphonse Nteziryayo spoke at the meeting, they differed on whether he attended in the capacity of *préfet*. Several Prosecution witnesses insisted that he attended in the capacity of *préfet*: Witness FBX testified that Nteziryayo was introduced as *préfet* at the meeting, and stated that he was *préfet* during his speech;<sup>99</sup> Witness AMJ testified that Nteziryayo informed the crowd that he was *préfet* of Butare *préfecture*;<sup>100</sup> and Witness CCS testified that Nteziryayo was introduced as *préfet* at the meeting.<sup>101</sup>

51. However, Defence witnesses Iryivuze, MO78 and MO99 testified that it was Nsabimana who was *préfet* at the time and spoke in that capacity.<sup>102</sup> The Defence also adduced Exhibit D1-R, a telefax addressed to Nteziryayo and Nsabimana, which stated that, on 17 June 1994, the Council of Ministers decided to replace Nsabimana with Nteziryayo as *préfet* of Butare *préfecture*. The Chamber accepts the authenticity of this document, and accepts that Nteziryayo became *préfet* on 17 June 1994.

<sup>97</sup> FBX, T. 17 Jun. 2009 p. 6, T. 18 Jun. 2009 p. 4 (authorities included *conseiller* Narcisse Gakwaya; Charles Kalimanzira, who worked in the Ministry of the Interior; Alphonse Nteziryayo, who was *préfet*; Ruzindaza, President of the Court of First Instance; Dominique Ntawukulyayo, *sous-préfet*; Charles Kabeza, the *bourgmestre* of Nyaruhengeri *commune*); AMJ, T. 18 Jun. 2009, p. 22 (local officials included the *conseiller*; members of the *cellule* committee; the *bourgmestre*; the deputy *bourgmestre*; Muvunyi; Nteziryayo; the *sous-préfet*); CCP, T. 18 Jun. 2009, pp. 60, 63 (testified that Muvunyi and Nteziryayo were present); CCP, T. 22 Jun. 2009, p. 10 (authorities included Muvunyi; Alphonse Nteziryayo, the *préfet*; the presiding judge of the first instance, the prison director from the area; the *bourgmestre*; and the *conseiller*); Iryivuze, T. 24 Aug. 2009, pp. 14, 15, 17 (dignitaries included Nteziryayo, *préfet* Sylvain Nsabimana, Judge Ruzindaza, Muvunyi, Cyprien Musabirema, Prosecutor Bushishi and *bourgmestre* Kabeza); MO78, T. 25 Aug. 2009, p. 14 (speakers included *préfet* Sylvain Nsabimana; Muvunyi; Alphonse Nteziryayo; Cyprien Musabirema, a representative of ORINFOR; Ruzindaza; *sous-préfet* Dominique Ntawukulyayo; the commander of the gendarmerie in Butare *préfecture*; and *bourgmestre* Charles Kabeza); MO99, T. 17 Sep. 2009, pp. 11, 12 (speakers included *bourgmestre* Charles Kabeza, *préfet* Sylvain Nsabimana, Alphonse Nteziryayo, Muvunyi, and Ruzindaza).

<sup>98</sup> FBX, T. 17 Jun. 2009, pp. 19, 21 (*conseiller*, *bourgmestre*, Nteziryayo, Muvunyi); AMJ, T. 18 Jun. 2009, pp. 41, 54 (Nteziryayo, Muvunyi); Iryivuze, T. 24 Aug. 2009 pp. 17, 18 (*bourgmestre*, Nsabimana, Nteziryayo, Muvunyi, Ruzindaza); MO78, T. 25 Aug. 2009, pp. 14, 15 (*bourgmestre*, Nsabimana; Nteziryayo and Muvunyi also spoke, but MO78 did not recall in what order); MO99, T. 17 Sep. 2009, pp. 11, 12 (*bourgmestre*, Nsabimana; Nteziryayo, Muvunyi, Ruzindaza spoke but in unknown order).

<sup>99</sup> T. 17 Jun. 2009, p. 19; T. 18 June 2009 p. 6 [Witness FBX].

<sup>100</sup> T. 18 Jun. 2009, pp. 41, 54 [Witness AMJ].

<sup>101</sup> T. 22 Jun. 2009, p. 41 [closed] [Witness CCS].

<sup>102</sup> T. 24 Aug. 2009, pp. 14, 15, 17, 18 [Witness Iryivuze]; T. 25 Aug. 2009, p. 14 [Witness MO78]; T. 17 Sep. 2009, pp. 11, 12 [Witness MO99].

1136

52. None of the Prosecution witnesses recalled Nsabimana's attendance at the meeting,<sup>103</sup> whereas the Defence factual witnesses testified that he was present.<sup>104</sup>

53. During cross-examination, the Prosecution witnesses were challenged on the identity of the *préfet* who attended the meeting. When asked whether Nteziryayo was in fact appointed *préfet* on 17 June 1994, Witness FBX reacted defensively and asked to see evidence to back up that assertion.<sup>105</sup> In response to Exhibit D1-R, he stated that it was not an official document, and therefore did not have any value, because it did not display an emblem or coat of arms of the Rwandan Republic. Witness FBX also pointed out that the document was not signed and that it did not indicate the person who allegedly appointed Nteziryayo *préfet*.<sup>106</sup>

54. Witnesses CCP and CCS had very similar defensive reactions when they were cross-examined on the identity of the *préfet* who attended the meeting. Witness CCP stated that he was skeptical about Exhibit D1-R,<sup>107</sup> and Witness CCS disputed its authenticity because it did not contain a reference to the person who appointed Nteziryayo *préfet*, or that person's signature.<sup>108</sup> Witness AMJ also rejected the assertion that Nteziryayo could have been appointed *préfet* on 17 June 1994 because the authorities and soldiers had already fled the area by that time.<sup>109</sup>

55. The Chamber recalls that Witnesses FBX, CCP, and CCS are brothers, and acknowledges the possibility that they may have discussed how to respond to Exhibit D1-R,

<sup>103</sup> FBX, T. 17 Jun. 2009, p. 6, T. 18 Jun. 2009, p. 4 (authorities included *conseiller* Narcisse Gakwaya; Charles Kalimanzira, who worked in the Ministry of the Interior; Lieutenant Alphonse Nteziryayo, who was *préfet*; Ruzindaza, President of the Court of First Instance; Dominique Ntawukuliyayo, *sous-préfet*; Charles Kabeza, the *bourgmestre* of Nyaruhengeri *commune*); AMJ, T. 18 Jun. 2009, p. 22 (local officials included the *conseiller*; members of the *cellule* committee; the *bourgmestre*; the deputy *bourgmestre*; Muvunyi; Nteziryayo; the *sous-préfet*); CCP, T. 18 Jun. 2009, pp. 60, 63 (testified that Muvunyi and Nteziryayo were present); CCP, T. 22 Jun. 2009, p. 10 (authorities included Muvunyi; Alphonse Nteziryayo, the *préfet*; the presiding judge of the first instance; the prison director from the area; the *bourgmestre*; and the *conseiller*);

<sup>104</sup> Iryivuze, T. 24 Aug. 2009, pp. 14, 15, 17 (dignitaries included Nteziryayo, *préfet* Sylvain Nsabimana, Judge Ruzindaza, Muvunyi, Cyprien Musabirema, Prosecutor Bushishi and *bourgmestre* Kabeza); MO78, T. 25 Aug. 2009, p. 14 (speakers included *préfet* Sylvain Nsabimana; Muvunyi; Alphonse Nteziryayo; Cyprien Musabirema, a representative of ORINFOR; Ruzindaza; *sous-préfet* Dominique Ntawukuliyayo; the commander of the gendarmerie in Butare *préfecture*; and *bourgmestre* Charles Kabeza); MO99, T. 17 Sep. 2009, pp. 11, 12 (speakers included *bourgmestre* Charles Kabeza, *préfet* Sylvain Nsabimana, Alphonse Nteziryayo, Muvunyi, and Ruzindaza).

<sup>105</sup> T. 18 Jun. 2009, p. 6 [Witness FBX].

<sup>106</sup> T. 18 Jun. 2009, pp. 6-9 [Witness FBX]; Defence Exhibit D1-R.

<sup>107</sup> T. 19 Jun. 2009, p. 9 [Witness CCP]; Defence Exhibit D1-R.

<sup>108</sup> T. 22 Jun. 2009, p. 39 [closed] [Witness CCS].

<sup>109</sup> T. 18 Jun. 2009, p. 55 [Witness AMJ].

1135

considering the similarity in their responses when confronted with that exhibit during cross-examination.

56. Nonetheless, the Chamber notes that fifteen years have passed since the date of the meeting in Gikore in mid to late May 1994 and recalls that discrepancies attributable to the passage of time do not necessarily affect the credibility or reliability of witnesses.<sup>110</sup> The Chamber considers it reasonable that, fifteen years later, the Prosecution witnesses may have mistakenly recalled that Nteziryayo attended the meeting as *préfet* of Butare given that he was appointed to this position only a few weeks later.

57. Furthermore, the Chamber is convinced that the demeanour of witnesses FBX, CCP and CCS suggests that they actually believed that Nteziryayo was *préfet* of Butare during the meeting at Gikore, and were offended by the suggestion that they were not telling the truth. Their startled, defensive reactions during cross-examination indicate to the Chamber that they were confronted with an incorrect recollection rather than a lie.

58. Noting that a witness can be both truthful and wrong, and recalling that it is not unreasonable for a Trial Chamber to accept some parts of a witness's testimony while rejecting others,<sup>111</sup> the Chamber believes the testimony of witnesses FBX, CCP, and CCS that they attended the Gikore meeting in mid to late May 1994. The Chamber finds no basis to conclude that these witnesses lacked credibility or were conspiring to falsely implicate Muvunyi simply because they were collectively mistaken on this point, or because of their familial relationship.

#### ***4.1.1. Whether the Witnesses Testified Regarding the Same Meeting***

59. In light of the extensive consistencies between the Prosecution and Defence evidence with respect to the details of the meeting, the Chamber finds that the parties have given evidence concerning the same meeting in Gikore in mid to late May 1994, and that Muvunyi addressed the audience at that meeting. This rebuts the Defence's claim that the Prosecution witnesses did not attend the same meeting as the Defence factual witnesses.

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<sup>110</sup> *Bikindi* Trial Judgement, para. 32.

<sup>111</sup> *Karera* Appeal Judgement, para. 120.

1134

**4.1.2. *Whether More than One Public Meeting Took Place in Gikore in May 1994***

60. The Chamber notes that the Prosecution has only adduced evidence that one meeting occurred in Gikore in May 1994. Moreover, because all Prosecution witnesses except for Witness YAI were residents of Gikore in May 1994, it is reasonable to assume that they would have attended all public security meetings in Gikore during that time of national crisis, and they only mentioned one meeting. In addition, the Defence did not seek to raise the possibility of more than one meeting in Gikore in May 1994 during its cross-examination of the Prosecution witnesses.

61. Furthermore, the Chamber recalls that Defence Witness MO99 stated that since the time of unrest in the region,<sup>112</sup> he did not hear anything concerning a meeting prior to the one the witnesses testified about. The Chamber considers this to be strong evidence that there was only one public meeting in Gikore in May 1994. In addition, the Chamber cannot conceive of a logical reason for the Butare authorities to hold more than one public meeting about the same issues in a location as remote as Gikore in May 1994.

62. Accordingly, the Chamber is satisfied beyond a reasonable doubt that there was only one public meeting in Gikore in mid to late May 1994 and concludes that despite the variance between the date pleaded in the Indictment and the evidence set forth by the Prosecution, the Accused was clearly informed of the meeting the charges were related to.

**4.2 The Speeches**

**4.2.1. *Evidence***

*Prosecution Witness FBX*

63. Witness FBX, a Hutu, was a native of Gikore at the time of the meeting.<sup>113</sup> He testified that Muvunyi spoke to the audience in Kinyarwanda, through loudspeakers on a vehicle.<sup>114</sup> Witness FBX recalled that Muvunyi told the crowd that he was an officer in the Rwandan army on duty in Butare *préfecture* and that he was not happy with their behaviour because they had killed people but left their bodies on the hills, which were being photographed by satellites. Muvunyi also stated that the people had made a mistake in marrying the young Tutsi girls and hiding them. According to the witness, Muvunyi said that

<sup>112</sup> T. 17 Sep. 2009, p. 19 [Witness MO99].

<sup>113</sup> Prosecution Exhibit P5-R.

<sup>114</sup> T. 17 Jun. 2009, p. 9 [Witness FBX].

they had to hand over the people in hiding because “when a snake wraps itself around a calabash, you have to kill the snake and break the calabash”.<sup>115</sup>

64. Witness FBX also testified that Muvunyi told the people not be afraid that they would be put in prison if they killed others because the director of the prison and the judge were also present at the meeting. Muvunyi pointed to the *préfet* and Charles Kalimanzira, who worked for the Ministry of the Interior, and told the crowd that they would not have any problems because the authorities were there. According to the witness, Muvunyi told the audience to begin killing the following day and not to be afraid.<sup>116</sup> Muvunyi also talked about the advance of the *Inkotanyis*<sup>117</sup> and asked the crowd to destroy the Tutsis’ houses after they had been killed.<sup>118</sup>

65. The Witness testified that he joined a mob of Hutus at 7:00 a.m. the morning after the meeting and proceeded to massacre Tutsis in Gikore.<sup>119</sup> The witness also stated that he had participated in the killing of Tutsis prior to the Gikore meeting.<sup>120</sup>

*Prosecution Witness AMJ*

66. Witness AMJ, a Hutu, was a native of Gikore at the time of the meeting.<sup>121</sup> He stated that he was about three meters from Muvunyi when he spoke to the crowd in Kinyarwanda. The witness did not believe that he saw a loud speaker.<sup>122</sup> Muvunyi told the crowd that the Tutsi were the enemy because they had provoked the war, and that they had to fight the Tutsi wherever they were. According to the Witness, Muvunyi added that Tutsi girls who had been married by young Hutu men had to be chased away or killed, although any girl married before 6 April was safe. Muvunyi also stated that a woman belongs to the family she has been married into, but that even babies who were born on that day had to be killed in the same way that you would kill a snake.<sup>123</sup> The witness testified that Muvunyi told the crowd that young people had to go to the front, men should show up on the road leading to Butare, and the

<sup>115</sup> T. 17 Jun. 2009, p. 7 [Witness FBX].

<sup>116</sup> T. 17 Jun. 2009, p. 9 [Witness FBX].

<sup>117</sup> T. 17 Jun. 2009, p. 27 [Witness FBX].

<sup>118</sup> T. 17 Jun. 2009, p. 23 [Witness FBX].

<sup>119</sup> T. 17 Jun. 2009, p. 10 [Witness FBX].

<sup>120</sup> T. 17 Jun. 2009, p. 22 [Witness FBX].

<sup>121</sup> Prosecution Exhibit P10-R.

<sup>122</sup> T. 18 Jun. 2009, p. 23 [Witness AMJ].

<sup>123</sup> T. 18 Jun. 2009, p. 23 [Witness AMJ].



**1132**

weak should go to Burundi. Muvunyi told the audience that if anyone was afraid to spill his blood for his country he was going to die like a coward.<sup>124</sup>

67. The witness testified that he joined a mob at 6:30 a.m. the morning after the meeting and proceeded to massacre Tutsis in Gikore.<sup>125</sup> The witness also stated that he had participated in the killing of Tutsis who were dumped into Cyamwakizi lake in April 1994, prior to the Gikore meeting.<sup>126</sup>

*Prosecution Witness CCP*

68. Witness CCP, a Hutu, was a native of Gikore at the time of the meeting.<sup>127</sup> He was about five meters away from Muvunyi when he heard him speak in Kinyarwanda.<sup>128</sup> Muvunyi said that the Tutsis had to be killed because they were comparable to snakes. According to the witness, Muvunyi also said that there were young people who had married Tutsi girls and that these young people had to kill the girls or send them elsewhere to be killed. The witness stated that Muvunyi mentioned a Rwandan proverb to the effect that the girls should die in a forest in a far away place. Muvunyi asked the members of the public not to flee, but to fight against the RPF.<sup>129</sup>

69. Witness CCP also testified that there was a ruin of a Tutsi house near the venue of the meeting, and that Muvunyi called for its remains to be totally destroyed, and for plants to be grown on the plot of land where the house stood. The witness understood that Muvunyi wanted to make all traces of the house disappear so that nearby RPF soldiers would not realize that Tutsi houses had been destroyed.<sup>130</sup>

70. The witness was not aware of the attacks that took place after the Gikore meeting, but accepted that it was established that Witnesses FBX and CCS participated in the killings.<sup>131</sup>

*Prosecution Witness YAI*

71. Witness YAI, a Hutu, was not a native of Gikore at the time of the meeting; however, he worked twelve to thirteen kilometers from Gikore.<sup>132</sup> He testified that Muvunyi told the

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<sup>124</sup> T. 18 Jun. 2009, p. 23 [Witness AMJ].

<sup>125</sup> T. 18 Jun. 2009, p. 24 [Witness AMJ].

<sup>126</sup> T. 18 Jun. 2009, pp. 43, 44 [Witness AMJ].

<sup>127</sup> Prosecution Exhibit P13-R.

<sup>128</sup> T. 18 Jun. 2009, pp. 60, 63 [Witness CCP].

<sup>129</sup> T. 18 Jun. 2009, pp. 60-62 [Witness CCP].

<sup>130</sup> T. 18 Jun. 2009, p. 62 [Witness CCP].

<sup>131</sup> T. 18 Jun. 2009, pp. 66, 67 [closed] [Witness CCP].

<sup>132</sup> T. 19 Jun. 2009, pp. 22, 23; Prosecution Exhibit P13-R.

**1131**

public to take charge of their security because the *Inkotanyi* had attacked the country and had almost reached the Gikore region. Muvunyi advised members of the public to be vigilant because the *Inkotanyi* had the habit of infiltrating a region before attacking it.<sup>133</sup> According to the witness, Muvunyi asked the young people to join the army and fight the *Inkotanyi* and said that he cowards could go to Burundi.<sup>134</sup>

72. Muvunyi also said that the young Tutsi girls who had been married by young Hutu men had to be sent away to their homes, which Witness YAI understood to mean that they had to be killed. Witness YAI testified that Muvunyi showed the population the ruins of the Tutsi house near the meeting venue that had been destroyed. Muvunyi said that the ruins had to be destroyed completely, and that some banana trees had to be planted on the plot where the house stood because if the walls were left it would prove to others that a house belonging to a Tutsi had been destroyed.<sup>135</sup>

73. The witness heard through Gacaca proceedings that some of the young Tutsi women who had been taken as wives were killed after the meeting.<sup>136</sup>

*Prosecution Witness CCS*

74. Witness CCS, a Hutu, was a native of Gikore at the time of the meeting.<sup>137</sup> He was less than ten steps from Muvunyi when he spoke. According to the witness, Muvunyi said that he came to the meeting to explain that the country was in a difficult situation, that the people in the audience were the victims of war, and to suggest what they ought to do to fight off the enemy.<sup>138</sup> Muvunyi said that the *Inyenzi* had attacked the country, that accomplices of those *Inyenzi* were in the village, and that the Tutsis were their enemy because they were accomplices of the *Inyenzi*. Witness CCS explained that ordinary residents, not soldiers, were the ones Muvunyi was describing as accomplices of the *Inyenzi*. Muvunyi also said that the accomplices of the *Inyenzi* should be killed because they could hide the *Inyenzi* who were capable of exterminating the people in the audience.

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<sup>133</sup> T. 19 Jun. 2009, p. 25 [Witness YAI].

<sup>134</sup> T. 19 Jun. 2009, p. 26 [Witness YAI].

<sup>135</sup> T. 19 Jun. 2009, pp. 25, 26 [Witness YAI].

<sup>136</sup> T. 19 Jun. 2009, pp. 26, 27 [Witness YAI].

<sup>137</sup> Prosecution Exhibit P18-R.

<sup>138</sup> T. 22 Jun. 2009, p. 10 [Witness CCS].

75. Witness CCS testified that Muvunyi told the crowd to do everything possible to exterminate the accomplices of the *Inyenzi* and that no one could punish them.<sup>139</sup> Muvunyi also asked the crowd to man the roadblocks robustly and to examine everyone who went through them to determine whether they were Tutsi, and if so, to kill them.<sup>140</sup> Muvunyi told the crowd that those who had taken women for wives must denounce them, and that they should destroy the houses belonging to those occupants who had been killed.<sup>141</sup>

76. The witness testified that he personally participated in the massacre of Tutsis in Gikore after the meeting.<sup>142</sup> The witness also stated that he had participated in the killing of Tutsis who were dumped into Cyamwakizi lake in April 1994, prior to the Gikore meeting.<sup>143</sup>

77. In contrast, the Defence factual witnesses each testified that the meeting was held for the purpose of pacifying the community, and that Muvunyi largely spoke about military and security issues. The Defence factual witnesses claimed that no one incited the crowd to kill Tutsis during the meeting.

*Defence Witness Sixbert Iryivuze*

78. Witness Iryivuze, a Hutu,<sup>144</sup> was not a resident of Gikore at the time the meeting was held. He was studying medicine at the National University of Rwanda in Butare town and only witnessed the meeting in Gikore because he was able to secure a ride in Nteziryayo's vehicle during that leg of the convoy's tour, so that he could visit his family living in Kanage *cellule*, Mukindo *secteur*, Kibayi *commune*.<sup>145</sup> Witness Iryivuze testified that Muvunyi spoke about military tactics during the meeting. According to the witness, Muvunyi told the residents that they were vulnerable to the traps of the RPF, a force that could launch an attack without having enough men and cause them to flee into areas under RPF control. Muvunyi told the residents to wait for complete information in order to avoid fleeing to the area where the enemy was located. The witness testified that Muvunyi said that the enemy had many tactics, which allowed it to destabilise the situation.<sup>146</sup>

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<sup>139</sup> T. 22 Jun. 2009, p. 11 [Witness CCS].

<sup>140</sup> T. 22 Jun. 2009, p. 11 [Witness CCS].

<sup>141</sup> T. 22 Jun. 2009, p. 15 [Witness CCS].

<sup>142</sup> T. 22 Jun. 2009, p. 11 [Witness CCS].

<sup>143</sup> T. 22 Jun. 2009, p. 15 [Witness CCS].

<sup>144</sup> T. 24 Aug. 2009, p. 27 [Witness Iryivuze].

<sup>145</sup> T. 24 Aug. 2009, pp. 12, 13 [Witness Iryivuze].

<sup>146</sup> T. 24 Aug. 2009, pp. 19, 31 [Witness Iryivuze].

1129

79. The witness testified that the meeting ended between 4:30 and 5:00 p.m. and that he left for Butare with the convoy arriving around 5:30 p.m.<sup>147</sup>

*Defence Witness MO78*

80. Witness MO78, a Hutu,<sup>148</sup> was not a resident of Gikore at the time the meeting was held and traveled approximately twelve kilometers in a communal vehicle to attend the meeting.<sup>149</sup> The witness testified that Muvunyi told the crowd that the purpose of the meeting was to restore security in the region. Muvunyi stated that the war raging in Rwanda did not involve only the army and that all criminals had to be taken to the *communal* office to face the law. According to the witness, Muvunyi also spoke about military deserters who were returning to their respective *communes* to intimidate the local residents. Muvunyi spoke about the war between the Rwandan armed forces and the RPF and urged the people to remain calm and to continue living together peacefully. The witness testified that Muvunyi never said that Tutsis should be attacked and killed.<sup>150</sup>

81. According to the witness, there was an improvement in the situation in Gikore after the meeting, people who had closed their shops reopened them, and others returned to their farms. The witness testified that the killings, which had started towards the end of April stopped after the meeting, and that he personally witnessed a lot of calm after the meeting.<sup>151</sup>

*Defence Witness MO99*

82. Witness MO99, a Hutu, fled from Kigali to his parents' home during the genocide.<sup>152</sup> From his parents' home, he traveled eight kilometers by foot to the Gikore meeting.<sup>153</sup> He testified that Muvunyi gave the crowd an update on the war situation, such as attacks at Ruhengeri, Byumba and Kigali. Muvunyi also spoke about the eventuality of another front of the RPF from Burundi, and said there was a strong likelihood that there was going to be an attack from that end. Muvunyi asked the population to support the war efforts, told them not to panic, and invited the young people to join the national army. Muvunyi asked the crowd to report any movements of troops or strange noises to the authorities.<sup>154</sup>

<sup>147</sup> T. 24 Aug. 2009, p. 20 [Witness Iryivuze].

<sup>148</sup> Defence Exhibit D8-R.

<sup>149</sup> T. 25 Aug. 2009, pp. 22, 23 [Witness Iryivuze].

<sup>150</sup> T. 25 Aug. 2009 p. 16 [Witness MO78].

<sup>151</sup> T. 25 Aug. 2009, pp. 17, 21, 22 [Witness MO78].

<sup>152</sup> T. 17 Sep. 2009, pp. 5, 6 [closed] [Witness MO99].

<sup>153</sup> T. 17 Sep. 2009, p. 7 [closed] [Witness MO99].

<sup>154</sup> T. 17 Sep. 2009, pp. 13, 25 [Witness MO99].

**1128**

#### 4.2.2. *Deliberations*

83. The Chamber notes that witnesses FBX, AMJ and CCS are accomplices and witnesses YAI and CCP are currently imprisoned for committing crimes of a similar nature. Thus, the Chamber has viewed their testimonies with the appropriate caution, considering that: (1) there is no evidence that the witnesses did in fact invoke incitement from authorities at the Gikore meeting as a mitigating circumstance before the *Gacaca* courts; (2) Witness FBX has been released after serving his sentence; and (3) Witness CCS has been released on community service.

84. The Chamber's use of caution falls short of accepting the Defence's contention that the Prosecution witnesses had a motive to create false evidence in order to reduce their sentences.<sup>155</sup> The evidence does not suggest that the witnesses could actually receive some type of benefit for fabricating testimony that would favor the Prosecution. Accordingly, the Chamber does not find that the Prosecution witnesses had a motive to create false evidence based on their convictions. This is particularly the case for witnesses FBX and CCS, who are no longer detainees, and witnesses YAI and CCP, who were convicted for genocide crimes unrelated to the killings that took place after the Gikore meeting.

85. Nonetheless, the Chamber has considered several difficulties with the evidence of the Prosecution witnesses when assessing their credibility. For example, the Chamber acknowledges that Witness FBX's *Gacaca* guilty plea does not mention the meeting at Gikore, nor Muvunyi and the other authorities who were allegedly present. However, the Chamber recalls that the witness explained this disparity by stating that he only mentioned the Gikore meeting and the authorities who attended during the data-collection phase of the *Gacaca* proceedings, and that Defence counsel did not have the complete file which would contain those allegations.<sup>156</sup> The Chamber accepts this explanation because authority figures are not typically included in *Gacaca* guilty pleas since they do not fall under *Gacaca* jurisdiction.

86. The Chamber acknowledges that in Witness FBX's 2002 statement to the Tribunal investigators, he stated that Muvunyi told the crowd that they had to start killing Tutsis. He did not mention that Muvunyi used Kinyarwanda proverbs in his speech, nor that attacks occurred after the meeting. When confronted with the statement, he said that it had been

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<sup>155</sup> Defence Closing Brief, para. 52.

<sup>156</sup> T. 17 Jun. 2009, pp. 27-28, 32-38 [Witness FBX].

1127

transcribed incorrectly and that it was impossible to include everything that was said in his statement. The witness insisted that Muvunyi told the crowd to kill those who had survived the initial killings.<sup>157</sup>

87. Recalling that witness statements to investigators of the Tribunal in another case have considerably less probative value than direct sworn testimony before the Chamber,<sup>158</sup> and noting that no direct evidence was presented regarding the quality of the statement's transcription, the Chamber accepts the witness's explanation that his statement had been transcribed incorrectly because it is undisputed that massacres of Tutsis occurred prior to the Gikore meeting. Therefore, the Chamber finds it incredible that the witness would have stated that Muvunyi told the crowd to *start* killing Tutsis during the meeting.

88. The Chamber also acknowledges that Witness CCS did not mention that Muvunyi was present or spoke at the meeting in Gikore in his April 1999 witness statement. The witness responded by insisting that his statement was incomplete, and that other documents would indicate that Muvunyi took the floor.<sup>159</sup> The Chamber accepts this explanation, noting that because Witness CCS cannot read, he may not have been in a position to correct any mistakes in his statement.

89. The Chamber is also aware that Witness CCS testified that he did not see his brothers at the meeting in Gikore, although witnesses FBX and CCP testified to being present.<sup>160</sup> However, the Chamber considers that there was a large number of people in attendance, and accepts Witness CCP's assertion that he had little contact with his brothers at that time because it was difficult to visit each other.<sup>161</sup> Therefore, the Chamber accepts the witness's testimony that he did not see his brothers at the meeting, and that he was not made aware, either before or after the meeting, that they had attended.

90. The Chamber also notes that, superficially, Witness YAI's account appears to be at odds with that of most of the Prosecution witnesses because he testified that Muvunyi did not say that Tutsis had to be killed and did not refer to them as "snakes".<sup>162</sup> However, the Chamber recalls that Witness YAI considered Muvunyi's order that young Tutsi women be

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<sup>157</sup> T. 17 Jun. 2009, pp. 21-25 [Witness FBX].

<sup>158</sup> See para. 11, *supra*.

<sup>159</sup> T. 22 Jun. 2009, pp. 24-29 [closed] [Witness CCS]; Defence Exhibit D5-R.

<sup>160</sup> T. 22 Jun. 2009, p. 36 [closed] [Witness CCS].

<sup>161</sup> T. 18 Jun. 2009, p. 68 [closed] [Witness CCP].

<sup>162</sup> T. 19 Jun. 2009, p. 30 [Witness YAI].

1126

sent back to their homes to mean that they should be sent to their deaths.<sup>163</sup> Accordingly, the Chamber does not find that Witness YAI's testimony contradicts that of the other Prosecution witnesses regarding the substance of Muvunyi's speech.

91. Although Witness FBX testified that Gérard Senyange had been killed before the meeting, while Witness AMJ testified that he was still alive at the time of the attack,<sup>164</sup> the Chamber does not find that this discrepancy affects the credibility of the witnesses because it is minor and a significant amount of time has passed since the events took place.

92. Despite the testimony of Witness CCS that there were no large-scale attacks before the Gikore meeting, the Chamber also notes that he participated in killings from April to May, and testified that attacks on Tutsis started at the end of April and continued in May.<sup>165</sup> Consequently, the Chamber does not find his evidence to be materially inconsistent with that of the other witnesses.

93. Notwithstanding the difficulties mentioned above, the Chamber finds that, as a whole, the Prosecution witnesses provide convincing, credible, and reliable first-hand testimony concerning the content of Muvunyi's speech at the Gikore meeting. The general consistency and corroboration among the Prosecution witnesses, which will be set forth below confirms their reliability.

94. Most notably, each of the Prosecution witnesses testified that Muvunyi spoke about the young Tutsis girls who remained alive because they had been "married" to Hutu men. Witness AMJ testified that Muvunyi said that these girls had to be sent away or killed and Witness CCP testified that Muvunyi ordered the crowd to kill the girls. Witness YAI testified that Muvunyi said that they had to be sent away to their homes, which he understood to mean that they should be killed.<sup>166</sup> Witness FBX testified that Muvunyi told the crowd that they should never have left the girls alive and that they had to hand them over because "when a snake wraps itself around a calabash, you have to kill the snake and break the calabash."<sup>167</sup> Witness FBX further testified that Muvunyi immediately followed his use of that proverb

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<sup>163</sup> T. 19 Jun. 2009, p. 26 [Witness YAI].

<sup>164</sup> T. 17 Jun. 2009, p. 11 [Witness FBX]; T. 18 Jun. 2009, p. 26 [Witness AMJ].

<sup>165</sup> T. 22 Jun. 2009, pp. 8, 14, 15 [Witness CCS].

<sup>166</sup> T. 17 Jun. 2009, p. 7 [Witness FBX]; T. 18 Jun. 2009, p. 23 [Witness AMJ]; T. 18 Jun. 2009, p. 61 [Witness CCP]; T. 19 Jun. 2009, pp. 25, 26 [Witness YAI]; T. 22 Jun. 2009, p. 15 [Witness CCS].

<sup>167</sup> T. 17 Jun. 2009, p. 7 [Witness FBX].

1125

with a statement to the effect that the public should not be afraid of killing people because the director of the prison and the judge were present at the meeting.<sup>168</sup>

95. According to Witness FBX, Muvunyi then told the crowd to begin killing on the following day without fear that anything would happen to them.<sup>169</sup> Witness CCS testified that Muvunyi ordered the crowd to “denounce” the Tutsi girls after stating that everything possible should be done to exterminate and kill the Tutsi because they were accomplices of the *Inyenzi* and *Inkotanyi*.<sup>170</sup>

96. Further, witnesses FBX and CCS testified that Muvunyi told them to destroy homes of Tutsis who had been killed, and Witnesses CCP and YAI stated that Muvunyi showed them the ruins of a Tutsi home at the venue of the meeting and told them to plant vegetation or trees over the ruins to ensure that there would be no trace of its existence.<sup>171</sup> Moreover, Witnesses FBX, YAI, CCS, and CCP testified that Muvunyi warned of or referred to the advance of the *Inkotanyis*,<sup>172</sup> and Witnesses FBX, AMJ, and CCP testified that Muvunyi referred to Tutsis as “snakes”.<sup>173</sup>

97. Other aspects of Muvunyi’s speech that were mentioned by more than one Prosecution witness include Muvunyi’s assurance to the crowd that they would not be punished for any killings;<sup>174</sup> and his statement that young men should join the army or go to the front while the cowards should go to Burundi.<sup>175</sup>

98. The Chamber also notes that nearly all of the Prosecution witnesses understood Muvunyi’s speech in a similar manner. Witness FBX testified that he understood that Muvunyi was asking them to kill the Tutsis who had been hidden by the population. He explained that it was necessary for Muvunyi to tell the crowd to seek out Tutsis, even though the Tutsis were already being targeted by the killers, because there were children and women who had been hiding in various houses and were therefore still alive.<sup>176</sup> Witness AMJ

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<sup>168</sup> T. 17 Jun. 2009, p. 9 [Witness FBX].

<sup>169</sup> T. 17 Jun. 2009, p. 9 [Witness FBX].

<sup>170</sup> T. 22 Jun. 2009, pp. 11, 15 [Witness CCS].

<sup>171</sup> T. 17 Jun. 2009, p. 23 [Witness FBX]; T. 22 Jun. 2009, p. 15 [Witness CCS]; T. 18 Jun. 2009, p. 62 [Witness CCP]; T. 19 Jun. 2009, pp. 25-26 [Witness YAI].

<sup>172</sup> T. 17 Jun. 2009, p. 27 [Witness FBX]; T. 19 Jun. 2009, p. 25 [Witness YAI]; T. 22 Jun. 2009, p. 15 [Witness CCS]; T. 18 Jun. 2009, p. 62 [Witness CCP].

<sup>173</sup> T. 17 Jun. 2009, p. 7 [Witness FBX]; T. 18 Jun. 2009, p. 23 [Witness AMJ]; T. 18 Jun. 2009, p. 60 [Witness CCP].

<sup>174</sup> T. 17 Jun. 2009, p. 9 [Witness FBX]; T. 22 Jun. 2009, p. 11 [Witness CCS].

<sup>175</sup> T. 18 Jun. 2009, p. 23 [Witness AMJ]; T. 19 Jun. 2009, p. 26 [Witness YAI].

<sup>176</sup> T. 17 Jun. 2009, p. 9 [Witness FBX].



**1124**

testified that the crowd knew that they had to go find Tutsis wherever they were hiding the following day.<sup>177</sup>

99. Witness CCP testified that Muvunyi's speech frightened the audience because there were old people and girls who had not yet been killed and lived in harmony with members of the public. The crowd did not want to kill these individuals but Muvunyi said that all of them had to be massacred, and no one should be spared.<sup>178</sup>

100. When Witness YAI heard Muvunyi speak, he was also disturbed by his statement that the young Tutsi girls had to be sent back home. According to the witness, those women had survived the large-scale massacres up to that point, but the houses of their parents had been destroyed. The witness considered Muvunyi's order to send them back home to be a death sentence.<sup>179</sup>

101. The Prosecution witnesses' perception of the message Muvunyi conveyed during his speech is also consistent with their evidence concerning the events that occurred after the meeting. In particular, all of the Prosecution witnesses testified that violence against Tutsis occurred as a result of the meeting.

102. Witness FBX testified that, at 7:00 a.m. the morning after the meeting, the Hutus assembled to launch attacks against the households that had hidden Tutsi women and children. Armed with clubs, spears and knives, the attackers formed two groups of 90 and 70 people. They attacked the homes of Gérard Senyange, where they killed six people; Espérance Mukandanga, a Hutu married to a Tutsi, where they killed her five children but left her alive; and Sotere where they killed his grandchild. There were others killed whom Witness FBX could not recall.<sup>180</sup>

103. Witness AMJ testified that he also participated in attacks against Tutsi the morning after the meeting, at around 6:30 a.m. The witness testified that his subgroup contained about 5 people and that another subgroup of about 10 people searched the lower side of the road he was on. According to the witness, the attackers were armed with traditional weapons, such as clubs and spears and went to the homes of: (1) Ananias, where they apprehended three children and another at a neighbor's house; (2) Gérard Senyange, where they killed the

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<sup>177</sup> T. 18 Jun. 2009, p. 23-24 [Witness AMJ].

<sup>178</sup> T. 18 Jun. 2009, p. 62 [Witness CCP].

<sup>179</sup> T. 19 Jun. 2009, p. 26 [Witness YAI].

<sup>180</sup> T. 17 Jun. 2009, pp. 10-11 [Witness FBX].

**1123**

children taken from Ananias's house and three other children who were there; (3) Elias Nzabamwita, where they apprehended his wife and child and another child below his house; (4) Bucumi, where they killed a boy and threw another in a latrine pit; and (5) Taciana Ntibishoboka, where they apprehended a man. He testified that Witnesses FBX and CCS were among the attackers and that all apprehended persons mentioned above were eventually killed.<sup>181</sup>

104. Witness CCS also testified that he killed Tutsis after the meeting; however, he was not asked any further questions concerning the details of what occurred.<sup>182</sup> Witness CCP testified that killings started early in the morning after the meeting, and many people were killed: the elderly, young girls, old women and children. According to the witness, a Tutsi child was also killed immediately after the meeting.<sup>183</sup> Witness YAI testified that young women were killed after the meeting, although he heard this information only through *Gacaca* proceedings after the fact, which lessens the probative value of his evidence on this point.<sup>184</sup>

105. In assessing the credibility of the Prosecution witnesses, the Chamber considered several arguments advanced by the Defence. For example, the Defence argues that Witnesses FBX, AMJ and CCS cannot corroborate each other because they are accomplices. According to the Defence, the Chamber should seek corroboration regarding Muvunyi's alleged participation in a crime from independent evidence not tainted by criminal conspiracy.<sup>185</sup> The Chamber recalls that this is not the jurisprudence of the Tribunal, which holds that reliance upon evidence of accomplice witnesses does not constitute a legal error *per se*.<sup>186</sup> Having found Witnesses FBX, AMJ, and CCS credible and reliable, the Chamber considers that it can corroborate the testimony of each with that of the other as long as it does so with caution, and considers the totality of the circumstances in which it was tendered.<sup>187</sup>

106. The Defence also argues that the Prosecution witnesses were predisposed to kill and did not need instructions from Muvunyi or anyone else because they admitted to participating

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<sup>181</sup> T. 18 Jun. 2009, pp. 24-28 [Witness AMJ]; Prosecution Exhibit P6-R [under seal]; Prosecution Exhibit P11-R [under seal].

<sup>182</sup> T. 22 Jun. 2009, p. 11 [Witness CCS].

<sup>183</sup> T. 18 Jun. 2009, pp. 62, 63; T. 19 Jun. 2009, pp. 13-15 [Witness CCP].

<sup>184</sup> T. 19 Jun. 2009, pp. 26-27 [Witness YAI].

<sup>185</sup> T. 2 Oct. 2009, p. 7 [Closing arguments].

<sup>186</sup> *Muvunyi* Appeal Judgement, para. 128.

<sup>187</sup> *Id.*; *Niyitigeka* Appeal Judgement, para. 98.

1122

in the genocide before the Gikore meeting.<sup>188</sup> The Chamber disagrees and considers that the Prosecution witnesses' participation in the genocide before the Gikore meeting actually enhances their credibility regarding the content of Muvunyi's speech at that meeting. The Chamber finds that, unlike the Defence factual witnesses, who were neither participants in the genocide nor residents of Gikore, the Prosecution witnesses had a more concrete interest in attending the meeting and paying attention to Muvunyi's words because they were concerned with searching for and killing Tutsis.

107. The Chamber considers that there are several fundamental problems with the credibility of the Defence's factual witnesses. Notably, none of the witnesses were residents of Gikore at the time of the meeting: Witness Iryivuze was traveling with Muvunyi's convoy so that he could visit his family living in Kibayi *commune* and the only reason he witnessed the Gikore meeting was because he decided to continue past Kibayi through Gikore and on to Butare with the convoy so that he could buy his father medicine;<sup>189</sup> Witness MO78 traveled approximately twelve kilometers in a communal vehicle to attend the meeting;<sup>190</sup> and Witness MO99, a resident of Kigali who had sought refuge in his parents' home near Gikore, traveled eight kilometers on foot to attend the meeting.<sup>191</sup>

108. The Chamber notes that the Defence claims that Witness Iryivuze is in a unique position to provide the most precise account of Muvunyi's speech because he traveled with the delegation for the entire day and heard Muvunyi speak twice. According to the Defence, this indicates that Witness Iryivuze could be certain about the content of Muvunyi's message, as well as his objective.<sup>192</sup>

109. While the Chamber acknowledges that Iryivuze was in a unique position because he traveled with Muvunyi's delegation, it recalls he did not take part in the trip to listen to the speeches, but rather to receive free transportation to visit his family. Most notably, the Chamber recalls that the only reason Iryivuze witnessed the Gikore meeting was because he decided to continue past Kibayi through Gikore and on to Butare with the convoy so that he

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<sup>188</sup> Defence Closing Brief, para. 52.

<sup>189</sup> T. 24 Aug. 2009, pp. 12, 20, 21 [Upon his arrival in Kibaye, Iryivuze was informed that his father had contracted malaria and decided to continue to Butare so that he could buy him medicine].

<sup>190</sup> T. 25 Aug. 2009, pp. 22, 23 [Witness MO78].

<sup>191</sup> T. 19 Sep. 2009, p. 7 [closed] [Witness MO99].

<sup>192</sup> Defence Closing Brief, para. 53; T. 2 Oct. 2009, p. 9 [Closing arguments]; T. 24 Aug. 2009, p. 13-17 [Witness Iryivuze].

1121

could buy his father anti-malarial medicine.<sup>193</sup> Taking this into consideration, noting that Iryivuze was not a resident of Gikore, and mindful that he was likely thinking of his malaria-stricken father during the meeting, the Chamber does not find that his credibility was enhanced because he traveled in Muvunyi's delegation. Instead, the Chamber concludes that Iryivuze had less of an incentive to pay close attention to the content of the speeches than witnesses FBX, AMJ, CCP, and CCS who were residents of Gikore and participants in the genocide.

110. Further, the Chamber also considers that witnesses MO78 and MO99 had less of an incentive to pay close attention to the content of Muvunyi's speech because they were not locals of Gikore either, and Muvunyi's speech concerned the specific situation in Gikore. Additionally, they were not active participants in the genocide at the time of the meeting, and the Chamber finds that this lessened their motivation to pay close attention to the content of Muvunyi's speech.

111. Witnesses MO78 and MO99 testified that no violence occurred after the meeting,<sup>194</sup> and Witness MO78 testified that he personally witnessed a lot of calm after the meeting.<sup>195</sup> However, Witness MO78 travelled about twelve kilometres to the meeting in the *communal* vehicle,<sup>196</sup> and the Chamber finds it to be the only reasonable inference that he would have returned to his native *secteur* on the *communal* vehicle after the meeting. Indeed, Witness MO78 admitted on cross-examination that he was not aware of what happened in Gikore after the meeting, which the Chamber considers a significant blow to his credibility.<sup>197</sup> Similarly, MO99 testified that the meeting was about seven to eight kilometres from the *secteur* where he was staying at the time. He travelled to Gikore the day before the meeting by foot and stayed overnight after the meeting.<sup>198</sup>

112. After careful consideration, the Chamber does not accept the Defence evidence that no violence occurred after the Gikore meeting. The Chamber finds that Witness MO78 was either dishonest about what occurred after the Gikore meeting, or that he gave evidence concerning a matter about which he had no personal knowledge.

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<sup>193</sup> T. 24 Aug. 2009, pp. 12, 20, 21 [Upon his arrival in Kibaye, Iryivuze was informed that his father had contracted malaria and decided to continue to Butare so that he could buy him medicine].

<sup>194</sup> T. 25 Aug. 2009, p. 17 [Witness MO78]; T. 17 Sep. 2009, pp. 14, 28 [Witness MO99].

<sup>195</sup> T. 25 Aug. 2009, p. 17 [Witness MO78].

<sup>196</sup> T. 25 Aug. 2009, pp. 22, 23 [Witness MO78].

<sup>197</sup> T. 25 Aug. 2009, p. 23 [Witness MO78].

<sup>198</sup> T. 17 Sep. 2009, pp. 6, 7 [closed], 14, 15, 26 [Witness MO99].

113. Furthermore, the Chamber considers Witness MO99's testimony that violence did not occur after the meeting to be problematic. During direct and cross-examination, the witness stated that he was sure that no violence occurred after the meeting, yet he also stated that he could not swear that nobody was killed after the meeting.<sup>199</sup> Even if the Chamber were not to consider the witness's demeanour and testimony on this issue evasive and contradictory, it would still find it less credible than that of Prosecution witnesses FBX and AMJ. Those witnesses stated, without reservation, that they personally participated in the massacre of Tutsis after the meeting and provided a multitude of details concerning the killings such as the time the killings began, the methodology with which they were carried out, and the names of the victims.<sup>200</sup> Accordingly, the Chamber does not find Witness MO99 to be credible in this respect.

114. The Chamber therefore finds that Tutsis were attacked and killed the morning after the Gikore meeting. Although Witness CCP was the only witness to testify that a child was killed immediately after the meeting, the Chamber nonetheless finds his testimony on this point to be credible. In particular, he testified that the child was killed behind buildings next to the venue of the meeting; therefore it makes sense that not all attendees at the meeting would have seen what occurred.<sup>201</sup>

115. The Chamber accepts that the Defence witnesses who attended the Gikore meeting have not been convicted of or suspected of any offences related to the genocide; nonetheless, the Chamber found their testimony regarding Muvunyi's speech to be incredible in many respects.

116. While all of the Defence factual witnesses testified that Muvunyi spoke about the civil war and did not incite the crowd to kill Tutsis, the Chamber finds that these are the only points where their evidence regarding the content of Muvunyi's speech is consistent. Unlike the Prosecution witnesses, the Defence factual witnesses did not present multiple ways in which their testimony was consistent. Instead, the Chamber considers that their evidence regarding Muvunyi's speech differed in several material respects.

117. Witness Iryivuze's evidence was that Muvunyi spoke about military tactics and the RPF, whereas Witness MO78 testified that Muvunyi spoke about criminals, military deserters, and the RPF, and Witness MO99 testified that Muvunyi spoke about specific

<sup>199</sup> T. 17 Sep. 2009, pp. 14, 28 [Witness MO99].

<sup>200</sup> See paras. 102, 103, *supra*.

<sup>201</sup> T. 19 Jun. 2009, p. 14 [Witness CCP].

1119

attacks and the possibility of a military front in Burundi. While it is to be expected that the witnesses would give differing accounts of the meeting after such a great passage of time, the Chamber finds that the absence of consistency on this issue in the testimonies of the Defence factual witnesses, as compared to the Prosecution witnesses, undermines the truthfulness of their evidence.

118. Furthermore, the Chamber considers that a specific difficulty with Defence Witness MO99 undermines his credibility regarding the content of Muvunyi's speech. According to the witness, he left Kigali on 16 April 1994 for Butare in a vehicle with his Tutsi fiancée.<sup>202</sup> However, when he was asked during cross-examination whether his Tutsi fiancée needed protection during a cross-country road trip at the height of the genocide, Witness MO99 stated that it was not incumbent upon him to protect her because he was in just as much danger as she was.<sup>203</sup> The Chamber finds that this answer demonstrates that the witness would not have paid close attention to any comments made by Muvunyi at the Gikore meeting that related to Tutsis because he was not sensitive to their particular security situation at that time.

119. Moreover, considering that almost all Prosecution and Defence witnesses testified that killings started in the Gikore area on or about 22 April, and that by the time of the meeting the killings had largely stopped,<sup>204</sup> the Chamber finds it incredible that the authorities would have convened the meeting solely for the purposes of pacification so long after the violence began, as claimed by the Defence. Indeed, Witness MO99 testified that he thought the speeches should have been made during the month of April to pre-empt the massacres.<sup>205</sup> The Chamber finds that this issue also has a negative effect on the credibility of the testimony of the Defence factual witnesses.

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<sup>202</sup> T. 17 Sep. 2009, p. 6 [closed] [Witness MO99].

<sup>203</sup> T. 17 Sep. 2009, p. 18 [MO99].

<sup>204</sup> FBX, T. 17 Jun. 2009 pp. 21, 22 (massacres began on 22 April); AMJ, T. 18 Jun. 2009, p. 32 (Tutsis began to be systematically killed on 19 April); CCP, T. 18 Jun. 2009, p. 67 [closed], T. 19 Jun. 2009, p. 7 (killings began on 22 April; by the time of the meeting, killings had stopped in Gikore); YAI, T. 19 Jun. 2009, p. 23 (security situation changed for the worse on 20 April); Iryivuze, T. 24 Aug. 2009, p. 28 (by time of Gikore meeting, killings had already stopped); MO78, T. 26 Aug. 2009 pp. 11 [closed], 21 (situation changed two weeks after 12 April; attacks started towards the end of April); MO99, T. 17 Sep. 2009, pp. 14, 25 (it was during last two weeks of April that things deteriorated).

<sup>205</sup> T. 17 Sep. 2009, p. 14 [Witness MO99].

### 4.3 The Use of Proverbs

120. The Defence submits that while the Indictment alleges that Muvunyi incited genocide by using Kinyarwanda proverbs, few Prosecution witnesses testified as such.<sup>206</sup> However, the Chamber recalls that: (1) Witness FBX testified that Muvunyi told them that even if people refused to hand over the Tutsis in hiding, they had to do so because when a snake wraps itself around a calabash, you have to kill the snake and break the calabash;<sup>207</sup> (2) Witness AMJ testified that Muvunyi said that babies born to Tutsi girls married to Hutu men after 6 April had to be killed like snakes are killed;<sup>208</sup> (3) Witness CCP testified that Muvunyi said that Tutsis were comparable to snakes and had to be killed;<sup>209</sup> and (4) Witness CCP testified that Muvunyi used a Rwandan proverb to the effect that the Tutsi girls that had been “married” to Hutu men should die in a forest in a far away place.<sup>210</sup>

121. Accordingly, the Chamber notes that all four witnesses testified that Muvunyi used Kinyarwanda proverbs to urge the audience to kill Tutsis, and that three Prosecution witnesses recalled that Muvunyi used proverbs comparing Tutsis to snakes to urge the crowd to kill Tutsis.

122. The Chamber also notes the evidence of Évariste Ntakirutimana, a sociolinguist who was accepted as an expert witness for the Prosecution.<sup>211</sup> The Prosecution tendered his testimony from the *Nyiramasuhuko et al.* proceedings into evidence pursuant to Rule 92 bis of the Rules, as well as a Report authored by him entitled “Sociolinguistic Analysis of some Polysemic Terms Produced during the War Period (1990-1994) in Rwanda”.<sup>212</sup>

123. Ntakirutimana’s evidence is that a proverb is a sentence, which may summarize an entire context; it is an attempt to say the most possible through the least possible words. Proverbs are universally accepted truths, so they are employed in an attempt to summarise a message into a universally accepted fact that everyone should be aware of or admit to.<sup>213</sup>

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<sup>206</sup> Defence Closing Brief, para. 51; T. 2 Oct. 2009 p. 13 [Closing arguments].

<sup>207</sup> T. 17 Jun. 2009, p. 7 [Witness FBX].

<sup>208</sup> T. 18 Jun. 2009, p. 23 [Witness AMJ].

<sup>209</sup> T. 18 Jun. 2009, p. 60 [Witness CCP].

<sup>210</sup> T. 18 Jun. 2009, pp. 61, 62 [Witness CCP].

<sup>211</sup> *Muvunyi*, Decision Admitting the Expert Evidence of Évariste Ntakirutimana (TC), 29 January 2009.

<sup>212</sup> Prosecution Exhibit P1-R; Prosecution Exhibit P3-R (T. 13 Sep. 2004, p. 42).

<sup>213</sup> Prosecution Exhibit P3-R (T. 13 Sep. 2004, p. 64).

**1117**

124. Ntakirutimana explained that the use of proverbs allows one to capture the attention of the addressee, and that this is greatly exploited in Kinyarwanda, as an argument of authority, especially during interactions aimed at mobilizing, persuading and/or warning people.<sup>214</sup> In the Rwandan context, proverbs were used because they are common amongst people who are more familiar with an oral tradition of communication, rather than a written one. The use of a proverb makes it easier for such an audience to understand the meaning of what is being conveyed; it reduces the distance between the person who is speaking and the target of the message.<sup>215</sup> Ntakirutimana also stated that speakers during the Rwandan war avoided calling the adversary, the Tutsi, by its real name to avoid interference or intervention by foreigners.<sup>216</sup>

125. For example, the term “snake” is utilized to show that there should be no pity when dealing with the Tutsi.<sup>217</sup> Ntakirutimana testified that a calabash is a container of great value, in which milk is stored. Consequently, the proverb “when a snake twirls around a calabash, the calabash must be broken in order to destroy the snake” conveys the meaning that if you have a precious object that comes under threat, you may have to sacrifice the object rather than sacrifice yourself.<sup>218</sup>

126. Witnesses FBX, AMJ and CCP understood Muvunyi’s speech as a call for them to seek out Tutsi in hiding and kill them, and Witness YAI understood that Muvunyi was sending surviving young Tutsis women to their deaths. The Chamber accepts this evidence, as well as Ntakirutimana’s evidence, and concludes that in Rwandan culture, the punishment reserved for a snake is death. Therefore the Chamber finds that calling a Tutsi a snake is almost synonymous with condemning him to death.<sup>219</sup>

127. Consequently, after careful consideration, the Chamber finds that the evidence strongly suggests that the only reasonable conclusion is that the crowd at the Gikore Centre understood that Muvunyi told them to seek out Tutsis in hiding and kill them. This finding is supported by the evidence, which the Chamber accepts, that Tutsis in hiding, particularly women and children, were sought out and killed the morning following the meeting.

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<sup>214</sup> Prosecution Exhibit P1-R, p. 18.

<sup>215</sup> Prosecution Exhibit P3-R (T. 13 September 2004) p. 64).

<sup>216</sup> Prosecution Exhibit P1-R, p. 36.

<sup>217</sup> Prosecution Exhibit P1-R, p. 24.

<sup>218</sup> Prosecution Exhibit P3-R (T. 13 September 2004 pp. 60, 61).

<sup>219</sup> Prosecution Exhibit P1-R, p. 31.



128. In giving such a speech, the Chamber finds that there is no reasonable doubt that Muvunyi intended to incite the audience to commit acts of genocide. The Chamber further finds that the Prosecution has proven beyond all reasonable doubt that Muvunyi possessed the requisite intent to destroy the Tutsi group as such.

129. The Chamber has found the character evidence of Defence witnesses Bimenyimana, MO69, MO31 and MO103 generally credible and has accepted their testimony.<sup>220</sup> The Chamber understands the Defence position to be that this evidence is pertinent to assessing Muvunyi's *mens rea*.<sup>221</sup>

130. The Chamber recalls that the evidence of these witnesses, described generally, is that Muvunyi provided assistance to Tutsis during the genocide, and that he was the sort of person who was unlikely to incite others to commit genocide against Tutsis. The Chamber notes however, that the only evidence before the Chamber demonstrates that the assistance Muvunyi provided was limited and selective, or offered to Tutsis who were close to either his friends or family. The Chamber also recalls the evidence of Witness MO31 that Muvunyi was suspected of being an accomplice and accepts that Muvunyi may have given his speech at the Gikore Centre in order to demonstrate his solidarity with the position taken by other authorities.

131. Nonetheless, in light of the content of the speech; Muvunyi's specific targeting of Tutsis; the context, namely, that large-scale massacres of Tutsis had already occurred in area, which must have been known to Muvunyi; and the fact that the speech was given to a large crowd, the Chamber finds beyond reasonable doubt that Muvunyi acted with genocidal intent.

132. The Chamber therefore finds Muvunyi guilty beyond reasonable doubt of committing direct and public incitement to commit genocide at the Gikore Centre in mid to late May 1994.

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<sup>220</sup> See para 39, *supra*.

<sup>221</sup> T. 2 Oct. 2009, p. 12 [Closing arguments].

1115'

**CHAPTER IV – VERDICT**

133. For the reasons set out in this Judgement, having considered all evidence and arguments, the Chamber unanimously finds Tharcisse Muvunyi

GUILTY of Direct and Public Incitement to Commit Genocide

**CHAPTER V - SENTENCE****1114****1. INTRODUCTION**

134. Having found Muvunyi guilty of Direct and Public Incitement to Commit Genocide, the Chamber must determine the appropriate sentence.
135. The relevant provisions on sentencing are Articles 22 and 23 of the Statute and Rules 99 to 106 of the Rules. A person convicted by the Tribunal may be sentenced to imprisonment for a fixed term or for the remainder of his life.<sup>222</sup> The penalty imposed should reflect the goals of retribution, deterrence, rehabilitation, and the protection of society. Pursuant to Article 23 of the Statute and Rule 101 of the Rules, the Chamber shall consider the general practice regarding prison sentences in Rwanda, the gravity of the offences or totality of the conduct, the individual circumstances of the accused, including aggravating and mitigating circumstances, and the extent to which any penalty imposed by a court of any State on the accused for the same act has already been served.<sup>223</sup> These considerations are not exhaustive. Trial Chambers are vested with a broad discretion in determining an appropriate sentence, due to their obligation to individualize the penalties to fit the circumstances of the convicted person and the gravity of the crime.<sup>224</sup> The Chamber shall credit the accused for any time spent in detention pending transfer to the Tribunal and during trial.<sup>225</sup>
136. In determining an appropriate sentence, the Appeals Chamber has stated that “sentences of like individuals in like cases should be comparable”. However, it has also noted the inherent limits to this approach because “any given case contains a multitude of variables, ranging from the number and type of crimes committed to the personal circumstances of the individual”.<sup>226</sup>
137. In addition, the Chamber recalls the Appeal Chamber’s directive that Muvunyi’s sentence on retrial may not exceed the twenty-five years of imprisonment imposed by the first Trial Chamber.<sup>227</sup>

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<sup>222</sup> Rule 101 (A) of the Rules.

<sup>223</sup> Article 23 (1)-(3) of the Statute and Rule 101 (B)(i)-(iv) of the Rules.

<sup>224</sup> *Nahimana et al.* Appeal Judgement, paras. 1037, 1046.

<sup>225</sup> *Kajelijeli* Appeal Judgement, para. 290. *See* Rule 101 (C) of the Rules.

<sup>226</sup> *Kvočka et al.* Appeal Judgement, para. 681.

<sup>227</sup> *Muvunyi* Appeal Judgement, para. 170.

1113

## 2. DETERMINATION OF THE SENTENCE

138. The Prosecution submits that a sentence of twenty-five years is warranted considering Muvunyi's criminal acts, the gravity of his offences, his individual circumstances, the aggravating circumstances, his abuse of trust and authority, and the absence of mitigating circumstances.<sup>228</sup> The Defence submits that if Muvunyi is not acquitted, the Chamber should sentence him to the period of time he has already served and order his immediate release.<sup>229</sup>

### 2.1 Gravity of the Offence

139. The Chamber has found Muvunyi guilty beyond a reasonable doubt of committing direct and public incitement to commit genocide at the Gikore Center in mid to late May 1994.<sup>230</sup> This finding is based in part on the Chamber's conclusion that Muvunyi possessed the requisite intent to destroy the Tutsi group as such beyond a reasonable doubt.<sup>231</sup>

140. All crimes under the Tribunal's Statute are serious violations of international humanitarian law.<sup>232</sup> Genocide is, by definition a crime of the most serious gravity which affects the very foundation of society and shocks the conscience of humanity. Directly and publicly inciting others to commit that crime is, in the Chamber's opinion, of similar gravity.

141. The Chamber recalls the Appeals Chamber's directive that Muvunyi's sentence on retrial may not exceed the twenty-five years of imprisonment imposed by the first Trial Chamber.<sup>233</sup>

142. The Chamber has also considered the general sentencing practice at the Tribunal, paying particular attention to the *Bikindi*, *Kajelijeli* and *Ruggiu* Trial Judgements in which Simon Bikindi, Juvénal Kajelijeli, and Georges Ruggiu were convicted for direct and public incitement to commit genocide. Bikindi and Kajelijeli were sentenced to fifteen years' imprisonment, and Ruggiu was sentenced to twelve years' imprisonment.<sup>234</sup>

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<sup>228</sup> Prosecution Closing Brief, para. 168.

<sup>229</sup> Defence Closing Brief, para. 57.

<sup>230</sup> See para. 132, *supra*.

<sup>231</sup> See para. 128, *supra*.

<sup>232</sup> *Kayishema and Ruzindana* Appeal Judgement para. 367 (quoting Article 1 of the Statute).

<sup>233</sup> *Muvunyi* Appeal Judgement, para. 170.

<sup>234</sup> *Bikindi* Trial Judgement, para. 460; *Kajelijeli* Trial Judgement (TC), para. 968; *Ruggiu* Trial Judgement (TC), p. 19.

## 2.2 Individual Circumstances

143. The Chamber has wide discretion in determining what constitutes mitigating and aggravating circumstances and the weight to be accorded thereto. While aggravating circumstances need to be proven beyond reasonable doubt, mitigating circumstances need only be established on a “balance of probabilities”.<sup>235</sup> Proof of mitigating circumstances does not automatically entitle the accused to a “credit” in the determination of the sentence; it simply requires the Trial Chamber to consider such mitigating circumstances in its final determination.<sup>236</sup>

### 2.2.1. Aggravating Circumstances

144. The Prosecution contends that Muvunyi’s status as a long-standing senior military officer and the highest-ranking military authority in Butare *préfecture* when he was Commander of the ESO in Butare are extremely aggravating mitigating circumstances.<sup>237</sup> According to the Prosecution, Muvunyi chose to use this status to strengthen his incitement of the civilian population to kill Tutsis rather than command soldiers and other law-enforcement personnel to protect the them.<sup>238</sup>

145. The Prosecution also argues that Muvunyi’s great zeal or enthusiasm in committing the crime and the fact that he perpetrated the crime in a manner, which brought about irreparable harm to the victims and their families may be considered aggravating factors.<sup>239</sup>

146. The Chamber notes Muvunyi’s stature as a Lieutenant Colonel in the Rwandan army that was stationed at the *École des Sous-Officiers* in Butare *préfecture* as discussed in Chapter III, Section 3 of the judgement. The Chamber considers that the influence he derived from his status made it likely that others would follow his exhortations. The Chamber considers that Muvunyi abused his stature by using his influence to incite genocide and finds this to be an aggravating factor.

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<sup>235</sup> *Nahimana et al.* Appeal Judgement, para. 1038.

<sup>236</sup> *Niyitegeka* Appeal Judgement, para. 267.

<sup>237</sup> Prosecution Closing Brief, paras. 179, 180.

<sup>238</sup> Prosecution Closing Brief, paras. 179, 180.

<sup>239</sup> Prosecution Closing Brief, para. 181.



### 2.2.2. *Mitigating Circumstances*

147. The Defence presented the evidence of four character witnesses, whom the Chamber found credible.<sup>240</sup> These witnesses testified that Muvunyi: (1) sent soldiers to protect a bishop and some Tutsi refugees in Butare *préfecture*; (2) placed several Tutsi orphans in orphanages; (3) had been accused of being an RPF accomplice; and (4) socialized with Tutsis and had Tutsi relatives.
148. The Defence also requests the Chamber to consider that Muvunyi is only charged with one count of direct and public incitement to commit genocide, which occurred on one day during a brief period in the afternoon, related to a speech he gave in a remote area of Rwanda that could not have taken more than a few minutes.<sup>241</sup>
149. The Prosecution submits that there are no mitigating circumstances in the case, specifically noting that Muvunyi neither cooperated with the Prosecution, nor showed any remorse or contrition.<sup>242</sup>
150. Exercising its discretion, the Chamber does not consider that the assistance Muvunyi provided to a handful of Tutsis during the genocide warrants mitigation because it was limited and selective. Similarly, the Chamber does not consider accusations that Muvunyi was an accomplice of the RPF or the fact that he socialized with Tutsis and has Tutsi relatives to have any bearing on the sentencing in this case.
151. The Chamber therefore concludes that there are no mitigating circumstances that should be taken into account in the determination of his sentence.

### 2.3 Credit for Time Served

152. On 5 February 2000, Muvunyi was arrested in The United Kingdom, and arrived at the United Nations Detention Facility in Arusha on 30 October 2000. He has been in physical custody ever since. Pursuant to Rule 101 (C) of the Rules, Muvunyi is therefore entitled to credit for time served as of 5 February 2000.

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<sup>240</sup> See paras. 39, 124, *supra*.

<sup>241</sup> Defence Closing Brief, para. 57.

<sup>242</sup> Prosecution Closing Brief, para. 184.

1110

**3. CONCLUSION**

153. Considering all the relevant circumstances above, the Chamber **SENTENCES** Tharcisse Muvunyi to

**FIFTEEN (15) YEARS' IMPRISONMENT**

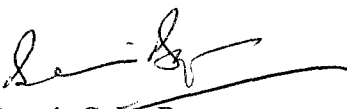
154. This sentence shall be enforced immediately and, pursuant to Rule 101 (C) of the Rules, Muvunyi shall receive credit for the time served as of 5 February 2000.

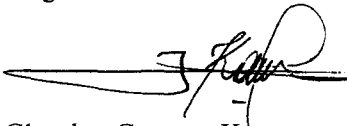
155. The above sentence shall be served in a State designated by the President of the Tribunal, in consultation with the Chamber. The Government of Rwanda and the designated State shall be notified of such designation by the Registrar.


156. Until his transfer to his designated place of imprisonment, Tharcisse Muvunyi shall be kept in detention under the present conditions.

157. Pursuant to Rule 102 (B) of the Rules, on notice of appeal, if any, enforcement of the above sentences shall be stayed until a decision has been rendered on the appeal, with the convicted person nevertheless remaining in detention.

Arusha, 11 February 2010, done in English

  
Dennis C. M. Byron  
Presiding Judge

  
Gberdao Gustave Kam  
Judge

  
Vagn Joensen  
Judge



1109

**ANNEX I – PROCEDURAL HISTORY**

158. Tharcisse Muvunyi was arrested on 5 February 2000 in the United Kingdom, and was transferred on 30 October 2000 to the United Nations Detention Facility in Arusha, Tanzania. The Accused made his initial appearance before Judge William Sekule on 8 November 2000, and entered a plea of not guilty.

159. Muvunyi was convicted by Trial Chamber II of this Tribunal on 12 September 2006 for several acts of genocide, direct and public incitement to commit genocide, and other inhumane acts and sentenced to 25 years imprisonment.<sup>243</sup> On 29 August 2008, the Appeals Chamber set aside all convictions and the sentence, but ordered a retrial of one allegation of direct and public incitement to commit genocide found in Count 3 of the Indictment.<sup>244</sup>

**1. RETRIAL**

160. Under Count 3 of the Indictment, the Prosecution charged Muvunyi with direct and public incitement to commit genocide pursuant to Article 2(3)(c) of the Statute and with individual criminal responsibility under Article 6(1).<sup>245</sup> The only allegation at issue in this retrial is charged in paragraphs 3.24 and 3.25 of the Indictment.

161. On 17 September 2008, the Appeals Chamber assigned judges to the Defence's motion for provisional release<sup>246</sup> and on 25 September 2009, the Appeals Chamber dismissed the motion stating that it should have been directed to the Trial Chamber assigned to the retrial.<sup>247</sup>

162. On 28 November 2008, the Chamber held a status conference and set the schedule for the pre-trial submissions.<sup>248</sup>

163. On 3 December 2008, the Chamber issued a scheduling order for the retrial, which ordered the Parties to prepare for commencement of the trial on 12 January 2009 and to complete the trial within two weeks time.<sup>249</sup>

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<sup>243</sup> *Muvunyi* Trial Judgement, para. 531.

<sup>244</sup> *Muvunyi* Appeal Judgement, para. 171.

<sup>245</sup> Indictment, paras. 3.23-3.25; pp. 16, 17.

<sup>246</sup> Order Assigning Judges to a Case before the Appeals Chamber, 17 September 2008.

<sup>247</sup> Decision on Muvunyi's Request for Provisional Release, 25 September 2008.

<sup>248</sup> T. Nov. 28 2008.

<sup>249</sup> Scheduling Order for the Retrial, 3 December 2008.



**1108**

164. On 17 December 2008, the Chamber issued a second scheduling order for the retrial, which requested further submissions from the Parties but retained the trial start date of 12 January 2009.<sup>250</sup>
165. On 23 December 2008, the Defence filed a motion for judgement of acquittal<sup>251</sup> and a motion to strike the Prosecution's expert witness.<sup>252</sup>
166. On 24 December 2008, the Chamber issued an interim order to the Registrar to file submissions concerning whether it was necessary for Lead Counsel for Muvunyi to be assisted by a co-counsel.<sup>253</sup>
167. On 30 December 2008, the Chamber denied the Prosecution's motion to have Witness NN testify via video-link and struck the witness from the Prosecution's witness list.<sup>254</sup> On that day, it also granted the Prosecution's motion for transfer of witnesses AMJ and CCP from Rwanda<sup>255</sup> and its motion for extension of time to respond to Muvunyi's motions for judgement of acquittal and to strike the Prosecution's expert witness.<sup>256</sup>
168. On 31 December 2008, the Chamber ordered that Co-Counsel Abbe Jolles be reinstated no later than 2 January 2009 and denied the Defence's motion to reschedule the start date of the trial for 11 March 2009.<sup>257</sup>
169. On 14 January 2009 the Chamber held a status conference where it issued oral orders: referring Defence Counsel to the Registrar for appropriate sanctions for failure to appear; establishing the scope of the Prosecution evidence to be adduced at retrial as limited to the evidence from the original trial; stating that the Defence's motion for judgement of acquittal was premature; ordering the Prosecution to disclose the testimony of Prosecution Witness FAH from the *Butare* trial, and the Witnesses and Victims Support Section to keep the witness in Arusha for two weeks so that he could be questioned by the Defence; denying the Defence's motion to have the Prosecution expert witness stricken from the witness list; denying the Prosecution's motion to admit the testimony of its

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<sup>250</sup> Second Scheduling Order for the Retrial, 17 December 2008.

<sup>251</sup> Accused Tharcisse Muvunyi's Motion for Judgement of Acquittal, dated 19 December 2008 and filed on 23 December 2008.

<sup>252</sup> Accused Tharcisse Muvunyi's Motion to Strike Prosecution Expert Witness, dated 19 December 2008 and filed on 23 December 2008.

<sup>253</sup> Interim Order, 24 December 2008.

<sup>254</sup> Decision on Prosecution's Motion to Have Witness NN Testify by Video-Link, 30 December 2008.

<sup>255</sup> Decision on Prosecution's Motion for Transfer of Prosecution Witnesses from Rwanda, 30 December 2008.

<sup>256</sup> Decision on Prosecution's Motion for Extension of Time, 30 December 2008.

<sup>257</sup> Decision on Tharcisse Muvunyi's Motion for an order to Reinstate Co-Counsel Abbe Jolles and to Reschedule Trial to Commence on 11 March 2009, 31 December 2008.

1107

expert witness due to lack of clarity of the annex, and granting it leave to file clarifying information within 24 hours; and denying the Defence's motion for an oral hearing regarding its motion for provisional release.<sup>258</sup>

170. On 29 January 2009, the Chamber denied the Defence's motion for provisional release;<sup>259</sup> granted the Prosecution's motion for certification to appeal the limitation of the scope of the retrial, thereby postponing the trial date until after the interlocutory decision was filed by the Appeals Chamber;<sup>260</sup> and admitted sociolinguist Évariste Ntakirutimana as the Prosecution's expert witness as well as his reports and transcripts from the *Nyiramasuhuko et al. trial* and the original *Muvunyi trial*.<sup>261</sup>

171. On 9 February 2009, the Appeals Chamber issued an order assigning judges to the Prosecution's interlocutory appeal regarding the scope of evidence to be adduced at trial.<sup>262</sup>

172. On 13 February 2009, the Chamber held a pre-trial conference.<sup>263</sup>

173. On 24 March 2009, the Appeals Chamber stated that the Trial Chamber had erred in interpreting the Appeal Judgement as imposing restrictions on the scope of the evidence to be adduced during the retrial and allowed the Prosecution to call the six witnesses it had originally selected.<sup>264</sup>

174. On 3 April 2009, the Chamber denied the Defence's motion for reconsideration of its earlier decision denying provisional release.<sup>265</sup>

175. On 14 April 2009, the Defence appealed the Chamber's decision denying its motion for reconsideration of the decision denying provisional release,<sup>266</sup> and the Appeals Chamber issued an order assigning judges to the appeal on 22 April 2009.<sup>267</sup>

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<sup>258</sup> T. 14 Jan. 2009.

<sup>259</sup> Decision on the Defence Motion for Provisional Release, 29 January 2009.

<sup>260</sup> Decision on the Prosecution Motion for Certification to Appeal the Limitation of the Scope of the Retrial, 29 January 2009.

<sup>261</sup> Decision Admitting the Expert Evidence of Évariste Ntakirutimana, 29 January 2009.

<sup>262</sup> Order Assigning Judges to a Case Before the Appeals Chamber, 9 February 2009.

<sup>263</sup> T. 13 Feb. 2009.

<sup>264</sup> Decision on the Prosecutor's Appeal Concerning the Scope of Evidence to be Adduced in the Retrial, 24 March 2009.

<sup>265</sup> Decision on Defence Motion for Reconsideration of Decision Denying Provisional Release, 3 April 2009.

<sup>266</sup> Accused Tharcisse Muvunyi's Appeal of the Trial Chamber's Denial of Provisional Release, filed on 14 April 2009.

<sup>267</sup> Order Assigning Judges to a Case before the Appeals Chamber, 22 April 2009.

176. On 24 April 2009, the Chamber denied the Defence's motion for dismissal as a remedy for alleged Rule 68 disclosure violations.<sup>268</sup>
177. On 27 April 2009, the Chamber denied the Defence's motion for reconsideration of the decision admitting the expert evidence of Évariste Ntakirutimana<sup>269</sup> and held a status conference, which was postponed until 29 April 2009 due to technical difficulties.<sup>270</sup> During the 29 April 2009 status conference, the Chamber scheduled the first day of trial to be 18 June 2009.<sup>271</sup>
178. On 8 May 2009, the Chamber issued a scheduling order setting the calendar for the trial.<sup>272</sup>
179. On 20 May 2009, the Appeals Chamber denied the Defence's appeal concerning provisional release.<sup>273</sup>
180. On 22 May 2009, the Chamber ordered the temporary transfer of Prosecution Witnesses YAI, CCP, and AMJ.<sup>274</sup>
181. On 26 May 2009, the Chamber ordered the Prosecution to comply with its scheduling order of 8 May 2009<sup>275</sup> and it filed a corrigendum to that order on 27 May 2009.<sup>276</sup>
182. On 29 May 2009, the Chamber filed a *proprio motu* order confirming that the protective measures granted for Prosecution witnesses YAI, CCP, AMJ, FBX, and CCS on 25 April 2001 continued in effect. However, the Chamber found that Witness BZB, the only Prosecution witness not involved in the original trial, was not subject to protective measures.<sup>277</sup>

## 2. PROSECUTION CASE

183. The trial commenced on 17 June 2009. The Prosecution conducted its case over the course of four trial days, called six witnesses, and tendered 21 exhibits.

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<sup>268</sup> Decision on Defence Motion for Dismissal as the Remedy for alleged Rule 68 Disclosure Violations, 24 April 2009.

<sup>269</sup> Decision on Defence Motion for Reconsideration of the Decision Admitting Expert Evidence of Évariste Ntakirutimana, 27 April 2009.

<sup>270</sup> T. 27 Apr. 2009.

<sup>271</sup> T. 29 Apr. 2009.

<sup>272</sup> Scheduling Order, 8 May 2009.

<sup>273</sup> Decision on Appeal Concerning Provisional Release, 20 May 2009.

<sup>274</sup> Order for the Temporary Transfer of Prosecution Witnesses, 22 May 2009.

<sup>275</sup> Order to Comply with Scheduling Order, 26 May 2009.

<sup>276</sup> Corrigendum to Order to Comply with Scheduling Order, 27 May 2009.

<sup>277</sup> Order Regarding the Protective Status of Witnesses, 29 May 2009.

1105'

184. On 17 June 2009, the Chamber denied the Defence's request to admit documents related to Witness FBX's trial before a *Gacaca* court as exhibits.<sup>278</sup>
185. On 18 June 2009, the Chamber ordered that a name pronounced by Witness CCP during his testimony be removed from the records and placed under seal.<sup>279</sup> On 22 June, the Chamber granted the Defence's request to file its pre-trial brief and motion for judgement of acquittal by 28 June 2009.<sup>280</sup>
186. On 29 June 2009, the Chamber changed the date of the commencement of the Defence case to 24 August 2009.<sup>281</sup>
187. On 3 August 2009, the Chamber ordered that the Defence's closing brief would be due on 23 September 2009 and that closing arguments for the Parties would take place on 2 October 2009.<sup>282</sup> It also issued an interim order to the Defence to file further and better submissions regarding protective measures for Witness MO103 by 5 August 2009.<sup>283</sup>
188. On 18 August 2009, the Chamber denied the Defence's motion for judgement of acquittal<sup>284</sup> and granted its application for protective measures in part.<sup>285</sup>

### 3. DEFENCE CASE

189. The Defence case opened on 24 August 2009. The Defence conducted its case over the course of five trial days, called seven witnesses, and tendered eleven exhibits.
190. On 24 August 2009, the Chamber requested the Registry to make inquiries to the government of Rwanda regarding the detention of one of the Defence investigators and ordered that the protective measures for Defence Witnesses MO79 and MO37 be revoked.<sup>286</sup>
191. On 27 August 2009, the Chamber ordered that the name and country of residence of Witness MO103 be kept under seal.<sup>287</sup>

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<sup>278</sup> T. 17 Jun. 2009.

<sup>279</sup> T. 18 Jun. 2009.

<sup>280</sup> T. 22 Jun. 2009.

<sup>281</sup> Amendment to Scheduling Order, 29 June 2009.

<sup>282</sup> Decision on Tharcisse Muvunyi's Application to Vary the Pre-Defence Brief and Allow Witness MO99 to Testify on 14 September 2009, 3 August 2009.

<sup>283</sup> Interim Order Regarding Motion for Protective Measures, 3 August 2009.

<sup>284</sup> Decision on Motion for Judgement of Acquittal, 18 August 2009.

<sup>285</sup> Decision on Tharcisse Muvunyi's Application for Protective Measures, 18 August 2009.

<sup>286</sup> T. 24 Aug. 2009.

<sup>287</sup> T. 27 Aug. 2009.

192. On 2 September 2009, the Chamber granted the Defence's motion for certification to appeal the denial of the motion for judgement of acquittal.<sup>288</sup> On 17 September, the Appeals Chamber issued an order assigning judges to the interlocutory appeal.<sup>289</sup>
193. On 11 November 2009, the Appeals Chamber granted in part the Defence's appeal of the Chamber's denial of its motion for judgement of acquittal, and remanded the matter to the Chamber for further consideration, stating that the Indictment was not defective.<sup>290</sup> On 12 November 2009, the Appeals Chamber filed a corrigendum to that decision.<sup>291</sup> On 13 November, the Chamber ordered the Parties to file supplemental submissions, which addressed the materiality of the discrepancy in the timeframe alleged in the Indictment and the evidence adduced by the Prosecution.<sup>292</sup>
194. On 25 November 2009, the Chamber denied the Defence's motion for judgement of acquittal because a final determination on the materiality of the variance between the date pleaded in the Indictment and the evidence set forth by the Prosecution could only be decided in light of the Defence's evidence. The Chamber reserved the issue for the judgement in this case.<sup>293</sup>
195. On 29 January 2010, the Chamber issued a scheduling order for the public delivery of the judgement for 11 February 2010.<sup>294</sup>

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<sup>288</sup> Decision on Motion for Certification to Appeal: Decision Denying Motion for Judgement of Acquittal, 2 September 2009.

<sup>289</sup> Order Assigning Judges to a Case Before the Appeals Chamber, 17 September 2009.

<sup>290</sup> Decision on Appeal of Decision Denying the Motion for Judgement of Acquittal, 11 November 2009.

<sup>291</sup> Corrigendum to Decision on Appeal of Decision Denying the Motion for Judgement of Acquittal, 12 November 2009.

<sup>292</sup> Order for Supplemental Submissions, 13 November 2009.

<sup>293</sup> Decision on Appeals Chamber Remand of Decision Denying the Motion for Judgement of Acquittal, 25 November 2009.

<sup>294</sup> Scheduling Order, 29 January 2010.

1103

**ANNEX II – CITED MATERIALS AND DEFINED TERMS****1. JURISPRUDENCE****1.1 International Criminal Tribunal for Rwanda****Akayesu**

*Prosecutor v. Akayesu*, Case No. ICTR-96-4-A, Judgement (AC), 1 June 2001

**Bikindi**

*Prosecutor v. Bikindi*, ICTR-01-72-T, Judgement (TC), 2 December 2008 (“*Bikindi Trial Judgement*”)

**Cyangugu**

*Prosecutor v. Ntagurera, Bagambiki, and Imanishimwe*, Case No. ICTR-99-46-A, Judgement (AC), 7 July 2006 (“*Cyangugu Appeal Judgement*”)

**Gacumbitsi**

*Gacumbitsi v. Prosecutor*, Case No. ICTR-01-64-A, Judgement (AC), 7 July 2006 (“*Gacumbitsi Appeal Judgement*”)

**Kajelijeli**

*Prosecutor v. Kajelijeli*, Case No. ICTR-98-44A-T, Judgement (TC), 1 December 2003, (“*Kajelijeli Trial Judgement*”)

*Juvénal Kajelijeli v. Prosecutor*, Case No. ICTR-98-44A-A, Judgement (AC), 23 May 2005

**Kalimanzira**

*Prosecutor v. Kalimanzira*, Case No. ICTR-05-88-T, Judgement (TC), 22 June 2009 (“*Kalimanzira Trial Judgement*”)

**Karera**

*Karera v. Prosecutor*, Case No. ICTR-01-74-A, Judgement (AC), 2 February 2009 (“*Karera Appeal Judgement*”)

**Kayishema and Ruzindana**

*Prosecutor v. Kayishema and Ruzindana*, Case No. ICTR-95-1-A, Judgement (AC), 1 June 2001 (“*Kayishema and Ruzindana Appeal Judgement*”)

**Muvunyi**

*Prosecutor v. Muvunyi*, Case No. ICTR-00-55A-T, Judgement (TC), 12 September 2006, (“*Muvunyi Trial Judgement*”)

1102

*Muvunyi v. Prosecutor*, Case No. ICTR-00-55A-A, Judgement (AC), 29 August 2008 (“*Muvunyi* Appeal Judgement”)

*Prosecutor v. Muvunyi*, Case No. ICTR-00-55A-AR73, Decision on the Prosecutor’s Appeal Concerning the Scope of Evidence to be Adduced in the Retrial (TC), 24 March 2009

*Prosecutor v. Muvunyi*, Case No. ICTR-00-55A-T, Decision on Appeals Chamber Remand of Decision Denying the Motion for Judgement of Acquittal (TC), 25 November 2009, (“*Muvunyi* Remand Decision”)

*Prosecutor v. Muvunyi*, Case No. ICTR-00-55A-T, Decision Admitting the Expert Evidence of Évariste Ntakirutimana (TC), 29 January 2009

### **Nahimana et al.**

*Nahimana, Barayagwiza, and Ngeze. v. Prosecutor*, Case No. ICTR-99-52-A, Judgement (AC), 28 November 2007 (“*Nahimana et al.* Appeal Judgement”)

### **Nchamihigo**

*Prosecutor v. Nchamihigo*, Case No. ICTR-01-63-I, Judgement (TC), 12 November 2008

### **Niyitegeka**

*Prosecutor v. Niyitegeka*, Case No. ICTR-96-14-T, Judgement (TC), 16 May 2003

*Niyitegeka v. Prosecutor*, Case No. ICTR-96-14-A, Judgement (AC), 9 July 2004 (“*Niyitegeka* Appeal Judgement”)

### **Ntakirutimana**

*Prosecutor v. Ntakirutimana and Ntakirutimana*, Case No. ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004 (“*Ntakirutimana* Appeal Judgement”)

### **Renzaho**

*Prosecutor v. Renzaho*, Case No. ICTR-97-31-T, Judgement (TC), 14 July 2009

### **Ruggiu**

*Prosecutor v. Ruggiu*, Case No. ICTR-97-32-I, Judgement (TC), 1 June 2000

### **Rukundo**

*Prosecutor v. Rukundo*, Case No. ICTR-01-70-T, Judgement (TC), 27 February 2009 (“*Rukundo* Trial Judgement”)

**1101****Rutaganda**

*Prosecutor v. Rutaganda*, Case No. ICTR-96-3-A, Judgement (AC), 26 May 2003 (“*Rutaganda Appeal Judgement*”)

**Simba**

*Prosecutor v. Simba*, Case No. ICTR-01-76-T, Judgement (TC), 13 December 2005 (“*Simba Trial Judgement*”)

**1.2 International Criminal Tribunal for the Former Yugoslavia****Čelebići**

*Prosecutor v. Mucić, Delić, and Landžo*, Case No. IT-96-21-Abis, Judgement (AC), 8 April 2003 (“*Čelebići Appeal Judgement*”)

**Krajišnik**

*The Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Judgement (AC), 17 March 2009

**Kvočka et al.**

*The Prosecutor v. Miroslav Kvočka, Mlado Radić, Zoran Žigić and Dragoljub Prcać*, Case No. IT-98-30/1-A, Judgement (AC), 28 February 2005

**2. DEFINED TERMS AND ABBREVIATIONS****Closing Arguments**

T. 2 Oct. 2009

**Defence Closing Brief**

Accused Tharcisse Muvunyi’s Final Trial Brief, filed on 23 September 2009, (“*Defence Closing Brief*”)

**Defence Pre-Trial Brief**

Accused Tharcisse Muvunyi’s PreDefence Brief, filed on 6 July 2009, (“*Defence Pre-Trial Brief*”)

**ESO**

*École des Sous-Officiers*, an officers’ training school in Butare *préfecture*

**ICTR or Tribunal**



1100

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994

**Indictment**

*Prosecutor v. Muvunyi*, Case No. ICTR-00-55A-T, Indictment, filed on 23 December 2003, (“Indictment”)

**p. (pp.)**

page (pages)

**para. (paras.)**

paragraph (paragraphs)

**Prosecution Closing Brief**

The Prosecutor’s Closing Brief, filed on 23 September 2009, (“Prosecution Closing Brief”)

**Prosecution Pre-Trial Brief**

The Prosecutor’s Pre-Trial Brief, filed on 4 May 2009, (“Prosecution Pre-Trial Brief”)

**RPF**

Rwandan (also Rwandese) Patriotic Front

**Rules**

Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda

**Statute**

Statute of the International Criminal Tribunal for Rwanda, established by Security Council Resolution 955

**T.**

Transcript