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TRIAL CHAMBER III

ICTR-00-55C-T
22-06-2012
(10895-10401)

Before: Judge Lee Gacuiga Muthoga, presiding
Judge Seon Ki Park
Judge Robert Fremr

Registrar: Adama Dieng

Date: 19 June 2012

THE PROSECUTOR

v.

Ildéphonse NIZEYIMANA

Case No. ICTR-2000-55C-T

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JUDGEMENT AND SENTENCE

Office of the Prosecutor:
Drew White
Kirsten Gray
Yasmine Chubin

Counsel for the Defence:
John Philpot
Cainnech Lussiaà-Berdou
Myriam Bouazdi
Sébastian Chartrand
Léopold Nsengiyumva

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CHAPTER I: INTRODUCTION

1. OVERVIEW

(i) Introduction

1. The Accused in this case is Ildéphonse Nizeyimana. During the relevant period, Nizeyimana was a captain at the military training school in Butare town called the *École des Sous-Officiers*, which is commonly referred to as the "ESO". The Prosecution charges Ildéphonse Nizeyimana with genocide, crimes against humanity and war crimes for violence perpetrated in Butare prefecture, and, for the most part, in Butare town. The Prosecution alleges that from the moment of President Juvénal Habyarimana's death on the night of 6 April 1994, Nizeyimana mobilised ESO soldiers and others to rape and kill Tutsis, as well as other civilians.

2. The Defence evidence confirms that many of the particularised killings that Nizeyimana is charged with did in fact occur. However, it disputes that Nizeyimana had anything to do with the killings and challenges the quality of the Prosecution evidence implicating Nizeyimana. It also presented alibi evidence that Nizeyimana was not in Butare town when many of the killings happened.[1]

(ii) Rape and Kill Order, 7 April 1994

3. The Indictment alleges that, around 7 April 1994, Nizeyimana ordered soldiers to kill Tutsi civilians and rape Tutsi women. This allegation was supported by a single witness, who testified that he was an ESO soldier who overheard Nizeyimana issue these instructions while at the ESO Camp in Butare on 7 April.

4. The Defence confronted this witness with the evidence he gave in a Rwandan Gacaca proceeding, wherein he stated he was a member of the Para Commando Battalion living in Kigali in April 1994. In that same proceeding, the witness indicated that he did not go to Butare during the month of April. The Chamber has found this witness unreliable. Accordingly, this allegation is not proved beyond reasonable doubt. Other incidents, such as the rape at Rosalie Gicanda's home, which are also only supported by this witness, have not been proven either.

(iii) Sexual Violence

5. The Indictment alleges that from 6 April 1994, Witness BUQ and others were repeatedly raped by soldiers at residences near the ESO Camp. Similarly, it also alleges that soldiers and others, including *Interahamwe*, raped Witnesses MKA, ZBL and DCO inside or near the Butare University Hospital between April and July.

6. The Chamber has no doubt that each of these women was raped. However, none of their testimonies sufficiently implicate Nizeyimana. While the record establishes that, on one

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[1] Trial commenced on 17 January 2011 and closed on 22 September 2011. The Prosecution called 41 witnesses and the Defence 44. Closing arguments were submitted on 7 December 2011. The Chamber pronounced its judgement on 19 June 2012. The written judgement was filed on 22 June 2012 after the conclusion of the editorial process.

occasion, Witness BUQ was raped by an ESO soldier, the evidence fails to demonstrate that Nizeyimana knew or would have had reason to know about this. With respect to Witnesses MKA, ZBL and DCO, the Chamber is not satisfied that their identification of ESO soldiers as the perpetrators is sufficiently reliable. Accordingly, the record fails to establish an evidentiary basis upon which Nizeyimana may be held liable for these crimes.

(iv) Training and Distributions of Weapons

7. The Indictment alleges that Nizeyimana bears criminal responsibility for the training of civilians and the distribution of weapons. Evidence presented in relation to these allegations fails to demonstrate ensuing criminal conduct for which Nizeyimana can be held liable. They are accordingly dismissed.

(v) Meetings

8. The Indictment alleges that Nizeyimana participated in several meetings between 7 and 20 April 1994, during which he is alleged to have ordered soldiers and militia to kill Tutsi civilians. There is evidence that, around 7 April, Nizeyimana was present at an assembly of ESO soldiers, and that afterward, many were deployed to various defensive positions around Butare town. However, the evidence fails to demonstrate that express orders were given to kill Tutsis or that any resulting criminal conduct followed from the orders given at the assembly.

9. With respect to the alleged meetings or assemblies that occurred on 8 and 20 April 1994 at ESO Camp, the Prosecution led no direct evidence supporting such events. Similarly, evidence supporting meetings at Gatsinzi's Bar in the second half of April and at Gahenerezo around 21 or 22 April was led through a single accomplice witness. His uncorroborated testimony does not establish these allegations beyond reasonable doubt.

(vi) Killing of the Ruhutinyanya Family

10. The evidence demonstrates that, around 17 April 1994, members of the Ruhutinyanya family, which included Tutsis, attempted to flee to Burundi through the Akanyaru border crossing. However, angry and armed civilians at a roadblock near the border threatened this convoy and refused to let it to pass.

11. Prosecution and Defence evidence confirms that ESO soldiers extricated the family and brought them to the ESO Camp. In this context, the Indictment alleges that members of the Ruhutinyanya family were killed on Nizeyimana's instructions.

12. Two Prosecution witnesses provided direct evidence that, on the evening of the Ruhutinyanya family's arrival at the ESO Camp, Nizeyimana was not happy with the presence of this Tutsi family. The following day, around 18 April 1994, two other Prosecution witnesses overheard Nizeyimana order that the family be returned to the location where they had been found. The Chamber finds this Prosecution evidence credible.

13. It is undisputed that ESO soldiers escorted members of the Ruhutinyanya family from the ESO Camp that day. No Prosecution witness saw what happened to the Ruhutinyanya family. However, several Prosecution and Defence witnesses learned that they were killed at the same roadblock near the Akanyaru border crossing. One Defence witness, an ESO soldier who escorted the family, testified that the soldiers and the family were attacked at the roadblock. The soldiers were forced to flee without the family. Another Defence witness also heard that this is what occurred.

14. The Chamber finds the Defence evidence that ESO soldiers were attacked at the roadblock and forced to flee unbelievable. It is further undermined by general evidence establishing the ability of armed soldiers to move through roadblocks. Notably, another Defence witness escorted Tutsi civilians on this same route days later. While he and the ESO soldiers experienced hostility, they managed to get the Tutsis past roadblocks by merely threatening to use force.

15. Under the circumstances, the only reasonable conclusion is that Nizeyimana ordered the removal of the Ruhutinyanya family knowing that the implementation of this order would lead to their slaughter. The Chamber has no doubt that either the ESO soldiers who transported the family to the roadblock and or the armed civilians and *Interahamwe* manning it directly participated in the killing of members of this family. The Chamber finds Nizeyimana criminally responsible for his role in these killings.

(vii) Attack on Cyahinda Parish

16. The record demonstrates that, around mid April 1994, Tutsis fled ethnically driven attacks in the Gikongoro and Butare prefectures border region. Thousands gathered at Cyahinda Parish in Nyakizu commune, Butare prefecture. The refugees continued to come under attack at Cyahinda Parish. On one occasion, they successfully defended themselves against an assault led by a local official, killing at least two gendarmes in the process.

17. Subsequently, around 17 April 1994, Nizeyimana travelled to Cyahinda Parish as part of a security delegation to meet with the refugees there. The single most significant event that followed this meeting was an attack on Cyahinda Parish around 18 April 1994. Thousands were killed. Survivors fled. The Indictment alleges that ESO and other soldiers, gendarmes and armed civilians participated in this massacre, and that Nizeyimana ordered and authorised it.

18. Three Prosecution witnesses provided direct and consistent evidence that soldiers participated in this attack. One witness, a former gendarme from Butare town, observed ESO's Chief Warrant Officer Paul Kanyashyamba and around 11 ESO soldiers supporting other attackers with heavy artillery and specialised weapons. Having considered relevant Defence evidence, much of which is indirect, the Chamber considers the Prosecution evidence established beyond reasonable doubt.

19. There is no direct evidence of Nizeyimana's presence during the attack on Cyahinda Parish. However, it is significant that the ESO Camp served as the operational command for the Butare and Gikongoro region. In this context, Nizeyimana was an officer charged with military intelligence and operations. Furthermore, evidence reflects that Nizeyimana generally issued orders to and held power over Chief Warrant Officer Paul Kanyashyamba, a participant in the attack. Finally, it is significant that in this final assault, ESO soldiers utilised specialised arms that could, from a safe distance, weaken structural safe havens and kill refugees, who had demonstrated a capacity to defend themselves.

20. Given these factors, the only reasonable conclusion is that Nizeyimana planned and authorised the participation of ESO soldiers in this attack. Nizeyimana's visit to Cyahinda Parish necessarily allowed him to assess the strengths and weaknesses of the displaced Tutsis who had fortified themselves within the parish facilities. The weapons employed by ESO soldiers demonstrate a nuanced understanding of the situation, and undoubtedly are a reflection of Nizeyimana's contribution to the planning and authorisation of the assault. The Chamber finds Nizeyimana criminally responsible for his role in this attack.

(viii) Killing of a Young Woman as well as the Maniraho and Ngarambe Families

21. The Indictment alleges that, in late April or early May 1994, Nizeyimana ordered the killing of a young Tutsi woman. It further accuses Nizeyimana of having ordered the killing of Jérôme Ngarambe, Jean Marie Vianney Maniraho and members of their families.

22. That these killings occurred is undisputed. The Prosecution witness who implicated Nizeyimana in these attacks conceded to having murdered the young woman and to have raided the Ngarambe household immediately before he and his family were killed. Defence evidence confirms that this witness had a close personal relationship with Nizeyimana and that he spent time at Nizeyimana's home around the period these killings occurred.

23. Notwithstanding, his evidence implicating Nizeyimana is uncorroborated. As an alleged accomplice to these crimes and an apparent fugitive at the time of his testimony, the Chamber views his evidence with caution. His testimony alone, cannot demonstrate Nizeyimana's involvement beyond reasonable doubt. These allegations are dismissed.

(ix) Attacks on the National University of Rwanda

24. The Indictment alleges that, starting 16 April 1994, Nizeyimana ordered soldiers and militia known as *Interahamwe* to kill Tutsi civilians at Butare University.

25. The evidence reflects that Presidential Guards, supported by ESO soldiers, came to Butare University on 21 April 1994. Using lists, the soldiers separated Tutsis from Hutus, and subsequently killed the Tutsis. However, there is no evidence establishing that Nizeyimana contributed to this operation in any way. Likewise, given the participation of Presidential Guards, the Chamber has doubts that Nizeyimana exercised effective control over these ESO soldiers who participated in this attack. Nizeyimana cannot be held responsible for their crimes.

26. The Indictment also alleges that, on 22 April 1994, Nizeyimana went to the Butare University, where he shot and killed four Tutsi women. This was supported by a single accomplice witness. The Chamber has general concerns about his credibility. His evidence, in this instance, cannot support findings beyond reasonable doubt. Other alleged crimes at Butare University were insufficiently supported to establish their occurrences and are, consequently, dismissed.

(x) Killing of Rosalie Gicanda

27. It is undisputed that Rosalie Gicanda, the former Tutsi Queen of Rwanda, was killed towards the end of April 1994. Prosecution and Defence evidence confirms that ESO Second Lieutenant Bizimana led ESO soldiers who removed Gicanda and others from her home and killed them. The Indictment alleges that Nizeyimana ordered and authorised this killing.

28. The Defence points to evidence, which it suggests, indicates that the killing occurred on 21 April, when Nizeyimana was not in Butare. Defence evidence about the timing is inconclusive, and in some cases supports other evidence that the killing happened around 20 April 1994. Furthermore, two Prosecution witnesses observed Bizimana report the killing to Nizeyimana. The Chamber finds the Prosecution evidence implicating Nizeyimana in this killing established beyond reasonable doubt.

29. Based on the foregoing, the Chamber concludes that Nizeyimana authorised the killing of Rosalie Gicanda. Defence evidence that Bizimana was punished for this attack was

unpersuasive, lacked credibility and was contradicted by other evidence. Nizeyimana bears criminal responsibility for this crime.

(xi) Roadblocks

30. The Indictment alleges that Nizeyimana is responsible for the killing of Remy Rwekaza and the shooting of Witness ZAV, both Tutsis, at the Gikongoro and Kigali roads junction roadblock around 21 April 1994. It further alleges that ESO soldiers acting on Nizeyimana's orders and authorisation killed a Tutsi professor, Pierre Claver Karenzi, at the nearby Hotel Faucon roadblock on the same day. Finally, the Indictment alleges that, around 5 May 1994, Nizeyimana ordered the killing of Beata Uwambaye, a Tutsi, at the roadblock where Rwekaza was killed and Witness ZAV shot.

31. Turning to the killing of Remy Rwekaza and the shooting of Witness ZAV around 21 April 1994, as well as the killing of Beata Uwambaye at the same roadblock weeks later, the Prosecution presented compelling first-hand evidence that Nizeyimana ordered ESO soldiers to perpetrate these attacks. The Defence has presented alibi evidence, indicating that on both dates, Nizeyimana was in Gikongoro prefecture. For the reasons detailed in the judgement, the Chamber has found that Nizeyimana's alibi is not credible and does not call into question the evidence supporting these allegations. The Chamber has found that Nizeyimana is criminally responsible for the killings of Remy Rwekaza and Beata Uwambaye. He is also liable for the serious bodily harm to Witness ZAV.

32. There is no direct evidence implicating Nizeyimana in the killing of Pierre Claver Karenzi at the Hotel Faucon roadblock around 21 April 1994. However, the record demonstrates that the Hotel Faucon roadblock was among a network of geographically proximate roadblocks manned by ESO soldiers that were openly and notoriously targeting and killing Tutsis during this period in April.

33. The only reasonable inference is that the instructions Nizeyimana issued at the Gikongoro and Kigali roads junction roadblock were necessarily transmitted and consistent with those issued to the Hotel Faucon roadblock only a short distance down the road. In light of Nizeyimana's high rank and considerable authority within the ESO, as well as his proven involvement in killings at a nearby roadblock, the Chamber has no doubt that Nizeyimana authorised the killing of Tutsis, and by implication, the murder of Pierre Claver Karenzi at the Hotel Faucon roadblock. He is criminally responsible for this killing. The Chamber, however, has not found that Nizeyimana can be held liable for the killing of Karenzi's wife, Alphonsine Mukamusoni, at the Karenzi residence on the same day.

(xii) Attack on the Matabaro and Nyirinkwaya Residences

34. Prosecution and Defence evidence confirms that in the last third of April 1994, the homes of Butare's Deputy Prosecutor, Jean Baptiste Matabaro, and a Butare Sub-Prefect, Zéphanie Nyirinkwaya, were raided. These two officials, members of their families and others staying in their residences in Butare town were executed a short distance away. The Indictment alleges that Nizeyimana led ESO soldiers in this attack.

35. Three Prosecution witnesses provided first-hand evidence of Nizeyimana's involvement in this murder operation. They testified that it occurred in the early evening of 22 April 1994. The Defence, however, presented evidence that this attack occurred on 21 April. It points to Prosecution evidence that also supports this conclusion. Furthermore, it relies on alibi evidence indicating that Nizeyimana was not in Butare on the evening of 21 April.

36. Having considered all the relevant evidence, the Chamber finds the Prosecution evidence in regards to these killings established beyond reasonable doubt. The alibi is not credible and does not call into question Nizeyimana's involvement in this attack. He is criminally liable for it.

(xiii) Attacks on Butare University Hospital

37. The Indictment charges Nizeyimana with several specific killings at the Butare University Hospital starting around 22 April 1994, as well as general killings by particular soldiers, including ESO soldiers.

38. There is no direct evidence of Nizeyimana's involvement in any particular killings at Butare University Hospital. Some Prosecution evidence tends to implicate Presidential Guards in targeted attacks. While the record demonstrates that an ESO soldier killed a man as alleged in the Indictment, evidence of Nizeyimana's involvement is indirect and unconvincing. He cannot be held responsible. Other evidence of killings is insufficient to support findings beyond reasonable doubt or establish Nizeyimana's liability. These allegations are dismissed.

(xiv) Attacks on Groupe Scolaire

39. Evidence before the Chamber leaves no doubt that ESO soldiers, led by ESO Second Lieutenant Modeste Gatsinzi, abducted between 50 and 140 Tutsi civilians from *Groupe Scolaire* around 29 April 1994. These civilians were taken to Rwasave valley where soldiers and *Interahamwe* killed them. The Indictment alleges that Nizeyimana ordered and authorised these killings.

40. Two Prosecution witnesses placed Nizeyimana at the *Groupe Scolaire* during the attack. However, the Chamber has fundamental concerns about the ability of one witness to identify Nizeyimana. With respect to the second Prosecution witness, the Chamber has general concerns about his credibility given his status as an accomplice. Furthermore, his evidence implicating Nizeyimana was brief and general. The record fails to support Nizeyimana's criminal liability on any basis. Evidence in support of another purported attack at *Groupe Scolaire* was indirect. It cannot support findings beyond reasonable doubt.

(xv) Attack on Benebikira Convent

41. The Indictment alleges that, around 30 April 1994, militia as well as ESO and Ngoma camp soldiers removed 25 Tutsi children from the Benebikira Convent. The Indictment further charges that these children were brought to an area below the Ineza Hotel and killed with others in Nizeyimana's presence.

42. The record reflects that Ngoma Camp soldiers participated in the abduction of Tutsi children from the Benebikira Convent and their subsequent killing. However, only one witness testified that ESO soldiers participated in this attack. The Chamber has some concerns about the credibility of this aspect of his testimony. Likewise his evidence implicating Nizeyimana is weak. The Chamber further views this witness's evidence with caution given his status as an alleged accomplice. It cannot support findings beyond reasonable doubt.

(xvi) Verdict

43. On the basis of the proven criminal conduct, and as set forth in detail in the Legal Findings (III), the Chamber has found Nizeyimana guilty of genocide, extermination and murder as crimes against humanity as well as murder as a war crime. The Chamber has entered convictions pursuant to Article 6 (1) of the Statute. In some instances, the Chamber has concluded that Nizeyimana could also bear criminal responsibility pursuant to Article 6 (3) of the Statute for the same conduct. However, it would be impermissible to enter convictions under both articles. Consequently, the Chamber has only considered Nizeyimana's superior responsibility in light of sentencing.

(xvii) Sentence

44. Having considered the gravity of the crimes for which Nizeyimana has been convicted, as well as all the aggravating and mitigating circumstances, the Chamber has the discretion to impose a single sentence and chooses to do so. Considering the relevant circumstances, the Chamber sentences Ildéphonse Nizeyimana to life imprisonment. He shall remain in the custody of the Tribunal pending transfer to the state where he will serve his sentence.

2. ALLEGATIONS OF BIAS

45. On 8 November 2011, the Defence filed its Closing Brief.[2] Contained therein, under the Chapter "Legal Issues", is a section related to the appearance of bias. Specifically, the Defence raised the issue of appearance of bias with respect to Presiding Judge Muthoga, and, by implication, the entire Bench.[3]

46. On 15 March 2012, the Chamber issued a *proprio motu* decision dismissing the Defence arguments set forth in its Closing Brief.[4] The Chamber noted that the Defence had not requested the disqualification of the Presiding Judge or Bench.[5] Accordingly, the Chamber found that the general Defence submissions and observations regarding bias did not amount to an application for disqualification as envisaged by Rule 15(B). Furthermore, the Chamber held that case-law prevented the Presiding Judge or the Bench from ruling on allegations of bias against it.[6]

47. In its decision, the Chamber observed that an application for disqualification should have instead been made to the Presiding Judge of the Chamber seised of the proceedings, which in this case is Judge Vagn Joensen, the Presiding Judge of Trial Chamber III.[7] The Defence has not filed any further application with respect to this allegation.

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[2] Nizeyimana Defence Closing Brief ("Closing Brief"), 8 November 2011.
[3] Defence Closing Brief, para. 610. Specifically, the Defence's basis for concern is (1) the excessive quantity of questions put to the Defence witnesses by the Presiding Judge, (2) the nature of a number of questions posed by the Presiding Judge to the Defence witnesses, and (3) the timing of the questions, which often occurred prior to the commencement of the Prosecution cross-examination. Defence Closing Brief, para. 613. In support of its "concern", the Defence attached as Annex 2 to its Closing Brief a "provisional" list of questions put to the first 20 Prosecution and Defence witnesses. The Defence further provided two examples of questions where the Presiding Judge is alleged to have assumed a series of facts not in evidence and misrepresented evidence. Defence Closing Brief, paras. 614-617.
[4] *Proprio Motu* Decision on Defence Submissions of Bias (TC), 15 March 2012.
[5] *Proprio Motu* Decision on Defence Submissions of Bias (TC), 15 March 2012, para. 7. The Defence did not clarify the nature of its bias arguments, and, in particular, did not identify the relief sought, during its Closing Arguments, nearly a month after it filed its Closing Brief.
[6] *Proprio Motu* Decision on Defence Submissions of Bias (TC), 15 March 2012, paras. 7-8.
[7] *Proprio Motu* Decision on Defence Submissions of Bias (TC), 15 March 2012, paras. 8-9; Corrigendum to *Proprio Motu* Decision on Defence Submissions of Bias (TC), 30 March 2012.

CHAPTER II: FACTUAL FINDINGS

1. RAPES OF WITNESS BUQ AND OTHERS, 6-9 APRIL 1994

Introduction

48. The Indictment alleges that between 6 April and 9 April 1994, FAR soldiers, under the operational region, command, and influence of Nizeyimana, raped Witness BUQ and her housemates daily at a residence near the ESO. Furthermore, on 9 April, one soldier removed Witness BUQ to a nearby house, where he raped her repeatedly for approximately two weeks. The Prosecution relies on the evidence of Witness BUQ.[8]

49. The Defence argues that Witness BUQ fabricated her evidence to implicate Nizeyimana, pointing to her membership in ABASA and her failure to affirm details of her evidence in the *Hategekima* case, where she testified on the same matter.[9] It also questions the plausibility of her testimony with regard to the alleged sequence of events.[10]

Evidence

Prosecution Witness BUQ

50. Witness BUQ, a Tutsi, lived in Butare town in 1994 with two other young women, Albertine and Cécile, not far from Nizeyimana's home.[11] Between about 8.00 and 8.30 p.m. on 6 April, following the news of President Habyarimina's death, the witness, Albertine, a Hutu, and Cécile, a Tutsi, were left alone in their residence.[12] Later that night, five soldiers forcibly entered the premises, stating that the plane of their "father" – Habyarimana – had crashed and they blamed Tutsis for having killed him.[13] The soldiers were all heavily armed, carrying grenades and rifles and wearing camouflage fatigues, as well as berets.[14] One of the attackers – dressed in an ESO uniform that the witness described as camouflage "combat uniform" and a black beret – referred to himself as "Rubaga" or "pitiless ... butcher", but she did not know his real name.[15] She was later told by a soldier called Ndererimana that Rubaga was a driver at the ESO.[16]

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[8] Indictment, para. 32(i)-(iii); Prosecution Closing Brief paras. 207-210. The Chamber observes that the Prosecution did not lead any evidence supporting Indictment paragraph 32(iv) as it relates to a soldier called Ndererimana raping her for two weeks. *See* Witness BUQ, T. 17 February 2011, pp. 59-61 (testified that Ndererimana asked the witness if she was willing to be his wife; however, she only testified about this soldier checking in on her and bringing her food, without any mention of sexual violence occurring). Notably, the Prosecution makes no reference to this particular allegation in its Closing Brief. It is dismissed.

[9] Defence Closing Brief paras. 459-462.

[10] Defence Closing Brief paras. 456-457.

[11] Witness BUQ, T. 17 February 2011, pp. 56, 70-71; Exhibit P30 (Witness BUQ's Personal Information Sheet).

[12] Witness BUQ, T. 17 February 2011, pp. 56-57, 62.

[13] Witness BUQ, T. 17 February 2011, pp. 57-58, 71-72. Witness BUQ testified that the name "Rubaga" was fitting for the soldier in light of what he was doing because "he was a butcher" (T. 17 February 2011, p. 57) and that the word in Kinyarwanda meant "pitiless, a butcher, who fears nothing" (T. 17 February 2011, p. 72). The Chamber observes that the word *kubaga* in Kinyarwanda is the verb to slaughter.

[14] Witness BUQ, T. 17 February 2011, p. 58.

[15] Witness BUQ, T. 17 February 2011, pp. 57, 72-73.

[16] Witness BUQ, T. 17 February 2011, pp. 61, 72-73. Ndererimana was able to identify Rubaga as they were involved in the same operation. T. 17 February 2011, pp. 61, 72-73.

51. The soldiers told the young women that "Tutsis and been handed over" and "that their superiors had authorised them to rape as they wished".[17] Warning the women that there was nothing they could do, the soldiers undressed them and forced them into a room.[18] Each of the five soldiers took turns raping the women for approximately 15 minutes.[19]

52. In light of the soldiers' prior comments that "Tutsis had been handed over" and fearing that soldiers, who were from the area, would be blocking the roads, the witness and the other two women remained in their home.[20] On 7 April 1994, at an unspecified time, four different "soldiers" entered the premises and each took turns raping the young women.[21] Like the soldiers before, they claimed that the women had no rights.[22] During the attack Albertine disappeared and the witness does not know what happened to her.[23]

53. Around 9 April 1994, in the mid afternoon, three different soldiers entered the residence, repeating the comments made on the previous two occasions that "Tutsis had killed their father" and that these women had been handed over.[24] After raping the witness, a soldier called Ndererimana, a Gisenyi native from the Ngoma Camp, told her that she was unlikely to survive and asked her to be his wife.[25] The witness accepted his proposal and they left while the other two soldiers were raping Cécile.[26] Ndererimana left the witness alone in a nearby house occasionally checking in on her and bringing her food.[27] Two weeks after her arrival, a soldier advised her to flee because the *Inkotanyi* were approaching and her life was at risk.[28] That night she left the house.[29] The witness suffered health problems requiring surgery as a result of the rapes.[30] She does not know what happened to Cécile since the last time she saw her in 1994.[31]

Deliberations

54. Through Witness BUQ, the Prosecution presented evidence that, on 6 April 1994, five soldiers forcibly entered the witness's home to rape her and two other young women.[32] Witness BUQ identified a "Rubaga" as coming from the ESO, primarily relying on his

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[17] Witness BUQ, T. 17 February 2011, p. 57. Witness BUQ believed that the superiors to these soldiers were Hategekimana from Ngoma Camp and Nizeyimana from the ESO. T. 17 February 2011, p. 57.
[18] Witness BUQ, T. 17 February 2011, p. 57.
[19] Witness BUQ, T. 17 February 2011, pp. 56-58, 73.
[20] Witness BUQ, T. 17 February 2011, p. 58 ("And since we lived in a neighbourhood where soldiers lived, we thought that there were soldiers in the streets and roads and therefore it was impossible for us to move about or to leave the house.").
[21] Witness BUQ, T. 17 February 2011, pp. 58, 73.
[22] Witness BUQ, T. 17 February 2011, p. 58.
[23] Witness BUQ, T. 17 February 2011, p. 58.
[24] Witness BUQ, T. 17 February 2011, pp. 59-60, 73. Witness BUQ described the soldiers as "adults", explaining that the army did not conscript minors. T. 17 February 2011, p. 59.
[25] Witness BUQ, T. 17 February 2011, pp. 59-60, 73.
[26] Witness BUQ, T. 17 February 2011, pp. 59-60, 73-74. Witness BUQ explained that it was almost dark out when they left. T. 17 February 2011, p. 59.
[27] Witness BUQ, T. 17 February 2011, pp. 60-61, 73.
[28] Witness BUQ, T. 17 February 2011, pp. 62, 74.
[29] Witness BUQ, T. 17 February 2011, p. 62.
[30] Witness BUQ, T. 17 February 2011, p. 61.
[31] Witness BUQ, T. 17 February 2011, p. 62.
[32] Witness BUQ, T. 17 February 2011, pp. 56-58.

camouflage uniform and black beret.[33] Additionally, the Prosecution presented evidence of similar attacks by largely unidentified soldiers on 7 and 9 April.[34]

55. The Defence challenges Witness BUQ's credibility based on her association with ABASA, a support group for surviving rape victims. It notes that other Prosecution witnesses belong to this organisation, raising concerns about evidence fabrication.[35] Evidence before the Chamber reflects that ABASA members share their experiences with each other and counselling experts.[36] Moreover, Prosecution Witness FAX was a member of ABASA and she and Witness BUQ knew each other.[37] Likewise, Prosecution Witness DCO also belonged to the group and identified Witnesses BUQ and FAX as members.[38]

56. Notwithstanding, the record does not raise reasonable concerns that Witness BUQ's evidence is fabricated or that she received any coaching in order for her testimony to implicate Nizeyimana. Indeed, Witness BUQ is the sole witness testifying in support of these allegations. Her ABASA membership and related associations do not render her testimony unreliable or partial against the Accused. Furthermore, the mere fact that she testified to her belief that Nizeyimana was a superior within the ESO command structure is largely uncontested by Defence evidence. This too does not create reasonable concerns of bias on her part.

57. The Defence further asserts that Witness BUQ tailored her evidence to implicate Nizeyimana.[39] In particular, it notes that in the *Hategekimana* trial she testified about being raped by a Ngoma Camp soldier called Ndererimana when she was ultimately removed to a separate house around 9 April 1994. However, in this trial, she made no mention of being raped once removed to that location.

58. Like her testimony in *Hategekimana*, Witness BUQ confirmed that Ndererimana, a Ngoma Camp soldier, had removed her from her house around 9 April 1994. Notwithstanding, a summary of her evidence provided for by the Trial Chamber in *Hategekimana* indicates that she expressly testified that she was raped by Ndererimana during this period.[40] She did not testify to this effect in this proceeding, although, notably she was not expressly questioned by either party as to whether she was raped during this period.[41]

59. While the Chamber considers the variance between her testimony in *Hategekimana* and this proceeding material as it pertains to criminal conduct of Butare soldiers generally, it questions to what extent it raises concerns about her evidence implicating Nizeyimana through the actions of an ESO soldier called "Rubaga".[42] There is a distinct possibility that

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[33] Witness BUQ, T. 17 February 2011, pp. 57-58; *see also* Prosecution Closing Brief para. 207.
[34] Witness BUQ T. 17 February 2011, pp. 58-60.
[35] Defence Closing Brief para. 461.
[36] Witness BUQ, T. 17 February 2011, pp. 67-68; Witness FAX, T. 17 February 2011, p. 32; Witness DCO, T. 10 February 2011, pp. 69-70; Witness ZBL, T. 10 February 2011, p. 49.
[37] Witness BUQ, T. 17 February 2011, p. 68; Witness FAX, T. 17 February 2011, p. 30.
[38] Witness DCO, T. 10 February 2011, p. 69.
[39] Defence Closing Brief para. 460. The Defence also questions the witness's ability to identify Nizeyimana as a superior at the ESO. Defence Closing Brief, para. 458. The Chamber rejects this as evidence of fabrication, finding that her proximity to the Accused and his status as a well-known soldier are sufficient explanations for her testimony. Witness BUQ, T. 17 February 2011, p. 57.
[40] *See Hategekimana* Trial Judgement, paras. 153-154.
[41] *See* Witness BUQ, T. 17 February 2011, pp. 59-62, 73-74.
[42] Indeed, the Defence has made no submissions suggesting that her testimony on the date of the early rapes in the *Hategekimana* proceeding is inconsistent with her testimony in this case. Notably, the *Hategekimana* trial

she did not provide evidence about being raped by Ndererimana after being removed in the *Nizeyimana* trial precisely because she was not expressly questioned and because the assailant was a Ngoma Camp soldier (rather than an ESO soldier). Indeed, the Chamber observes that her evidence as summarised by the *Hategekimana* Trial Chamber relating to the 6 April 1994 attack is materially consistent with her testimony in this proceeding in that it implicates an ESO soldier called "Rubaga".[43]

60. The Defence has also challenged Witness BUQ's evidence as it relates to timing. It argues that while she provided a time-frame for the first attack in her testimony in the *Hategekimana* case, she refused to do so in this one. Notably, the Defence suggests that her evidence was not accepted by the *Hategekimana* trial, because the Chamber considered her testimony about the timing of the event unlikely.[44]

61. The Chamber observes that Witness BUQ's evidence reflects that she frequently had difficulty recalling the time or day of particular events.[45] Her inability to recall these details is reasonable given the traumatic nature of the events as well as the fact that she remained exclusively inside their home once the attacks started.[46] Nearly two years have elapsed since she testified in the *Hategekimana* trial. The Chamber is not convinced that her inability to provide an approximate time of day the first attack in this proceeding raises the reasonable possibility that her evidence is somehow fabricated to now implicate Nizeyimana.

62. Turning to Witness BUQ's ability to identify the perpetrators, the Chamber observes that, during the 6 April 1994 attack, she singled out one of the assailants as an ESO soldier called "Rubaga".[47] She explained that her identification was based on his camouflage

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judgement reveals that witness has consistently implicated ESO soldier "Rubaga" as participating in rapes in which she was a victim. *See Hategekimana* Trial Judgement, para. 174. As noted elsewhere, the Chamber does not consider that prior consistent statements bolster a witness's credibility but may reflect that certain discrepancies are immaterial in nature.

[43] *See Hategekimana* Trial Judgement, paras. 149, 174. As noted elsewhere, the Chamber does not consider that prior consistent statements bolster a witness's credibility but may reflect that certain discrepancies are immaterial in nature.

[44] *See* Defence Closing Brief, paras. 460, 462.

[45] Regarding the first attack: Witness BUQ, T. 17 February 2011, pp. 57 ("Q. Approximately what time were you attacked by soldiers? A. During the night. I can't tell you the precise time."), 71 ("Q. Now, that was around 10 p.m., according to your previous testimony. Can you also confirm that? A. If you read my testimony – my statement – well, that is maybe the time I gave, but I have to state today that I do not recall the precise time. ... Q. Madam Witness, didn't you testify before in the Hategekimana case that the neighbourhood was surrounded around 10 p.m. at night? A. I already stated that after my employers left, the soldiers arrived, but I didn't specify when the soldiers entered the house."). Regarding the second attack: T. 17 February 2011, p. 58 ("Q. What part of the day did the four soldiers arrive? A. For me the day was long. It was almost impossible for me to distinguish night from day and day from night. Therefore, I cannot tell you what time of the day or night it was."). Regarding the third attack: T. 17 February 2011, p. 60 ("JUDGE PARK: Madam Witness, do you remember the approximate date of the third attack? THE WITNESS: I think that it was on the 9th, although it was difficult to tell the days. But I think it might have been on the 9th.").

[46] Indeed, Witness BUQ's ability to describe at what time of day third attack happened appears to be based on the fact that she left the house immediately after it, when it was "almost dark". Witness BUQ, T. 17 February 2011, pp. 59 ("Q. When was this third attack by the soldiers? A. I think that it was in the middle of the afternoon when I went out with that soldier. It was almost dark. He said that if it had been in broad daylight, in the middle of the day, he could not have taken me out because it would be – it would have been impossible to make our way forward."), 73 ("A. It was evening and it was almost dark. And when he arrived, rather, he came and he did the same thing as the other soldiers.").

[47] Witness BUQ testified that the name "Rubaga" was fitting for the soldier in light of what he was doing because "he was a butcher" (T. 17 February 2011, p. 57) and that the word in Kinyarwanda meant "pitiless, a

uniform and black beret, that during the attack he referred to himself by this name and that an Ngoma Camp soldier, Ndererimana, later confirmed that Rubaga was a driver at the ESO.[48]

63. Although her description of Rubaga's uniform is consistent with other evidence about what soldiers in Butare – as opposed to gendarmes – were wearing in 1994, it fails to provide any characteristics that necessarily signal its distinctiveness as an ESO uniform.[49] Nevertheless, other evidence in the record suggests that a soldier referred to as "Rubaga" worked at the ESO.[50]

64. Turning to the hearsay identification of Rubaga as an ESO soldier by Ndererimana, the Chamber observes that Witness BUQ specified that Rubaga and Ndererimana participated

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butcher, who fears nothing" (T. 17 February 2011, p. 72). The Chamber observes that the word *kubaga* in Kinyarwanda is the verb to slaughter.

[48] Witness BUQ, T. 17 February 2011, pp. 57, 61, 72.

[49] Prosecution Witness ZCB, T. 17 January 2011, pp. 38-39, 53 (suggested that you could distinguish ESO soldiers as they were younger and their uniform was a light colour that was "somewhat worn out"); Prosecution Witness ZCC, T. 18 January 2011, p. 54 (stated that generally all soldiers wore black berets, while gendarmes wore red berets); Prosecution Witness Dufitumukiza, T. 19 January 2011, pp. 73-74, 76 (a gendarme in Butare, testified that gendarmes wore red berets with the insignia of a bird, red stripes and ceremonially wore red epaulettes; all soldiers wore black berets with the words "national army" although commando units could at times wear camouflage berets; stripes and ceremonial epaulettes for soldiers were blue and ranks were in white); Prosecution Witness ZAK, T. 24 January 2011, pp. 61-62 (ESO soldiers manning a roadblock wore camouflage uniforms and black berets); Prosecution Witness Spielmann, T. 31 January 2011, p. 8 (asserted that the Presidential Guard had a "very distinctive uniform" when compared with soldiers from the ESO; she was not questioned as to the difference); Prosecution Witness AZD, T. 31 January 2011, pp. 76-77 (testified that ESO soldiers had distinctive insignia on their uniforms separate to the rank displayed on a standard military uniform), T. 1 February 2011, p. 4 (compared a dark camouflage vehicle to the military uniforms); Prosecution Witness YAA, T. 1 February 2011, p. 65 (ESO cadets wore military fatigues); Prosecution Witness ZW, T. 9 February 2011, p. 68 (ESO soldiers at the hospital wore military uniforms and black berets); Prosecution Witness Ntezimana, T. 14 February 2011, p. 75 (identified that several corps wore the same uniform); Prosecution Witness AJP, T. 15 February 2011, p. 20 (stated that it was easy to distinguish ESO soldiers as they were younger and their uniforms were different, although neither the Prosecution nor Defence inquired as to the distinction); Prosecution Witness MKA, T. 21 February 2011, p. 7 (believed all soldiers wore the same uniform and was unable to distinguish soldiers' provenances based on such); Prosecution Witness YAP, T. 21 February 2011, p. 39 (ESO soldiers usually wore black berets); Defence Witness Mushi, T. 11 May 2011, p. 45 (gendarmes wore red berets while soldiers wore black berets); Defence Witness MAL06, T. 16 May 2011, pp. 40-41 (stated that ESO soldiers had a "normal military uniform" of camouflage and black berets); Defence Witness ZML02, T. 17 May 2011, p. 12 (recalled the Presidential Guard wearing camouflage berets); Defence Witness Mutarutinya, T. 23 May 2011, p. 8 (described two soldiers wearing black berets whom he later discovered to have been Presidential Guard); Defence Witness Ufitimana, T. 26 May 2011, pp. 30-31 (described ESO soldiers as wearing blue camouflage); Witness MAL01, T. 16 May 2011, pp. 61, 75-76 (a nurse in Butare, could distinguish gendarmes, who wore red berets, from soldiers; could not distinguish among the various soldiers in Butare town, including ESO and Presidential Guards, who wore black berets); Defence Witness CKN10, T. 26 May 2011, p. 57 (testified that the Presidential Guard wore camouflage uniforms while the ESO soldiers did not, but wore dark coloured uniforms instead); Defence Witness Nsabimana, T. 19 May 2011, p. 8 (ESO soldiers were generally younger and their uniforms had an unidentified insignia that distinguished them from other soldiers).

[50] Prosecution Witness BDE, T. 28 January 2011, pp. 28-29 (recalled a sergeant *nouvelle formule* from the ESO whose nickname was Rubaga); Prosecution Witness ZBH, T. 8 February 2011, pp. 47-48 (referred to an ESO soldier, Corporal Rutayisire, whose alias was Rubaga). *But see* Defence Witness CKN10, T. 26 May 2011, p. 44 (recalled a soldier named Corporal Rubaga who was positioned at Akanyaru but did not expressly state that he was an ESO soldier). The Chamber notes that a driver at the ESO could be the rank of Corporal. *See* Witness CKN10, T. 30 May 2011, pp. 41-42 (mentioning that a corporal was the driver of Nizeyimana's UNAMIR vehicle).

in separate attacks.[51] She explained that Ndererimana would still have been able to identify Rubaga not because she ever saw them together, but based on her belief that "they were all involved in the same operation", they were acting with the approval of "the authorities", and "they were all informed of what ... other soldiers were doing".[52]

65. The Chamber considers that the totality of this evidence provides considerable circumstantial features, which lead to only one reasonable conclusion that, on the evening of 6 to 7 April 1994, an ESO soldier referred to as "Rubaga" was among others who participated in an attack that involved the raping of Witness BUQ, another Tutsi female and a Hutu female. The statements by the assailants firmly establish that the point of the attack was motivated by the victims' actual (and in one case perceived) Tutsi ethnicity.[53] The Chamber has no doubt that the acts constituted sexual violence, and based on Witness BUQ's evidence the she was a virgin prior to the rapes who subsequently required surgery as a result of them, that these acts resulted in severe mental and bodily harm.

66. Having considered and determined the above, the Chamber recalls that there is no direct evidence of Nizeyimana's involvement in any of the attacks alleged by Witness BUQ. While she described the initial assailants as stating that they were following orders of their superiors, such evidence is hearsay, would be self-serving for the attackers at the time, and is of limited probative value. Furthermore, Nizeyimana was not expressly named as the superior who issued such instructions. Moreover, the Chamber has elsewhere found that evidence of Nizeyimana ordering ESO soldiers to rape and kill Tutsis on 7 April 1994 was unreliable.[54]

67. Finally, Witness BUQ's evidence raises the very reasonable possibility that only one of the assailants – "Rubaga" – was a soldier from the ESO camp. The relative privacy of the attacks creates questions as to whether Nizeyimana ordered, knew or would have known that an ESO soldier referred to as "Rubaga" raped Witness BUQ and two other women in a private residence on the evening of 6 to 7 April 1994. In so finding, the Chamber is mindful of the proximity of these attacks to the ESO camp and Nizeyimana's home. However, such circumstances cannot lead to only one reasonable conclusion that Nizeyimana was involved in, aware of, or should have been aware of, this conduct, particularly in light of the relative privacy of the attack and its timing immediately after the President's death.

68. Finally, the lack of any direct evidence implicating Nizeyimana in the subsequent attacks described by Witness BUQ, as well as ambiguities as to who the soldiers were, cannot support criminal liability against the Accused. While the Indictment seeks to establish Nizeyimana's criminal liability for the conduct of soldiers other than those assigned to the ESO, the record as it relates to these crimes fails to create any reliable nexus to demonstrate criminal culpability. These allegations are dismissed.

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[51] *See, e.g.*, Witness BUQ, T. 17 February 2011, p. 73 ("Q. ... Now, the soldiers who came the second time and the third time, they were different. If I understood correctly your evidence in chief, they were different people from the ones who came the first night. That is correct as well? A. Yes, they were different.").

[52] Witness BUQ, T. 17 February 2011, p. 73.

[53] Again, the statements Witness BUQ recalled hearing were very similar to women who were raped by soldiers elsewhere in Butare town. *See* Witness MKA, T. 21 February 2011, pp. 11-12 ("JUDGE FREMR: ... Had the soldiers before the rape and during the rape made any comments or had they provided you with an explanation of their behaviour? THE WITNESS: It was said that the soldiers had been – or, rather, that the Tutsis had been handed over and that they were supposed to die.").

[54] The Chamber further notes that the evidence of Prosecution Witnesses BUR and YAA and about orders issued on the evening of 6 April 1994 also fail to reflect that Nizeyimana ordered soldiers to rape Tutsis. *See* Witness BUR, T. 2 February 2011, pp. 74-76; Witness YAA, T. 1 February 2011, pp. 60-61.

2. ORDER TO RAPE AND KILL TUTSIS, 7 APRIL 1994

Introduction

69. The Indictment alleges that, around 7 April 1994, Nizeyimana convened FAR officers and soldiers at the ESO and ordered them to kill Tutsi civilians and rape Tutsi women. The Prosecution makes no express reference to the relevant Indictment paragraph but appears to rely on the testimony of Witness BUR in support of it.[55] The Defence argues that Witness BUR's testimony is uncorroborated and that he is not credible. Defence Witnesses RWV11 and Thomas Ruzindana provided relevant evidence.[56]

Evidence

Prosecution Witness BUR

70. In April 1994, Witness BUR, a Hutu, was a sergeant at the ESO in Butare.[57] The day following the death of the President, around 12.00 p.m., he observed a meeting in Muvunyi's office attended by Nizeyimana, Lieutenant Colonel Tharcisse Muvunyi, Ngoma Camp Commander Ildéphonse Hategekimana, Tumba Gendarmerie Camp Commander Cyriaque Habyarabatuma, the Gikongoro gendarmerie squad commander and the Nyanza gendarmerie squad commander.[58] The meeting lasted approximately 30 minutes and Nizeyimana subsequently convened a select group of between 100 to 200 soldiers on the camp's tarmac area.[59] Nizeyimana informed the soldiers that "they" had decided to kill Tutsis and take their property.[60] He also instructed them to kill Tutsis with bayonets in order to save bullets.[61] Nizeyimana also "asked" the soldiers to rape Tutsi women and then kill them.[62]

71. Following this, Nizeyimana ordered Witness BUR's section of 12 soldiers to patrol areas of Butare town inhabited by persons on a list, which the witness never saw, of important Tutsis to be killed.[63] He carried out patrols on foot around Butare town and went to Prefect Juvénal Habyarimana's home to ensure that he did not flee.[64] The witness was also

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[55] Indictment, paras. 8, 30; Prosecution Closing Brief, paras. 200-225; T. 7 December 2011, p. 34 (Prosecution Closing Arguments). The Prosecution also references Witness BUR's testimony about this 7 April 1994 gathering as supporting Indictment paragraph 10(i). In that section of its Closing Brief, the Prosecution also points to the summaries of Witnesses AZD, BDE, ZAW, YAA and ZT, who also testified about a meeting at the ESO around 7 April 1994. *See* Prosecution Closing Brief, paras. 43-62. The Chamber has summarised the testimony elsewhere (*see* II.3.1) but considers it here.

[56] Defence Closing, Brief, paras. 153-158, 160-162, 441-443; T. 7 December 2011, pp. 38, 41, 50 (Defence Closing Arguments). The Chamber has elsewhere summarised Defence evidence disputing that an assembly led by Nizeyimana occurred on 7 April 1994 (*see* II.3.1) but considers it here.

[57] Witness BUR, T. 2 February 2011, p. 74; Exhibit P18 (Witness BUR's Personal Information Sheet).

[58] Witness BUR, T. 2 February 2011, p. 77.

[59] Witness BUR, T. 2 February 2011, pp. 77-79; T. 3 February 2011, p. 54.

[60] Witness BUR, T. 2 February 2011, p. 78.

[61] Witness BUR, T. 2 February 2011, p. 78; T. 3 February 2011, p. 54.

[62] Witness BUR, T. 2 February 2011, p. 78; T. 3 February 2011, p. 54.

[63] Witness BUR, T. 3 February 2011, pp. 54-55. Witness BUR testified that he learned about the list from Nizeyimana's escort Léonidas Busharire and that individuals on that list included the Deputy Prosecutor in Butare, an entrepreneur named Sonera, Bicakumuyange, Gatorano and Ndakaza. T. 3 February 2011, pp. 54-55, 60.

[64] Witness BUR, T. 3 February 2011, pp. 54, 56, 60.

later instructed to go to Queen Gicanda's house and to supervise the situation at roadblocks, receiving these instructions in person and over the telecommunications radio directly from Nizeyimana.[65]

Defence Witnesses RWV11 and Thomas Ruzindana

72. Witness RWV11, a Hutu, was an instructor at the ESO in April 1994.[66] Witness Ruzindana, an ESO cadet, was present at the ESO on 7 April.[67] They were unaware of any assembly on the ESO's tarmac on the morning of 7 April and both denied ever hearing Nizeyimana call on soldiers to rape Tutsis.[68]

Deliberations

73. The Prosecution appears to rely solely on Witness BUR in support of the allegation that, during a 7 April 1994 assembly of soldiers at ESO, Nizeyimana ordered them to rape and kill Tutsis. Notably, several other Prosecution witnesses testified that Nizeyimana was either present at or spoke during an assembly of ESO soldiers on 7 April. Among other differences, none of these Prosecution witnesses testified that Nizeyimana expressly ordered the raping and killing of Tutsis and the looting of their properties.[69] The absence of any Prosecution evidence corroborating Witness BUR's account is surprising in light of the numerous Prosecution witnesses who testified that they were at the ESO on 7 April and led evidence of Nizeyimana's role at the assemblies that day.

74. Of greater significance, the Defence challenged that Witness BUR was assigned to the ESO in April 1994 or was even in Butare that month based on Rwandan Gacaca court records from February 2010. The relevant excerpt reflects that Witness BUR testified in a Gacaca proceeding and was asked if he was in Butare during the genocide. His recorded response was that he was a member of the Para Commando Battalion living in Kigali, that he went to Gitarama, left Gitarama for Gikongoro on 25 April, and left Gikongoro for Butare around 4 May. He went back to Gikongoro on 7 May.[70] Witness BUR was later asked how he could provide relevant evidence if he had only been in Butare for "two days".[71] The record reflects him responding that he had asked fellow soldiers about the conduct of the accused in that proceeding.[72]

75. The witness rejected the content of the Rwandan Gacaca court document, suggesting that the name to which such statements were attributed was different than his and that the document failed to demonstrate that it was the record from a Gacaca court.[73] Notably, he

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[65] Witness BUR, T. 3 February 2011, pp. 54-60.
[66] Witness RWV11, T. 2 June 2011, p. 8; Exhibit D53 (Witness RWV11's Personal Information Sheet).
[67] Witness Ruzindana, T. 1 June 2011, pp. 24-25.
[68] Witness RWV11, T. 2 June 2011, p. 14; Witness Ruzindana, T. 1 June 2011, pp. 25, 28.
[69] *See* II.3.1.
[70] Exhibit D14 (Gacaca Record), p. 51. The relevant excerpt was translated at T. 3 February 2011, pp. 77-79. The Chamber observes that the Exhibit reflects that early in the witness's answer he responded that he went to "Butare" and the hand-written record indicates a number – either 4 or 5 – before a "/1994". Read in the context of the remainder of the witness's response, it is clear the number is a "5" and, consequently, a reference to "May 1994".
[71] Exhibit D14 (Gacaca Record), p. 52. The relevant excerpt was translated at T. 3 February 2011, p. 79.
[72] Exhibit D14 (Gacaca Record), p. 52. The relevant excerpt was translated at T. 3 February 2011, p. 79.
[73] Witness BUR, T. 3 February 2011, pp. 82-84.

confirmed that the signature under the relevant text resembled his own.[74] Furthermore, the spelling of the name is consistent with the witness's.[75] Finally, the Chamber has no doubt about the authenticity of the document. The Defence cross-examined the witness with records provided by the Prosecution. The ultimate exhibit is a certified copy of Rwandan Gacaca court records.[76]

76. The witness's account in Rwandan Gacaca court proceedings in February 2010, which was also given under oath, is materially inconsistent with his testimony before this Chamber as it relates to the alleged 7 April 1994 meeting.[77] It raises questions about his physical presence in Butare on that day (or at any time in April). It creates doubts about whether he was assigned to the ESO (and if he *would have been* present at an assembly of its soldiers), and about whether he could identify Nizeyimana generally. Indeed, no other Prosecution or Defence witness confirmed that Witness BUR was an ESO soldier or present at the camp in April.[78]

77. Under the circumstances, the Chamber is of the view that his evidence lacks basic credibility. The possibility that ESO soldiers might have later raped and killed Tutsis in no way reconciles the Chamber's fundamental concerns about whether Witness BUR was even in Butare on 7 April 1994 to purportedly hear Nizeyimana issue orders to do so. This allegation is dismissed. In light of the above, the Chamber considers it unnecessary to evaluate the testimonies of Defence Witnesses RWV11 and Ruzindana here.[79]

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[74] Witness BUR, T. 3 February 2011, p. 82. Witness BUR's signature in this proceeding is strikingly similar to that contained on the Gacaca record. *Compare* Exhibit P18 (Witness BUR's Personal Information Sheet) (signature), *with* Exhibit D14 (Gacaca Record), p. 55 (signature).

[75] *Compare* Exhibit P18 (Witness BUR's Personal Information Sheet), *with* Exhibit D14 (Gacaca Record), pp. 51, 55. In his testimony, the witness indicates that his name uses an "l" in place of an "r". The Chamber observes that throughout this proceeding these letters have been used interchangeably. Despite his suggestion that there is an "i" where a "u" should be, the witness's observation is incorrect as the Gacaca record uses a "u". Witness BUR, T. 3 February 2011, p. 82.

[76] *See* Exhibit D14 (Gacaca Record). *See also* Inter-Office Memorandum from Roland Amoussouga to Nouhou Diallo attaching Exhibit D14, dated 29 August 2011 and filed 2 September 2011; T. 7 September 2011, pp. 2-3 (ordering the certified copy of Exhibit D14 replace original exhibit).

[77] Exhibit D14 (Gacaca Record), p. 51 (oath). Witness BUR testified under oath throughout his appearances. *See* Witness BUR, T. 2 February 2011, p. 73; T. 3 February 2011, p. 53; T. 4 February 2011, p. 1.

[78] Only three other witnesses were questioned or testified about Witness BUR and none identified him as an ESO soldiers. *See* Witness BUQ, T. 17 February 2011, p. 69 (knew Witness BUR); Witness FAX, T. 17 February 2011, p. 31 (did not think she knew Witness BUR). For witness protection purposes, the Chamber does not refer to the testimony of a third witness.

[79] The Chamber discusses the general merits of their testimonies concerning meetings on 7 April 1994 at the ESO elsewhere. *See* II.3.1.

3. MEETINGS, 7-22 APRIL 1994

3.1 Meeting of 7 April 1994

Introduction

78. The Indictment alleges that Nizeyimana met with FAR officers and ESO soldiers, including Second Lieutenants Bizimana, Gakwerere, Ndayambaje, Gatsinzi and Chief Warrant Officer Ntibiramira at the ESO on 7 April 1994. These were some of many gatherings that occurred between 7 April and July where Tutsis were identified and listed to be killed. The Prosecution refers to Witnesses AZD, BDE, YAA, ZT, ZAW, ZY and BUR.[80]

79. The Defence does not expressly deny that meetings took place on 7 April 1994, but submits that if any gathering occurred, it was an administrative, informative meeting devoid of any criminal conduct. Furthermore, Nizeyimana did not issue any criminal orders and the Prosecution evidence on this point is unreliable. Defence Witnesses CKN10, OUV03, CKN10, RWV11, Jean Népomuscène Bunani, ZML07, Thomas Ruzindana and ZML13 provided relevant evidence.[81]

Evidence

Prosecution Witnesses AZD, BDE, YAA, ZT, ZAW and ZY

80. Witnesses AZD, BDE, YAA, ZT, ZAW and ZY were assigned to the ESO in April 1994.[82] Witnesses AZD, YAA, ZAW, ZT and BDE all attended a general assembly of soldiers on the tarmac of the ESO on 7 April.[83] The assembly commenced between 7.00 or

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[80] Indictment, paras. 9-10(i); Prosecution Closing Brief, paras. 43-62; T. 7 December 2011, pp. 7, 18 (Prosecution Closing Arguments). The Chamber recalls its finding that paragraph 9 is "relatively vague", but that when read in conjuction with paragraph 10, "paragraph 9 is clearly intended to be an introduction" and cautions the Prosecution that an accused can only be convicted of crimes that are charged in the indictment. *See* Decision on Defence Preliminary Motion on Defects in the Indictment (TC), 15 December 2010, para. 39.

[81] Defence Closing Brief, paras. 82-84, 92-117, 443, 499, 504-509; T. 7 December 2011, pp. 38, 41-44 (Defence Closing Arguments).

[82] Witness AZD was a non-commissioned officer working in the camp. Witness AZD, T. 31 January 2011, pp. 64, 66; Exhibit P15 (Witness AZD's Personal Information Sheet). Witness BDE was a cadet at the ESO in April 1994. Witness BDE, T. 28 January 2011, pp. 8-9; Exhibit P13 (Witness BDE's Personal Information Sheet). Witness YAA was an instructor and warrant officer at the ESO in April 1994. Witness YAA, T. 1 February 2011, p. 60; Exhibit P16 (Witness YAA's Personal Information Sheet). Witness ZT was a cadet at the ESO in April 1994. Witness ZT, T. 7 February 2011, p. 7; Exhibit P19 (Witness ZT's Personal Information Sheet). Witness ZAW was a cadet at the ESO in April 1994. Witness ZAW, T. 26 January 2011, p. 3; Exhibit P10 (Witness ZAW's Personal Information Sheet). Witness ZY was a student at the ESO in April 1994. Witness ZY, T. 26 January 2011, pp. 45, 51, 52; Exhibit P11 (Witness ZY's Personal Information Sheet).

[83] Witness AZD, T. 31 January 2011, pp. 70, 72; T. 1 February 2011, p. 46; Witness YAA, T. 1 February 2011, pp. 61-62; Witness ZAW, T. 26 January 2011, p. 40; Witness ZT, T. 7 February 2011, p. 8; Witness BDE, T. 28 January 2011, p. 14. Witness ZY was not in Butare at that time, but later learned of an assembly occurring that day. Witness ZY, T. 27 January 2011, p. 15. Witness ZY did attend an assembly on 9 April, during which Nizeyimana spoke for about 20 minutes and told the soldiers present that they were no longer considered cadets and they would be carrying out military activities until further notice. She saw Nizeyimana go into his office with Warrant Officer Ntamuhanga, Warrant Officer Kubwimana and Sergeant Muhayimana. When Nizeyimana came out of his office again, the soldiers, including Witness ZY, were divided into sections and platoons and left. *See* Witness ZY, T. 26 January 2011, pp. 49-50.

8.00 a.m., and lasted for approximately 30 to 40 minutes.[84] Witnesses AZD, ZT, BDE and ZAW noted that all ESO soldiers were present at the gathering.[85] Various witnesses saw Captain Nizeyimana at the assembly and Witness YAA noted that Nizeyimana chaired the assembly.[86] Witness AZD identified Lieutenant Colonel Muvunyi, Théodore Sindikubwabo and Colonel Marcel Gatsinzi as attending, while Witness BDE recalled having seen Lieutenant Colonel Muvunyi, Second Lieutenant Bizimana, Second Lieutenant Alphonse Ndayambaje, Second Lieutenant Ezechiel Gakwerere and Second Lieutenant Modeste Gatsinzi.[87] Witness BDE recalled that Colonel Marcel Gatsinzi was in his office.[88]

81. Colonel Muvunyi informed those present at the assembly that President Habyarimana's plane had been shot down, discussed the prevailing situation and told the soldiers that they were to remain on stand-by.[89] After Muvunyi spoke, Nizeyimana told the soldiers that President Habyarimana's plane had been shot down, calling the RPF responsible for the act.[90] Witness YAA heard Nizeyimana tell everyone that they had to ready themselves to intervene or to go on a mission if necessary.[91] Witnesses BDE recalled Nizeyimana telling the cadets that classes were suspended, that they were now soldiers and as such responsible for providing security and that they had to wait for instructions.[92]

82. Witnesses AZD and BDE observed Nizeyimana meet with unspecified platoon heads and company commanders in his office on 7 April 1994 following the gathering on the tarmac.[93] Witness BDE saw Nizeyimana enter his office, from the tarmac where she remained assembled with the other ESO soldiers.[94] Neither Witness AZD nor BDE attended the meeting, which, by Witness BDE's account, lasted between 10 and 15 minutes.[95]

83. Witnesses AZD and BDE had already left when orders or instructions, if any, were given to soldiers after the platoon heads and company commanders meeting.[96] Witness AZD

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[84] Witness AZD, T. 31 January 2011, p. 72 (assembly happened on the morning of 7 April); Witness BDE, T. 28 January 2011, pp. 14, 34; Witness YAA, T. 1 February 2011, p. 62. Witness ZAW referred to an assembly during the day on 7 April 1994 but did not provide any details. *See* Witness ZAW, T. 26 January 2011, p. 40. Witnesses AZD, ZY, YAA, ZT and ZAW did not specify how long the assembly lasted.

[85] Witness AZD, T. 31 January 2011, p. 72; Witness ZT, T. 7 February 2011, p. 8; Witness BDE, T. 28 January 2011, pp. 15-16 (Witness BDE specified that around 300 to 350 cadets, non-commissioned officers, second officers, corporals, sergeants and around 100 instructors and between seven and 10 camp commanders were present); Witness ZAW, T. 26 January 2011, p. 40.

[86] Witness YAA, T. 1 February 2011, p. 62. Witness ZT, T. 7 February 2011, p. 8; Witness ZT did not specifically identify any other soldiers as being present at the assembly.

[87] Witness AZD, T. 31 January 2011, pp. 70, 72; T. 1 February 2011, pp. 4, 46-48.

[88] Witness BDE, T. 28 January 2011, p. 15; T. 31 January 2011, p. 34.

[89] Witness AZD, T. 31 January 2011, pp. 70, 72; T. 1 February 2011, p. 46; Witness ZAW, T. 26 January 2011, p. 40; Witness BDE denied that Muvunyi addressed the assembly. *See* Witness BDE, T. 31 January 2011, p. 34.

[90] Witness YAA, T. 1 February 2011, p. 62; Witness BDE, T. 28 January 2011, pp. 17-18. Witness AZD was asked to read out a prior statement on cross-examination, which states that Nizeyimana called those responsible for the President's plane crash *Inyenzis*. Witness AZD, T. 1 February 2011, pp. 47-48.

[91] Witness YAA, T. 1 February 2011, p. 62.

[92] Witness BDE, T. 28 January 2011, pp. 17-18.

[93] Witness AZD, T. 31 January 2011, pp. 72-74, T. 1 February 2011, p. 47; Witness BDE, T. 28 January 2011, pp. 16-17.

[94] Witness BDE, T. 28 January 2011, p. 18. It is unclear where Witness AZD was standing when he saw the officers enter Nizeyimana's office. He simply noted that they entered Nizeyimana's office, which was close to his office. Witness AZD, T. 31 January 2011, pp. 72-73, 74; T. 1 February 2011, p. 47.

[95] Witness AZD, T. 31 January 2011, pp. 72-73, 74, T. 1 February 2011, p. 46; Witness BDE, T. 28 January 2011, p. 18.

[96] Witness AZD, T. 31 January 2011, p. 73; Witness BDE, T. 28 February 2011, pp. 18-19.

was unaware of any other instructions handed down on 7 April 1994, but heard that roadblocks were set up in Butare town that day.[97] Witness BDE heard from male soldiers who had remained on the tarmac that they were placed into teams that would provide security in the city centre or take up positions in the camp.[98] She heard that soldiers had been deployed at locations including Magerwa (near the fuel depot), near Butare city's entrance at the roundabout near the crossroads leading to Gikongoro and the Taba neighbourhood, outside the Hotel Faucon, the roundabout at Kwabihira, at the entrance of the University of Rwanda and in front of the Arab Quarter.[99]

84. According to Witness ZT, three platoons were formed with Second Lieutenant Jean-Pierre Bizimana assigned as the commander after the general assembly in the morning of 7 April 1994.[100] Some soldiers were then deployed to provide security to the camp, while others were assigned to various unidentified areas around Butare.[101]

Prosecution Witness BUR

85. In April 1994, Witness BUR, a Hutu, was a sergeant at the ESO in Butare.[102] The day following the death of President Habyarimana, around 12.00 p.m., the witness observed a meeting in Colonel Muvunyi's office attended by Nizeyimana, Lieutenant Colonel Tharcisse Muvunyi, Ngoma Camp Commander Ildéphonse Hategekimana, Tumba Gendarmerie Camp Commander Cyriaque Habyarabatuma, the Gikongoro Gendarmerie Squad Commander and the Nyanza Gendarmerie Squad Commander.[103] The meeting lasted approximately 30 minutes and Nizeyimana subsequently convened a select group of between 100 to 200 soldiers on the camp's tarmac area to receive instructions.[104]

86. Nizeyimana informed the soldiers assembled of what had transpired at the meeting in Muvunyi's office, and told them that "they" had decided to kill Tutsis and to take their property.[105] Nizeyimana instructed the soldiers to kill Tutsis with bayonets in order to save bullets.[106] He also "asked" the soldiers to rape Tutsi women and then kill them.[107]

87. Following the assembly, Nizeyimana ordered Witness BUR's section of 12 soldiers to patrol areas of Butare town inhabited by persons on a list of important Tutsis to be killed, which Nizeyimana had in his office.[108] Witness BUR never saw the list, but learned about its existence from Nizeyimana's escort, Léonidas Busharire.[109] Busharire told him that a deputy prosecutor working in the Butare prosecutors office was on the list, as well as the name

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[97] Witness AZD, T. 31 January 2011, p. 73. Witness AZD did not specify where the roadblocks had been set up.
[98] Witness BDE, T. 28 February 2011, pp. 18-19.
[99] Witness BDE, T. 28 February 2011, pp. 19-20; *see also* II.7.3.
[100] Witness ZT, T. 7 February 2011, p. 8. Witness YAA also spoke of the formation of platoons immediately following the assembly, which were deployed around town. Witness YAA remained at the ESO following this assembly. Witness YAA, T. 1 February 2011, p. 62.
[101] Witness ZT, T. 7 February 2011, pp. 8-9.
[102] Witness BUR, T. 2 February 2011, p. 74; Exhibit P18 (Witness BUR's Personal Information Sheet).
[103] Witness BUR, T. 2 February 2011, p. 77.
[104] Witness BUR, T. 2 February 2011, pp. 77-79; T. 3 February 2011, p. 54.
[105] Witness BUR, T. 2 February 2011, p. 78.
[106] Witness BUR, T. 2 February 2011, p. 78; T. 3 February 2011, p. 54.
[107] Witness BUR, T. 2 February 2011, p. 78; T. 3 February 2011, p. 54.
[108] Witness BUR, T. 3 February 2011, pp. 54-55.
[109] Witness BUR, T. 3 February 2011, p. 55.

Sonera, an entrepreneur, and Mr. Bicakumuyange, Gatorano and Ndakaza.[110] The latter was one of the important members of the Nkura football association.[111] Following Nizeyimana's instructions, the witness carried out patrols on foot around Butare town and went to Prefect Habyarimana's home to ensure that he did not flee.[112] The witness was also later instructed to go to Queen Gicanda's house and to supervise the situation at roadblocks, receiving these instructions in person and over the telecommunications radio directly from Nizeyimana.[113]

Defence Witness OUV03

88. Witness OUV03, a Hutu, was an officer who worked at the ESO in 1994.[114] On the morning of 7 April, a meeting was held in Colonel Marcel Gatsinzi's office, not far from Witness OUV03's post.[115] He observed that only officers who had attended a gathering on the evening of 6 April attended the meeting.[116] There were about 15 people who attended that meeting.[117] Nizeyimana did not attend the 6 April meeting, because he had the flu.[118] After the meeting, Captain Twagiramungu and Gendarmerie Lieutenant Ndibwami, who had also attended the meeting, told the witness that they had discussed Colonel Gatsinzi's immediate appointment of army Chief of Staff and that Lieutenant Colonel Muvunyi would replace him as camp commander.[119] No assembly was held on 7 April.[120]

Defence Witnesses CKN10, RWV11, Jean Népomuscène Bunani, ZML07, Thomas Ruzindana and ZML13

89. Defence Witnesses CKN10, RWV11, Bunani, ZML07, Ruzindana and ZML13 were present at the ESO in April 1994.[121] With the exception of Witness Ruzindana, each witness was in their respective defensive positions in or around the ESO camp on the evening of 6 April and into the morning of 7 April.[122] None of the witnesses attended an assembly on 7 April and they did not see any meeting take place.[123]

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[110] Witness BUR, T. 3 February 2011, p. 55.
[111] Witness BUR, T. 3 February 2011, p. 55.
[112] Witness BUR, T. 3 February 2011, pp. 54, 56, 60.
[113] Witness BUR, T. 3 February 2011, pp. 54-60.
[114] Witness OUV03, T. 30 May 2011, pp. 62, 64; Exhibit D51 (Witness OUV03's Personal Information Sheet).
[115] Witness OUV03, T. 30 May 2011, p. 62. Witness OUV03 did not specify who these officers were.
[116] Witness OUV03, T. 30 May 2011, p. 69.
[117] Witness OUV03, T. 30 May 2011, p. 70.
[118] Witness OUV03, T. 30 May 2011, p. 71; T. 31 May 2011, pp. 4-5. Witness OUV03 specifically stated that Second Lieutenant Modeste Gatsinzi did not attend this meeting. The witness did not clarify whether Nizeyimana was still absent from the ESO on 7 April 1994.
[119] Witness OUV03, T. 31 May 2011, p. 7.
[120] Witness OUV03, T. 31 May 2011, p. 9.
[121] Witness CKN10, T. 26 May 2011, p. 35; Witness RWV11, T. 2 June 2011, p. 8; Witness Bunani, T. 10 June 2011, p. 45; Witness ZML07, T. 18 May 2011, p. 5; Witness Ruzindana, T. 1 June 2011, p. 24; Witness ZML13, T. 6 June 2011, p. 44.
[122] Witness CKN10, T. 26 May 2011, p. 36 (Witness CKN10 was posted at the UNAMIR office at the ESO from around 9.00 p.m. on 6 April to 6:30 a.m. on 7 April 1994, when he went to breakfast and then to his trench position near the main entrance of the ESO where the telecommunications centre was); Witness RWV11, T. 2 June 2011, p. 9 (Witness RWV11 was at his defensive position at the main, southern entrance of the ESO from an unspecified time, when he heard about President Habyarimana's death on 6 April 1994); Witness Bunani, T. 10 June 2011, p. 47 (Witness Bunani manned his position on the Rwabayanga side of the ESO from about 9.00 p.m. on 6 April, until the morning of 7 April 1994); Witness ZML07, T. 18 May 2011, pp. 6-9 (Witness ZML07

Deliberations

90. Prosecution Witnesses AZD, BDE, YAA, ZAW and ZT gave first-hand evidence about a general assembly that was held at the ESO on the morning of 7 April 1994. Witnesses AZD, YAA, BDE and ZT all saw Nizeyimana at this assembly and Witnesses AZD, YAA and BDE heard him address the gathering. Witnesses AZD and BDE saw Nizeyimana enter his office with the platoon heads and company commanders following the assembly. When they emerged from the meeting, soldiers were divided into platoons and ordered to deploy to various locations around Butare town.

91. At the outset, the Chamber notes that Witnesses AZD and BDE's second-hand and circumstantial evidence as it relates to the Nizeyimana's participation in a meeting involving FAR officers, and ESO soldiers, including Second Lieutenants Bizimana, Gakwerere, Ndayambaje, Gatsinzi and Chief Warrant Officer Ntibiramira, fails to implicate Nizeyimana in any criminal conduct. While the evidence reflects that ESO cadets were deployed in Butare town on or around 7 April 1994, shortly after President Habyarimana's plane crashed, there is no evidence of resulting criminal conduct as a consequence of this action.[124] Indeed, the record shows that the identification and targeting of Tutsis at defensive positions throughout Butare town taken by ESO soldiers appears to have commenced towards 19 April, when President Théodore Sindikubwabo delivered a speech in Butare.[125]

92. In addition to Witnesses AZD and BDE, Prosecution Witness BUR also provided first-hand evidence of the assembly that took place on 7 April 1994 and a meeting attended by Nizeyimana, Lieutenant Colonel Tharcisse Muvunyi, Ngoma Camp Commander Ildéphonse Hategekimana, Tumba Gendarmerie Camp Commander Cyriaque Habyarabatuma, the Gikongoro Gendarmerie Squad Commander and the Nyanza Gendarmerie Squad Commander in Colonel Muvunyi's office. Witness BUR is further the only witness to testify about the existence of a list of prominent Tutsis and Nizeyimana having issued orders to the soldiers assembled on the tarmac to kill and rape Tutsis.

93. Notably, Witness BUR's testimony regarding Nizeyimana's statements to rape and kill finds no corroboration, notwithstanding the numerous other Prosecution witnesses who testified that Nizeyimana was either present at, or spoke during, an assembly of ESO soldiers on 7 April 1994. Moreover, the Chamber has elsewhere considered in detail Witness BUR's evidence about his observations on this day. His evidence that he was at the ESO Camp on 7 April, or even an ESO soldier have been brought into question by statements he made in

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was sent to his defensive position at Rwabayanga on the night of 6 April and remained there until 8 April 1994; Witness ZML07 described his position as being a considerable distance from the assembly point); Witness ZML13, T. 6 June 2011, pp. 45-46 (Witness ZML13 was at his position located at the ESO's *nouvelle formule* building, not far from the Rwabayanga post from about 8.30 p.m. on 6 April 1994 until 5.30 a.m. on 7 April; at 7.00 a.m. he went to breakfast after which he went to a room not far from the school command office where he was assigned as the non-commissioned officer for the week). Witness Ruzindana did not specify where his position was located. None of the witnesses specifically discussed their ability to see the tarmac or Nizeyimana's office from their position.

[123] Witness CKN10, T. 26 May 2011, p. 36; Witness RWV11, T. 2 June 2011, p. 14; Witness Bunani, T. 10 June 2011, p. 47; Witness ZML07, T. 18 May 2011, pp. 8-9; Witness Ruzindana, T. 1 June 2011, p. 25; Witness ZML13, T. 6 June 2011, p. 46. Witness ZML13 stated there were no assemblies held at ESO during the genocide. T. 7 June 2011, p. 57.

[124] *See* II.7.3.1.

[125] *See* II.7.3.

Rwanda in Gacaca proceedings there. The Chamber concluded elsewhere that Witness BUR lacks basic credibility.[126] The same analysis applies here.

94. In light of the above, the Chamber finds that the Prosecution failed to elicit evidence suggesting that Nizeyimana discussed the identification and targeting of Tutsi civilians who were to be killed, during a meeting with platoon heads in the morning of 7 April 1994. Moreover, it failed to adduce any evidence suggesting that subsequent killings and targeting of Tutsi civilians by ESO soldiers were conducted as a result of this meeting. Accordingly, this allegation is dismissed.

[126] *See* II.2.

3.2 Assembly of 8 April 1994

Introduction

95. The Indictment alleges that an assembly took place on 8 April 1994 with numerous FAR soldiers, including Lieutenant Colonel Muvunyi, during which Nizeyimana said to fight Tutsis. The Prosecution relies on Witnesses ZY and Rony Zachariah.[127]

96. The Defence submits that there is no evidence in support of this allegation, except for Witness ZY's hearsay account, which does not reflect Nizeyimana's presence at this meeting or any form of incitement that was conveyed during this gathering. Moreover, Defence witnesses provide evidence contradicting that any such meeting ever took place on 8 April 1994. The Defence relies on Witnesses ZML07, Jean-Népomuscène Bunani, Thomas Ruzindana and RWV11.[128]

Evidence

Prosecution Witness ZY

97. In April 1994, Witness ZY, a Tutsi, was a cadet at the ESO.[129] Witness ZY knew of an assembly that took place on 8 April, even though she did not attend this gathering herself.[130] She noted that they would usually assemble each morning at the ESO, during which the soldiers would receive instructions they were to implement.[131]

Prosecution Witness Rony Zachariah

98. Witness Zachariah was a doctor for *Médecins Sans Frontièrs* working at the Butare University Hospital in April 1994.[132] Witness Zachariah met with Colonel Muvunyi for the first time on 8 April, to get authorisation passes in order to freely move around Butare.[133] Colonel Muvunyi had been in a meeting when he came out to speak to Witness Zachariah.[134]

Defence Witnesses ZML07, Jean-Népomuscène Bunani, Thomas Ruzindana and RWV11

99. Witnesses ZML07 and RWV11 did not know of or recall an assembly taking place at the ESO on 8 April 1994, because they were at their respective defensive positions within the

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[127] Indictment, para. 10(ii); Prosecution Closing Brief, para. 43; Prosecutor's Response to Defence Motion for Judgement of Acquittal Pursuant to Rule 98*bis* of the Rules ("Rule 98*bis* Response"), 9 March 2011, paras. 21-25.
[128] Defence Closing Brief, para. 510.
[129] Witness ZY, T. 26 January 2011, p. 45; Exhibit P11 (Witness ZY's Personal Information Sheet).
[130] Witness ZY, T. 27 January 2011, p. 15. Witness ZY did not attend this assembly, because she had not yet arrived in Butare. T. 27 January 2011, p. 15. Witness ZY did not further explain her basis for knowing that an assembly took place, other than her assertion that assemblies took place on a daily basis.
[131] Witness ZY, T. 26 January 2011, p. 48.
[132] Witness Zachariah, T. 14 February 2011, pp. 2-3; Exhibit P15 (Witness Zachariah's Personal Information Sheet).
[133] Witness Zachariah, T. 14 February 2011, p. 6.
[134] Witness Zachariah, T. 14 February 2011, p. 6.

ESO Camp.[135] Witnesses Bunani and Ruzindana knew there was no assembly on that day, because they would have been present at the gathering if it had taken place.[136]

Deliberations

100. At the outset, the Chamber observes that the Prosecution does not set out the evidence which relates to Indictment paragraph 10(ii) in its Closing Brief, but instead refers to general evidence set out in support of its Rule 98*bis* Response. This practice can hardly be construed as the Prosecution pursuing this allegation in earnest.

101. Notably, the Prosecution did not present any direct evidence in support of its allegation that an assembly took place on 8 April 1994, during which Nizeyimana instructed soldiers to fight Tutsis. Instead, it relies on two witnesses who were not present at the ESO during the time when the assembly took place. Prosecution Witness ZY "knew" of an assembly that took place on 8 April, without explaining her basis for this knowledge, other than the fact that an assembly took place every morning. However, the gathering of soldiers on the tarmac of the ESO on a daily basis is contradicted by other Prosecution evidence.[137]

102. Witness Zachariah did not speak of an assembly, but noted that Colonel Muvunyi came out to greet him, despite having been in a meeting at that time. Notably, neither witness mentioned Nizeyimana as having been present at this assembly or provide evidence of his instructions to fight Tutsis to those gathered on the tarmac. Consequently, it finds it unnecessary to consider the Defence evidence in detail. In the absence of evidence demonstrating that Nizeyimana incited soldiers gathered at an assembly on 8 April 1994 to fight Tutsis, this allegation is dismissed.

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[135] Witness ZML07, T. 18 May 2011, p. 9; Witness RWV11, T. 2 June 2011, p. 15.
[136] Witness Bunani, T. 10 June 2011, pp. 47-48; Witness Ruzindana, T. 1 June 2011, p. 27.
[137] Indeed, her account that a gathering took place every day during that period is contradicted by Prosecution Witness BDE, who stated that the assemblies "were not as frequent as before". Witness BDE, T. 28 January 2011, p. 20.

3.3 Assembly of 20 April 1994

Introduction

103. The Indictment alleges that an assembly took place around 9.00 a.m. on 20 April 1994, with numerous FAR soldiers, during which Nizeyimana gave orders regarding roadblocks. A second meeting took place that day inside a meeting room with Colonel Muvunyi and approximately one dozen ESO officers. The Prosecution appears to rely on Witnesses ZY and BDE.[138]

104. The Defence submits that there exists no evidence of an assembly on 20 April 1994, during which Nizeyimana gave orders. Instead, the Prosecution relies on general allegations of meetings taking place at the ESO on unspecified dates.[139]

Evidence

Prosecution Witnesses ZY and BDE

105. Witness ZY noted that they would usually assemble each morning at the ESO, during which the soldiers would receive instructions they were to implement.[140] Witness BDE recalled having attended an assembly at the ESO towards the end of April or beginning of May 1994.[141]

Deliberations

106. The Prosecution has led a considerable amount of general evidence of meetings that took place at the ESO in April 1994.[142] It has not, however, linked this evidence into a cohesive narrative and has done less to show how the evidence fits within the particularised allegations in Indictment paragraph 10(iii). Indeed, the Chamber observes that the Prosecution presented no evidence of an assembly that took place on 20 April, during which Nizeyimana gave orders regarding roadblocks. Similarly, there is no evidence of a second meeting taking place on that day inside a meeting room, with Colonel Muvunyi and a dozen ESO officers. The only evidence the Prosecution appears to rely on consists of two ESO

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[138] Indictment para. 10(iii); Prosecution Closing Brief, para. 43; Rule 98*bis* Response, paras. 23-24, 26. Similar to the practice described above, the Prosecution again refers to its Rule 98*bis* Response in support of Indictment paragraph 10(iii), rather than setting out its evidence in a cohesive and succinct manner in its Closing Brief. In the absence of any further guidance, the Chamber concluded that the Prosecution appears to rely on Witnesses ZY and BDE.

[139] Defence Closing Brief, para. 551.

[140] Witness ZY, T. 26 January 2011, p. 48.

[141] Witness BDE, T. 28 January 2011, p. 20.

[142] In its Closing Brief, the Prosecution refers to its Rule 98*bis* response in support of Indictment paragraphs 10(ii) (iii) and (v). Prosecution Closing Brief, para. 43. The Prosecution's Rule 98*bis* Response, however, points generally to evidence of Nizeyimana having attended meetings with other officers at the ESO. The evidence is just that however – general. There are no dates provided for the meetings and none of the witnesses provided evidence on orders given by Nizeyimana following these meetings or any other criminal conduct, as alleged in Indictment paragraph 10(ii)(iii) and (v). *See* Rule 98*bis* Response, paras. 23-42. Given the absence of any dates or context linking their testimony specifically to Indictment paragraph 10(iii), the Chamber shall not make any findings on the evidence of Prosecution Witnesses AZD, Anaclet Dufitumukiza, Justin Gahizi and ZAW as it relates to this Indictment paragraph.

cadets, one of whom recalls an assembly on an unspecified date at the end of April. Neither witness mentioned Nizeyimana or any orders he gave in regards to roadblocks at these gatherings. This allegation is dismissed.

3.4 Meeting at Gatsinzi's Bar, Second Half of April 1994

Introduction

107. The Indictment alleges that a meeting took place at Dr. Théophile's bar during the second half of April 1994 with FAR officers, soldiers from the ESO and Ngoma Camp, local administrative officials, *Interahamwe* and civilians. The Prosecution relies on Witness ZBH.[143] The Defence challenges the credibility of Witness ZBH.[144]

Evidence

Prosecution Witness ZBH

108. In April 1994, Witness ZBH, a Hutu, was a civilian who had previously worked as a "helper" at ESO in 1991, who, among other things, washed clothing and polished shoes.[145] On an unspecified date, a meeting was held at Dr. Théophile's bar in Gahenerezo, which was attended by Major Cyriaque Habyarabatuma, Corporal Bernard Mukinisha, Corporal Juvénal Nzabarinda, Safari, who was a member of the RAF and ran a barbeque at Gatsinzi's bar, Mathieu Kazungu, former President Théodore Sindikubwabo, Alexis Hakizimana, Gaspard Twagirayezu, the commander of Camp Ngoma, the bourgmestre of the Huye Commune, Jonathan Ruremesha, Chief Warrant Officer Rekeraho, Joseph Muganga, who was the president of the MRND in the Huye commune and Commander Ildéphonse Hategekimana.[146] Also in attendance were Captain Venuste Gatwaza, First Private Ngendahimana, Corporal Ndayambaje, Rutanihubwoba, Jonas Ndayisaba, who worked at the University library, Vital Koffi, who was a member of the population and Isaac Munyampundu.[147] Witness ZBH was present at the meeting as well.[148]

109. During this meeting, the decision was taken that Tutsis who had sought refuge at various locations around the area would not be allowed to return home and would all have to be killed.[149] The areas discussed included the Mbazi stadium in Byiza, the Huye commune office, the Huye school, the Matyazo dispensary, the valley downhill from the museum, and other sites.[150] Gatwaza and his fellow soldiers had received orders during that meeting.[151] Rekeraho stated during this meeting that all Hutus had to be separated from the Tutsis and that the houses of Tutsis were to be destroyed such that only ruins remained.[152] Lieutenant Hategekimana, along with the gendarmerie commander, told Commander Gatwaza, from the Ngoma Camp, that they had brought boxes of ammunition and grenades.[153] Witness ZBH

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[143] Indictment para. 10(iv); Prosecution Closing Brief, paras. 43(b), 87.
[144] Defence Closing Brief, para. 512; T. 7 December 2011, pp. 38-39, 60 (Defence Closing Arguments).
[145] Witness ZBH, T. 8 February 2011, pp. 35-36; Exhibit P21 (Witness ZBH's Personal Information Sheet).
[146] Witness ZBH, T. 9 February 2011, pp. 16-18, 22. The Chamber observes that this evidence was elicited on cross-examination by having Witness ZBH read aloud his prior statement. T. 9 February 2011, p. 17.
[147] Witness ZBH, T. 9 February 2011, p. 18.
[148] Witness ZBH, T. 9 February 2011, p. 22.
[149] Witness ZBH, T. 9 February 2011, p. 18.
[150] Witness ZBH, T. 9 February 2011, p. 18.
[151] Witness ZBH, T. 9 February 2011, p. 18.
[152] Witness ZBH, T. 9 February 2011, p. 18.
[153] Witness ZBH, T. 9 February 2011, p. 18.

offloaded the ammunition, and was ordered to take it to Commander Gatwaza.[154] The ammunition was subsequently used in attacks against Tutsis.[155]

Deliberations

110. The Prosecution relies on Witness ZBH alone to establish that a meeting took place at Dr. Théophile's bar around the second half of April 1994, during which it was decided to target and kill Tutsis. The Chamber shall review Witness ZBH's general credibility as well as purported inconsistencies between his evidence and information given elsewhere.

111. Witness ZBH was incarcerated at the time of his testimony for his participation in the genocide in Rwanda in 1994.[156] The Chamber has some concerns that Witness ZBH's evidence in this proceeding may have been used as an opportunity to deflect responsibility for crimes. It might also have been motivated by a desire to obtain lenient treatment from Rwandan judicial authorities.

112. Moreover, the Chamber notes that the Defence had Witness ZBH read out excerpts from a Rwandan judicial proceeding that appears to find that he accepted money in return for not testifying against Major Cyriaque Habyarabatuma.[157] The same Rwandan court further appears to have found evidence of Witness ZBH having encouraged other detainees to provide false testimony.[158] The Rwanda judicial document was not exhibited and the Chamber notes that Witness AZM denied having heard that Witness ZBH "invented false stories" about him.[159]

113. As a general matter, credibility observations of judges reviewing an entirely separate record are of little probative value in this proceeding.[160] However, judicial findings that a witness has been convicted for a crime of dishonesty or has lied in a separate proceeding – rather than just general credibility concerns – could be a basis for considering his or her evidence before this Tribunal with caution.[161] While the record before the Chamber is

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[154] Witness ZBH, T. 9 February 2011, pp. 18-19.
[155] Witness ZBH, T. 9 February 2011, p. 19.
[156] Witness ZBH was convicted twice. He was released after having spent 13 years in prison in 2007, after which he was sentenced again for another 19 years for his involvement with a paramilitary group that worked at roadblocks. *See* Witness ZBH, T. 9 February 2011, pp. 33, 35, 38; Exhibit P21 (Witness ZBH's Personal Information Sheet).
[157] Witness ZBH, T. 9 February 2011, pp. 25-27.
[158] Witness ZBH, T. 9 February 2011, pp. 25-26. *See also* Exhibit D17 (*Pro Justitia* Statement, 17 June 2009), pp. 8, 10.
[159] Witness AZM, T. 24 January 2011, p. 36.
[160] *See The Prosecutor v. Georges Rutaganda*, Case No. ICTR-96-03-R, Decision on Requests for Reconsideration, Review, Assignment of Counsel, Disclosure, and Clarification (AC), 8 December 2006, paras. 15, 20 (alleged findings in a Rwandan proceeding that Tribunal witnesses generally lacked credibility were insufficient to justify review proceedings); *Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-A, Confidential Decision on Appellant's Extremely Urgent Motion of Delivery of Judgement and for the Admission of Additional Evidence (AC), 5 July 2004, para. 18 (holding that even if an immigration court were to have deemed a witness not credible, "it would simply amount to a decision by a different finder of a fact based on different testimony").
[161] *See Nchamihigo* Appeals Judgement, paras. 68, 77, 83 (overturning factual findings of the Trial Chamber, in part, because it relied on the uncorroborated evidence of a witness convicted for forgery without having exercised appropriate caution), 305, 309, 312-314 (overturning factual findings of the Trial Chamber, in part, because insufficient caution was used when assessing the evidence of an accomplice witness who admitted to misleading judicial officials in his own criminal case).

unclear, these circumstances as well as Witness ZBH's incarceration at the time of his testimony necessitate that his evidence be viewed with the appropriate caution.

114. Of particular significance, Witness ZBH's 2003 confession to Rwandan judicial authorities contains reference to this particular meeting.[162] He subsequently talked about this gathering in *pro justitia* statements given in June 2005 and June 2009.[163] What is striking about each of these documents is that they contain a relatively detailed list of who attended the meetings. Remarkably, none identifies Nizeyimana as being present.[164]

115. Indeed, the Chamber observes that the Prosecution refers exclusively to testimony from the witness elicited during cross-examination.[165] Notably, the testimony cited is Witness ZBH reading his confession from 2003.[166] While Witness ZBH was subsequently questioned on the contents of this statement, he never expressly confirmed nor denied the substance of this aspect of his confession.[167] In this regard, the Chamber recalls that the Tribunal's Rules of Procedure and Evidence evince a clear preference for live testimony.[168] Prior statements of a witness who provides live testimony are primarily relevant to a Trial Chamber in its

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[162] Exhibit D15A(K) (Original Copy of Witness ZBH's Confession), p. 6 and Exhibit D15B (Translation of Witness ZBH's Confession), pp. 12, 30.

[163] Exhibit D16(E) (*Pro Justitia* Statement, 25 June 2005), p. 1; Exhibit D17 (*Pro Justitia* Statement, 17 June 2009), pp. 7-8.

[164] The Chamber observes that immediately preceding Witness ZBH's narration of this particular event in his confession, are the words "Capt. Nizeyimana Ildéphonse na Commandent Hategekimana Ild". The words are in darker ink than most of the confession and appear to be squeezed into the text of it. Exhibit D15A(K) (Original Copy of Witness ZBH's Confession), p. 6. The Defence has argued that Witness ZBH, who kept a copy of his confession, had modified the one that he gave to the Prosecution in 2010, adding Nizeyimana's name in several places after the fact. It submits that this is one example. Defence Closing Brief, paras. 170-179. Witness ZBH denied that he added these names after the fact. *See* Witness ZBH, T. 9 February 2011, pp. 46-47 ("Q. Please I have a couple of questions for you, sir, and we will try and finish this off. If you look at page 203, that is, K0473203, and look at the top. Is it not true that you added in the name of Ildéphonse Nizeyimana and probably Hategekimana later, is that not true, and not when you signed the original confession? A. No. That is not the case. Mr. President, if counsel is alleging that I added those names later, his position is untenable, because Hategekimana's name appears in the following lines, in the body of the contents. If his name was not in the body of the text on this page, then, he would have been right in saying that his name was added later, because Hategekimana's name comes up in the text itself. It would have been a problem if his name had been in the heading, but not in the contents. If you look down, Hategekimana's name keeps coming up. Q. And where is the name Ildéphonse Nizeyimana come up in that page? I put it to you it didn't come up. So I'm right that it was added. A. Thank you, Counsel. I said that at that time Hategekimana was driven by a driver, Hannang, and his bodyguards found us at the roadblock and made us board an FAO pickup truck and led us to the maison généraliste. So would you want me to talk about Captain Nizeyimana, whereas it was not Nizeyimana who came to get us? I am talking about someone who came to get us. MR. PRESIDENT: Mr. Witness, what's been put to you is very simple and very clear. We have heard about Hategekimana and you've said that Hategekimana's name appears here and there and there in the text. Counsel is telling you Nizeyimana's name does not appear anywhere in that text except at the top. That's all. Is it the case or is it not? Just say yes, it is or, no, it is not. And it is all, then, you tell us where it appears. THE WITNESS: Thank you, Mr. President. Maybe it would be easier for me to answer with yes or no, but to add further explanation. It is true that Hategekimana's name appears in the text because he came to get us. I did not mention Nizeyimana's name because he did not come to pick us up and that would have been a lie.").

[165] Prosecution Closing Brief, para. 87, fns. 162-164 *citing* T. 9 February 2011, pp. 16-18.

[166] *See* Exhibit D15B (Translation of Witness ZBH's Confession), pp. 30-31.

[167] Witness ZBH, T. 9 February 2011, pp. 16-18.

[168] *Simba* Appeal Judgement, paras. 19 ("[The Appeals Chamber] further recalls that in exercising its discretion to admit witness testimony, the Trial Chamber shall be guided by the general principle, enshrined in Rule 90(A) of the Rules, that witnesses be heard directly by the Chambers."), 103. *Cf. Bagosora and Nsengiyumva* Appeal Judgement, para. 543; *Renzaho* Appeal Judgement, para. 469 fn. 125.

assessment of the witness's credibility. It is not necessarily the case that they should or could generally in and of themselves constitute evidence that the content thereof is truthful.[169]

116. The fact that Witness ZBH read his 2003 confession in court, does not necessarily transform it into "live testimony". Rather, the failure to have the witness confirm the accuracy of his 2003 confession leaves the testimony cited by the Prosecution as unchecked, out-of-court hearsay. Raising additional concerns, the Prosecution did not question the witness on the meeting at Dr. Théophile's bar on examination-in-chief, and did not subsequently raise it on re-examination. His evidence fails to implicate Nizeyimana in this meeting. Given the nature of the evidence solicited and the caution with which the Chamber has decided to view Witness ZBH's testimony, this practice does not meet the required threshold necessary to establish facts beyond a reasonable doubt. This allegation has not been proven beyond a reasonable doubt.

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[169] *See Akayesu* Appeal Judgement, para. 134.

3.5 Meeting at Gahenerezo, Ngoma Commune, 21 or 22 April 1994

Introduction

117. The Indictment alleges that a meeting was held at Gahenerezo in Ngoma commune on 21 or 22 April 1994, with FAR soldiers, soldiers from the ESO and Ngoma Camp, local administrative officials, *Interahamwe* and civilians. The Prosecution relies on Witness ZBH.[170] The Defence challenges the credibility of Witness ZBH.[171]

Evidence and Deliberations

118. Witness ZBH is the sole witness who, according to the Prosecution, provides evidence of a meeting that took place at Gahenerezo in Ngoma commune on 21 or 22 April 1994.[172] The Prosecution, while admitting that Witness ZBH does not refer to a roadblock called "Gahenerezo" during his examination-in-chief, instead relies on evidence contained in Witness ZBH's Rwandan confession in support for this allegation.[173]

119. Notably, the portion of Witness ZBH's confession to which the Prosecution refers states generally that "it was at the meetings held by the soldiers that a decision was made to set up three roadblocks on Cyangugu road. Thus, one roadblock, which we manned, was set up at Gahenerezo (...)".[174] The statement then generally implicates Chief Warrant Officer Rekeraho, Commander Hategekimana and Nizeyimana in killings that were committed at roadblocks set up pursuant to their orders.[175] No mention is made of any specific meeting on 21 or 22 April 1994 at Gahenerezo with the participants set out in the Indictment.

120. Witness ZBH was not asked to confirm this content while testifying. Indeed, Witness ZBH was not questioned at all on any meeting taking place at Gahenerezo, let alone a gathering on 21 or 22 April between soldiers, local administrative officials, *Interahamwe* and other civilians.

121. The Chamber recalls that the Tribunal's Rules of Procedure and Evidence evince a clear preference for live testimony.[176] Prior statements of a witness who provides live testimony are primarily relevant to a Trial Chamber in its assessment of the witness's credibility. It is not necessarily the case that they should or could generally in and of themselves constitute evidence that the content thereof is truthful.[177] Under the circumstances, the evidence relied upon by the Prosecution cannot support findings beyond reasonable doubt. This allegation is dismissed.

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[170] Indictment para. 10(v); Prosecution Closing Brief, para. 43; Rule 98*bis* Response, paras. 35-42.
[171] Defence Closing Brief, para. 512; T. 7 December 2011, pp. 38-39, 60 (Defence Closing Arguments).
[172] Similar to the instances set out above, the Prosecution again refers to its Rule 98*bis* Response in support of Indictment paragraph 10(v), rather than setting out its evidence in a cohesive and succinct manner in its Closing Brief.
[173] Rule 98*bis* Response, paras. 35-39.
[174] Exhibit D15B (Translation of Witness ZBH's Confession), pp. 32-33.
[175] Exhibit D15B (Translation of Witness ZBH's Confession), p. 33.
[176] *Simba* Appeal Judgement, paras. 19 ("[The Appeals Chamber] further recalls that in exercising its discretion to admit witness testimony, the Trial Chamber shall be guided by the general principle, enshrined in Rule 90(A) of the Rules, that witnesses be heard directly by the Chambers."), 103. *Cf. Bagosora and Nsengiyumva* Appeal Judgement, para. 543; *Renzaho* Appeal Judgement, para. 469 fn. 125.
[177] *See Akayesu* Appeal Judgement, para. 134.

4. KILLINGS OUTSIDE BUTARE TOWN, MID-APRIL 1994

4.1 Killing of the Ruhutinyanya Family

Introduction

122. The Indictment alleges that between 16 and 19 April 1994, members of the Ruhutinyanya family were forcibly apprehended by ESO soldiers at a roadblock near the Burundi border and forced to return to the ESO. Following Nizeyimana's instructions, Second Lieutenant Bizimana engaged a number of subordinate officers to target the civilian victims, who were killed on the orders or instigation of Nizeyimana. The Prosecution relies on Witnesses XAG, YAL, ZAW, AZD, BDE, ZY and Anaclet Dufitumukiza.[178]

123. The Defence argues that the ESO soldiers saved the Ruhutinyanya family at the border on 17 April 1994 and attempted to safely deliver them across it the following day upon orders of Lieutenant Colonel Tharcisse Muvunyi. It submits that the evidence is inconclusive regarding whether the family was killed, but it appears to have happened at the hands of Burundian soldiers when they arrived at the border, without any involvement of Nizeyimana. The Defence further contends that Prosecution witnesses lack credibility. Defence Witnesses ZML07, RWV11, CKN10, OUV03 and Désiré Ufitimana provided relevant evidence.[179]

Evidence

Prosecution Witness XAG

124. In April 1994, Witness XAG, a Hutu, was a member of the gendarmerie based at the Tumba Camp in Butare.[180] Sometime after the death of President Habyarimana, Witness XAG and a colleague, Witness YAL, were assigned by the camp commander to accompany the Ruhutinyanya family to the Akanyaru border crossing into Burundi.[181] The two gendarmes joined Mr. Ruhutinyanya in a pickup truck, while other Ruhutinyanya family members traveled in a minibus.[182]

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[178] Indictment, para. 19; Prosecution Closing Brief, paras. 254-285; T. 7 December 2011, p. 33 (Prosecution Closing Arguments). The Prosecution also relies on evidence relating to the killing of Mr. Ruhutinyanya. *See* Prosecution Closing Brief, paras. 283-285; Prosecution Response to the Defence Motion for Exclusion of Evidence, para. 48. The Defence has challenged that sufficient notice was given for this event. Defence Motion for Exclusion of Evidence, 29 April 2011, paras. 52-54. The Prosecution concedes that this event is not pleaded and could not serve as a basis for conviction. Prosecution Closing Brief, para. 285; *see also* Witness AZM, T. 20 January 2011, p. 81; T. 24 January 2011, pp. 42-44. Considering the highly prejudicial nature of this evidence and its remoteness in time, geographic location and perpetrators, the Chamber shall not make findings in relation to it.

[179] Defence Closing Brief, paras. 8, 67, 102, 109, 114, 116, 285, 293-319; T. 7 December 2011, pp. 43-44, 51 (Defence Closing Arguments).

[180] Witness XAG, T. 25 January 2011, p. 27; Exhibit P8 (Witness XAG's Personal Information Sheet).

[181] Witness XAG, T. 25 January 2011, pp. 29-30; Exhibit P8 (Witness XAG's Personal Information Sheet), p. 1 (identifying Witness YAL as the "military colleague on the Ruhutinyanya mission").

[182] Witness XAG, T. 25 January 2011, pp. 30, 38.

125. The convoy left between 1.00 and 2.00 p.m. but was stopped at a roadblock near the Akanyaru border post.[183] There, armed civilians acted in a threatening fashion.[184] Negotiations to allow passage of the convoy through the roadblock failed, prompting Mr. Ruhutinyanya to leave in his pickup truck toward Butare, while the gendarmes and Ruhuntinyaya family members in the minibus remained.[185] In response, those manning the roadblock "tried to kill" members of the group.[186]

126. Between 5.00 and 5.30 p.m., a pickup truck from the ESO arrived at the roadblock.[187] The vehicle was mounted with a machine gun, contained approximately six soldiers and a white man whom they were escorting to the Akanyaru border post.[188] Witness XAG's colleague requested their assistance, but was told to wait until the soldiers returned from the border.[189] When the ESO soldiers returned, they promised those manning the roadblock that they would "punish" the gendarmes and the Ruhutinyanya family members, and all were allowed to depart thereafter.[190] Witness XAG assumed that the ESO soldiers' promise was a lie intended to convince those manning the roadblock to release the gendarmes and the Ruhutinyanya family members.[191] To his surprise, however, the soldiers compelled the group to travel to the ESO.[192] They arrived at the ESO after dark, about two hours after they had left the roadblock.[193]

127. The minivan containing the family stayed inside the camp, while the gendarmes were escorted to Nizeyimana's office.[194] The first sergeant accompanying Witness XAG and his colleague saluted Nizeyimana and explained to him that they had surprised Witness XAG and his colleague while they were escorting *Inyenzi*.[195] Though the gendarmes explained that they were following orders, Nizeyimana was "not happy".[196] Nizeyimana confiscated their identity cards and ordered that they be detained, but he did not have their FAL rifles taken from them.[197] The gendarmes asked to be given food, and Nizeyimana granted this request.[198] They were escorted from his office, down a hill and towards a kitchen.[199] However, Witness XAG and his colleague, noticing that soldiers were not paying attention to them, escaped from the ESO and returned to the Tumba Camp.[200]

128. Witness XAG heard the following day from an ESO lieutenant that, on the orders of Nizeyimana, the Ruhutinyanya family was returned to the roadblock so that those manning it

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[183] Witness XAG, T. 25 January 2011, pp. 30, 37-38.
[184] Witness XAG, T. 25 January 2011, pp. 30, 38-40.
[185] Witness XAG, T. 25 January 2011, pp. 30, 38-40.
[186] Witness XAG, T. 25 January 2011, p. 30.
[187] Witness XAG, T. 25 January 2011, pp. 30, 40.
[188] Witness XAG, T. 25 January 2011, pp. 30, 40.
[189] Witness XAG, T. 25 January 2011, p. 30.
[190] Witness XAG, T. 25 January 2011, pp. 31, 40.
[191] Witness XAG, T. 25 January 2011, pp. 31, 40.
[192] Witness XAG, T. 25 January 2011, p. 31.
[193] Witness XAG, T. 25 January 2011, p. 40.
[194] Witness XAG, T. 25 January 2011, pp. 31-32, 41.
[195] Witness XAG, T. 25 January 2011, pp. 32, 41.
[196] Witness XAG, T. 25 January 2011, p. 32.
[197] Witness XAG, T. 25 January 2011, pp. 32, 41.
[198] Witness XAG, T. 25 January 2011, pp. 32, 41.
[199] Witness XAG, T. 25 January 2011, p. 32.
[200] Witness XAG, T. 25 January 2011, pp. 33, 41-42.

would kill them.[201] Unidentified soldiers also told him that the family was killed inside the ESO.[202]

Prosecution Witness YAL

129. In April 1994, Witness YAL, a Hutu, was a gendarme at the Tumba Camp in Butare.[203] Witness YAL's camp commander, gendarmerie General Cyriaque Habyarabatuma, ordered him and a colleague, Witness XAG, to escort Mr. Ruhutinyanya, a Tutsi business owner, and his family to the Burundi border.[204] Around 3.00 p.m. on 17 April, the gendarmes arrived at Mr. Ruhutinyanya's home and escorted the family to a roadblock.[205] Witness YAL explained that the situation at the border roadblock was chaotic, with more than a thousand civilians and hostile *Interahamwe* present.[206] Mr. Ruhutinyanya left the roadblock and returned towards Butare, apparently having become concerned about what might happen there.[207] However, his family and the gendarmes remained.[208]

130. Approximately 15 to 20 minutes after their arrival at the roadblock, Witness YAL saw a Toyota pickup truck under the command of a first sergeant approach the roadblock, containing ESO soldiers and a white man.[209] The ESO soldiers instructed those manning the roadblock not to let the minibus through, and continued on their way to the border.[210] On their return, the soldiers retrieved Witness YAL, his colleague, and Ruhutinyanya's family from the roadblock area and escorted them to the ESO, arriving there around 8.30 p.m.[211] The Ruhutinyanya family members remained in the ESO courtyard, with their vehicle parked approximately seven metres from the guard room.[212] The two gendarmes were taken to the *corps de garde*, where Witness YAL was joined by the first sergeant from the pickup truck, Second Lieutenant Gakwerere, and Nizeyimana.[213]

131. The first sergeant introduced Witness YAL and his colleague to Nizeyimana as the "accomplice soldiers transporting the *Inkotanyi*".[214] Nizeyimana responded that the gendarmes "were accomplices who were protecting the *Inkotanyi* and that [they] had to die".[215] He then began to beat Witness YAL and Witness XAG, assisted by Gakwerere.[216] After about two hours, an acquaintance of Witness YAL, Chief Warrant Officer Ntibiramira, arrived.[217] Ntibiramira convinced Nizeyimana to free the two gendarmes, though their

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[201] Witness XAG, T. 25 January 2011, pp. 33, 42-43.
[202] Witness XAG, T. 25 January 2011, pp. 42-43.
[203] Witness YAL, T. 25 January 2011, p. 46; Exhibit P9 (Witness YAL's Personal Information Sheet).
[204] Witness YAL, T. 25 January 2011, pp. 47-49; Exhibit P9 (Witness YAL's Personal Information Sheet), p. 1 (identifying Witness XAG as the "military colleague on Ruhutinyanya mission").
[205] Witness YAL, T. 25 January 2011, pp. 48-49.
[206] Witness YAL, T. 25 January 2011, pp. 57-58.
[207] Witness YAL, T. 25 January 2011, p. 63.
[208] Witness YAL, T. 25 January 2011, p. 63.
[209] Witness YAL, T. 25 January 2011, pp. 58-59.
[210] Witness YAL, T. 25 January 2011, pp. 59-60, 63.
[211] Witness YAL, T. 25 January 2011, pp. 49, 63.
[212] Witness YAL, T. 25 January 2011, pp. 50, 53.
[213] Witness YAL, T. 25 January 2011, pp. 49-50, 52-53, 63.
[214] Witness YAL, T. 25 January 2011, p. 49. Later, Witness YAL recalled that the first sergeant said "[w]e have arrested the gendarmes who usually help *Inkotanyi* to flee." T. 25 January 2011, p. 63.
[215] Witness YAL, T. 25 January 2011, p. 50.
[216] Witness YAL, T. 25 January 2011, pp. 49-50, 63-64.
[217] Witness YAL, T. 25 January 2011, pp. 50, 64.

weapons and identity cards were confiscated.[218] The next day, Witness YAL heard from others at the Tumba Camp that the Ruhutinyanya family members had been returned to the roadblock where they had been stopped and killed.[219]

Prosecution Witness ZAW

132. Witness ZAW, a Hutu, was a cadet at the ESO in April 1994.[220] Around 6.00 p.m. on 21 or 22 April 1994, Witness ZAW observed a Toyota Hiace minibus filled with women and children parked at the ESO.[221] He later spoke to one of the vehicle's occupants, who explained that the passengers were members of the Ruhutinyanya family.[222]

133. Witness ZAW saw the minibus at the ESO the following morning.[223] While positioned about 10 to 15 metres away from Nizeyimana that morning, the witness heard the captain instruct Sergeant Major Nyirimanzi to return the Ruhutinyanya family members to the "place where he had taken them from", as Nizeyimana did not need to see "*Inyenzis*" in the camp.[224] Chief Warrant Officer Ntibiramira was also present.[225] From Nizeyimana's comments, Witness ZAW deduced that Nyirimanzi, with the assistance of other soldiers, had brought the Ruhutinyanya family to the ESO.[226] The witness later learned that the family had previously been stopped at the Akanyaru border while attempting to flee to Burundi.[227]

134. Sergeant Nyirimanzi, in the company of other soldiers, removed the family from the ESO.[228] Witness ZAW did not observe this, but later heard from his colleagues who had also escorted the Ruhutinyanyas from the ESO, Eric Ntirenganya and Iyamuremye, that the family had been killed at the roadblock manned by *Interahamwe* in the Kigembe commune around the Akanyaru border.[229]

Prosecution Witness AZD

135. In April 1994, Witness AZD, a Tutsi bearing a Hutu identity card, was a non-commissioned officer at the ESO.[230] Sometime after President Théodore Sindikubwabo's speech in Butare and between 21 and 26 April, Witness AZD overheard a discussion between First Sergeant Nyirimanzi and Nizeyimana.[231] The witness, a member of the general staff and services company, assembled outside near the command offices, in front of Nizeyimana's office, and was about three to five metres from them.[232] Nyirimanzi told Nizeyimana that he

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[218] Witness YAL, T. 25 January 2011, pp. 50, 63-64.
[219] Witness YAL, T. 25 January 2011, pp. 50-51, 65.
[220] Witness ZAW, T. 26 January 2011, p. 3; Exhibit P10 (Witness ZAW's Personal Information Sheet).
[221] Witness ZAW, T. 26 January 2011, pp. 4-5, 34-35.
[222] Witness ZAW, T. 26 January 2011, pp. 4-5, 34-35.
[223] Witness ZAW, T. 26 January 2011, p. 5.
[224] Witness ZAW, T. 26 January 2011, pp. 5-6, 24, 35, 37.
[225] Witness ZAW, T. 26 January 2011, pp. 5, 37.
[226] Witness ZAW, T. 26 January 2011, pp. 5, 35-37.
[227] Witness ZAW, T. 26 January 2011, p. 24.
[228] Witness ZAW, T. 26 January 2011, p. 6.
[229] Witness ZAW, T. 26 January 2011, pp. 6, 24.
[230] Witness AZD, T. 31 January 2011, p. 64; Exhibit P15 (Witness AZD's Personal Information Sheet).
[231] Witness AZD, T. 1 February 2011, pp. 5-7, 35. Witness AZD estimated that the minibus arrived between 20 and 25 April 1994 but that he had overheard the conversation between First Sergeant Nyirimanzi and Nizeyimana the following day. T. 1 February 2011, p. 5.
[232] Witness AZD, T. 1 February 2011, pp. 5-7, 36; Exhibit D7 (Sketch of the ESO).

had escorted the Ruhutinyanya family to the ESO from the Akanyaru area as they were attempting to flee to Burundi.[233] Nizeyimana replied that the family should be taken back to that area.[234]

136. The witness, who knew Mr. Ruhutinyanya and his wife, then saw a minibus from a distance but did not approach it.[235] He learned from ESO soldiers that the vehicle contained the Ruhutinyanya family and had arrived the previous evening between 7.00 and 7.30 p.m.[236] The day after the minibus's departure, the witness heard that the family members who had been brought to the ESO had been killed.[237] Witness AZD never saw a member of the Ruhutinyanya family again.[238]

Prosecution Witness BDE

137. Witness BDE, a Hutu, was a *nouvelle formule* cadet at the ESO in April 1994.[239] Between 7.00 and 7.15 p.m. on a day shortly before 19 April, Witness BDE observed a Hiace minibus containing women, children (and young girls) at the ESO.[240] The vehicle was visible to soldiers at the entrance to the ESO, but she did not notice soldiers guarding it.[241] No other civilian vehicle was present at the camp on that day.[242]

138. Witness BDE, in the company of Pascasie Uwimana, approached the vehicle and spoke to a woman who identified herself as Ruhutinyanya's wife.[243] She explained that they were members of his family that had left for Burundi.[244] However, they had been stopped by *Interahamwe* at a roadblock near the border in Kigembe commune.[245] The *Interahamwe* noticed that the group contained Tutsis and wanted to kill them.[246] While members of the group began to negotiate with the *Interahamwe*, soldiers coming from the direction of the Akanyaru border arrived.[247] The minibus occupants informed the soldiers about the situation

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[233] Witness AZD, T. 1 February 2011, p. 5.
[234] Witness AZD, T. 1 February 2011, pp. 5, 36.
[235] Witness AZD, T. 1 February 2011, pp. 4-6.
[236] Witness AZD, T. 1 February 2011, pp. 5-6.
[237] Witness AZD, T. 1 February 2011, p. 7. Witness AZD also heard that Mr. Ruhutinyanya, who had not been with his family at the ESO had also been killed. T. 1 February 2011, p. 7.
[238] Witness AZD, T. 1 February 2011, p. 7.
[239] Witness BDE, T. 28 January 2011, pp. 8-9; T. 31 January 2011, p. 51; Exhibit P13 (Witness BDE's Personal Information Sheet).
[240] Witness BDE, T. 28 January 2011, p. 22; T. 31 January 2011, pp. 34-36.
[241] Witness BDE, T. 28 January 2011, p. 23.
[242] Witness BDE, T. 31 January 2011, p. 35.
[243] Witness BDE, T. 28 January 2011, pp. 22, 25; T. 31 January 2011, p. 34.
[244] Witness BDE, T. 28 January 2011, pp. 22-23, 25; T. 31 January 2011, p. 35.
[245] Witness BDE, T. 28 January 2011, p. 23. *See* T. 28 January 2011, p. 24 (French) ("*Lorsqu'ils sont arrivés, en cours de route, non loin de la frontière, à Kigembe, ils y ont trouvé un barrage routier tenu par les Interahamwe.*").
[246] Witness BDE, T. 28 January 2011, p. 23.
[247] Witness BDE, T. 28 January 2011, p. 23.

and the soldiers told the *Interahamwe* that they would take them to Butare.[248] Witness BDE spoke with the occupants for about five to 10 minutes.[249]

139. The minibus was gone the following day.[250] Witness BDE was told by unidentified male colleagues in the refectory that Nizeyimana nearly killed Sergeant Major Nyirimanzi, who brought the family to the ESO.[251] They stated that Nizeyimana had ordered the bus's occupants, who he identified as *Inyenzi*, to be "taken back to their place of origin because he didn't need them in the camp".[252] These colleagues also said that the group was "chased out of camp", returned to the location where they were first retrieved and murdered.[253] The witness did not know who killed the Ruhutinyanyas or the precise circumstances of their death.[254]

Prosecution Witness ZY

140. Witness ZY, a Tutsi, was a cadet at the ESO in April 1994.[255] One evening, around 6.00 p.m., she saw a minivan full of women, children, and some men, parked in the ESO.[256] The witness observed about three ESO cadets from the third batch discreetly positioned close to the vehicle while others were nearby.[257] The cadets insulted the van's occupants and spit in their faces.[258]

141. Curious, the witness approached the vehicle and spoke to a young girl called Kayitesi.[259] The girl explained that they had fled to Burundi, but were intercepted by *Interahamwe* near the Akanyaru border.[260] Soldiers subsequently brought the vehicle to the ESO.[261] The girl expressed her fear that those in the van would be killed unfairly for the "errors or the acts of people they did not even know".[262] Witness ZY spoke with the girl for

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[248] Witness BDE, T. 28 January 2011, p. 23; T. 31 January 2011, p. 35. The Chamber observes that the English and French versions of the transcript refer to "Kanyaru" in place of Akanyaru. This is a transcription error, which is made clear by the witnesses repeated references to "Akanyaru" in the context of her testimony about the Ruhutinyanya event. *See* T. 28 January 2011, p. 23; T. 31 January 2011, p. 35.
[249] Witness BDE, T. 31 January 2011, p. 35.
[250] Witness BDE, T. 28 January 2011, p. 23.
[251] Witness BDE, T. 28 January 2011, p. 23.
[252] Witness BDE, T. 28 January 2011, pp. 23-24.
[253] Witness BDE, T. 28 January 2011, pp. 24-25; T. 31 January 2011, pp. 35, 37.
[254] Witness BDE, T. 28 January 2011, p. 25; T. 31 January 2011, p. 37.
[255] Witness ZY, T. 26 January 2011, p. 45; Exhibit P11 (Witness ZY's Personal Information Sheet).
[256] Witness ZY, T. 26 January 2011, pp. 55-57; T. 27 January 2011, p. 63. Witness ZY initially testified that, although she could not recall the date, she believed she saw the Ruhutinyanya family at the ESO after President Sindikubwabo's speech in Butare. T. 26 January 2011, pp. 55-56. During cross-examination, she stated she did not know the date. T. 27 January 2011, p. 64. Similarly, Witness ZY initially testified that she started speaking with the occupants around 7.30 p.m. T. 26 January 2011, p. 56. Later she noted she started talking to them around 6.00 p.m. T. 27 January 2011, p. 63.
[257] Witness ZY, T. 26 January 2011, p. 58; T. 27 January 2011, p. 7.
[258] Witness ZY, T. 26 January 2011, p. 57.
[259] Witness ZY, T. 26 January 2011, pp. 55-58.
[260] Witness ZY, T. 26 January 2011, pp. 55-57.
[261] Witness ZY, T. 26 January 2011, p. 57.
[262] Witness ZY, T. 26 January 2011, pp. 55, 57.

approximately two hours.[263] The witness also observed Claire Mukamusoni speak to the vehicle's occupants.[264]

142. While speaking to Kayitesi, the cadets, including one from Byumba nicknamed "Blindé", sternly informed the witness that Nizeyimana had ordered them to guard the minivan and that Nizeyimana would decide the occupants' fate.[265] The witness was directed to stay clear of the vehicle.[266]

143. After breakfast the following day, around 7.00 a.m., the witness spoke with an ESO cadet from the third batch that had been guarding the minivan the previous evening.[267] Dark-skinned and a native of Byumba, he told the witness that he and his group of soldiers murdered all the vehicle's occupants, including a small child, in Rwasave.[268] Rwasave was located in a valley "on the lower side of the *Groupe Scolaire*" and not on the Kigembe commune border.[269]

Prosecution Witness Anaclet Dufitumukiza

144. Witness Dufitumukiza, a Tutsi, was a corporal in the gendarmerie posted to the Tumba Camp in Butare in April 1994.[270] Witness YAL told the Witness Dufitumukiza that he escorted the Ruhutinyanya family to the border, after which the bus was stopped by ESO soldiers and was sent to the ESO.[271] Witness YAL also told Witness Dufitumukiza that he had almost been killed at the ESO.[272] Witness Dufitumukiza learned that the Ruhutinyanya family members were later killed.[273]

Defence Witness ZML07

145. Witness ZML07, a Hutu, was a student in the third batch at the ESO in April 1994.[274] Around 17 April, his platoon leader assigned Witness ZML07 and soldiers of the third batch to escort the Ruhutinyanya family to the border so they could enter Burundi.[275] The witness did not know who gave his platoon leader these instructions.[276] Witness ZML07 then saw the minibus, which contained several people, parked inside the ESO with no soldiers posted near

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[263] Witness ZY, T. 26 January 2011, p. 56; T. 27 January 2011, pp. 62-63.
[264] Witness ZY, T. 27 January 2011, p. 63.
[265] Witness ZY, T. 26 January 2011, pp. 55, 57-59; T. 27 January 2011, p. 7.
[266] Witness ZY, T. 26 January 2011, pp. 55, 58-59.
[267] Witness ZY, T. 26 January 2011, p. 58; T. 27 January 2011, pp. 62, 64-65.
[268] Witness ZY, T. 26 January 2011, p. 58.
[269] Witness ZY, T. 27 January 2011, pp. 63-64.
[270] Witness Dufitumukiza, T. 19 January 2011, pp. 71-72; T. 20 January 2011, p. 13; Exhibit P5 (Witness Dufitumukiza's Personal Information Sheet).
[271] Witness Dufitumukiza, T. 20 January 2011, pp. 21, 51-52.
[272] Witness Dufitumukiza, T. 20 January 2011, p. 21.
[273] Witness Dufitumukiza, T. 20 January 2011, p. 21.
[274] Witness ZML07, T. 18 May 2011, pp. 5-6, 30; Exhibit D35 (Witness ZML07's Personal Information Sheet).
[275] Witness ZML07, T. 18 May 2011, pp. 10-12, 26, 28, 35, 40. At one point, Witness ZML07 testified that Second Lieutenant Bizimana identified the civilians in the minibus as the Ruhutinyanya family and explained that the soldiers would accompany them to the Burundi border. *See* T. 18 May 2011, p. 35; Exhibit D37 (Names of Soldiers).
[276] Witness ZML07, T. 18 May 2011, pp. 28, 37-38.

it.[277] While he did not know the vehicle's occupants or check their identities, the witness concluded that they were Tutsis based on their appearances.[278]

146. Second Lieutenant Bizimana led the mission, which included five soldiers and a driver of an ESO pickup truck.[279] The soldiers were armed with rifles and hand guns and had approximately 100 rounds of ammunition.[280] They did not have communication devices that would have allowed them to contact the ESO.[281] The minibus led the convoy towards the Burundi border, with the ESO vehicle following a short distance behind it.[282] They passed two civilian roadblocks without incident.[283] A third barrier, located between 500 metres to one kilometre from the Burundian border, was guarded by civilians carrying traditional weapons and guns.[284] Bizimana attempted to negotiate the convoy's passage, but those manning the roadblock refused, accusing the soldiers of transporting Tutsis.[285]

147. In an attempt to intimidate those administering the roadblock, Bizimana shot his firearm into the air.[286] Simultaneously, a civilian assailant removed a passenger from the minibus, prompting one of the soldiers, Emanuel Manilakiza, to shoot and kill the assailant.[287] The witness then heard shots from a "gas machine gun" and other automatic weapons, which he believed were from Burundian soldiers at the border.[288] The ESO soldiers fled, and Witness ZML07 took cover alone behind a nearby hill.[289]

148. After "some minutes", the gunshots reduced.[290] The witness walked to the road, about 500 metres to one kilometre away from the roadblock, where he found the ESO pickup truck and ESO soldiers.[291] Bizimana ordered that the group return to camp, where they arrived a little more than two hours later.[292]

149. The witness did not see what happened to the Ruhutinyanya family or the minibus, and none of the members of the mission spoke to him about their fate.[293] However, having heard sustained gunshots while fleeing, he believed that the Ruhutinyanyas had been killed.[294] He did not know if a report about the incident was made to the camp commander, Lieutenant Colonel Tharcisse Muvunyi.[295]

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[277] Witness ZML07, T. 18 May 2011, p. 35.
[278] Witness ZML07, T. 18 May 2011, pp. 23, 35.
[279] Witness ZML07, T. 18 May 2011, pp. 12, 16, 18, 25, 28-29, 33, 36; Exhibit D37 (Names of Soldiers).
[280] Witness ZML07, T. 18 May 2011, pp. 16, 33-34, 36-37.
[281] Witness ZML07, T. 18 May 2011, pp. 27, 29.
[282] Witness ZML07, T. 18 May 2011, pp. 19-20, 22, 35-36, 38.
[283] Witness ZML07, T. 18 May 2011, pp. 16-17, 38-39.
[284] Witness ZML07, T. 18 May 2011, pp. 17-18, 24-25, 27.
[285] Witness ZML07, T. 18 May 2011, pp. 18, 24; Exhibit D37 (Names of Soldiers).
[286] Witness ZML07, T. 18 May 2011, p. 18.
[287] Witness ZML07, T. 18 May 2011, pp. 18, 20, 39; Exhibit D37 (Names of Soldiers).
[288] Witness ZML07, T. 18 May 2011, pp. 18, 20, 24-25, 39. Witness ZML07 estimated the shooting range of the gas machine gun to have been between 400 and 600 metres. T. 18 May 2011, p. 25.
[289] Witness ZML07, T. 18 May 2011, pp. 18, 20, 24, 39.
[290] Witness ZML07, T. 18 May 2011, p. 18.
[291] Witness ZML07, T. 18 May 2011, pp. 18, 20.
[292] Witness ZML07, T. 18 May 2011, pp. 18-19, 41.
[293] Witness ZML07, T. 18 May 2011, pp. 20-21.
[294] Witness ZML07, T. 18 May 2011, pp. 20-21.
[295] Witness ZML07, T. 18 May 2011, pp. 22, 38.

Defence Witness RWV11

150. Witness RWV11, a Hutu, was an instructor at the ESO in April 1994.[296] Around 7.30 p.m. on 17 April, the witness, while stationed at the roadblock in the Arab quarter close to the southern entrance of the ESO, saw soldiers in a supply vehicle returning to the ESO with a Hiace minivan containing approximately 15 civilians.[297] The vehicle stopped at the northern entrance to the ESO, approximately 100 metres from the witness's position, before being allowed inside.[298]

151. Between 8.00 and 8.30 p.m. that evening, the witness went to the northern entrance of the ESO and spoke with Sergeant Shadrack Kagimbangabo, who controlled that guard post.[299] Kagimbango explained that the soldiers saved the civilians from a mob that had tried to kill them while on a supply mission to Kigembe commune.[300] The civilians had been attempting to go to Burundi and now wanted to enter the ESO to obtain *laissez-passers*.[301] The civilians were compelled to remain in the vehicle and within the ESO because the camp commander, who was not present, was the only authority that could issue these documents.[302] Nizeyimana was not present at the camp either, having left the ESO around 6:30 p.m. to attend to his sick child at home.[303] From about 30 metres away, the witness observed the minibus parked close to the command office and soldiers close to it.[304]

152. Around 8.00 a.m. the following morning – 18 April 1994 – Witness RWV11 observed the minivan and an ESO pickup truck carrying four soldiers – armed with R4 rifles and Kalashnikovs – and Second Lieutenant Bizimana leave the camp.[305] The witness heard that the civilians had been issued *laissez-passers*, most likely by Muvunyi, and that Bizimina had been assigned by Muvunyi to transport the civilians to Akanyaru.[306]

153. When Bizimana returned to the ESO, he stated that the convoy had been stopped by *Interahamwe* at a roadblock on the way to the Burundi border.[307] The *Interahamwe* stated that the soldiers were accompanying the same *Inyenzi* they had encountered the previous evening.[308] An altercation ensued when the *Interahamwe* refused to let the convoy pass.[309] Bizimana fired into the air, prompting Burundian soldiers to fire on the ESO soldiers from across the border.[310] The Burundian soldiers had more powerful weapons, forcing the ESO soldiers to leave the Ruhutinyanyas at the roadblock.[311] Witness RWV11 heard that the

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[296] Witness RWV11, T. 2 June 2011, p. 8; Exhibit D53 (Witness RWV11's Personal Information Sheet).
[297] Witness RWV11, T. 2 June 2011, pp. 17-18, 49-50, 52, 55-57.
[298] Witness RWV11, T. 2 June 2011, pp. 17, 49-50.
[299] Witness RWV11, T. 2 June 2011, pp. 17-19, 52, 56-57.
[300] Witness RWV11, T. 2 June 2011, pp. 17-18, 22, 35, 52-53, 55-56, 58, 73-74.
[301] Witness RWV11, T. 2 June 2011, pp. 17-18, 53, 56.
[302] Witness RWV11, T. 2 June 2011, pp. 36, 50-51, 53-55.
[303] Witness RWV11, T. 2 June 2011, p. 59.
[304] Witness RWV11, T. 2 June 2011, pp. 36, 50.
[305] Witness RWV11, T. 2 June 2011, pp. 35, 38-39, 52, 74.
[306] Witness RWV11, T. 2 June 2011, pp. 19, 35, 38, 74-75. The transcripts incorrectly refer to "Kanyaru" in place of Akanyaru. *See* T. 2 June 2011, pp. 22, 38.
[307] Witness RWV11, T. 2 June 2011, p. 39.
[308] Witness RWV11, T. 2 June 2011, p. 39.
[309] Witness RWV11, T. 2 June 2011, p. 39.
[310] Witness RWV11, T. 2 June 2011, p. 39.
[311] Witness RWV11, T. 2 June 2011, p. 39.

Ruhutinyanyas were left at the mercy of the *Interahamwe*, whom the witness thought would not have spared them.[312]

Defence Witness CKN10

154. Witness CKN10, a Hutu, was a sergeant at the ESO in April 1994.[313] On 17 April, he was positioned at the main entrance of the ESO, starting at 4.00 p.m.[314] Nizeyimana arrived at the camp around 6.30 or 7.00 p.m.[315] Between 8.30 and 9.30 p.m., Witness CKN10 observed a Hiace minibus stop at a roadblock in the Arab quarter before continuing onto the witness's post.[316] The minibus contained a corporal and members of the Ruhutinyanya family, who the witness knew lived in Butare.[317] Mr. Ruhutinyanya, a Tutsi, was not among them.[318] The corporal on the minibus "explained the situation" to the witness.[319] Specifically, the Ruhutinyanya family had been travelling to Burundi, but were stopped and almost killed at a roadblock before the soldier helped them retreat.[320]

155. The vehicle parked inside the camp a few metres from where Witness CKN10 was posted.[321] Witness CKN10, who stayed at his post until 4.00 p.m. the following day, noted that the Ruhutinyanya family remained in the minibus throughout the evening.[322] Soldiers spent the evening looking for "identification documents" to enable the family to travel to Burundi.[323]

156. Lieutenant Colonel Tharcisse Muvunyi arrived at the camp on the morning of 18 April 1994.[324] The witness informed Muvunyi about the civilians' arrival and, though not present when it occurred, believed that the Muvunyi issued travel documents to the family.[325] The family left the ESO between 10.00 and 11.00 a.m. that day, with a military escort that included Second Lieutenant Bizimana.[326] On a subsequent day, Witness CKN10 learned from Corporal Rubaga, who had been posted at Akanyaru, that the family was unable to cross the border and was massacred.[327]

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[312] Witness RWV11, T. 2 June 2011, p. 39.
[313] Witness CKN10, T. 26 May 2011, pp. 35, 59; Exhibit D50 (Witness CKN10's Personal Information Sheet).
[314] Witness CKN10, T. 26 May 2011, pp. 42, 44; T. 30 May 2011, p. 51.
[315] Witness CKN10, T. 26 May 2011, p. 43.
[316] Witness CKN10, T. 26 May 2011, pp. 42-44; T. 30 May 2011, pp. 4-6, 51-52.
[317] Witness CKN10, T. 26 May 2011, p. 42; T. 30 May 2011, pp. 51-52.
[318] Witness CKN10, T. 30 May 2011, p. 52.
[319] Witness CKN10, T. 30 May 2011, pp. 51-52.
[320] Witness CKN10, T. 30 May 2011, p. 53. While Witness CKN10 does not specifically attribute these statements to the corporal with whom he spoke, this can clearly be inferred from the questions posed to the witness in regards to his knowledge of the Ruhutinyanya family's presence at the ESO Camp.
[321] Witness CKN10, T. 26 May 2011, p. 58.
[322] Witness CKN10, T. 26 May 2011, pp. 42-43, 58; T. 30 May 2011, pp. 52-53.
[323] Witness CKN10, T. 26 May 2011, p. 42.
[324] Witness CKN10, T. 26 May 2011, p. 43.
[325] Witness CKN10, T. 26 May 2011, pp. 42-43, 58.
[326] Witness CKN10, T. 26 May 2011, p. 43-44.
[327] Witness CKN10, T. 26 May 2011, p. 44.

Defence Witness OUV03

157. Witness OUV03, a Hutu, was an officer at the ESO in 1994.[328] He heard from other ESO soldiers that Bizimana had been asked to take "Ruhutinyanya" across the border and subsequently killed him.[329] Lieutenant Colonel Muvunyi arrested him for the crime, but Bizimana was never prosecuted because they had to flee.[330]

Defence Witness Désiré Ufitimana

158. In April 1994, Witness Ufitimana, a Hutu, was a cadet at the ESO.[331] Around 20 April, Witness Ufitimana was assigned on a small mission to accompany an Italian ambassador and a group of Tutsi priests and sisters to the border post around Akanyaru, after which he crossed into Burundi.[332] The ambassador and his group had six vehicles, which they drove themselves.[333] The ESO provided three vehicles to escort the convoy to the border with armed soldiers.[334] They passed a lot of roadblocks on their way to Akanyaru and often had to spend a long time explaining to the people manning the barriers why the soldiers were in the company of this group, whom the civilians identified as Tutsi.[335] The civilians manning the roadblocks were like "enraged or rabid dogs".[336] They had dried banana leaves, which they used as camouflage and were generally "scary".[337] The convoy frequently had to negotiate their way through roadblocks, and when the civilians refused to let them pass, the soldiers would threaten to use force against them.[338] Ultimately, the civilians understood and let them through.[339]

159. Once they got to the border crossing, Witness Ufitimana was able to discern soldiers on the Burundi side of the border.[340] At the Rwandan customs post there were civilians and customs officers.[341] The group then thanked the soldiers for escorting them.[342]

Deliberations

160. The evidence uniformly demonstrates that around 17 April 1994, ESO soldiers freed members of the Ruhutinyanya family from hostile, armed civilians, including *Interahamwe*,

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[328] Witness OUV03, T. 30 May 2011, pp. 62, 64; Exhibit D51 (Witness OUV03's Personal Information Sheet).
[329] Witness OUV03, T. 31 May 2011, pp. 37-38.
[330] Witness OUV03, T. 31 May 2011, p. 38. Witness OUV03 here refers to Ruhutinyanya in the singular form. He stated that he "heard that [Bizimana] killed him".
[331] Witness Ufitimana, T. 26 May 2011, p. 5; Defence Exhibit D49 (Witness Ufitimana's Personal Information Sheet).
[332] Witness Ufitimana, T. 26 May 2011, p. 8.
[333] Witness Ufitimana, T. 26 May 2011, pp. 8-9.
[334] Witness Ufitimana, T. 26 May 2011, p. 10. Specifically, the ESO provided two military vehicles and one civilian vehicle, all with armed soldiers. T. 26 May 2011, p. 10.
[335] Witness Ufitimana, T. 26 May 2011, pp. 10-11.
[336] Witness Ufitimana, T. 26 May 2011, p. 10.
[337] Witness Ufitimana, T. 26 May 2011, p. 10.
[338] Witness Ufitimana, T. 26 May 2011, p. 10.
[339] Witness Ufitimana, T. 26 May 2011, p. 11.
[340] Witness Ufitimana, T. 26 May 2011, p. 11. Witness Ufitimana was unable to say how many Burundian soldiers there were. T. 26 May 2011, p. 11.
[341] Witness Ufitimana, T. 26 May 2011, p. 11.
[342] Witness Ufitimana, T. 26 May 2011, p. 11.

at a roadblock close to the Akanyaru border crossing near Burundi.[343] ESO soldiers then accompanied the Ruhutinyanyas to the ESO Camp, where they arrived that evening and remained through the night. The following day, on approximately 18 April, armed ESO soldiers, led by Second Lieutenant Pierre Bizimana, escorted the Ruhutinyanyas from the ESO back to the border crossing.

161. In this context, the Chamber must determine whether Nizeyimana was involved in a decision to return the Ruhutinyanya family to the roadblock near the Akanyaru border in order to have them killed. Furthermore, it must determine whether, in fact, members of the Ruhutinyanya family were killed. The Chamber shall address these issues in turn.

(i) Decision to Remove the Ruhutinyanya Family from the ESO, 17-18 April 1994

162. The Prosecution argues that Nizeyimana ordered the removal of the Ruhutinyanya family in order to have them eliminated. In particular, it points to the evidence of Witnesses XAG and YAL, who testified that on the evening of their arrival, Nizeyimana was informed of the Ruhutinyanyas' presence. The family was referred to as *Inyenzi* or *Inkotanyi*, and Nizeyimana expressed anger about their presence in the camp. Similarly, Prosecution Witness ZY heard from cadets guarding the vehicle that same evening that Nizeyimana had assigned them to guard the minibus and that he would decide the occupants' fates. Furthermore, the following morning Prosecution Witnesses ZAW and AZD heard Nizeyimana instruct Sergeant Nyirimanzi to return the Ruhutinyanya family to where they had been found.

163. The Chamber shall first evaluate the evidence of Witnesses XAG and YAL, the two gendarmes assigned to escort the Ruhutinyanya family to Burundi who were later brought to the ESO. While Witnesses XAG and YAL testified on the same day, the Chamber observes that the Defence raised no challenges concerning the circumstances in which they provided evidence. Nothing in the record suggests that either witness had an ostensible interest in testifying against Nizeyimana, or that the two witnesses colluded.[344]

164. Witnesses XAG and YAL provided strikingly consistent accounts of what happened in the vicinity of the Akanyaru border crossing preceding their arrival at the ESO.[345] Differences in their testimonies about these events are immaterial.[346] Indeed, the Defence

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[343] The Chamber observes that the evidence is not uniform in terms of when the Ruhutinyanya family was brought to the ESO Camp. Its conclusion on this particular point is discussed in detail below.

[344] According to the personal information sheets, Witness XAG worked as a police officer in the East Province at the time of his testimony and Witness YAL was incarcerated in Gikongoro. *See* Exhibits P8 and P9, respectively.

[345] With regard to the consistencies, Witnesses XAG and YAL testified that the Tumba Gendarmerie Camp commander ordered them to escort the Ruhutinyanya family to Burundi. Each described being detained by hostile armed civilians at a roadblock near the Akanyaru border. Both stated that ESO soldiers, who were accompanied by a white man, arrived and departed from the roadblock. They subsequently returned, intervened and escorted the gendarmes and the Ruhutinyanyas, who were in a minivan, back to the ESO. They consistently asserted that they arrived at the camp at night.

[346] For example, Witness XAG testified that this event occurred after President Sindikubwabo's speech in Butare (or 19 April 1994), while Witness YAL testified that it happened on 17 April 1994. As discussed in greater detail below, the Chamber accepts Witness YAL's corroborated account that this event occurred around 17 April 1994. Notably, Witness XAG's testimony about the timing of this event was general. He conceded that "[he could not] remember the date", which is reasonable in light of the considerable passage of time between the event and his testimony. Witness XAG, T. 25 January 2011, p. 29. Likewise, only Witness YAL made reference

submissions appear to accept the accounts of Witnesses XAG and YAL as they pertain to what occurred at the roadblock near the Akanyaru border crossing, only challenging their evidence as it relates to their subsequent presence at the ESO.[347]

165. The Chamber next evaluates the evidence of Witnesses XAG and YAL about what occurred once they arrived at the ESO. Compelling similarities are present. Both testified that a first sergeant, who had escorted the witnesses from the roadblock near Akanyaru, brought the gendarmes to a room where they met Nizeyimana.[348] Each stated that the first sergeant informed Nizeyimana that the gendarmes had been assisting *Inyenzi* or *Inkotanyi*.[349] Both described Nizeyimana as responding angrily to this information and confiscating their identification cards.[350] The witnesses stated that they tried to explain their actions.[351] The witnesses testified that they later "escaped" or "slipped away" and reported the incident to their camp commander late that evening.[352]

166. Notable differences, however, do emerge. In particular, Witness YAL testified that the gendarmes were disarmed and beaten by Nizeyimana and others with fists, kicks and truncheons. He conceded that he was bloody and injured from the assault and stated that he was later treated by doctors at his military camp.[353] According to Witness YAL, the beating lasted up to two hours and ended only after the intervention of Chief Warrant Officer Ntibiramira.[354] After leaving Nizeyimana, Witness YAL testified that he approached the

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to the presence of the assistant *bourgmestre* of Kigembe commune. Notably, Witness XAG was not questioned about the presence of the deputy *bourgmestre* of Kigembe commune. Witness YAL's testimony about his presence was elicited largely through cross-examination concerning a prior statement dated 21 March 2011. *See* Witness YAL, T. 25 January 2011, pp. 58-59, 62-63. His evidence depicts the deputy *bourgmestre's* role at the roadblock as secondary to that of the ESO soldiers, who both witnesses recalled being present. Under the circumstances, any inconsistency between the testimonies of Witnesses XAG and YAL is not material. Finally, the Chamber notes that Witness XAG's evidence suggests that, while at the roadblock, he held the impression that the ESO soldiers were trying to assist him and Witness YAL. *See* Witness XAG, T. 25 January 2011, pp. 30 (an ESO soldier explained that he would "assist" the gendarmes), 31 ("as [the ESO soldiers] promised that they were going to assist"), 40 (referring to the ESO soldiers as assisting the gendarmes by extracting them from the roadblock). By contrast, Witness YAL's testimony suggests that, while detained at the roadblock, he viewed the ESO soldiers as issuing commands to the civilians to stop the convoy from passing. *See* Witness YAL, T. 25 January 2011, pp. 58 (denying that the ESO soldiers assisted the gendarmes at the roadblock), 58-59 (ESO soldiers initially told the gendarmes to wait at the roadblock), 59-60 (soldiers ultimately instructed those at the roadblock not to allow the passage of the convoy), 63 (ESO soldiers stated that the convoy was not to pass the roadblock). These differences of opinion are immaterial. Indeed, aspects of Witness XAG's evidence would support Witness YAL's view that the ESO soldiers were in control of whether the gendarmes would be allowed through the roadblock. Specifically, Witness XAG testified that the ESO soldiers, once having taken custody of the gendarmes and the Ruhutinyanya family, told those guarding the checkpoint that they intended to punish them, and the witness later concluded that the ESO soldiers were not trying to help the gendarmes. *See* Witness XAG, T. 25 January 2011, pp. 31, 40.

[347] *See* Defence Closing Brief, paras. 293-294, 303-307, 317.

[348] *See* Witness XAG, T. 25 January 2011, pp. 32, 40 (brought to Nizeyimana's office); Witness YAL, T. 25 January 2011, pp. 49, 53, 63 (brought to an office called the *corps de garde*).

[349] *See* Witness XAG, T. 25 January 2011, pp. 32, 41; Witness YAL, T. 25 January 2011, pp. 49, 63.

[350] *See* Witness XAG, T. 25 January 2011, pp. 32, 41; Witness YAL, T. 25 January 2011, pp. 49-50, 63-64.

[351] *See* Witness XAG, T. 25 January 2011, p. 32 (the gendarmes explained that they were following orders from their superior); Witness YAL, T. 25 January 2011, p. 49 (the gendarmes responded that they were not accomplices, but protecting a family that had problems).

[352] Witness XAG, T. 25 January 2011, pp. 33, 41-42; Witness YAL, T. 25 January 2011, pp. 50, 64.

[353] *See* Witness YAL, T. 25 January 2011, pp. 49-50, 63-65.

[354] *See* Witness YAL, T. 25 January 2011, pp. 50, 64.

minibus and warned its occupants to close the windows in order to prevent ESO soldiers from planting weapons on them.[355]

167. By contrast, Witness XAG made no mention of being assaulted by Nizeyimana. Rather, he testified that Nizeyimana ordered that the gendarmes be detained and given food from the ESO kitchen.[356] Furthermore, Witness XAG volunteered that the witnesses retained possession of their weapons.[357] According to Witness XAG, he and his colleague only remained at the ESO Camp for one hour and he made no mention of Witness YAL returning to the minibus after leaving Nizeyimana's office.[358]

168. Witness XAG was not questioned about being assaulted by Nizeyimana and others. Nonetheless, the omission is striking in light of his otherwise detailed account of what happened while he was in Nizeyimana's presence. Other differences, including whether or not the gendarmes were disarmed, the length of their time at the ESO and whether Witness YAL spoke with the minibus's occupants before leaving the camp, are also unexplained.

169. However, the inconsistencies pertain to peripheral events and fail to raise doubts about the fundamentally consistent evidence that they were brought to Nizeyimana and that the captain was informed about the presence of the Ruhutinyanya family – who were labelled as *Inyenzi* or *Inkotanyi* – at the ESO.[359] As discussed below, these aspects of their evidence find compelling circumstantial corroboration from other Prosecution witnesses.[360]

170. Having considered the similarities and differences between the testimonies of Witnesses XAG and YAL, the Chamber turns to assess their identification of Nizeyimana. With respect to Witness XAG, the Chamber observes that he was not an ESO soldier and had only been in Butare about two months prior to April 1994.[361] His ability to identify Nizeyimana was not elicited through direct examination or challenged on cross-examination. Nonetheless, he correctly identified Nizeyimana as a "captain" and explained how the first sergeant had saluted Nizeyimana while he was sitting at his desk.[362]

171. Witness XAG's identification of Nizeyimana at the ESO that evening was directly corroborated by Witness YAL. The latter had been posted at the Tumba Gendarmerie Camp, which is in Butare town, since 1987.[363] While he could not give precise details pertaining to the timing of Nizeyimana's arrival at the ESO or his exact position there, he generally

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[355] Witness YAL, T. 25 January 2011, pp. 50-51.
[356] *See* Witness XAG, T. 25 January 2011, pp. 32, 41.
[357] Witness XAG, T. 25 January 2011, pp. 32, 41.
[358] *See* Witness XAG, T. 25 January 2011, p. 42.
[359] Another notable difference between the testimonies of Witnesses XAG and YAL was that the former stated that the gendarmes remained in possession of their firearms, namely FAL rifles, while Witness YAL testified that their weapons were confiscated. *Compare* Witness XAG, T. 25 January 2011, pp. 32, 41, *with* Witness YAL, T. 25 January 2011, pp. 63-64. The Chamber considers that this too constitutes peripheral evidence and the inconsistencies between it do not raise concerns about the fundamental features of the witnesses' testimonies.
[360] However, the Chamber considers Witness YAL's evidence of Nizeyimana and other soldiers assaulting the gendarmes, in light of its variance with Witness XAG's evidence, as unproven.
[361] *See* Witness XAG, T. 25 January 2011, pp. 27, 38.
[362] Witness XAG, T. 25 January 2011, p. 32.
[363] Witness YAL, T. 25 January 2011, p. 46. *See also* Witness Dufitumukiza, T. 19 January 2011, p. 73 (Tumba Gendarmerie Camp was located in Butare town); Witness AZD, T. 31 January 2011, p. 65 (Tumba Gendarmerie Camp was located in Butare town).

testified that Nizeyimana was a captain who was well known and influential.[364] The Chamber considers this identification reliable, notwithstanding the witness's inability to identify Nizeyimana in court while testifying nearly 17 years after 1994.[365]

172. The Chamber must now evaluate the evidence of Witnesses XAG and YAL in the context of the remaining evidence. Notably, Prosecution Witnesses ZAW, BDE and ZY, as well as Defence Witnesses RWV11 and CNK10, provided first-hand corroboration that the Ruhutinyanya family was brought to the ESO in a minibus one evening in April 1994. However, the Defence has challenged that Witnesses XAG and YAL were also present, noting that no other witness placed the gendarmes at the ESO that evening.[366]

173. In the Chamber's view, the absence of additional evidence corroborating the presence of Witnesses XAG and YAL at the ESO does not raise concerns about their testimonies that they were there. Notably, Defence Witnesses RWV11 and CNK10, who observed the arrival of the Ruhutinyanya family at the ESO, were not questioned about the presence of the gendarmes among the soldiers or the civilians that entered the camp.[367] Likewise, Witnesses XAG and YAL gave evidence suggesting that they were escorted directly into a building to meet Nizeyimana.[368] Notably, Witnesses ZAW, BDE and ZY observed the minibus once it was already within the ESO, raising the distinct possibility that Witnesses XAG and YAL were not with it or the Ruhutinyanya family at that time.[369]

174. The Chamber observes that Witness ZY testified that she spoke with a passenger of the minibus for approximately two hours and made no mention of gendarmes passing it.[370] Notably, Witness YAL testified that he spoke with the vehicle's occupants after leaving Nizeyimana in the *corps de garde* room.[371] For the reasons detailed below, the Chamber finds no inconsistency in their evidence.

175. At the outset, while Witness ZY testified that she spoke with the minibus occupants for two hours, she also stated that she was not continuously present at it.[372] Furthermore, even assuming Witness YAL spoke to the minibus occupants while Witness ZY was in its vicinity, the latter's evidence indicated that anyone passing through the yard could stop to speak with them.[373] This was confirmed by Witness ZAW, who did just that.[374] Like Defence Witnesses RWV11 and CKN10, Prosecution Witness ZY was not asked if she observed gendarmes in the camp that evening.

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[364] *See* Witness YAL, T. 25 January 2011, pp. 52-53.
[365] *See* Witness YAL, T. 25 January 2011, pp. 53-54.
[366] Defence Closing Brief, para. 305.
[367] Indeed, while Witness RWV11 observed the minibus enter the ESO, he was positioned approximately 100 metres away when it occurred and he did not approach the minibus once it was in the camp. *See* Witness RWV11, T. 2 June 2011, pp. 17-18, 49-50. This too, would mitigate his ability to observe the presence of gendarmes among the soldiers and civilians.
[368] *See* Witness XAG, T. 25 January 2011, p. 41 (the gendarmes were brought immediately to Nizeyimana's office); Witness YAL, T. 25 January 2011, pp. 49, 63 (once inside the ESO, the gendarmes were brought to a room called the *corps de garde* to meet Nizeyimana).
[369] *See* Witness ZAW, T. 26 January 2011, pp. 4, 34; Witness BDE, T. 28 January 2011, p. 22; Witness ZY, T. 26 January 2011, pp. 55-56, T. 27 January 2011, p. 63.
[370] Witness ZY, T. 26 January 2011, pp. 56-58; T. 27 January 2011, pp. 62-63.
[371] Witness YAL, T. 25 January 2011, pp. 50-51.
[372] *See* Witness ZY, T. 27 January 2011, p. 63.
[373] Witness ZY, T. 27 January 2011, p. 63.
[374] *See* Witness ZAW, T. 26 January 2011, pp. 4-5, 34-35.

176. Indeed, Defence evidence confirms that soldiers were near the vehicle and that there was considerable activity relating to its presence in the camp.[375] In the Chamber's view, these circumstances would have further served to conceal the gendarmes' fleeting presence around the minibus. The absence of any reference to them in Witness ZY's testimony does not amount to a reasonable contradiction of the testimonies of Witnesses XAG and YAL that they were at the ESO that evening.

177. Finally, the Defence challenges the evidence of Witnesses XAG and YAL by pointing to evidence indicating that Nizeyimana was not in the camp when they arrived. Defence Witness RWV11 testified that Nizeyimana had left around 6.30 p.m., prior to the arrival of the Ruhutinyanya family.[376] While Witness RWV11 specified that the captain departed to treat a sick child, his evidence is brief and does not reveal his basis of knowledge.[377] Notably, Defence Witness CKN10, who was posted at the camp's main entrance, testified about Nizeyimana *arriving* at the camp around 6.30 or 7.00 p.m. and gave no indication that he left.[378]

178. Indeed, Witnesses XAG and YAL's evidence that Nizeyimana was in the camp that evening and involved in the Ruhutinyanya situation finds circumstantial corroboration through the testimony of Witness ZY. Specifically, she spoke to cadets near the minibus, who had told her that Nizeyimana had assigned them to guard the vehicle and that he would decide the occupants' fates.[379] The Chamber considers this aspect of her testimony compelling when viewed among all the relevant evidence.[380] Moreover, Witness AZM, who accompanied Nizeyimana to Cyahinda parish on 17 April 1994, testified that he had returned to the ESO Camp with the captain around 7.00 p.m. that evening.[381]

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[375] *See* Witness RWV11, T. 2 June 2011, p. 50 (observed soldiers close to the minibus while it was parked inside the ESO); Witness CKN10, T. 26 May 2011, p. 42 (soldiers spent the evening looking for "identification documents" so the family could travel to Burundi).

[376] Witness RWV11, T. 2 June 2011, p. 59. The Chamber also considers the testimony of Witness OUV03, who briefly testified that he was informed by Nizeyimana that he was going to go to the hospital to attend to his sick child on dates "beyond" 16 or 17 April. *See* Witness OUV03, T. 31 May 2011, p. 55.

[377] Witness RWV11, T. 2 June 2011, p. 59.

[378] *See* Witness CKN10, T. 26 May 2011, p. 43.

[379] Witness ZY, T. 26 January 2011, pp. 55, 57-59; T. 27 January 2011, p. 7.

[380] The Defence has challenged the reliability of Witness ZY's evidence generally. For example, while Witness ZY saw Witness BDE speaking with the minibus's occupants, Witness BDE denied that Witness ZY was present while she was around the minibus. *See* Prosecution Witness BDE, T. 31 January 2011, pp. 34-35. Furthermore, Witness BDE did not observe soldiers guarding the minibus and denied that another civilian vehicle was in camp that day. *See* T. 28 January 2011, p. 23; T. 31 January 2011, p. 35. By contrast, Witness ZY testified about the presence of cadets guarding the minibus and the presence of an *Interahamwe* vehicle near the minibus. Prosecution Witness ZY, T. 26 January 2011, pp. 55, 57-59. At the outset, the Chamber observes that Witness BDE's presence at the minibus was brief – about five to 10 minutes – compared to Witness ZY's two hour stay there. *Compare* Prosecution Witness BDE, T. 28 January 2011, p. 23, *with* Prosecution Witness ZY, T. 26 January 2011, p. 58, T. 27 January 2011, pp. 62-63. The differing circumstances of their vantage points would have allowed Witness ZY to make more detailed observations as well as observe acts and incidents that would have occurred outside Witness BDE's presence. In this regard, the fact that Witness BDE did not see Witness ZY observe soldiers guarding the minibus or another civilian vehicle present in camp does not necessarily contradict Witness ZY's evidence. Indeed, Witness RWV11 confirmed Witness ZY's account that soldiers were positioned near the minibus. *See* Defence Witness RWV11, T. 2 June 2011, p. 50.

[381] *See* II.4.2. Witness AZM's testimony of Nizeyimana's presence at the ESO Camp around 7.00 p.m. is consistent with evidence of Witnesses YAL and XAG, who saw Nizeyimana there later that evening.

179. Based on the foregoing, the evidence demonstrates that Witnesses XAG and YAL returned to the ESO Camp with ESO soldiers and the Ruhutinyanya family on the evening of 17 April 1994. The Chamber concludes that the gendarmes were brought to Nizeyimana by a first sergeant, who informed the captain that the soldiers were accompanying *Inyenzi* or *Inkotanyi*. This angered Nizeyimana, and the gendarmes tried to explain their actions. The Chamber now turns to the evidence of Witnesses ZAW and AZD, who testified that, the following morning, they heard Nizeyimana tell Sergeant Nyirimanzi to remove the Ruhutinyanya family from the ESO.

180. Before assessing the evidence of Witnesses ZAW and AZD in detail, the Chamber shall consider alleged internal inconsistencies as well as general challenges to their credibility. With respect to Witness ZAW, the Defence confronted him with excerpts from a prior statement he had given to Tribunal investigators in May 2010 and signed in June 2010. The statement reads that the witness heard Nizeyimana instruct Sergeant Nyirimanzi and Warrant Officer Ntibiramira to remove the minibus the evening it arrived at the ESO (rather than the following morning).[382] The Defence further highlighted that the June 2010 statement indicates that the witness learned of the identities of the bus's occupants the following day (rather than the evening they arrived).[383]

181. Witness ZAW explained that his interview occurred long after this event in 1994. After further reflection, he was able to recall that he observed Nizeyimana give these instructions in the morning and that he had spoken to persons on the bus.[384] The witness's explanation is reasonable in light of the considerable passage of time between the events and his statement to Tribunal investigators. The variances are immaterial when viewed in light of the fundamental consistencies between his statement and testimony.

182. Turning to Witness AZD, the Defence mounts several challenges to his general credibility. In particular, it argues that he lied when questioned if he assisted the Tribunal's Office of the Prosecutor during investigations into the *Hategekimana* case as well as falsified medical documents for Witness YAA.[385]

183. When initially questioned, Witness AZD denied having worked for the Tribunal's Office of the Prosecutor.[386] When provided further details, including the relevant period and that it related to the *Hategekimana* case, the witness affirmed that the Tribunal's Kigali Office of the Prosecutor requested assistance. He further stated that he helped an individual from that office locate the Ngoma Camp and identify certain things there.[387] The witness explained that he did this without compensation.[388]

184. In the Chamber's view, the witness's limited assistance to the Tribunal's Office of the Prosecutor in Kigali does not render his evidence in this case partial or unreliable. Nor does his initial inability to recall having provided this assistance – particularly because it was uncompensated and limited in nature – suggest that he sought to withhold this information.

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[382] *See* Witness ZAW, T. 26 January 2011, pp. 27, 37-38.
[383] *See* Witness ZAW, T. 26 January 2011, pp. 27, 37.
[384] Witness ZAW, T. 26 January 2011, pp. 37-38.
[385] *See* Defence Closing Brief, paras. 105, 109-110.
[386] Witness AZD, T. 1 February 2011, p. 33.
[387] Witness AZD, T. 1 February 2011, pp. 33-35.
[388] Witness AZD, T. 1 February 2011, p. 35.

185. Turning to Witness AZD's alleged falsification of medical leave documents, the Chamber observes that Witness YAA testified that he had deserted his post in Kigali in mid-May 1994 and that Witness AZD provided an authorisation that Witness YAA was ill.[389] Witness YAA stated he was not ill and that this was meant to assist him.[390] Witness AZD denied that Witness YAA was a deserter but conceded that he might have granted Witness YAA sick leave because his wife was pregnant.[391] Witness YAA confirmed that he had a pregnant wife, who gave birth in June.[392]

186. The circumstances in 1994 were clearly different from the context in which Witness AZD testified in this proceeding. Witness YAA, a Tutsi, had lost confidence in any protection the Rwandan army could provide him and his Tutsi wife.[393] To the extent Witness AZD improperly authorised sick leave, which allowed Witness YAA to be with his pregnant wife during the war in 1994, the Chamber does not consider that such prior conduct raises questions about the witness's fidelity to the testimonial oath in this proceeding.[394] It in no way raises reasonable concerns that Witness AZD, at the time of his testimony, possessed motivations or incentives to lie to the Chamber or implicate Nizeyimana.

187. Having considered internal credibility issues and challenges to general reliability, the Chamber shall now assess the witnesses' evidence as it relates to the event. Witnesses ZAW and AZD testified that, the day following the arrival of the Ruhutinyanya family, they heard Nizeyimana speaking with Sergeant Nyirimanzi. Witness ZAW was standing 10 to 15 metres from them while Witness AZD testified that he was four to five metres away.[395] Witness ZAW heard Nizeyimana tell Nyirimanzi to return the Ruhutinyanya family "to the place where he had taken them from" and Nizeyimana state that "he did not need *Inyenzis* at the camp".[396] Witness AZD heard Nyirimanzi explain that he had brought the Ruhutinyanya family from around Akanyaru, prompting Nizeyimana to respond that "this family should be taken back where they had been brought from".[397]

188. Viewed together, the Chamber considers these accounts fundamentally consistent and compelling. Noting the minor differences as to what precisely was heard by the witnesses and who exactly was present when Nizeyimana gave the instructions, the Chamber considers that these accounts are fundamentally consistent.[398] Witness ZAW's testimony was brief and did

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[389] Witness AZD, T. 1 February 2011, p. 50.
[390] Witness YAA, T. 1 February 2011, p. 67; T. 2 February 2011, pp. 8-12; Exhibit P16 (Witness YAA's Personal Information Sheet).
[391] Witness AZD, T. 1 February 2011, p. 50; Witness YAA, T. 1 February 2011, p. 67, T. 2 February 2011, p. 9.
[392] Witness YAA, T. 1 February 2011, p. 68.
[393] Witness YAA, T. 1 February 2011, pp. 68-69; T. 2 February 2011, pp. 8-11; Exhibit P16 (Witness YAA's Personal Information Sheet).
[394] Witness AZD, T. 31 January 2011, pp. 50, 63-64. *See also* T. 1 February 2011, p. 22 (acknowledging that lying in court is punished severely in his country). The Chamber considers that evidence about whether Witness AZD improperly authorised sick leave for Witness YAA is ambiguous, and distinguishable from, for example, a conviction for forgery. *See Nchamihigo* Appeal Judgement, paras. 77, 83 (overturning factual findings when the Trial Chamber failed to exercise sufficient caution in evaluating the testimony of a single witness who had been convicted for forgery).
[395] Witness ZAW, T. 26 January 2011, pp. 5-6; Witness AZD, T. 1 February 2011, pp. 5-6, 36.
[396] Witness ZAW, T. 26 January 2011, pp. 5, 35, 37-38.
[397] Witness AZD, T. 1 February 2011, pp. 5, 24, 35-36.
[398] Witness ZAW testified that Chief Warrant Officer Ntibiramira was present. *See* Witness ZAW, T. 26 January 2011, pp. 5, 37; *but see* T. 26 January 2011, p. 35 (noting that Nyirimanzi was alone when Nizeyimana spoke to

not describe the precise location where the conversation took place. Notwithstanding, Witness AZD's testimony reflects that it happened in a relatively public area inside the camp.[399]

189. Similarly, the Chamber has no doubt in the abilities of both witnesses to have identified Nizeyimana in April 1994. Both were posted at the ESO at the time – Witness ZAW having joined in 1991 and Witness AZD in November 1993.[400] Both correctly testified that Nizeyimana held the position of S2/S3 and Witness ZAW identified him in court.[401]

190. In addition, the testimonies of Witnesses ZAW and AZD are bolstered by the circumstantial corroboration of Witnesses XAG and BDE. Witness XAG testified that a lieutenant from the ESO informed him that the Ruhutinyanya family, on the orders of Nizeyimana, were returned to the roadblock and killed the day after they were detained at the ESO.[402]

191. Witness BDE also heard from ESO colleagues that Nizeyimana nearly "killed" Sergeant Nyirimanzi for bringing the Ruhutinyanyas into the ESO and that Nizeyimana, who referred to the family as "*Inyenzi*", ordered that they be "taken back to their place of origin because he didn't need them in the camp".[403] The Chamber considers this aspect of Witness BDE's testimony, when viewed among all the relevant evidence, compelling.[404] Indeed, evidence of Nizeyimana being angered about the presence of the Ruhutinyanya family is strikingly consistent with the testimonies of Witnesses XAG and YAL (discussed above), and Nizeyimana consequently ordering their removal, compelling.

192. The Defence challenges the Prosecution evidence, noting in particular variant dates provided by Witnesses ZAW and AZD. Witness ZAW estimated that he observed Nizeyimana speaking with Sergeant Nyirimanzi "around" 21 or 22 April 1994 and Witness AZD confirmed that this occurred after President Théodore Sindikubwabo's speech in Butare between 21 and 26 April.[405]

193. The evidence uniformly demonstrates that the Ruhutinyanya family arrived at the ESO Camp on an evening in April 1994 and left the following day. Based on the consistent

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him). Witness AZD made no mention of him or Ntibiramira being present during that conversation. Witness AZD, T. 1 February 2011, pp. 15, 24, 35-36.

[399] *See* Witness AZD, T. 1 February 2011, pp. 5 ("A. I am referring to Captain Nizeyimana because that first sergeant was talking to him in front of his office. As I mentioned yesterday, his office was right next to the command office and opposite the tarmac. And by tarmac, I mean our assembly area."), 6 ("THE WITNESS: Thank you, Mr. President. I could hear them because since we assembled at that place, I was part of the general staff and services company. And that is where this company assembled and this area was directly opposite his office."), 36.

[400] *See* Witness ZAW, T. 26 January 2011, pp. 3, 24, 41; Witness AZD, T. 31 January 2011, p. 64.

[401] *See, e.g.*, Witness ZAW, T. 26 January 2011, pp. 3 (Nizeyimana held the position of S2/S3 in April 1994), 12-13 (in court identification of Nizeyimana), 41-42 (Nizeyimana held the position of S2/S3 when the witness joined the ESO in 1991); Witness AZD, T. 31 January 2011, p. 65.

[402] Witness XAG, T. 25 January 2011, p. 33.

[403] Witness BDE, T. 28 January 2011, pp. 23-24; T. 31 January 2011, pp. 35-36, 43.

[404] Defence challenges to Witness BDE's evidence concerning this event primarily focus on the differences between her account and Witness ZY's testimony. The Chamber has discussed this in detail previously in this section.

[405] Witness ZAW, T. 26 January 2011, p. 4; Witness AZD, T. 1 February 2011, pp. 5-7, 35. Witness AZD estimated that the minibus arrived between 20 and 25 April 1994 but that he had overheard the conversation between First Sergeant Nyirimanzi and Nizeyimana the following day. T. 1 February 2011, p. 5.

and detailed testimonies of Prosecution Witnesses YAL and BDE as well as Defence Witness ZML07 the Chamber has determined that the Ruhutinyanya family was brought to the ESO around 17 April and left the following day, approximately 18 April.[406] In this regard, the evidence of Witness ZAW and AZD is inconsistent with these conclusions.

194. However, the Chamber notes that Witness ZAW only provided an estimate about the date and was not questioned extensively on the issue.[407] Witness AZD testified that President Théodore Sindikubwabo's 19 April 1994 speech triggered acts of genocide and was certain that his observations concerning the Ruhutinyanya family happened after the speech.[408] However, his evidence also reflects that he could only provide estimates, given the considerable passage of time.[409] The inabilities of the witnesses to recall the precise dates are reasonable due to the passage of time and the variances do not raise doubts about their otherwise consistent and compelling accounts.

195. Having considered the Prosecution evidence, the Chamber turns to the relevant testimonies of the Defence witnesses. Contrary to the Prosecution witnesses, Defence Witnesses RWV11 and CKN10 testified that Lieutenant Colonel Tharcisse Muvunyi arranged for the removal of the Ruhutinyanya family from the ESO. Their evidence, however, is second-hand.[410] Witness ZML07, who accompanied the Ruhutinyanya family from the camp, did not know who ordered the mission.[411]

196. In the Chamber's view, the second-hand evidence of Witnesses RWV11 and CKN10 is of relatively little probative value. The Chamber has elsewhere raised concerns about the fundamental credibility of their evidence.[412] It does not raise doubts with the direct accounts of Witnesses ZAW and AZD that Nizeyimana instructed Sergeant Nyirimanzi to have the Ruhutinyanyas removed from the ESO and returned to where they had come from. In so finding, the Chamber has also considered Witness ZML07's first-hand account that Sergeant

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[406] Specifically, Witness YAL, the gendarme, identified 17 April 1994 as the exact date of his mission to escort the Ruhutinyanya to the border crossing. Prosecution Witness YAL, T. 25 January 2011, p. 48. Witness BDE recalled that the Ruhutinyanya family was brought to the ESO prior the President Théodore Sindikubwabo's speech in Butare on 19 April 1994. Prosecution Witness BDE, T. 28 January 2011, p. 22; T. 31 January 2011, p. 36. Witness ZML07 repeatedly estimated that he escorted the Ruhutinyanya family from the ESO "around" 17 April 1994. Defence Witness ZML07, T. 18 May 2011, pp. 10, 26. The Chamber observes that Defence Witnesses RWV11 and CKN10 also testified that the Ruhutinyanya family was brought to the ESO on 17 April and that they left the following day. The Chamber has elsewhere questioned the fundamental credibility of these witnesses. *See* II.13.2. Notwithstanding, the Chamber considers that this aspect of their testimonies offers limited corroboration concerning the timing of this event.

[407] Witness ZAW, T. 26 January 2011, p. 4.

[408] Witness AZD, T. 1 February 2011, p. 35.

[409] *See* Witness AZD, T. 1 February 2011, p. 5 ("Q. And do you know, approximately when or what the date was that that vehicle arrived at the ESO? A. I do not know the exact date, I apologise, because these things happened 17 years ago. But all I recall is that it was towards the end of April, that is, after the 20th, between the 20th and the 25th of April 1994. It was around that time, but let me repeat, I apologise, because I cannot remember dates.").

[410] *See* Witness CKN10, T. 26 May 2011, pp. 43-44 (explaining that he was not present when "Muvunyi took the decision" to provide a military escort to bring the Ruhutinyanya family to the border); Witness RWV11, T. 2 June 2011, p. 19 (noting that it was "likely that the camp command represented by commander Muvunyi" was informed about the presence of the Ruhutinyanyas; the witness heard that the family was allowed to leave camp because they had been issued *laissez-passers*).

[411] Witness ZML07, T. 18 May 2011, pp. 28, 37-38.

[412] II.13.2.

Nyirimanzi *did not* participate in the removal of the Ruhutinyanya family from the camp.[413] That other soldiers ultimately acted on these instructions, does not raise reasonable doubt in the first-hand evidence of Witnesses ZAW and AZD that Nizeyimana ordered the removal of the Ruhutinyanya family from the ESO.

197. Having considered the above, the Chamber must assess whether Nizeyimana's instructions amounted to an order or instigation to kill the Ruhutinyanya family. At the outset, none of the Prosecution witnesses testified that Nizeyimana ordered that the Ruhutinyanya family be killed. Furthermore, while Witnesses XAG and YAL testified about the particular threat the *Interahamwe* posed to the Ruhutinyanya family at the roadblock near the Akanyaru border crossing,[414] the Prosecution evidence does not provide direct evidence of Nizeyimana being informed of this or potential dangers of returning the family to the roadblock.[415]

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[413] *See* Witness ZML07, T. 18 May 2011, pp. 12-13 (instructed to write the names of soldiers who escorted the Ruhutinyanya family); Exhibit D37 (Names of Soldiers).

[414] *See* Witness XAG, T. 25 January 2011, pp. 38-40; Witness YAL, T. 25 January 2011, pp. 57-59.

[415] *See* Witness XAG, T. 25 January 2011, pp. 32 ("Captain Nizeyimana was sitting in his office and the soldiers saluted him – saluted the captain. And the first sergeant who was accompanying us informed Captain Nizeyimana that he had surprised us while we were escorting *Inyenzi*. Captain Nizeyimana asked us why we were escorting *Inyenzi*. We answered that we were gendarmes who had been given a mission by our superiors and that we were merely respecting the orders of our commander, in accordance with the rules which stipulated that we could carry out escort missions. Captain Nizeyimana was not happy with that and he seised our service cards. We tried to explain and justify ourselves, but he did not want to understand us."), 41 ("Q. And in Captain Nizeyimana's office you had a discussion with the well – the fact, according to the sergeant, that you had been assisting *Inyenzi* to leave, and he confiscated your identity cards. Correct as well? A. Yes, Counsel. ... Q. ... the first sergeant took you to Nizeyimana's office where you found him. You had the discussion with him about how you were taking people to the border and how you were to be locked up for the night. ... And then you left his office and you did not talk with him again that night. Correct? A. We left Captain Nizeyimana in his office. When we went outside, we tried to escape from the person who was responsible for guarding us, but we were not able to talk to Captain Nizeyimana that evening."); Witness YAL, T. 25 January 2011, pp. 49 ("A. When we arrived at ESO, the people who were driving us introduced us to Captain Nizeyimana. He was in his office. His office was located at the place referred to as the *corps de garde*. This is what he said. 'We have just arrested these accomplice soldiers transporting the *Inkotanyi*.' Nizeyimana was in the company of a lieutenant called Gakwerere. And they beat us up saying that we had transported accomplices. We responded that we had not transported any accomplices and that this was a family that had some problems which we were protecting. The soldiers did not understand this and continued to beat us."), 50 ("Q. And did Captain Nizeyimana say anything to you while you were in the office? A. He said we were accomplices who were protecting the *Inkotanyi* and that we had to die."), 63 ("Q. And that's when, according to your testimony, you were asked – or, sorry, the first sergeant who had brought you back to ESO told Captain Nizeyimana of your attempt to assist *Inkotanyi* fleeing the country. And then you were – well, is that correct? Am I stating it correctly so far? A. The first sergeant said the following: 'We have arrested the gendarmes who usually help *Inkotanyi* to flee.'"); Witness ZAW, T. 26 January 2011, pp. 5 ("A. ... On the following day, in the morning, I heard Captain Nizeyimana insult the person who had brought the vehicle to the camp. Captain Nizeyimana was telling the person to return the vehicle to where it had come from, because he really didn't need to see those *Inyenzi*s at the camp. ... Q. And you just told us about something that Captain Nizeyimana told that person. Did you know that person? A. Yes, I knew that person. Q. Can you tell us who that was. A. Captain Nizeyimana spoke to Sergeant Major Nyirimanzi, who had brought the vehicle to the camp. He was with Chief Warrant Officer Ntibiramira. ... Q. Did you hear Captain Nizeyimana yourself? A. Yes. Q. What words did you hear? A. I heard him tell Nyirimanzi that he should take back those people to the place where he had taken them from. He also said that he did not need *Inyenzi*s at the camp."), 24 ("JUDGE FREMR: ... Mr. Witness, you said that Captain Nizeyimana thought that the people which had been transported by minivan to the ESO should be returned back to the place where they had been taken. Did he specify that place to which they should be returned back? THE WITNESS: I thank you, Your Honour. It was being said that those people had been taken to a place that might have been known by

198. Having accepted the evidence of Witnesses XAG, YAL, ZAW and AZD, the Chamber considers it inconceivable that Nizeyimana would not have known of the particular threat posed by returning the Ruhutinyanya family to where they had come from – the roadblock near the Akanyaru border. The information about what had happened to the family there prior to their arrival at the ESO Camp circulated widely among ESO soldiers within the camp.[416] Given the overnight duration of the Ruhutinyanya family's presence there, it is doubtless that Nizeyimana would have acquired this information over the several hours that elapsed. Indeed, as an S2/S3 officer charged with intelligence and operations, as well as a captain issuing orders to lower ranking soldiers, it is inconceivable that Nizeyimana would have deployed ESO soldiers to return the Ruhutinyanya family to a particular location without first considering what circumstances the convoy would be facing.[417] The only reasonable inference is that the very danger the Ruhutinyanya family had faced at the roadblock was the reason why Nizeyimana ordered ESO soldiers to return the family to that very location.

199. Moreover, the evidence of Nizeyimana's anger towards the presence of this family, characterised by him and others as *Inyenzi* or *Inkotanyi*, further reflects disgust with the fact that resources were being employed to protect the Tutsi family. Indeed, such disgust falls squarely in line with the Chamber's conclusions elsewhere that Nizeyimana, around this same time, substantially and significantly contributed to the preparations of an overwhelming military assault on displaced Tutsis at the Cyahinda parish.[418] Notably, this attack on the Tutsi refugees there occurred after they had effectively defended themselves against initial incursions by the Nyakizu *bourgmestre* and gendarmes, and, indeed, managed to kill at least two gendarmes.[419]

Captain Nizeyimana, but I did not know the place. Subsequently, I learned that those people had been stopped at the Akanyaru border as they were attempting to flee into Burundi."), 35 ("Q. And the following day in the morning, that's when you saw Nizeyimana insulting the people who had brought the bus there, and you heard him telling them to take that vehicle back where it had come from because, and I'm quoting you from my notes, he didn't – Nizeyimana said he didn't need to see *Inyenzi*s in the camp. That's correct as well? A. Yes, Counsel."); Witness AZD, T. 1 February 2011, pp. 5 ("A. ... When a soldier who had the rank of first sergeant called Nyirimanzi, First Sergeant Nyirimanzi ... told Captain Nizeyimana that he had brought Ruhutinyanya's family from the road near Akanyaru when the family was fleeing to Burundi. And he responded that this family should be taken back where they had been brought from. ... Q. When you said he said "take them back", who were you referring to? A. I am referring to Captain Nizeyimana ... I'm referring to him because the first sergeant talked to him and mentioned the fact that he had brought the family which was fleeing towards Burundi. So I am referring to Captain Ildéphonse Nizeyimana."), 35-36 ("Q. Now, sir, you stated to the Court that one day you saw Mr. Nizeyimana speaking to Nyirimanzi saying to – something like, 'Get rid of these people. Take them back where they came from.' I have two questions here. First, is it not true this event happened prior to the speech of Dr. Sindikubwabo? A. That is not true, because that happened after the speech. ... Q. Okay. Now, you stated that you were on the tarmac, and you heard Nyirimanzi speaking to Nizeyimana. And you were 4 metres away or 5 metres away when he allegedly made those comments about getting rid of them. Is that correct, or am I wrong? A. Yes, that's what I said.").

[416] Prosecution Witness BDE, T. 28 January 2011, p. 22-23; Prosecution Witness ZY, T. 26 January 2011, pp. 55-57; Defence Witness RWV11, T. 2 June 2011, pp. 17-18, 53, 56-57; Defence Witness CKN10, T. 30 May 2011, pp. 51-53.

[417] Indeed, the testimony of Witness RWV11, an ESO soldier, presumes that Bizimana, who led the Ruhutinyanyas away, necessarily would have known about the dangers that would confront them. *See* Witness RWV11, T. 2 June 2011, pp. 73-75. The same would apply to the higher ranking soldier who ordered the removal.

[418] *See* II.4.2.

[419] *See* II.4.2.

200. Moreover, the record compellingly explains why the instructions overheard by Witnesses ZAW and AZD were not explicit orders to kill. Notably, this conversation was occurring in a relatively public venue when the full resources of the ESO Camp had not been turned towards the unabated slaughter of Tutsis or opposition figureheads.

201. Based on the above, the Chamber considers that the only reasonable inference is that Nizeyimana gave these instructions – namely returning the family to the place from where they were retrieved by ESO soldiers – knowing that the implementation of this order would lead to the slaughter of the Ruhutinyanya family. The Chamber has no doubt that Nizeyimana's order substantially and significantly contributed to the Ruhutinyanya family's removal and resulting killings.

202. In reaching this finding, the Chamber has also considered the evidence of Witness ZML07, whose testimony does not reflect that the Ruhutinyanya family were removed from the ESO for the purpose of being killed. Rather, the ESO soldiers were attempting to bring the family into Burundi.[420] Witnesses RWV11 and CKN10 also testified that the purpose of the mission was to secure the family's passage into Burundi.[421]

203. Moreover, Witness ZML07 testified that the mission was unsuccessful because of an ensuing fight with *Interahamwe* manning a roadblock near the border and Burundian soldiers, who fired upon the ESO soldiers. Witness RWV11 corroborated aspects of Witness ZML07's account, testifying that he heard from Second Lieutenant Pierre Bizimana that an altercation occurred at the roadblock and that Burundian soldiers fired upon the ESO soldiers.[422]

204. The Defence does not carry a burden of proof. Nonetheless, it remains appropriate to assess the reliability of the Defence evidence against conflicting Prosecution testimonies.[423] At the outset, the Chamber considers that, even if credited, the second-hand evidence of Witnesses RWV11 and CKN10 as to the purpose of the mission is of little probative value when weighed against the first-hand accounts of the Prosecution witnesses and the compelling circumstantial evidence suggesting otherwise. The Chamber reiterates its fundamental concerns as it relates to the reliability of these witnesses.[424]

205. Turning to the evidence of Witness ZML07, the Chamber observes that he is the only witness who testified about this incident that has an ostensible personal interest in the Chamber's assessment of it. As one of the ESO soldiers who left with the Ruhutinyanya family from the ESO Camp, it would be self-incriminatory to say that the purpose of the mission was to kill them. As a Rwandan in exile at the time of his testimony, the Chamber has concerns that he may have used his appearance before the Tribunal as an attempt to provide evidence that would exonerate him of liability as it relates to the killing of the Ruhutinyanya family.[425] Indeed, the Chamber notes that Witness ZML07 left a uniformly negative impression with each member of this Bench. Having considered the relevant circumstances, as well as the witness's demeanour during his *viva voce* evidence, the

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[420] Witness ZML07, T. 18 May 2011, pp. 10-12, 26, 28, 35, 40.
[421] *See* Witness RWV11, T. 2 June 2011, pp. 19, 35, 38-39, 74-75; Witness CKN10, T. 26 May 2011, pp. 42-43, 58.
[422] Witness RWV11, T. 2 June 2011, p. 39.
[423] *See, e.g.*, *Setako* Appeals Judgement, paras. 233-234.
[424] *See* II.13.2.
[425] *See* Exhibit D35 (Witness ZML07's Personal Information Sheet) (identifying his current nation of residence).

Chamber finds his evidence regarding the events at the roadblock that led to the killing of the Ruhutinyanya family patently unbelievable.

206. The Chamber observes that Witness ZML07's account about the altercation at the roadblock near the Akanyaru border post is detailed, and that Witness RWV11's evidence of what he heard closely corresponds to Witness ZML07's evidence. However, the Chamber finds these accounts *prima facie* unbelievable. The Chamber has considerable doubts that *Interahamwe* at this roadblock would have acted so aggressively towards this armed contingent of soldiers. It also is unable to credit evidence that Burundian soldiers would have subsequently fired upon a roadblock 500 metres to one kilometre inside of Rwanda.[426] Indeed, Witness ZML07's evidence tends to suggest that the ESO soldiers were nearly out of range, or were in fact out of range of the firearms allegedly employed by the Burundian soldiers.[427]

207. Moreover, the fact that no attempt was made to retrieve the Ruhutinyanya family further belies that the purpose was to safely convey the Ruhutinyanya family across the border. Indeed, Witness ZML07's description of the soldiers deliberately placing a minivan full of civilians at the front of the convoy, as a means to safely deliver it through a roadblock where it had previously experienced considerable hostility, further demonstrates that the purpose was to shepherd the van towards the roadblock rather than convey it through the barrier.[428]

208. Furthermore, a broad review of the record reflects that, around this time, Lieutenant Bizimana effectuated attacks on select targets.[429] His involvement in this operation lends

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[426] There is evidence that soldiers were deployed near the border with Burundi, although it is not clear if they were posted at the Akanyaru border crossing. *See* Witness Ruzindana, T. 1 June 2011, p. 26 (learned that ESO units were "deployed near the border" shortly after the President's death); Witness Hitayezu, T. 9 June 2011, p. 61 (confirming that ESO soldier Kanyeshyamba was assigned to guard the Akanyaru post at the border with Burundi); Witness OUV03, T. 30 May 2011, pp. 69, 71, T. 31 May 2011, p. 59 (as early as 6 April 1994, units were deployed to Kigembe and Kibayi communes to patrol the border with Burundi). Indeed, the Defence argues that the ESO deployed soldiers to Akanyaru. *See* Defence Closing Brief, para. 559. The Chamber notes that Witness Ufitimana did not describe the presence of ESO soldiers at the Akanyaru border post. Indeed, he only saw civilians and customs officers at the Rwandan side of the border. Witness Ufitimana, T. 26 May 2011, p. 11. However, the Chamber does not consider this a material fact, which would undermine his credibility in regards to this allegation.

[427] Witness ZML07, T. 18 May 2011, pp. 25-26.

[428] Witness ZML07, T. 18 May 2011, pp. 19 ("A. The two vehicles were close to each other, but the minibus was ahead. But our pickup was following closely behind."), 22 ("Q. I will ask a little more. For six soldiers including one officer, took this mission to escort this family, your team faced roadblocks – three roadblocks. Why did you choose the rear escort position instead of front escort? A. I think that I have already explained that point. However, I will repeat it. I have already said that our pickup truck was behind the minibus, but the distance between the two vehicles was very small. When we would get to a roadblock, our platoon leader would get out of the pickup truck and go and speak to the people manning at a given roadblock."), 36 ("A. I'm going to be brief. Personally I observe that the Prosecutor is suggesting that we were forcing the minibus to go in a certain direction, and that is not the case. When you escort somebody you don't place yourself before that person. When you escort somebody you position yourself behind the escorted person to protect him. Now, regarding the mission that was assigned to us, there wasn't a big distance between the minibus that we were escorting and our own vehicle. And we thought that the situation was not as dangerous, and we did not envisage that there will be any problem carrying out that problem (sic). We never expected that there were people who were going to prevent us from escorting the family to the border and for them to cross the border. The prevailing situation was not a war situation, as such.").

[429] *See* II.6.2.

further credence to the Chamber's conclusion that it was aimed at the elimination, rather than the safe passage, of the Tutsi civilians he was accompanying.

209. Indeed, the plausibility of Witness ZML07's account is undermined by Witness Ufitimana, an ESO soldier who testified that he escorted a convoy of Tutsi civilians to the Akanyaru border just days after the Ruhutinyanya family was brought there. The two missions share strikingly similar circumstances. Like the Ruhutinyanya convoy, Witness Ufitimana and other armed ESO soldiers in three vehicles accompanied an Italian ambassador and a group of Tutsis, who were driving in their own vehicles, to the border with Burundi on 20 April 1994.[430] While Ufitimana described facing difficulties at many roadblocks manned by civilians acting like "rabid dogs", the ESO soldiers were able to negotiate their way through. They managed to safely deliver the group to the border with Burundi.[431] Indeed, Witness Ufitimana's evidence reflects that when faced with difficulties, the soldiers managed to make their way through roadblocks by threatening force.

210. In the Chamber's view, Witness Ufitimana's evidence undermines the plausibility of the purported dangers armed civilians posed to a convoy of ESO soldiers escorting the Ruhutinyanya family at a roadblock near the Akanyaru border crossing. Indeed, the only reasonable conclusions are that these soldiers either shepherded members of that family to their death by leaving them at the roadblock, and / or did so and directly participated in the killing.

211. Moreover, the fact that one group of ESO soldiers sought to safely escort Tutsis across the border while others contributed directly to another group's killing is not irreconcilable. Witness Ufitimana's group was not only accompanying Tutsis, but also a foreign ambassador. Ensuring the safe passage of Witness Ufitimana's group had international and diplomatic implications that the killing of a Tutsi family from Butare did not.

212. Additionally, the fact that Witness RWV11 heard a story that closely corresponded with Witness ZML07's purported first-hand account is, in the Chamber's view, far from dispositive. Notably, the Chamber has elsewhere questioned Witness RWV11's credibility generally because his evidence at points appears exaggerated as a means of exculpating Nizeyimana or, as shown earlier, is inconsistent with other evidence tending to implicate Nizeyimana in this particular event.[432] The Chamber again remarks that Witness RWV11 left a uniformly negative impression with each member of this Bench. Having considered the relevant circumstances, as well as the witness's demeanour during his *viva voce* evidence, the Chamber has concerns about his credibility.

213. Furthermore, even if the Chamber were to credit Witness RWV11's evidence, the Chamber has no doubt that this story was concocted so as not to implicate the soldiers involved in the mission. Notably, the removal of the Ruhutinyanya family occurred at a period when large scale attacks on Tutsis had not yet commenced in Butare town. While the record reflects that shortly after, groups of ESO soldiers were organised and participated in targeted attacks on Tutsis and others, the full resources of the ESO Camp were not. Indeed, the Chamber has no doubt that Nizeyimana ordered the family to be removed to where they had first been retrieved knowing that they would be killed, but at a geographically distant

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[430] Witness Ufitimana, T. 26 May 2011, pp. 10-11.
[431] Witness Ufitimana, T. 26 May 2011, pp. 10-11.
[432] *See* II.13.2.

location, and under circumstances that would allow him and ESO soldiers escorting them plausible deniability of their involvement.

214. Based on the above, the Chamber finds that Nizeyimana ordered the removal of the Ruhutinyanya family, knowing that the implementation of this order would lead to the slaughter of the Ruhutinyanya family. The Chamber has no doubt that in doing so, Nizeyimana shared the intention of those who ultimately killed the Ruhutinyanya family.

215. Furthermore, the Chamber has no doubt that the ESO soldiers accompanying the family either executed the Ruhutinyanya's themselves or brought them to the roadblock to be slaughtered. As discussed in detail below, the Chamber has no doubt that Nizeyimana's order substantially and significantly contributed to the Ruhutinyanya family's removal and resulting killings.

(ii) Killing of the Ruhutinyanya family

216. The Chamber observes that none of the evidence pertaining to the death of the Ruhutinyanya family is direct. The Chamber may make findings based on circumstantial evidence so long as it is the only reasonable conclusion.[433] The Chamber also has the discretion to cautiously consider hearsay evidence and has the discretion to rely on it.[434] The weight and probative value afforded to hearsay evidence will usually be less than that accorded to evidence of a witness who has given it under oath and who has been cross-examined.[435]

217. In this context, the Chamber considers that the circumstantial and hearsay evidence relating to the killing of the Ruhutinyanya family near the Akanyaru border is sufficiently reliable to allow for findings beyond reasonable doubt. At the outset, it notes that Defence Witness ZML07 provided a first-hand account that he and other ESO soldiers, including Second Lieutenant Pierre Bizimana, accompanied the Ruhutinyanya family to a roadblock manned by armed civilians close to the Akanyaru border crossing. Although he was not sure, he believed based on the sustained gunshots he heard while fleeing, that the Ruhutinyanyas had been killed at the border.[436] While the Chamber has considerable reservations about Witness ZML07's evidence as to how the Ruhutinyanya family were killed, it finds his concession that they were in fact killed in that area compelling. Indeed, there is a significant amount of second-hand evidence from various sources, including Prosecution and Defence witnesses that support this conclusion.[437]

218. Other second-hand evidence that the family was killed at Rwasave or inside the ESO camp is supported by only a single witness in each instance.[438] This evidence reflects the dangers of relying on hearsay. However, without a direct account offering a competing narrative or any indication that the family survived, the Chamber is satisfied that the diversity

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[433] *See Renzaho* Appeal Judgement, para. 318; *Ntagerura et al.* Appeal Judgement, para. 306.
[434] *Kalimanzira* Appeal Judgement, para. 96.
[435] *Kalimanzira* Appeal Judgement, para. 96.
[436] Witness ZML07, T. 18 May 2011, pp. 20-21.
[437] *See* Prosecution Witness XAG, T. 25 January 2011, pp. 33, 42-43; Prosecution Witness YAL, T. 25 January 2011, pp. 50-51, 65; Prosecution Witness BDE, T. 28 January 2011, pp. 24-25, T. 31 January 2011, pp. 35, 37; Prosecution Witness Dufitumukiza, T. 20 January 2011, p. 21; Defence Witness RWV11, T. 2 June 2011, p. 39; Defence Witness CKN10, T. 26 May 2011, p. 44. *See also* Defence Witness BUV03, T. 10 May 2011, pp. 72-73 (generally testifying that Ruhutinyanya and his family were killed, although the witness was not present).
[438] Witness ZY, T. 27 January 2011, pp. 58, 63-64; Witness XAG, T. 25 January 2011, pp. 42-43.

of sources demonstrates that the Ruhutinyanya family was killed in the vicinity of a roadblock near the Akanyaru border crossing around 18 April 1994. This is the only reasonable conclusion given the evidence.[439]

219. Similarly, the Chamber has no doubt that the ESO soldiers who transported the Ruhutinyanyas to this location significantly and substantially contributed to their murders and intended this outcome. Indeed, it is significant that Second Lieutenant Bizimana led this operation. Only days later, he also led a team of ESO soldiers in the extraction and killing of Rosalie Gicanda, the former Tutsi Queen of Rwanda, and other persons in her household.[440] The Chamber has no doubt that either the ESO soldiers who transported the family to the roadblock and or the armed civilians and *Interahamwe* manning it directly participated in the killing of members of this family.

220. Furthermore, given the undisputed fact that Mr. Ruhutinyanya was Tutsi,[441] that the minivan's occupants were members of his family and included children,[442] and that those inside the minivan were perceived to be Tutsis,[443] the only reasonable conclusion is that a significant number of the victims within the minibus were Tutsis, were identified as such, and killed on that basis. Such a conclusion is necessarily supported by the considerable evidence in this proceeding that Tutsis were targeted by soldiers and civilian militia, including *Interahamwe* at roadblocks.[444] The Chamber shall consider these conclusions in its Legal Findings (III).

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[439] *Cf. Rukundo* Appeal Judgement, paras. 190-191.
[440] *See* II.6.2.
[441] *See* Prosecution Witness YAL, T. 25 January 2011, p. 47; Defence Witness CKN10, T. 26 May 2001, pp. 42-43; T. 30 May 2011, pp. 52-53.
[442] *See* Witness ZAW, T. 26 January 2011, pp. 4-5, 15, 34-35; Witness BDE, T. 28 January 2011, p. 22, T. 31 January 2011, pp. 34-36; Witness ZY, T. 26 January 2011, p. 58, T. 27 January 2011, p. 7.
[443] *See, e.g.*, Prosecution Witness BDE, T. 28 January 2011, pp. 22-23, 25; Defence Witness ZML07, T. 18 May 2011, pp. 23-24.
[444] *See* II.7.3.

4.2 Cyahinda Parish Massacre

Introduction

221. The Indictment alleges that from approximately 15 April until 20 April 1994, Nizeyimana authorised, ordered, or instigated soldiers from the ESO, Ngoma Camp, and Butare Gendarmerie Camp, militiamen, Burundian refugees, and armed civilians from Nyakizu and surrounding communes to kill Tutsi civilians who had taken refuge at Cyahinda Parish. Specifically, around 17 April, Nizeyimana and Prefect Jean Baptiste Habyalimana went to Cyahinda Parish and met with the Tutsi refugees, after which it was decided that soldiers would be sent to the parish. The next day, around 18 April, following Nizeyimana's instructions, a number of ESO soldiers and "others", led by Warrant Officer Paul Kanyeshyamba, as well as gendarmes led by Second Lieutenant Majoro, exercised their command to target the civilian victims. Soldiers, militiamen and armed civilians killed thousands of Tutsis civilians at Cyahinda Parish on the orders or instigation of Nizeyimana. Prosecution Witnesses AZM, Anaclet Dufitumukiza, ZBK, ZCC, GEN and XAG provided relevant evidence.[445]

222. The Defence concedes that Nizeyimana went to Cyahinda Parish, where thousands of Tutsis had sought refuge, and does not dispute that an attack occurred there. However, the Defence submits that the Prosecution evidence lacks credibility. Furthermore, the evidence fails to establish the involvement of ESO soldiers or Nizeyimana. Defence Witnesses Jean Marie Vianney Mushi, ZML10, RWV09, Thomas Ruzindana, OUV03, CKN10 and Valens Hahirwa provided relevant evidence.[446]

Evidence

Prosecution Witness AZM

223. Witness AZM, a Hutu, was a member of the prefecture security committee in Butare in April 1994.[447] On the afternoon of 17 April 1994, the witness, Nizeyimana, Butare Prefect Jean Baptiste Habyalimana, Prosecutor Mathias Bushishi and a priest called Nyaminani, went to Cyahinda Parish.[448] A gendarme guarding the refugees who had gathered there had been killed by them.[449] This delegation of the prefecture security committee went to the parish to "iron out" the refugees' security issues.[450]

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[445] Indictment, para. 13; Prosecution Closing Brief, paras. 98-118; T. 7 December 2011, pp. 3, 15-17 (Prosecution Closing Arguments). The Prosecution also points to the evidence of Justin Gahizi. This evidence is summarised elsewhere but considered here. II.12.1.

[446] Defence Closing Brief, paras. 7, 67, 296, 320-361; T. 7 December 2011, pp. 57-59, 74, 77 (Defence Closing Arguments).

[447] Witness AZM, T. 20 January 2011, pp. 58, 72; T. 24 January 2011, p. 18; Exhibit P6 (Witness AZM's Personal Information Sheet). At the time of his testimony, Witness AZM was incarcerated for genocide related crimes. T. 20 January 2011, pp. 58-59; T. 24 January 2011, p. 30. He has been in two different prisons since 1999. T. 24 February 2011, p. 30. He pleaded guilty to genocide related crimes in 2002. T. 24 January 2011, pp. 35-36; T. 24 January 2011, pp. 50-51. He prepared a statement for the Gacaca court in 2012. T. 24 January 2011, pp. 50-51.

[448] Witness AZM, T. 20 January 2011, pp. 63-64; T. 24 January 2011, pp. 32-33.

[449] Witness AZM, T. 20 January 2011, pp. 64-65.

[450] Witness AZM, T. 20 January 2011, pp. 63-64.

224. Although not allowed to enter the Cyahinda Parish buildings, the witness observed nearly 3,000 refugees, who were from Gikongoro prefecture.[451] Upon arrival, Father Nyaminani negotiated with the refugees, who acceded to speaking with the entire security delegation once shown that the Tutsi prefect, Jean Baptiste Habyalimana, was among them.[452] The refugees agreed to return the corpse of the gendarme on the condition that the gendarmes guarding the parish be replaced with soldiers.[453] The delegation retrieved the body, but briefly into the discussions, a Tutsi refugee was injured by Hutus who stole a cow, causing an uprising among the refugees that forced the security delegation to leave around 5.00 p.m.[454]

225. The security delegation returned to Butare and all went to the ESO Camp's officers' mess to have a drink.[455] Around 7.00 p.m., they heard on the radio that Jean Baptiste Habyalimana had been dismissed as Butare's prefect.[456] Witness AZM believed that soldiers were sent to Cyahinda Parish because the prefect had previously explained to the witness that this was why Nizeyimana formed part of the delegation and because the refugees had asked for soldiers.[457]

Prosecution Witness Anaclet Dufitumukiza

226. In April 1994, Witness Dufitumukiza, a Tutsi, was a gendarme corporal who worked as a driver at the Tumba Gendarmerie Camp in Butare town.[458] Two or three days before 19 April, gendarmes led by Second Lieutenant Majaro were sent to Cyahinda Parish to recover the body of one of two gendarmes who had been killed by Tutsi refugees that had fled from Nyaruguru and other regions of Butare and gathered at the parish.[459] Before their departure, the witness saw the gendarmes in possession of their personal firearms take a heavy machine gun operated by three people from the armoury.[460] Although Witness Dufitumukiza did not talk to the envoy, he believed that the gendarmes, sent under the pretence of protecting the refugees, actually intended to disarm the Tutsis at the parish and seek revenge for the killing of their colleagues.[461]

227. On 19 April 1994, gendarmerie Sergeant Major Mugisha instructed Witness Dufitumukiza to retrieve the gendarmes that had previously been sent to Cyahinda Parish as well as the corpse of the gendarme who had been killed there.[462] Witness Dufitumukiza left the Tumba Gendarmerie Camp around 11.00 a.m. and arrived at the Nyakizu commune

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[451] Witness AZM, T. 20 January 2011, p. 64.
[452] Witness AZM, T. 20 January 2011, pp. 64-65.
[453] Witness AZM, T. 20 January 2011, pp. 65-66.
[454] Witness AZM, T. 20 January 2011, pp. 66-67. It was rumoured that the refugees at Cyahinda Parish were in possession of another gendarme's body in addition to the one that was returned. T. 20 January 2011, p. 67.
[455] Witness AZM, T. 20 January 2011, pp. 67-68.
[456] Witness AZM, T. 20 January 2011, pp. 67-68.
[457] Witness AZM, T. 20 January 2011, p. 66.
[458] Witness Dufitumukiza, T. 19 January 2011, pp. 72-73; Exhibit P5 (Witness Dufitumukiza's Personal Information Sheet).
[459] Witness Dufitumukiza, T. 20 January 2011, pp. 6-8, 10-11, 35, 37, 39, 46. The body of one gendarme had already been recovered. T. 20 January 2011, pp. 6, 35, 49.
[460] Witness Dufitumukiza, T. 20 January 2011, pp. 38-40, 46.
[461] Witness Dufitumukiza, T. 20 January 2011, pp. 7, 37, 46-47.
[462] Witness Dufitumukiza, T. 20 January 2011, pp. 6-7, 35, 49, 51. The gendarmes were reassigned to support forces at the front in Kigali. T. 20 January 2011, p. 6.

office, situated on a hill near Cyahinda Parish, around 12.30 p.m.[463] He drove a Toyota Stout 2200 pickup.[464]

228. Upon arrival at the commune office, Witness Dufitumukiza heard heavy machine gun fire and grenades exploding and saw that Tutsis had been killed.[465] From a very short distance, and while positioned in front of the office, he saw ESO Chief Warrant Officer Kanyashyamba commanding about 11 ESO soldiers who fired support weapons towards Cyahinda Parish.[466] The weapons included one 60 millimetre mortar, a heavy machine gun (which was stationary), and other machine guns.[467] Only the ESO, a training institution, had such heavy weaponry.[468] He heard Kanyashyamba, who he knew well, shout to the soldiers "[s]ee that no one gets away" and instruct a "Hutu" in a Daihatsu pickup to get Hutus to surround the hill to prevent Tutsis from getting away.[469] He also saw Kanyashyamba firing his rifle "furiously at refugees".[470]

229. Soldiers participating in the attacks were "scattered all over the place", including the woods and nearby hills.[471] Hutus surrounded the "hill" and killed Tutsis that had escaped with bladed or traditional weapons.[472] Witness Dufitumukiza remained there between 20 to 30 minutes in order to allow the approximately 11 gendarmes, who had been awaiting his arrival, to recover all their equipment.[473] While he did not observe any of the gendarmes participate in what he described as a "massacre" of the refugees at Cyahinda Parish, he believed that they in fact had.[474] They left, along with the corpse of the gendarme who had previously been killed, and returned to the Tumba Gendarmerie Camp.[475]

Prosecution Witness ZBK

230. Witness ZBK, a Tutsi, was a student in April 1994 who lived close to Cyahinda Parish in Nyakizu commune.[476] On the morning of 15 April, a Friday, the witness was

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[463] Witness Dufitumukiza, T. 20 January 2011, pp. 6, 35-36. Witness Dufitumukiza estimated that Cyahinda Parish was approximately 48 kilometres from the Tumba Gendarmerie Camp. T. 20 January 2011, pp. 5-6.
[464] Witness Dufitumukiza, T. 20 January 2011, p. 49.
[465] Witness Dufitumukiza, T. 20 January 2011, pp. 8-9, 36.
[466] Witness Dufitumukiza, T. 20 January 2011, pp. 9-11, 36-37.
[467] Witness Dufitumukiza, T. 20 January 2011, pp. 8-11, 36-37, 47, 53.
[468] Witness Dufitumukiza, T. 20 January 2011, pp. 9, 38.
[469] Witness Dufitumukiza, T. 20 January 2011, pp. 8, 10, 37, 40, 53. Witness Dufitumukiza could distinguish between ESO soldiers, Ngoma Camp soldiers and gendarmes from the Tumba Camp, noting that Butare was a small town and that he knew almost all soldiers personally. T. 20 January 2011, p. 8. *See also* T. 19 January 2011, p. 74 (describing the differences between the uniforms and berets of gendarmes and soldiers).
[470] Witness Dufitumukiza, T. 20 January 2011, p. 53.
[471] Witness Dufitumukiza, T. 20 January 2011, p. 9.
[472] Witness Dufitumukiza, T. 20 January 2011, p. 11.
[473] Witness Dufitumukiza, T. 20 January 2011, p. 8. Second Lieutenant Majaro was not among the gendarmes Witness Dufitumukiza retrieved from the Cyahinda commune office on 19 April 1994. T. 20 January 2011, p. 37.
[474] Witness Dufitumukiza, T. 20 January 2011, pp. 36, 47, 49.
[475] Witness Dufitumukiza, T. 20 January 2011, pp. 11, 40. The dead gendarme was a corporal from Rubavu. T. 20 January 2011, p. 40.
[476] Witness ZBK, T. 19 January 2011, p. 11; Exhibit P4 (Witness ZBK's Personal Information Sheet). Cyahinda Parish was approximately 40 kilometres from Butare town. T. 19 January 2011, p. 11.

captured and brought to a compound where Burundian refugees assaulted her.[477] Gendarmes and their driver, who was Witness ZBK's neighbor, arrived.[478] They had been sent by the *bourgmestre* to remove a woman, but she was not there.[479] The driver took the witness and placed her in the gendarmes' Daihatsu pickup.[480] They went to the *bourgmetre's* home, retrieved the *bourgmestre's* wife and her children, the commune driver as well as his wife and children, and went to the commune office, arriving around 9.00 a.m. that day.[481] There, the *bourgmestre's* wife instructed Witness ZBK to come into the commune office with those families.[482]

231. From inside the commune office, Witness ZBK looked out the window and could see the Cyahinda Parish on an opposite hill, situated approximately one kilometre away.[483] The witness was aware that Tutsi refugees from Gikongoro had been gathering there since 9 April 1994. That day she observed persons with their livestock carrying personal belongings, travelling through a wooded area to towards the parish.[484] On 15 April, she heard screams from Cyahinda Parish and believed that *Interahamwe* were killing the displaced Tutsis there.[485] She also saw gendarmes and communal police leave the commune office for the parish and believed that they went there to kill Tutsis as well.[486] The attack lasted until about 3.00 p.m., when gendarmes returned to the commune office, stating that while refugees had been killed, they had defended the parish and killed gendarmes in the process.[487]

232. That afternoon, President Théodore Sindikubwabo addressed a large crowd, including *Interahamwe* from the commune that had surrounded the commune office.[488] He admonished them that the situation was similar to that experienced during the 1959 revolution, and that each needed to defend "himself".[489] Nyakizu *Bourgmestre* Ladislas Ntaganzwa then informed those gathered that he had heard the president and would reinforce them.[490] He told the crowd to continue to "work", which the witness interpreted as continuing to "kill[] people".[491]

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[477] Witness ZBK, T. 19 January 2011, pp. 19-20, 55-56, 58. *See also* T. 19 January 2011, pp. 53-55 (Witness ZBK's statement to Tribunal investigators of November 1996 was read to her and she confirmed its contents, with the exception of some omissions).
[478] Witness ZBK, T. 19 January 2011, pp. 15, 55-56, 59.
[479] Witness ZBK, T. 19 January 2011, pp. 55-56.
[480] Witness ZBK, T. 19 January 2011, pp. 15, 55-56, 58-59.
[481] Witness ZBK, T. 19 January 2011, pp. 12-13, 15, 19-20, 34-35, 56, 59. Witness ZBK believed that those who took refuge in the commune office with her were Hutu, although the *bourgmestre's* wife could have been Tutsi. T. 19 January 2011, p. 16.
[482] Witness ZBK, T. 19 January 2011, pp. 15-16, 59.
[483] Witness ZBK, T. 19 January 2011, pp. 13, 61-62. From the commune office Witness ZBK clarified that there was a wooded area and school between the commune office and Cyahinda Parish, but that one could recognise the parish buildings including the church, sisters' convent and school. T. 19 January 2011, pp. 13, 61-62. The distance was significant enough so that Witness ZBK could not recognise persons who were, for example, in the church courtyard and she would have been unable to distinguish if one person was shooting another. Rather, the witness could only recognise larger movements, such as a person running. T. 19 January 2011, pp. 13, 61-62.
[484] Witness ZBK, T. 19 January 2011, p. 13.
[485] Witness ZBK, T. 19 January 2011, pp. 13-14, 35.
[486] Witness ZBK, T. 19 January 2011, pp. 13-14, 35.
[487] Witness ZBK, T. 19 January 2011, pp. 14-15. Witness ZBK learned from gendarmes that they had seen that her father was killed around midday on 15 April 1994. T. 19 January 2011, pp. 17, 23.
[488] Witness ZBK, T. 19 January 2011, p. 15.
[489] Witness ZBK, T. 19 January 2011, p. 15.
[490] Witness ZBK, T. 19 January 2011, p. 15.
[491] Witness ZBK, T. 19 January 2011, p. 15.

233. Between 9.00 or 10.00 p.m. that evening, *Bourgmestre* Ntaganzwa, who the witness knew, came to the commune office.[492] He had a light wound, which he explained had been inflicted while at Cyahinda Parish.[493] He stated that he would go to the ESO the following day to get reinforcements, who the witness understood would "come and exterminate all the Tutsis".[494] Ntaganzwa left with his wife.[495] The next day, the witness did not hear much gunfire or screams and she was unsure of the situation.[496]

234. Before 7.00 a.m. on a following day, Ntaganzwa returned to the commune office, retrieved his diary, and again informed the witness that he was going to the ESO to seek reinforcements.[497] On Sunday, 17 April 1994, two days after her arrival at the commune office, Witness ZBK heard gendarmes who were positioned around the commune office announce the arrival of military lorries around 12.00 p.m.[498] She observed two vehicles, referred to as CTA, Siteya or Tata, park in front of the commune office.[499] One lorry could carry about 35 soldiers.[500]

235. Soldiers, some wearing fully green or camouflage uniforms, black berets or metal helmets, some in plastic looking overcoats, and some carrying grenades, exited hastily from the vehicles.[501] A number of soldiers ran in the direction of Cyahinda Parish while she observed others connecting "grenades", "rockets" or devices to the nozzles of their weapons.[502] She heard some soldiers say that they were going to "Rukuguru" hill.[503] She did not see heavy weapons being positioned in front of the commune office and believed that the soldiers were positioned away from it.[504] Witness ZBK heard gunfire and explosions and was uncertain if it came from the vicinity of the commune office.[505]

236. When calm had returned two days after the attacks, on 19 April 1994, the *bourgmestre* returned to the commune office and took Witness ZBK to the large Red Cross camp.[506] She spent two days there before leaving for Butare town.[507]

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[492] Witness ZBK, T. 19 January 2011, pp. 13, 16, 18, 35.
[493] Witness ZBK, T. 19 January 2011, pp. 16-18.
[494] Witness ZBK, T. 19 January 2011, pp. 17, 30, 34.
[495] Witness ZBK, T. 19 January 2011, p. 19.
[496] Witness ZBK, T. 19 January 2011, pp. 19, 34.
[497] Witness ZBK, T. 19 January 2011, pp. 19-20, 34-35.
[498] Witness ZBK, T. 19 January 2011, p. 20.
[499] Witness ZBK, T. 19 January 2011, pp. 19-20, 22, 34.
[500] Witness ZBK, T. 19 January 2011, p. 30. A gendarme told Witness ZBK that other lorries carrying soldiers also arrived but that they did not go to the commune office. T. 19 January 2011, pp. 20, 30.
[501] Witness ZBK, T. 19 January 2011, pp. 20-23, 62. Witness ZBK was able to distinguish the soldiers from communal police or gendarmes. For example, gendarmes had khaki coloured uniforms and maroon coloured berets. T. 19 January 2011, p. 20.
[502] Witness ZBK, T. 19 January 2011, pp. 20, 23-24, 62, 65-66. Witness ZBK explained that gendarmes demonstrated to her that the attachments used by the soldiers on their rifles were stream rockets. T. 19 January 2011, pp. 23-24.
[503] Witness ZBK, T. 19 January 2011, p. 62.
[504] Witness ZBK, T. 19 January 2011, p. 66.
[505] Witness ZBK, T. 19 January 2011, pp. 23, 62-64, 66.
[506] Witness ZBK, T. 19 January 2011, pp. 25, 35, 57.
[507] Witness ZBK, T. 19 January 2011, p. 25.

Prosecution Witness ZCC

237. Witness ZCC, a Tutsi, was a Red Cross volunteer in April 1994.[508] Approximately four days following the shooting of President Habyarimana's plane, the witness went to Cyahinda Parish with members of the Red Cross.[509] He saw more than 3,000 persons who he had heard were Tutsis.[510] Refugees informed the group that they had fled attacks on Tutsis.[511]

238. Sometime after 10 April but before 18 April 1994, Witness ZCC was at the Red Cross tents based at Nyabidande hill, metres from the commune office.[512] He saw Nyakizu *bourgmestre*, "Ladislas", take gendarmes who guarded the Red Cross facility in his vehicle to go to Cyahinda Parish.[513] The witness heard gunfire.[514] When they returned about one hour later, the gendarmes told Witness ZCC and others that the *bourgmestre* instructed them to fire.[515] They complied with the order and the refugees responded by throwing stones, killing one gendarme and forcing the rest to retreat.[516]

239. The Nyakizu *bourgmestre*, in the presence of the witness and the other Red Cross workers, asked the head of the Red Cross operation to retrieve the gendarme's body from Cyahinda Parish.[517] Witness ZCC drove there with the commune vehicle.[518] At the parish he saw numerous wounded Tutsi refugees, who appeared to have been shot.[519] They were allowed to take the body of the gendarme – Musanganira – which they found downhill from the parish, next to the hostels.[520] He appeared to have died from blunt trauma caused by sticks and stones, rather than sharp objects or bullets.[521]

240. On a weekend day, Witness ZCC, a colleague named Alexandre and a driver left with the gendarme's corpse and drove it approximately 30 to 40 kilometres to the mortuary at the Butare University Hospital.[522] They left the body there between 3.00 and 4.00 p.m.[523] Having run out of fuel, the vehicle was left at the Red Cross coordination centre and the witness went to his home in Mpare sector, Huye commune.[524]

241. The next morning, the witness returned to Butare town.[525] Efforts were made to find an alternative way to get back to Nyakizu commune because the vehicle was still out of

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[508] Witness ZCC, T. 18 January 2011, p. 34; Exhibit P2 (Witness ZCC's Personal Information Sheet).
[509] Witness ZCC, T. 18 January 2011, p. 34.
[510] Witness ZCC, T. 18 January 2011, pp. 33-35. During the days, mostly children and the elderly women were inside the parish while men tended to livestock outside. T. 18 January 2011, p. 35.
[511] Witness ZCC, T. 18 January 2011, pp. 35-36.
[512] Witness ZCC, T. 18 January 2011, pp. 38-40, 48. The tents closest to the commune office were about three metres from it while his tent, in the middle of the tents, was about five metres away. T. 18 January 2011, p. 48.
[513] Witness ZCC, T. 18 January 2011, pp. 37-40.
[514] Witness ZCC, T. 18 January 2011, pp. 39-40.
[515] Witness ZCC, T. 18 January 2011, pp. 38, 40.
[516] Witness ZCC, T. 18 January 2011, pp. 38-41.
[517] Witness ZCC, T. 18 January 2011, pp. 41-42.
[518] Witness ZCC, T. 18 January 2011, pp. 40-41, 43.
[519] Witness ZCC, T. 18 January 2011, pp. 41-43.
[520] Witness ZCC, T. 18 January 2011, pp. 41-43.
[521] Witness ZCC, T. 18 January 2011, pp. 41, 43.
[522] Witness ZCC, T. 18 January 2011, pp. 43-44.
[523] Witness ZCC, T. 18 January 2011, p. 43.
[524] Witness ZCC, T. 18 January 2011, pp. 43-44.
[525] Witness ZCC, T. 18 January 2011, p. 44.

fuel.[526] Witness ZCC joined driver, Ruwire, who was getting fuel at the Hotel Ibis for a red Toyota Stout belonging to the Nyakizu commune.[527] Having obtained the fuel, they went to the ESO Camp, where they remained for approximately one and a half hours.[528] The vehicle left ESO with the witness, the driver, two soldiers armed with rifles, a communal policeman and the Nyakizu *bourgmestre*, "Ladislas", who ordered the driver to go fast.[529] One soldier referred to the other during the drive as "CDR".[530] They arrived at the Nyakizu commune office around 10.00 a.m. and Witness ZCC went to his Red Cross tent, situated about five metres from the office.[531]

242. Around 1.00 p.m., the witness left his tent and went to the commune office courtyard as four military lorries arrived.[532] Two parked near the commune office, carrying between 50 and 60 soldiers, while two others parked at the CERAI office, which was "a few metres" from the commune office.[533] The soldiers wore combat fatigues, worn-out uniforms, camouflage and ordinary uniforms.[534] All wore black berets that bore the "insignia of the army", which were distinguishable from the red berets worn by gendarmes.[535] The witness did not know any of the soldiers or what camp they came from.[536]

243. Six soldiers entered the commune office while the others remained in the vehicles.[537] When the six soldiers exited five minutes later, they joined the others, went to the "lower side of the road" near an avocado farm, and started firing at people and livestock on Cyahinda hill, who fled to the church.[538] Carrying "self-loading" firearms or light "NATO" weapons that fired 30 bullets rather than 24, the soldiers continued to move through the valley towards the church and the buildings at Cyahinda Parish and shoot at the Tutsis there.[539] The witness estimated that Cyahinda Parish was about one and a half times the width of a football field as the crow flies, or around 120 metres from the commune office.[540]

244. At a certain point in the fighting, Witness ZCC, accompanied gendarmes posted near the Red Cross tents and moved towards Cyahinda Parish.[541] The witness observed gendarmes, *Interahamwe* and Burundian refugees "finishing off" the victims with small axes,

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[526] Witness ZCC, T. 18 January 2011, p. 44.
[527] Witness ZCC, T. 18 January 2011, pp. 44, 46, 71.
[528] Witness ZCC, T. 18 January 2011, pp. 44, 46.
[529] Witness ZCC, T. 18 January 2011, pp. 46-47.
[530] Witness ZCC, T. 18 January 2011, pp. 46-47.
[531] Witness ZCC, T. 18 January 2011, p. 47. At this point in his testimony, Witness ZCC only discussed "communal policemen" exiting the vehicle at the commune office and makes no mention of the soldiers. T. 18 January 2011, p. 47.
[532] Witness ZCC, T. 18 January 2011, pp. 47-48.
[533] Witness ZCC, T. 18 January 2011, pp. 48, 50-51. Witness ZCC estimated that one lorry could carry approximately 30 soldiers. T. 18 January 2011, p. 51.
[534] Witness ZCC, T. 18 January 2011, pp. 52-53.
[535] Witness ZCC, T. 18 January 2011, pp. 53-54.
[536] Witness ZCC, T. 18 January 2011, pp. 52, 54.
[537] Witness ZCC, T. 18 January 2011, p. 48.
[538] Witness ZCC, T. 18 January 2011, pp. 37, 48-50. Witness ZCC estimated that the soldiers started firing once they were five metres from the commune office. T. 18 January 2011, p. 49.
[539] Witness ZCC, T. 18 January 2011, pp. 37, 48-49, 52 (explaining that the weapons were not set up), 54-55.
[540] Witness ZCC, T. 18 January 2011, pp. 49-50, 72.
[541] Witness ZCC, T. 18 January 2011, pp. 36-37, 54-55.

hoes, swords and clubs.[542] The soldiers returned and then left around 5.30 p.m.[543] After the attack subsided, the witness remained at the Red Cross tents until the *Inkotanyi* arrived.[544] Traces of grenade explosions and the impacts of bullets could be seen on the buildings in Cyahinda Parish.[545] Not a single survivor was left at Cyahinda Parish.[546]

Prosecution Witness GEN

245. In April 1994, Witness GEN, a Tutsi, worked at Cyahinda Parish, which was surrounded by a wooded area and Rukugutu and Nyabidande hills on either side.[547] At 8.00 a.m. on Friday, 15 April, the witness, her husband, a niece, and a nephew fled attacks in her neighborhood.[548] They arrived at Cyahinda Parish around 10.00 a.m., observing nearly 10,000 refugees, scattered throughout the parish complex and in the nearby woods.[549] Many were children, young adults and the elderly – very few were adult males.[550] The refugees informed the witness that they had been displaced from neighboring communes such as Rushishi, Nyirera and Kibeho, due to attacks on Tutsis.[551]

246. Upon arriving at the parish, Witness GEN also saw Nyakizu *bourgmestre* Ladislas Ntaganzwa accompanied by gendarmes in khaki uniforms and red berets, who were also carrying firearms.[552] Speaking into a microphone, Ntaganzwa counted from one to three, and on three, the witness heard gunfire.[553] She hid behind a classroom and after about 30 minutes the *bourgmestre* and two gendarmes passed by her.[554] While Ntaganzwa ordered them to kill her, one gendarme, whom the witness had helped while he was in school, prevented it.[555]

247. Witness GEN hid in a stable that night and saw many wounded refugees as well as corpses the following day.[556] She remained in the parish that evening.[557] The next day, 17 April 1994, around 2.00 p.m., persons wearing military fatigues fired on the witness and others at Cyahinda Parish from Rukugutu hill.[558] Refugees were also fired on from

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[542] Witness ZCC, T. 18 January 2011, pp. 37, 54. Witness ZCC previously stated that "gendarmes did not shoot" when initially describing the attack by the soldiers (T. 18 January 2011, p. 37) and later testified that they did nothing (T. 18 January 2011, p. 55).
[543] Witness ZCC, T. 18 January 2011, pp. 50, 54-55.
[544] Witness ZCC, T. 18 January 2011, pp. 50, 54-55.
[545] Witness ZCC, T. 18 January 2011, p. 55.
[546] Witness ZCC, T. 18 January 2011, pp. 54-55.
[547] Witness GEN, T. 18 January 2011, pp. 76-77; T. 19 January 2011, pp. 2, 6-7; Exhibit P3 (Witness GEN's Personal Information Sheet). Butare town was approximately 45 kilometres from Cyahinda parish. T. 18 January 2011, p. 77.
[548] Witness GEN, T. 18 January 2011, p. 78; T. 19 January 2011, pp. 2-3.
[549] Witness GEN, T. 19 January 2011, p. 3.
[550] Witness GEN, T. 19 January 2011, pp. 3-4.
[551] Witness GEN, T. 19 January 2011, pp. 3-4.
[552] Witness GEN, T. 19 January 2011, pp. 4-5.
[553] Witness GEN, T. 19 January 2011, pp. 4-5.
[554] Witness GEN, T. 19 January 2011, p. 5.
[555] Witness GEN, T. 19 January 2011, p. 5.
[556] Witness GEN, T. 19 January 2011, p. 6.
[557] Witness GEN, T. 19 January 2011, p. 6.
[558] Witness GEN, T. 19 January 2011, pp. 6-7.

Nyabidande hill, on the opposite side of the parish, where the Nyakizu commune office was situated.[559]

248. The witness fled to Mount Nyakizu that day and firing continued into the evening.[560] It recommenced the following morning between 9.00 and 10.00 a.m. and the witness heard explosions and saw bursts of flames and dust from her position on Nyakizu hill.[561] The impact of projectiles on the church walls was visible.[562] Survivors told the witness that corpses were found inside and outside the parish buildings.[563] She fled Nyakizu hill around 3.00 a.m. that evening.[564] Witness GEN later learned that Butare Prefect Jean Baptiste Habyalimana went to Cyahinda Parish after she had left for Mount Nyakizu.[565]

Prosecution Witness XAG

249. In April 1994, Witness XAG, a Hutu, was a member of the gendarmerie based at the Tumba camp in Butare.[566] Fellow gendarmes told the witness that gendarmes had been assigned to protect the refugees from Gikongoro, who were staying at Cyahinda Parish.[567] One gendarme entered and was disarmed and killed.[568] Civilian and military authorities held a meeting and retrieved the body either the day of, or one day prior to President Théodore Sindikubwabo's arrival there.[569]

Defence Witness Jean Marie Vianney Mushi

250. Witness Mushi, a Hutu, lived on Rukugutu hill, about 100 metres from the Cyahinda commercial centre and 300 metres from Cyahinda Parish.[570] His house and Cyahinda Parish were about one kilometre from the Nyakizu commune office.[571]

251. About five to seven days after President Juvénal Habyarimana's plane was shot down, refugees started arriving at Cyahinda Parish.[572] The witness went to the parish during the first

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[559] Witness GEN, T. 18 January 2011, p. 77; T. 19 January 2011, pp. 6-7. According to Witness GEN, a person at the commune office could see someone at the Cyahinda Parish complex. T. 18 January 2011, p. 77.
[560] Witness GEN, T. 18 January 2011, p. 75; T. 19 January 2011, pp. 7-8.
[561] Witness GEN, T. 19 January 2011, pp. 7-8.
[562] Witness GEN, T. 19 January 2011, p. 8.
[563] Witness GEN, T. 19 January 2011, p. 7.
[564] Witness GEN, T. 19 January 2011, p. 8.
[565] Witness GEN, T. 19 January 2011, p. 9.
[566] Witness XAG, T. 25 January 2011, p. 27; Exhibit P8 (Witness XAG's Personal Information Sheet).
[567] Witness XAG, T. 25 January 2011, pp. 27-28.
[568] Witness XAG, T. 25 January 2011, p. 28.
[569] Witness XAG, T. 25 January 2011, pp. 27-28. Witness XAG believed that the commander of the Tumba Gendarmerie Camp had sent a representative with the delegation that went to recover the gendarme's body from Cyahinda Parish. T. 25 January 2011, p. 37.
[570] Witness Mushi, T. 11 May 2011, pp. 31, 39-41; Exhibit D27 (Witness Mushi's Personal Information Sheet).
[571] Witness Mushi, T. 11 May 2011, pp. 31, 40-41. Witness Mushi stated that one could clearly see Cyahinda Parish from the commune office. T. 11 May 2011, p. 40. The positions of his house, Cyahinda Parish and the Nyakizu commune office formed a "triangle". T. 11 May 2011, pp. 31, 41.
[572] Witness Mushi, T. 11 May 2011, pp. 32-33. Witness Mushi testified that the refugees were so numerous that they occupied Cyahinda Parish first, then the primary and secondary schools, followed by the nuns' convent. T. 11 May 2011, p. 32.

three days and spoke to refugees, who eventually numbered in the thousands.[573] He learned that Tutsis were fleeing neighboring attacks in areas like Mubuga commune.[574]

252. The witness was told that about three to four days after the initial arrival of refugees, two gendarmes were killed and that the *bourgmestre* was wounded.[575] Rumours spread that members of "Kagame's army", armed with rifles, infiltrated the refugees at the parish.[576] The following day, the witness saw vehicles pass through the Cyahinda commercial centre, including a communal transport with communal police and gendarmes.[577] Onlookers identified Butare's prefect and a "soldier" in the convoy.[578] About 20 minutes later, Witness Mushi observed the vehicles return.[579] He learned that the prefect had tried to negotiate with the refugees, who ultimately refused to return the bodies of the gendarmes.[580]

253. Between 1.00 and 2.00 p.m. the next day, Witness Mushi, who was standing about two to three metres away, saw a pickup carrying approximately 30 gendarmes and 10 communal police drive through the commercial centre's main road towards Cyahinda Parish.[581] He knew the gendarmes as they had been camped about one kilometre from his home and had previously given him rice.[582] He also knew the communal police.[583] The truck returned empty.[584]

254. Starting around 7.00 p.m., Witness Mushi heard gunshots in the vicinity of Cyahinda Parish, which continued through the evening until around 2.00 or 3.00 a.m.[585] That night, Witness Mushi, and all who lived on Rukugu hill, fled to an unidentified hill out of fear.[586] The next morning, Witness Mushi and the others remained at this hill as they heard gunshots and saw refugees being attacked now on Nyakizu hill.[587] He observed Burundian refugees and civilians armed with machetes as well as gendarmes passing his position and going in the direction of Nyakizu hill.[588] The gunfire ceased between 12.00 and 1.00 p.m.[589] As gendarmes and "other people" returned, they informed Witness Mushi, and others who had fled, that it was safe to go home.[590] Attacks of a lesser intensity continued for the next two to

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[573] Witness Mushi, T. 11 May 2011, pp. 32-33, 42-45.
[574] Witness Mushi, T. 11 May 2011, pp. 32, 41, 43-44, 53-54. Witness Mushi found and spoke with the godmother of his sister as well as other families at Cyahinda Parish. T. 11 May 2011, pp. 44, 53-54.
[575] Witness Mushi, T. 11 May 2011, pp. 33-35, 41.
[576] Witness Mushi, T. 11 May 2011, pp. 35, 41.
[577] Witness Mushi, T. 11 May 2011, pp. 35-36.
[578] Witness Mushi, T. 11 May 2011, pp. 35-36.
[579] Witness Mushi, T. 11 May 2011, pp. 35-36.
[580] Witness Mushi, T. 11 May 2011, pp. 35-36.
[581] Witness Mushi, T. 11 May 2011, pp. 36-37, 54-55.
[582] Witness Mushi, T. 11 May 2011, pp. 53-54. Communal police did not wear berets, gendarmes wore red berets and soldiers wore black berets or metal helmets. T. 11 May 2011, pp. 36, 45. *See also* T. 11 May 2011, pp. 48-53 (affirming that his testimony in the *Nsengimana* trial reflected that he was unsure if communal police or gendarmes came to *Christ-Roi* and explaining that his uncertainty was because he did not observe the security forces long and, although he was not sure of the differences in uniforms, he knew the various uniforms well at the time of his testimony in this proceeding).
[583] Witness Mushi, T. 11 May 2011, p. 45.
[584] Witness Mushi, T. 11 May 2011, pp. 36-37, 54.
[585] Witness Mushi, T. 11 May 2011, pp. 37-38.
[586] Witness Mushi, T. 11 May 2011, p. 54.
[587] Witness Mushi, T. 11 May 2011, pp. 37-38.
[588] Witness Mushi, T. 11 May 2011, pp. 37-38.
[589] Witness Mushi, T. 11 May 2011, p. 38.
[590] Witness Mushi, T. 11 May 2011, pp. 38, 54.

three days.[591] After the violence ceased, Witness Mushi went to Cyahinda Parish.[592] He saw bodies and fled out of fear.[593]

Defence Witness ZML10

255. Witness ZML10, a Hutu, worked at a school in 1994 and lived in Nyakizu commune, about eight to 10 kilometres from Cyahinda.[594] In the days after President Juvénal Habyarimana's plane crash, Tutsis from neighboring communes as well as from Witness ZML10's locality were being attacked, prompting several to flee to Cyahinda Parish.[595]

256. Around 14 April 1994, Witness ZML10 learned that large numbers of refugees had arrived at Cyahinda Parish, that they had killed two gendarmes, and wounded the *bourgmestre*.[596] About four to five days after hearing this information, around 10.00 and 11.00 a.m., the witness and between seven to 10 Hutu neighbors left on foot for the parish to participate in attacks on the displaced Tutsis there.[597] Some of the Hutus were armed with machetes or stones.[598]

257. They arrived at the Cyahinda business centre between 2.00 and 3.00 p.m.[599] Witness ZML10 and five or six members of the original group then crossed the river and went to the commune office, where the witness observed an empty military vehicle and the red communal pickup.[600] Sometime between 3.30 and 4.30 p.m., they heard gunfire from Cyahinda Parish and went there.[601]

258. Once at Cyahinda Parish, the witness observed from close range gendarmes, wearing red berets, firing at the refugees, which included Tutsi men, women and children numbering in the thousands.[602] The gendarmes were divided into several groups and, gauging from the gunfire, the witness estimated that there were between 20 and 30 of them.[603] Witness ZML10, armed with a stick, participated in attacks on the Tutsis, who were perceived as *Inkotanyi*.[604] While he did not enter the church, he moved around it as well as the "Sisters' banana plantation".[605] Numerous civilian assailants joined the attack, but the witness did not see any

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[591] Witness Mushi, T. 11 May 2011, p. 38.
[592] Witness Mushi, T. 11 May 2011, p. 38.
[593] Witness Mushi, T. 11 May 2011, p. 38.
[594] Witness ZML10, T. 16 May 2011, pp. 4, 16; Exhibit D30 (Witness ZML10's Personal Information Sheet). Witness ZML10 was arrested in 1997 based on his participation in the genocide. T. 16 May 2011, pp. 10, 22-23. He pleaded guilty in 2001 and appeared before a Gacaca court in 2008. T. 16 May 2011, pp. 10-11. He was released, having already been detained longer than the sentence imposed on him. T. 16 May 2011, pp. 10-11.
[595] Witness ZML10, T. 16 May 2011, pp. 18-19, 22-23.
[596] Witness ZML10, T. 16 May 2011, pp. 5-7, 22-23.
[597] Witness ZML10, T. 16 May 2011, pp. 5-7, 20, 22-25.
[598] Witness ZML10, T. 16 May 2011, p. 7.
[599] Witness ZML10, T. 16 May 2011, pp. 7, 20, 23.
[600] Witness ZML10, T. 16 May 2011, pp. 8, 10, 23, 27. Witness ZML10 testified that one had a clear view of Cyahinda Parish from the Nyakizu commune office. T. 16 May 2011, p. 18.
[601] Witness ZML10, T. 16 May 2011, pp. 8-9, 20, 28-29.
[602] Witness ZML10, T. 16 May 2011, pp. 9-10, 18-19, 26, 29-30. Witness ZML10 recognised one gendarme as Abraham Ruvuragabo. T. 16 May 2011, pp. 9, 30.
[603] Witness ZML10, T. 16 May 2011, pp. 10, 28.
[604] Witness ZML10, T. 16 May 2011, pp. 9-10, 20-25, 28-29, 31.
[605] Witness ZML10, T. 16 May 2011, p. 25.

soldiers.[606] He left around 6.00 p.m.[607] He could still hear gunshots and believed that the attack was growing in intensity.[608]

Defence Witness RWV09

259. Witness RWV09, a Hutu, was a military officer who was assigned to the ESO Camp around 13 or 14 April 1994 and lived there.[609] Witness RWV09 learned that violence occurred between gendarmes, on the one hand, and Tutsi officials and refugees gathered at Cyahinda Parish, on the other.[610] On 17 April, Nizeyimana and the Butare prefect were part of a delegation that went to the parish to investigate the disturbances.[611] Nizeyimana, as well as a team of soldiers, were responsible for providing security to the prefect on this mission.[612] Nizeyimana returned to camp around 6.00 p.m. and the witness was not aware of any violence during the mission.[613]

260. Witness RWV09 was unaware of any ESO trucks leaving the ESO Camp on 18 April 1994.[614] Likewise, he heard that gendarmes from the Tumba Gendarmerie Camp were sent to Cyahinda Parish to provide security, but he denied that ESO soldiers were also sent there.[615]

Defence Witness Thomas Ruzindana

261. In April 1994, Witness Ruzindana, a Hutu, was a cadet in a platoon led by Ndayambaje.[616] He generally recalled that between 15 and 17 April, Nizeyimana went on a pacification mission to Cyahinda.[617] Nizeyimana was accompanied by a civilian, whose name the witness no longer recalled.[618] Witness Ruzindana did not observe or hear that two to four military trucks with soldiers went to Cyahinda.[619] Likewise, he never heard that two to four truckloads of ESO soldiers were dispatched from the camp and attacked thousands of "people" there.[620]

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[606] Witness ZML10, T. 16 May 2011, pp. 10, 21, 28. Witness ZML10 did not know what was happening on Rukugutu hill. T. 16 May 2011, p. 27.
[607] Witness ZML10, T. 16 May 2011, pp. 9, 20.
[608] Witness ZML10, T. 16 May 2011, pp. 9, 20, 30-31.
[609] Witness RWV09, T. 8 June 2011, pp. 9-10, 26-27, 42; Exhibit D58 (Witness RWV09's Personal Information Sheet).
[610] Witness RWV09, T. 8 June 2011, pp. 14, 49.
[611] Witness RWV09, T. 8 June 2011, pp. 10, 12, 14, 33.
[612] Witness RWV09, T. 8 June 2011, pp. 14, 21
[613] Witness RWV09, T. 8 June 2011, pp. 14, 21.
[614] Witness RWV09, T. 8 June 2011, pp. 14, 49.
[615] Witness RWV09, T. 8 June 2011, pp. 33, 48, 51.
[616] Witness Ruzindana, T. 1 June 2011, pp. 24-25; Exhibit D52 (Witness Ruzindana's Personal Information Sheet). At the time of his testimony, Witness Ruzindana lived in Kibungo, Rwanda. T. 1 June 2011, p. 24.
[617] Witness Ruzindana, T. 1 June 2011, p. 29.
[618] Witness Ruzindana, T. 1 June 2011, p. 29.
[619] Witness Ruzindana, T. 1 June 2011, p. 29.
[620] Witness Ruzindana, T. 1 June 2011, p. 29.

Defence Witnesses OUV03 and CKN10

262. Witnesses OUV03 and CKN10, Hutus, were soldiers at the ESO in April 1994.[621] Nizeyimana personally told Witness OUV03 on 17 April that he would be going to Cyahinda Parish in Nyakizu commune, accompanied by ESO subordinate personnel.[622]

263. On 17 April 1994, Witness CKN10 was positioned at the main entrance of the ESO, starting at 4.00 p.m.[623] When he arrived he received a message to pass on to Nizeyimana, who had not spent the night at the ESO because he had gone on mission to Cyahinda.[624] Nizeyimana arrived at the Camp around 6.30 and 7.00 p.m. that evening.[625]

264. Witness CKN10, who remained at his post until 4.00 p.m. the following day, did not see ESO soldiers pass his post in a truck.[626] Witness OUV03 believed that there were three Mercedes-Benz lorries at the ESO, while Witness CKN10 believed that there were three to four.[627]

Defence Witness Valens Hahirwa

265. Witness Hahirwa was a Defence investigator for Nizeyimana at the time of his testimony.[628] Cyahinda Parish was located 46 kilometres by road from Hotel Faucon in Butare town.[629] Nyakizu commune office was 44 kilometres away.[630] It took him 15 minutes to walk from the commune office to Cyahinda Parish, taking a less direct route.[631] Witness Hahirwa took a picture of the parish from the commune office, admitted as Defence Exhibit D66(B) and stated that he could not see the church from the point from where he took the photograph.[632]

Deliberations

266. The evidence reflects that in the days following the killing of President Juvénal Habyarimana on 6 April 1994, primarily Tutsi civilians fled attacks in communes neighbouring Nyakizu and made their way to Cyahinda Parish. A considerable complex, estimates before the Chamber demonstrate that thousands of displaced men, women and children filled the parish facilities.

267. Furthermore, Prosecution and Defence evidence proves that in the second third of April 1994 – likely 15 April – the Nyakizu *bourgmestre*, Ladislas Ntaganzwa, took

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[621] Witness OUV03, T. 30 May 2011, pp. 62, 64; Exhibit D51 (Witness OUV03's Personal Information Sheet); Witness CKN10, T. 26 May 2011, p. 35; Exhibit D50 (Witness CKN10's Personal Information Sheet).
[622] Witness OUV03, T. 31 May 2011, pp. 40-41; T. 1 June 2011, pp. 9-10.
[623] Witness CKN10, T. 26 May 2011, pp. 42-44; T. 30 May 2011, p. 51.
[624] Witness CKN10, T. 26 May 2011, p. 43.
[625] Witness CKN10, T. 26 May 2011, p. 43.
[626] Witness CKN10, T. 26 May 2011, p. 43.
[627] Witness OUV03, T. 31 May 2011, pp. 41-42; Witness CKN10, T. 30 May 2011, p. 8.
[628] Witness Hahirwa, T. 11 May 2011, p. 58; T. 14 June 2011, p. 3; Exhibit D28 (Witness Hahirwa's Personal Information Sheet).
[629] Witness Hahirwa, T. 14 June 2011, p. 8.
[630] Witness Hahirwa, T. 14 June 2011, p. 8.
[631] Witness Hahirwa, T. 14 June 2011, p. 11.
[632] Witness Hahirwa, T. 14 June 2011, pp. 8-11. *See also* Exhibit D66(B) (Photograph of Cyahinda Parish from Nyakizu Commune *Bourgmestre's* Office). Cyahinda parish is circled in the photograph.

gendarmes to the Cyahinda Parish complex. The gendarmes attacked the displaced persons staying at Cyahinda, but the refugees fought back. They managed to kill at least two gendarmes and wounded the *bourgmestre*. Subsequently, a security delegation, which included Butare's Tutsi prefect, Jean Baptiste Habyalimana, and Nizeyimana, went to Cyahinda Parish to meet with those living there. Finally, the evidence undoubtedly confirms that a crushing assault was launched by civilian militia and security forces against those staying at Cyahinda Parish. Thousands of the displaced persons, primarily Tutsis, were killed, their bodies scattered throughout the complex. Survivors fled.

268. In this context, the Prosecution seeks to hold Nizeyimana responsible for the later attack on Cyahinda Parish "on or around 18 April 1994". It alleges that soldiers from ESO platoons and "other" soldiers exercised their command responsibility, which led to "soldiers, militiamen and armed civilians" killing thousands of Tutsi civilians.[633] The Prosecution case relies primarily on the evidence of Witnesses ZBK, ZCC and GEN, who all testified that soldiers participated in the attack on Cyahinda Parish. Furthermore, Prosecution Witness Anaclet Dufitumukiza, a gendarme assigned to retrieving colleagues from the Nyakizu commune office, saw ESO Chief Warrant Officer Kanyashyamba leading around 11 soldiers in attacks on the parish and directing civilian assailants as well. The Prosecution also points to other circumstantial evidence that the Nyakizu *bourgmestre* went to the ESO before the attack. In support of Witness Dufitumukiza's identification of ESO soldiers, it highlights evidence that Kanyashyamba was Nizeyimana's subordinate and was deployed in the region.

269. The Defence concedes that a large scale attack followed the killing of gendarmes and wounding of the Nyakizu *bourgmestre*. However, it presented evidence disputing the participation of any soldiers – much less ESO soldiers. It argues that the evidence of the Prosecution witnesses, when viewed individually and collectively, lacks credibility.

270. In light of the Indictment allegations and the evidence, the Chamber considers that a threshold determination must be made as to whether soldiers (and, in particular, ESO soldiers) participated in the concluding attacks on Cyahinda Parish. Furthermore, the Chamber shall consider what role, if any, Nizeyimana had in the attack. For the sake of clarity, the Chamber shall first provide a brief summary of the relevant Prosecution evidence concerning the attacks on Cyahinda Parish. Next, it will address general credibility challenges to the Prosecution evidence, followed by alleged inconsistencies within each witness's testimony, as well as with prior statements made by them. The Chamber shall consider the merits of the Prosecution evidence viewed collectively and in light of Defence evidence. Finally, the Chamber shall consider whether the evidence supports Nizeyimana's involvement in the attack. Although set forth separately, the analysis in each section is informed by that in the others.

(i) Introduction

271. Witnesses ZBK and GEN provided first-hand accounts of soldiers participating in an attack on Cyahinda Parish around 17 April 1994. Witness ZCC also provided direct testimony of soldiers attacking the parish on a day following a weekend day in mid-April. Moreover, Witness Dufitumukiza testified to seeing soldiers attacking Cyahinda Parish on 19 April and specified that ESO soldiers were participating. Witnesses ZBK, ZCC and

[633] Indictment, para. 13(ii).

Dufitumukiza all gave direct evidence of soldiers launching the attack while in the immediate vicinity of the Nyakizu commune office, situated on Nyibadande hill. Witness GEN's observations of the assault were from inside the Cyahinda Parish facilities and then from Nyakizu hill.

(ii) General Credibility Challenges

272. At the outset, the Defence does not challenge Witness GEN's evidence.[634] Furthermore, the Chamber has no concerns about the general credibility of Witnesses ZBK, ZCC or GEN. None are accomplices or have an apparent interest in implicating Nizeyimana.

273. With respect to Witness Dufitumukiza, the Chamber has no ostensible concerns about his general credibility. The witness's position within the Tumba Gendarmerie Camp is uncontested and his evidence, when viewed with other evidence about the Tumba Gendarmerie Camp, firmly supports that he was assigned there. Likewise, Witness Dufitumukiza was not incarcerated at the time his testimony. While he was an accused before a Rwandan Gacaca court in 2006, there is no evidence that he had any pending genocide proceedings against him in Rwanda at the time of his testimony.[635] Again, the Chamber finds no ostensible interest for the witness to implicate Nizeyimana.

274. Nonetheless, the Defence argues that Witness Dufitumukiza used his testimony in this proceeding to shift blame for the attack on Cyahinda Parish from gendarmes at the Tumba Gendarmerie Camp to ESO soldiers.[636] The fallacy of this argument was exposed by the Defence. During cross-examination, Witness Dufitumukiza confirmed that he provided evidence in Rwanda that assisted in securing the conviction of Tumba Gendarmerie Camp commander Cyriaque Habyarabatuma for his role in the killings at Cyahinda Parish.[637] Under these circumstances, there is no basis to suggest that Witness Dufitumukiza now seeks to shift blame for the attacks from gendarmes to ESO soldiers or Nizeyimana.

(iii) Alleged Inconsistencies within Testimonies as well as with Prior Statements

275. Turning to alleged inconsistencies within the witnesses' evidence as well as with prior statements, the Defence raises a number of challenges to Witness ZBK's evidence.[638] Of significance, the Defence confronted Witness ZBK with her 1996 statement to Tribunal investigators, which reads that during the night of 15 April 1994, the *bourgmestre* retrieved

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[634] *See* Defence Closing Brief, para. 335 (merely summarizing Witness GEN evidence, without challenging it).
[635] *See* Exhibit P5 (Witness Dufitumukiza's Personal Information Sheet); T. 20 January 2011, p. 32.
[636] Defence Closing Brief, paras. 322, 347-353.
[637] Witness Dufitumukiza, T. 20 January 2011, pp. 31, 50-51.
[638] The Defence submits that Witness ZBK's testimony about how she arrived at the commune office is inconsistent with her November 1996 statement to Tribunal investigators. Defence Closing Brief, para. 345. Having reviewed all the relevant testimony, the Chamber considers that there is no material discrepancy between her testimony during direct examination and her 1996 statement. Rather, her testimony, which was led by Prosecution counsel, was less detailed. Her cross-examination merely confirmed the details present in her statement. *Compare* Witness ZBK, T. 19 January 2011, pp. 15, *with* 53-59. Likewise, the Defence argues that her evidence reflects that gendarmes, not soldiers, participated in the attack as she initially discussed gendarmes putting grenades on their rifles. Defence Closing Brief, para. 341. In the Chamber's view, Witness ZBK clearly explained that she saw soldiers doing this and received explanations from gendarmes. T. 19 January 2011, pp. 23-24, 62, 65-67. These challenges do not raise reasonable doubts about her evidence.

his wife from the commune office, while he asked the witness to stay. "[The witness] was put behind his office in a Red Cross tent".[639]

276. Witness ZBK stated that this was a recording error, affirming her testimony that she remained in the commune office and did not go to the nearby Red Cross facility until 19 April 1994.[640] To the extent that the 1996 statement is inconsistent with the witness's testimony, the Chamber considers the difference immaterial.[641] Moreover, the 1996 statement is ambiguous as to whether the witness left that night or later.[642] This purported inconsistency does not impact the witness's reliability or evidence.

277. Turning to Witness ZCC, the Defence argues that Witness ZCC's evidence is "pure fantasy", highlighting in particular his description of the location from which the soldiers started to fire at the Cyahinda Parish and the witness's position during the event.[643] As discussed in greater detail below, the Chamber considers Witness ZCC evidence of observing soldiers arrive at Nyakizu commune, head towards Cyahinda Parish, and firing on it credible and convincing. The Chamber does not consider that the confusion as it relates to other aspects of his account about the attack raises questions in regards to his observations from the Nyakizu commune office.[644]

278. The Defence argues that Witness Dufitumukiza's statement to Tribunal investigators in 2000 is inconsistent with his testimony.[645] In material respects, the statement describes the gendarmes, who the witness ultimately retrieved from Cyahinda Parish, leaving with "heavy artillery and machine guns". It further reflects Witness Dufitumukiza having concerns that these gendarmes would attack Cyahinda Parish.[646]

279. The Defence argues that these excerpts reflect that gendarmes acquired weapons – namely heavy artillery – which Witness Dufitumukiza testified only the ESO had possession

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[639] Witness ZBK, T. 19 January 2011, p. 54.
[640] Witness ZBK, T. 19 January 2011, pp. 57, 60.
[641] Notably, the Red Cross camp was essentially at the same location as the commune office, only metres from it. Witness ZCC, T. 18 January 2011, p. 48; *cf.* Witness ZBK, T. 19 January 2011, p. 25 (gendarmes advised the *bourgmestre* to take the witness from the Red Cross camp if he did not want her "to be killed at the commune office"). Thus, even if Witness ZBK had moved to the Red Cross tents near the commune office, her vantage point as it concerned events around the Nyakizu commune office would not have been significantly different.
[642] *See* Witness ZBK, T. 19 January 2011, p. 54 ("During the night, the *bourgmestre* took his family to Butare. He asked me to stay, adding that he could not guarantee my security. I was put behind his office in a Red Cross tent.").
[643] Defence Closing Brief, para. 342.
[644] Witness ZCC's description of whether gendarmes participated in the attack was unclear. *Compare* Witness ZCC, T. 18 January 2011, p. 37 ("A. ... but the gendarmes did not open fire on the refugees ... ") *and* T. 18 January 2011, p. 55 ("Q. What were the gendarmes doing during the attack? A. Nothing. They were standing at the place where our tents were set up and we were all looking towards Cyahinda to find out what was going on there."), *with* T. 18 January 2011, p. 54 ("Q. Other than the soldiers and the gendarmes that you were with, who else did you see during the attack? A. The soldiers moved forward shooting, and the gendarmes and the Burundian refugees and the *Interahamwes* were finishing off the victims who had not yet died.").
[645] Defence Closing Brief, para. 351.
[646] Witness Dufitumukiza, T. 20 January 2011, p. 43.

of.[647] Furthermore, the Defence suggests that the statement tends to implicate gendarmes, not soldiers in the attack.[648] The Chamber shall address these issues in turn.

280. With respect to the weapons, Witness Dufitumukiza explained that the gendarmes did not take heavy support weapons, but only a heavy machine gun operated by three persons and their personal firearms.[649] Notably, a statement of his evidence in a Rwandan proceeding indicates that he had said that the gendarmes left with "rifles as well as light and heavy weapons".[650] While his evidence may be inconsistent with the statement from 2000, the Chamber considers the discrepancy immaterial. They appear to be technical in nature and could have been easily overlooked in summarising or reviewing the statement.

281. Turning to the other purported inconsistency, the Chamber observes that Witness Dufitumukiza testified that he did not observe gendarmes participating in the attack on Cyahinda Parish when he arrived.[651] This is not inconsistent with his statement from 2000, which does not indicate that he did.[652] Indeed, the statement reflects that when Witness Dufitumukiza arrived to pick up the gendarmes, he observed "... dead bodies all over the valley. There were some survivors but *the chief warrant officer ordered the soldiers* to finish the work".[653] This is generally consistent with his testimony that ESO Chief Warrant Officer Kanyashyamba was directing soldiers participating in the attack.[654]

(iv) Merits of the Prosecution Evidence

282. Having considered the initial challenges to their evidence, the Chamber finds that Witnesses ZBK, ZCC and Dufitumukiza provided fundamentally consistent accounts about an attack on Cyahinda Parish launched from the Nyakizu commune office. Their evidence finds limited support from Witness GEN. Witness ZBK, a Tutsi, testified that on Sunday, 17 April 1994, she was hiding in the Nyakizu commune office. Around 12.00 p.m., she looked out the office window and saw two military lorries, which could carry about 35 soldiers each, park in front of it. She heard that other lorries carrying soldiers had gone past the office to another location.

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[647] *See* Defence Closing Brief, para. 350; *see also* Witness Dufitumukiza, T. 20 January 2011, p. 9 (describing 60 millimetre mortars being fired at Cyahinda Parish and noting that only ESO had "heavy weapons" while other camps only had "light weapons").
[648] Defence Closing Brief, paras. 351-352.
[649] Witness Dufitumukiza, T. 20 January 2011, p. 38.
[650] Witness Dufitumukiza, T. 20 January 2011, p. 51.
[651] Witness Dufitumukiza, T. 20 January 2011, pp. 8, 47.
[652] When questioned about his 2000 statement to Tribunal investigators, Witness Dufitumukiza repeatedly confirmed its contents to the extent that it reflected his belief that the gendarmes leaving for Cyahinda Parish *would* attack the Tutsis who had killed gendarmes there. *See* Witness Dufitumukiza, T. 20 January 2011, pp. 46-47.
[653] Witness Dufitumukiza, T. 20 January 2011, p. 43 (emphasis added).
[654] The Chamber recalls that prior consistent statements do not bolster a witness's credibility. *Ntakirutimana* Appeal Judgement, para. 147 ("The Rules of Procedure and Evidence of the Tribunal do not expressly forbid the use of prior consistent statements to bolster credibility. However, the Appeals Chamber is of the view that prior consistent statements cannot be used to bolster a witness's credibility, except to rebut a charge of recent fabrication of testimony. The fact that a witness testifies in a manner consistent with an earlier statement does not establish that the witness was truthful on either occasion; after all, an unlikely or untrustworthy story is not made more likely or more trustworthy simply by rote repetition.")..

283. Similarly, Witness ZCC worked for the Red Cross, which had set up tents metres from the Nyakizu commune office. Around 1.00 p.m., on a day following what he believed was a "weekend" day, the witness moved from inside his tent to the courtyard of the commune office. From this position, he observed four military trucks arrive: two parked near the commune office while two more continued to the CERAI office. Two of the trucks carried between 50 and 60 soldiers.[655]

284. Like Witnesses ZBK and ZCC, Witness Dufitumukiza's observations were made from the immediate vicinity of the Nyakizu commune office. However, his evidence reflects that the soldiers arrived before he did.[656] Witness Dufitumukiza stated that he arrived at Cyahinda Parish on 19 April 1994 around 12.30 p.m. Once at the Nyakizu commune office, he observed about 11 ESO soldiers, led by ESO Chief Warrant Officer Kanyashyamba, in the midst of an attack on Cyahinda parish. Other soldiers were "scattered all over the place", including the woods and nearby hills.[657]

285. Furthermore, Witness GEN, who was at Cyahinda Parish on 17 April 1994, testified that persons in "military fatigues" shot at her from Rukugutu hill and that refugees were also fired upon from Nyabidande hill, where the Nyakizu commune office is located.[658] Notably, Witness ZBK overheard soldiers stating that they were going to "Rukuguru" hill, offering circumstantial support for Witness GEN's testimony that persons in military fatigues attacked from there.[659] However, the Chamber has some reservations about Witness GEN's ability to observe what was happening at the Nyakizu commune office.[660] Nonetheless, her position among the refugees would have afforded her a unique opportunity to learn that attackers, including soldiers, were also mounting an assault from Nyabidande hill.

286. At this juncture, it is important to note some differences among the Prosecution evidence as it relates to the date of the attack. Witness Dufitumukiza's testimony reflects that

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[655] The Defence, without express reference to Witness ZCC's evidence that two military lorries continued on to the CERAI office, argues that he testified that 120 soldiers got off the trucks, and therefore, his evidence in inconsistent with Witness ZBK's about the number of soldiers present. Defence Closing Brief, para. 342. Notably, when pressed to identify the number of soldiers, his evidence, although only an estimate, focused on how many soldiers were on two vehicles parked near the commune office (rather than all four). *See* Witness ZCC, T. 18 January 2011, pp. 48, 50, 51 ("THE WITNESS: I would say that the two trucks that were parked near the commune office could have been transporting between 50 and 60 soldiers. But this is a merely estimate because I did not count those soldiers. MR. PRESIDENT: Yes. Is it each or both? THE WITNESS: You asked me to give you an approximate number, and I would say that one truck could have been transported 30 soldiers."). Notably, when Witness ZBK was pressed to give an estimate of the soldiers present, she qualified her estimate by noting that a gendarme told her that other lorries carrying soldiers had gone elsewhere. Witness ZBK, T. 19 January 2011, p. 30. *See also* T. 19 January 2011, p. 20. In this regard, their evidence is remarkably consistent.

[656] In this regard, the Chamber considers it immaterial that Witness Dufitumukiza did not testify about military vehicles in the vicinity of the Nyakizu commune office. Understandably, his evidence reflects that he was focused on the ongoing violence that he observed upon his arrival and during his brief stay there.

[657] Witness Dufitumukiza, T. 20 January 2011, p. 9.

[658] Witness GEN, T. 18 January 2011, p. 77; T. 19 January 2011, pp. 6-7.

[659] Witness ZBK, T. 19 January 2011, p. 62.

[660] While Witness GEN testified that she observed persons in military fatigues who were shooting at her from Rutuguku hill, her evidence appears to suggest that she only heard the persons who were also shooting from Nyabidande hill. Witness GEN, T. 18 January 2011, pp. 6-7. Furthermore, based on her own description, the commune office was on Nyabidande hill, which was on the opposite side of Cyahinda Parish from Rutuguku hill. T. 18 January 2011, p. 77; T. 19 January 2011, p. 7. This would appear to have limited her ability to have viewed what was happening on Rutuguku hill and Nyabidande hill at the same time.

he observed an attack on 19 April 1994, which fell on a Tuesday.[661] When confronted with a recording of his evidence in a Rwandan proceeding suggesting that he went there on 18 April, he stated that he was certain that he went there on 19 April.[662]

287. To the contrary, Witness ZBK testified that the attack happened on a Sunday, two days after her arrival at the Nyakizu commune, on 15 April 1994.[663] Thus, her evidence tends to reflect that the attack happened on 17 April, although she also conceded it could also have been 18 April.[664] Witness GEN's evidence also reflects that the major attack commenced on 17 April 1994, the day she fled to Nyakizu hill.[665]

288. Although Witness ZCC did not identify the date the soldiers attacked Cyahinda Parish, his evidence reflects that it was a day after he went to Butare town, which he believed was a weekend day.[666] As noted above, 19 April 1994 was a Tuesday. Thus, the date provided by Witness Dufitumukiza is not the day identified by Witness ZCC.

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[661] Witness Dufitumukiza, T. 20 January 2011, p. 6 ("Q. Did you ever go to Cyahinda parish in April 1994? A. Yes. The 19th was a Tuesday. I went there on the 19th. It was a Tuesday. I'm sorry, I'm talking about the 19th of April. It was a Tuesday. The 19th of April 1994."). *Cf.* T. 20 January 2011, p. 8 ("Q. When you arrived to the parish on the 19th, how long were you there that day? A. I did not pay attention to the time, but I believe that I stayed there for between 20 to 30 minutes, the time that it took for the gendarmes to pick up everything they wanted to collect from that place.").

[662] Witness Dufitumukiza, T. 20 January 2011, p. 51 ("Q. Now, for the record, I have read the 19th of April. Did you read the 19th of April or the 18th of April? A. Let me repeat. 'Participation in criminal activities in the death of refugees at Cyahinda. Units under his orders and Anaclet's statement. *See* transcript 73, page 3, on 17th of April when the refugees at Cyahinda tried to defend themselves, and when they killed three gendarmes on the following day, 18th April 1994, Major Habyarabatumba sent gendarmes commanded by Second Lieutenant Gakwerere. Those gendarmes were armed with heavy and light weapons. So they were sent to kill refugees and to recover the bodies of the killed gendarmes.' Q. So was that the testimony wasn't that the testimony that you gave in the trial of Major Habyarabatumba in Rwanda? Is that correct? A. Yes. I gave evidence in the same manner I'm testifying before this Tribunal. It's obvious that other evidence confirmed or corroborated my testimony. I have to say that I am not very sure about the dates. The only date about which I am absolutely sure is the 19th of April when I went to get those people.").

[663] Witness ZBK, T. 19 January 2011, pp. 19 ("Q. Did you ever see these reinforcements? A. ... I believe that must have been a Sunday. When towards noon I saw trucks, military trucks, arrive. ..."), 20 ("Q. And which day was this? A. It isn't easy for us to remember dates and times and days, but if I try to remember, I believe the soldiers arrived on a Sunday. I arrived the commune office on a Friday and that was two days before the arrival of the soldiers."), 34 ("Q. Fine. And you told him also that a little later, around noon, as your testimony was today, the soldiers arrived; is that correct? A. If I talked about the following day, then maybe you misunderstood me. ... So if you were led to believe, or if you understood that the soldiers arrived on the day following my arrival at the commune office, that is not correct. Rather, it is two days after we arrived rather, I arrived on Friday and the situation on Saturday was still confusing, and it is only on Sunday around noon that I saw the soldiers."), 35 ("Q. Fine. So you arrived at the commune office on the 15th and the soldiers arrived on the 17th. Is that exact? A. That is likely what it was. As I as I told you before, no one had a watch and there was no calendar so it is very likely that the soldier arrived soldiers arrived the commune office on the 17th or the 18th."), 36 ("So with him I spent two nights in the commune office prior to that attack which was which was launched against the Cyahinda parish. I believe you can assist me in clarifying the situation yourself.").

[664] Witness ZBK, T. 20 January 2011, p. 35.

[665] Witness GEN, T. 18 January 2011, p. 75; T. 19 January 2011, pp. 7-8.

[666] Witness ZCC, T. 18 January 2011, pp. 43-44 (believing that they left the body of the gendarme at the mortuary on a weekend day). The Defence raised a notice objection to Witness ZCC's evidence that he stopped at the ESO with the *bourgmestre* before returning to Cyahinda Parish. *See* Defence Motion for Exclusion of Evidence, 29 April 2011, paras. 41-44. The Chamber recalls that the Prosecution is required to state the charges and the material facts underpinning those charges in the Indictment. *See Ntagerura et al.* Appeal Judgement, para. 21; *Nahimana et al.* Appeal Judgement, para. 347; *Blaškić* Appeal Judgement, para. 219. Witness ZCC's

289. In the Chamber's view, the differences are immaterial and the evidence reasonably reflects some confusion as to the date. Witness ZBK generally had some difficulty providing dates.[667] While Witness GEN specified that she fled on 17 April 1994, her evidence lacks contextual clues demonstrating how she was aware of this.[668] Furthermore, although Witness Dufitumukiza expressed certainty that he went to the Nyakizu commune office on 19 April, he had previously stated in a Rwandan proceeding that he went on 18 April.[669]

290. In this regard, the Chamber considers it significant that Prosecution and Defence evidence generally confirms that a security delegation, of which Nizeyimana was a part, went to Cyahinda Parish on 17 April 1994.[670] Witness AZM provided compelling contextual clues that support the date.[671] Moreover, the Prosecution and Defence evidence suggests that the security delegation arrived after the gendarmes were killed and the Nyakizu *bourgmestre* was wounded at Cyahinda Parish.[672] The Defence submits that the large scale attack on the parish followed this visit and reliable evidence reflects this.[673]

291. Consequently, the evidence of Witnesses ZBK and GEN of an attack launched on 17 April 1994 appears to be off.[674] However, the inability of the witnesses to provide the "correct" date in this context does not raise doubts about their otherwise credible and compelling observations. Witnesses ZBK and GEN were displaced Tutsis fleeing attacks. Likewise, Witness ZCC was a Red Cross worker, who also would have been reasonably traumatised by the events unfolding at the Cyahinda Parish. Ultimately, the discrepancies are minor in nature given the significant amount of time that elapsed between the events and their testimonies. Rather, the fundamentally consistent and compelling parallels among the

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evidence about his presence at the ESO camp, although relevant to the pleaded charge, reflects evidence rather than material facts that must be set forth in the Indictment. Accordingly, the Chamber dismisses this objection.

[667] Witness ZBK, T. 19 January 2011, pp. 19-20.

[668] Witness GEN, T. 18 January 2011, p. 75; T. 19 January 2011, pp. 7-8.

[669] Witness Dufitumukiza, T. 20 January 2011, p. 51.

[670] *See, e.g.*, Prosecution Witness AZM, T. 20 January 2011, p. 63; Defence Witness RWV09, T. 8 June 2011, p. 14. The Chamber has elsewhere questioned the credibility of Witness OUV03. *See* II.13.2. Notwithstanding, it considers his evidence about the date to offer limited corroboration. Defence Witness OUV03, T. 1 June 2011, p. 10.

[671] For example, Witness AZM testified that the security delegation travelled to Cyahinda Parish on 17 April 1994, and that evening, when they returned, it was announced over the radio that Butare Prefect Jean Baptiste Habyalimana had been removed from office. Witness AZM, T. 20 January 2011, pp. 65, 67-68.

[672] *See, e.g.*, Prosecution Witness AZM, T. 20 January 2011, pp. 64, 66-67 (explaining that the security delegation needed to go to Cyahinda, as the refugees had killed a gendarme; they retrieved the body from the refugees); Defence Witness Mushi, T. 11 May 2011, pp. 35-36, 41 (observed a convoy, which fellow observers said included the prefect and a soldier; heard that they had come to obtain the bodies of the gendarmes killed at Cyahinda Parish); *cf.* Defence Witness RWV09, T. 8 June 2011, pp. 14, 49 (the security delegation went to Cyahinda Parish because of disputes between Tutsis there and the gendarmes guarding them).

[673] *See* Defence Closing Brief, paras. 326-328, 335-336. *See, e.g.*, Defence Witness Mushi, T. 11 May 2011, pp. 36-38 (observed gendarmes and communal police going to Cyahinda Parish a day after the prefects visit; he heard gunshots that evening). *Cf.* Prosecution Witness AZM, T. 20 January 2011, p. 64 (observed about 3,000 refugees gathered at the Cyahinda Parish, and, although not allowed inside the complex's buildings, did not describe seeing evidence of large scale violence); Defence Witness RWV09, T. 8 June 2011, p. 21 (did not hear of incidents of violence during the 17 April 1994 mission). *But see* Prosecution Witness GEN, T. 19 January 2011, p. 9 (learned that Butare Prefect Jean Baptiste Habyalimana went to Cyahinda Parish after she had fled on 17 April 1994 from attacks on Cyahinda Parish).

[674] Witness ZCC's evidence, which could suggest that attack happened on a Monday, is not necessarily inconsistent.

evidence of Witnesses ZBK, ZCC and Dufitumukiza (discussed below) establish that they all observed the same attack, which appears to have happened around 18 April.

292. Turning back to the observations of the Prosecution witnesses, Witnesses ZBK and ZCC identified the security personnel that arrived at the Nyakizu commune office as soldiers based on their uniforms, accoutrements, and, in some instances, their black berets.[675] Their testimonies are consistent with other evidence about the soldiers' attire in Butare at that time.[676] Each witness convincingly explained how the uniforms of these soldiers were distinctive from those worn by gendarmes.[677] Nonetheless, Witness ZCC conceded that he did not know any of the soldiers or from which camp they came.[678] Witness ZBK was not asked from which camp the soldiers came.

293. Witness Dufitumukiza's general evidence about the differences between the uniforms of soldiers and gendarmes corroborates the identification of soldiers made by Witnesses ZBK and ZCC.[679] Of greater significance, Witness Dufitumukiza expressly identified Chief Warrant Officer Kanyashyamba as the commander of a support group of about 11 ESO soldiers.[680] The Chamber is satisfied that Witness Dufitumukiza would have been able to identify ESO soldiers and Chief Warrant Officer Kanyashyamba in April 1994. As a member of one of three military camps in Butare town, Witness Dufitumukiza's testimony that he knew most soldiers there is compelling.[681] Likewise, there is no dispute that a warrant officer named Paul Kanyashyamba was stationed at the ESO in April.[682] Although Witness Dufitumukiza did not know the commune from which Kanyashyamba came, his identification of Kanyashyamba – from a short distance and in the middle of the day – is compelling.[683]

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[675] Witness ZCC, T. 18 January 2011, pp. 52-54; Witness ZBK, T. 19 January 2011, pp. 20-23.
[676] *See* II.1.
[677] Witness ZCC, T. 18 January 2011, p. 54 (explaining that gendarmes wore red berets, while soldiers wore black berets); Witness ZBK, T. 19 January 2011, p. 20 (explaining that gendarmes had khaki coloured uniforms and "red" or "maroon" coloured berets).
[678] Witness ZCC, T. 18 January 2011, pp. 52, 54.
[679] Witness Dufitumukiza, T. 19 January 2011, pp. 74, 76 (gendarmes wore red berets with the insignia of a bird, red stripes and ceremonially wore red epaulettes; all soldiers wore black berets with the words "national army" although commando units could at times wear camouflage berets; stripes and ceremonial epaulettes for soldiers were blue and ranks were in white).
[680] Witness Dufitumukiza, T. 20 January 2011, pp. 9-11, 36-37, 51.
[681] Witness Dufitumukiza, T. 19 January 2011, p. 73; T. 20 January 2011, p. 8, 10, 37, 40, 53. Witness Dufitumukiza testified that he could distinguish between ESO soldiers, Ngoma Camp soldiers and gendarmes from the Tumba Camp, noting that Butare was a small town and he knew almost all soldiers personally. T. 20 January 2011, p. 8. *See also* T. 19 January 2011, p. 74 (describing the differences between the uniforms and berets of gendarmes and soldiers).
[682] *See* Prosecution Witness BDE, T. 31 January 2011, p. 42; Prosecution Witness YAA, T. 2 February 2011, p. 37; Prosecution Witness Gahizi, T. 8 February 2011, p. 28; Defence Witness OUV03, T. 31 May 2011, pp. 12, 16-19, 24-25, 39, T. 1 June 2011, p. 9; Defence Witness Hitayezu, T. 9 June 2011, p. 61; Defence Witness Bunani, T. 13 June 2011, p. 19. *See also* Defence Witness RWV09, T. 8 June 2011, pp. 10-11 (testified that Chief Warrant Officer "Kanyeshyamba" worked in the S2/S3 office). *Cf.* Defence Witness ZML07, T. 18 May 2011, p. 49 (recognised the name of Chief Warrant Officer "Kanyeshyamba" from the ESO, although he could not recognise his face); Defence Witness BUV02, T. 10 May 2011, p. 80 ("Q. Did you also know, Mr. Witness, Chief Warrant Officer Kanyashyamba? A. Yes, I knew Warrant Officer Kanyashyamba. But for some time now I don't know the camp in which he is. I got to know him during the killings.").
[683] Witness Dufitumukiza, T. 20 January 2011, pp. 8, 40, 53.

294. Next, the Chamber observes that Witnesses ZBK, ZCC and Dufitumukiza each testified that the soldiers carried specialised weapons. Witness ZBK referred to "bombs – rockets" or "grenades" that would attach to the end of the soldiers' rifles and various grenades carried on soldiers' belts.[684] The witness heard gunfire and explosions.[685] Witness ZCC referred to soldiers exiting the lorries with "self-loading" firearms and observed light "NATO" weapons, which were not set up.[686] He later observed traces of grenade attacks on the parish buildings.[687] Witness Dufitumukiza observed a 60 millimetre mortar, a heavy machine gun that "had to be installed in the ground", and other machine guns.[688] He also heard grenades exploding.[689] Offering further circumstantial corroboration, Witness GEN heard explosions and saw plumes of dust and bursts of flames in an attack the day after the initial assault and could see the impact of projectiles on the church walls.[690]

295. The Chamber considers that the differences among the testimonies of Witnesses ZBK, ZCC and Dufitumukiza as they relate to the weapons carried or employed by the soldiers around the Nyakizu commune office are immaterial. At the outset, Witness ZBK, a civilian clarified that she could not distinguish between light or heavy weaponry.[691] Likewise, Witness GEN was unable to distinguish between the sounds of "heavy weaponry and light weapons", raising the reasonable possibility that Witness ZBK could not either.[692]

296. Furthermore, while neither Witness ZBK nor ZCC saw soldiers using stationary weapons in the immediate vicinity of the commune office, the Chamber considers that the varying vantage points and the traumatic nature of the circumstances could have resulted in these variances. First, Witness Dufitumukiza only saw one 60 millimetre mortar and one heavy machine gun while at the commune office.[693] Moreover, when pressed on whether soldiers fired from beside the commune office, Witness ZBK stated that she "[did] not know", as she could only observe through "a single window" and could not see "all the corners of the courtyard of the commune office".[694] Likewise, Witness ZCC's testimony of the weapons he saw intimates that he did not see all of them.[695] Furthermore, his evidence reflects that he did not remain at the commune office once the soldiers started attacking the parish.[696]

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[684] Witness ZBK, T. 19 January 2011, pp. 20, 23-24, 62, 65-66. Witness ZBK explained that gendarmes demonstrated to her that the attachment used by the soldiers on their rifles were stream rockets. T. 19 January 2011, pp. 23-24.
[685] Witness ZBK, T. 19 January 2011, pp. 23 ("explosions") and ("gunfire"), 62 ("gunshots").
[686] Witness ZCC, T. 18 January 2011, pp. 37, 48-49, 52.
[687] Witness ZCC, T. 18 January 2011, p. 55.
[688] Witness Dufitumukiza, T. 20 January 2011, pp. 9, 37.
[689] Witness Dufitumukiza, T. 20 January 2011, p. 9.
[690] Witness GEN, T. 19 January 2011, p. 8.
[691] Witness ZBK, T. 19 January 2011, p. 66 ("Q. And that you saw them firing with heavy weaponry. Yes or no? A. When you talk about 'heavy weaponry', I did not understand you. I could not distinguish or tell the difference between the types of weapons. I couldn't tell between heavy weaponry or light weaponry. Mr. President, Your Honours, I'm talking as a layperson.").
[692] Witness GEN, T. 19 January 2011, p. 8.
[693] Witness Dufitumukiza, T. 20 January 2011, pp. 36-37.
[694] Witness ZBK, T. 19 January 2011, p. 64.
[695] Witness ZCC, T. 18 January 2011, p. 52 ("Q. What weapons did you see when the soldiers started shooting at Cyahinda office? A. *If I were to go by the weapons that I saw from my position*, most of those weapons were self loading weapons. But there were also others which were the NATO-type weapons.") (emphasis added).
[696] Witness ZCC, T. 18 January 2011, pp. 36-37, 54-55.

297. The Chamber observes that Witness Dufitumukiza testified that he could see "a mortar, 60 millimetres ... used to fire at the hill where the church was located. There was also heavy machine gun fire that was also firing towards the hill".[697] At the outset, credible evidence reflects that the commune office is situated approximately one kilometre from the Cyahinda Parish.[698] The Chamber has elsewhere considered evidence that the shooting range of a heavy gas machine gun was only 400 to 600 metres and has expressed considerable reservations about whether one would be used to shoot at targets nearly a kilometre away.[699] On an initial review, Witness Dufitumukiza's evidence about the use of the heavy machine gun appears to suggest that it was to fire at targets nearly a kilometre away. Specifically, he testified about firing "towards the hill".[700]

298. Imprecise, Witness Dufitumukiza's evidence also reflects that he observed Tutsis being killed. Moreover, Witness ZCC's evidence similarly reflects that soldiers commenced firing a short distance away from the commune office. Indeed, the record reflects that refugees occupied not just the buildings, but were positioned throughout the complex's facilities.[701] In the Chamber's view, his description of the use of the heavy machine gun is credible and convincing.

299. The same is true with Witness Dufitumukiza's evidence of the use of a 60 millimetre mortar. The evidence demonstrates that those attacking Cyahinda Parish created a perimeter, attacking from Nyabidande and Rukugutu hills. They fired on dispersed refugees and prevented their flight from the premises. Such action would be complimented by heavy mortar fire on the parish facilities, preventing the displaced Tutsis from seeking refuge in the buildings, and forcing them into the perimeter. Furthermore, although Witness Dufitumukiza was not present when the soldiers arrived, his time estimate of his arrival – 12.30 p.m. – put him there near the beginning of the attack described by Witnesses ZBK and ZCC. Witness Dufitumukiza was only there for about 20 to 30 minutes. The early stages of the attack would have offered prime timing to launch heavy fire on Cyahinda's buildings, before friendly attackers got too close.

300. Having assessed the Prosecution evidence, the Chamber now turns to the Defence evidence. Through the testimonies of Defence Witnesses Mushi and ZML10, the Defence presented direct accounts that soldiers did not participate in an attack on Cyahinda Parish.

301. At the outset, Witness Mushi was in the Cyahinda commercial centre when he saw gendarmes going in the direction of Cyahinda Parish on the day he first heard firing there, around the middle of April 1994.[702] In the Chamber's view, the activity that Witness Mushi saw would have distracted him from observing what was occurring at Nyabidande hill, where

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[697] Witness Dufitumukiza, T. 20 January 2011, p. 9.

[698] *Cf.* Prosecution Witness ZBK, T. 19 January 2011, pp. 13, 61-62; Defence Witness Mushi, T. 11 May 2011, pp. 31, 40-41; Defence Witness Hahirwa, T. 14 June 2011, p. 11.

[699] *See* II.4.1.

[700] Witness Dufitumukiza, T. 20 January 2011, p. 9.

[701] Prosecution Witness GEN, T. 18 January 2011, p. 78, T. 19 January 2011, pp. 2-3, 7; Prosecution Witness ZCC, T. 18 February 2011, pp. 34-35; Defence Witness ZML10, T. 16 May 2011, pp. 7, 21, 24-28; Defence Witness Mushi, T. 11 May 2011, pp. 32-33.

[702] Witness Mushi noted that refugees started to arrive about five to seven days after President Habyarimana's plane was shot down. Witness Mushi, T. 11 May 2011, pp. 32-33. About three to four days after their arrival, the witness heard that the gendarmes had been killed at the Cyahinda Parish. T. 11 May 2011. pp. 33-35, 41. The day after this incident, Witness Mushi saw the vehicle pass through the Cyahinda commercial centre. T. 11 May 2011, pp. 35-36.

the Nyakizu commune office was located. Moreover, the kilometre between his position and Nyabidande hill would have limited his ability see any such activity.[703]

302. Of greater significance, Witness Mushi's evidence reflects that he fled to an unidentified hill upon hearing gunshots.[704] Although he discussed seeing people firing at refugees on Nyakizu hill and hearing gunshots there the day after the initial attack,[705] his evidence tends to reflect that he only heard gunfire from Cyahinda Parish on the preceding day.[706] The probative value of his evidence about what was happening at and around Cyahinda Parish, including the Nyakizu commune office, is limited.

303. Witness ZML10's evidence is more probative than Witness Mushi's. As a civilian participant in the attack, Witness ZML10's estimates appear to place him at Nyabidande hill and the Nyakizu commune office around 18 or 19 April 1994.[707] Presuming his evidence pertains to same the attack described by the Prosecution witnesses, it tends to reflect that he arrived at the Nyakizu commune office after Witnesses ZBK and ZCC suggested that soldiers had already started to move towards Cyahinda Parish and assault it.[708] As noted above, Witness Dufitumukiza's evidence also appears to have pertained to the initial stages of the attack, and his evidence tends to reflect that he left before Witness ZML10 would have arrived there. However, Witness ZML10's testimony appears to be inconsistent with much of the Prosecution evidence, as he seems to have only heard gunfire once at the commune office.[709] Nonetheless, he observed a military "pickup"[710] parked near the commune office, offering circumstantial support for Witnesses ZBK and ZCC's evidence that military vehicles with soldiers arrived prior to the attack on Cyahinda Parish.

304. Furthermore, although Witness ZML10 did not see soldiers participating in the attack, it is imperative to consider his evidence in context. At the outset, Cyahinda Parish was a

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[703] Witness Mushi, T. 11 May 2011, pp. 31, 40-41.
[704] Witness Mushi, T. 11 May 2011, p. 54.
[705] Witness Mushi, T. 11 May 2011, pp. 37-38. Indeed, his evidence is equivocal as to whether he actually saw attacks at Nyakizu hill. While he initially testified that he did, he later stated that he heard gunshots (T. 11 May 2011, p. 38) and testified about seeing armed members of the population going past his position towards Nyakizu hill and leaving it (T. 11 May 2011, pp. 37, 54).
[706] Witness Mushi, T. 11 May 2011, pp. 37-38 (testifying that unable to go to Cyahinda Parish, he "heard" gunshots in the evening), 38 (no longer heard gunshots coming from Cyahinda Parish the following morning).
[707] Witness ZML10, T. 16 May 2011, p. 5 ("Q. And in relation to the time when you took your leave from your work, can you recall when it is that you started hearing about refugees in Cyahinda? A. *After the attack on the president's plane on the 6th – I already said that five days later I took my leave – my annual leave. And three days later we started hearing information to the effect that a large number of people had sought refuge at Cyahinda and that those people came from all over.* Q. How did you hear about it? A. People who were going back and forth as usual. So we were going to the market. They went to pay visits to friends, and when they came back, they told us that they had been to Cyahinda and that they had seen a large number of refugees there. Q. Thank you. Did there come a time when you decided to go to Cyahinda yourself? A. Yes. Q. When in relation to the time where you heard those informations (sic) about the presence of refugees did you decide to go to Cyahinda? A. *I would say about four to five days after hearing about it that I decided to go to Cyahinda.* Q. And what prompted that decision to go? A. I decided to go to Cyahinda – because you heard those rumours about the presence of refugees in Cyahinda. So I decided to go there and see for myself whether the information I had heard was indeed true.") (emphasis added).
[708] Witness ZML10 testified that he arrived at the Cyahinda shopping centre between 2.00 and 3.00 p.m. Defence Witness ZML10, T. 16 May 2011, p. 7. By contrast, Witnesses ZBK and ZCC testified that soldiers arrived around 12.00 or 1.00 p.m., respectively. Prosecution Witness ZBK, T. 19 January 2011, pp. 19-20; Prosecution Witness ZCC, T. 18 January 2011, pp. 47-48.
[709] Witness ZML10, T. 16 May 2011, pp. 8-9, 20, 29-30.
[710] Witness ZML10, T. 16 May 2011, pp. 8, 27.

substantial facility comprising several buildings and fields.[711] Furthermore, the evidence reflects that the assault occurred throughout the complex.[712] Thus, the scale of the attack and the area in which it was conducted would necessarily limit the ability to view all of the assailants. Witness ZML10's testimony reflects that he did not go to all sections of the parish facilities.[713] Moreover, his presence there was limited and he left while the attack was ongoing.[714]

305. Furthermore, Witness ZML10's evidence reflects that his active participation in the attack necessarily limited his ability to carefully and comprehensively view all of his fellow attackers.[715] While he visually identified some gendarmes firing at the refugees, his evidence also reflects that the gendarmes were difficult to spot as they had been divided into groups. Indeed, his estimate of how many gendarmes were present was based on the amount of firing he *heard* rather than the number he *saw*.[716] Seeing some gendarmes firing rifles and hearing gunfire is not necessarily inconsistent with other evidence that soldiers also participated in the attack.

306. In the Chamber's view, the relatively direct evidence of Witnesses Mushi and ZML10 fails to raise reasonable doubt in the fundamentally consistent and first-hand accounts of Witnesses ZBK, ZCC and Dufitumukiza that soldiers launched an attack on Cyahinda Parish from the Nyakizu commune office. These conclusions rest not only on the analysis above, but also on the Chamber's observations of the demeanour of each witness.

307. The Chamber shall now turn to Defence evidence tending to suggest that ESO soldiers did not participate in the attack on Cyahinda Parish, and that trucks carrying the

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[711] Prosecution Witness GEN, T. 18 January 2011, p. 76 (Cyahinda Parish was a large area, which contained a church that was 30 metres long and could hold thousands of people; an office and dispensary were beside the church, and primary and secondary schools were located at the complex along with a neighbouring school complex; it was surrounded by a wooded area, which was not fenced); Prosecution Witness ZCC, T. 18 January 2011, pp. 34-35 (Cyahinda Parish consisted of open ground and facilities, including a parish, schools, hostels and a clinic); Defence Witness ZML10, T. 16 May 2011, p. 26 (describing Cyahinda Parish as a "small village" that occupied a "vast expanse of land"; it contained a primary school, a clinic, as well as unfarmed land); *cf.* Defence Witness Mushi, T. 11 May 2011, p. 32 (describing refugees filling the parish facilities, and seeking refuge in the primary and secondary school, as well as the "nuns' convent").

[712] *See, e.g.*, Prosecution Witness ZCC, T. 18 January 2011, pp. 54-55 (attackers approached the church and all the buildings, there were no survivors); Prosecution Witness GEN, T. 19 January 2011, pp. 5-7 (corpses were found all over the parish, inside the hostels and parish buildings); Defence Witness ZML10, T. 16 May 2011, p. 10 (there were many civilians attacking and "they were everywhere in the parish.").

[713] Witness ZML10, T. 16 May 2011, p. 25 (explaining that he did not enter the church, but went around it and in the "premises of the parish" and in the "Sisters' banana plantations").

[714] Witness ZML10, T. 16 May 2011, pp. 9, 20, 30-31.

[715] Witness ZML10, T. 16 May 2011, pp. 24 ("Q. So, Mr. Witness, you went to Cyahinda parish the day of the major attack and there were thousands of people there and the situation was chaotic? A. Yes. Q. Your attention was focused on the attack and its objective? A. Yes. Q. And while you were focused, you weren't paying attention to everything that was going on around you? A. Could you give me an example[?] Q. You were busy killing the refugees; correct? A. I wasn't the only one. There was no security. And when there is no peace, we have only one goal. I was focused on those refugees."), 25 ("MR. PRESIDENT: No. But what I am saying is, if, for instance, you were killing in the church, inside, you wouldn't know who is killing outside or what is happening or whatever. You are concentrated on the area you are operating. Is that not the case? THE WITNESS: That is the case, indeed.").

[716] Witness ZML10, T. 16 May 2011, p. 10 ("Q. How many of those gendarmes would you say there was or did you notice involved in the attack? A. They divided themselves into several groups, so it was difficult for me to count them. But if I should gauge by the gunshots that I could hear, there could be 20 – between 20 and 25, possibly 30.").

soldiers did not leave from the ESO Camp around 18 April 1994.[717] Specifically, Witnesses RWV09 and Ruzindana generally denied that ESO soldiers were sent to Cyahinda Parish or participated in attacks there. Witness RWV09 was unaware of any ESO trucks leaving the ESO Camp on 18 April.[718] Likewise Witness CKN10, who was posted at the ESO Camp's main entrance from 4.00 p.m. on 17 April to 4.00 p.m. the following day, did not see a single truck carrying ESO soldiers leave.[719]

308. The general denials that ESO soldiers participated in attacks at Cyahinda Parish is of limited probative value. This evidence came from ESO soldiers who were not at the parish during the assault.[720] The Chamber has elsewhere raised concerns about the credibility of Witnesses Ruzindana and CKN10.[721] It considers that the same concerns apply here. The testimony of Witness RWV09 is probative as it relates to the allocation of ESO vehicles in the second half of April 1994.[722] His denial that trucks were not allocated for the purposes of transporting soldiers from the ESO is of low probative value.

309. The Chamber observes that Witness CKN10's position at the ESO Camp's main entrance from 4.00 p.m. on 17 to 4.00 p.m. 18 April 1994 provided him with the ability to directly observe some traffic coming in and out of the ESO Camp. Notwithstanding, other Defence evidence tends to reflect that the entrance at which this witness was not positioned – the southern entrance through the Arab Quarter – was used by soldiers and supply lorries.[723] Consequently, his evidence is far from dispositive. Indeed, his blanket assertions that he did not see any ESO soldiers aboard a truck leave the ESO through his post on 18 April appears to contradict his testimony, and that of other witnesses, that the Ruhutinyanya family left that morning with soldiers.[724] Again, the Chamber recalls that it has expressed considerable

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[717] The Defence refers to Prosecution Exhibit 62, noting that Alison des Forges's testimony in the *Butare* trial supports the Defence assertion that the gendarmerie "forced people to attack" Cyahinda parish, and they collaborated with the communal police. T. 7 December 2011, pp. 58-59 (Defence Closing Arguments); Exhibit P62 (Transcript and Exhibits of Alison des Forges's Testimony during the *Butare* trial), pp. 1239-1240, 1242, 1244. The Chamber observes that Witness des Forges's evidence in the *Butare* trial generally corroborates the events as set out above. Exhibit P62, pp. 411, 1239-1244. Notably, Witness des Forges mentioned that the reinforcement from Butare was military in nature, while the assistance from Gikongoro was from civilians. Exhibit P62, p. 1240. The Chamber observes that the questioning of Witness des Forges focused on the involvement of the gendarmerie, rather than the ESO. Indeed, Witness des Forges described the visit by Jean Baptiste Habyalimana and Major Cyriaque Habyarabatuma on 17 April 1994, without reference to Nizeyimana. The Chamber has already noted that there exists no dispute in regards to the fact that Nizeyimana joined this delegation to Cyahinda parish. Accordingly, the Chamber does not consider her evidence in the *Butare* trial dispositive insofar as it relates to the involvement of ESO soldiers.

[718] Witness RWV09, T. 8 June 2011, pp. 14, 49.

[719] Witness CKN10, T. 26 May 2011, pp. 42-44; T. 30 May 2011, pp. 8, 51.

[720] The Chamber observes that Witness RWV09 was confronted with aspects of his testimony in the *Butare* case, wherein he stated that just before the "19th" ESO soldiers and gendarmes from Tumba were requested to go to communes in Butare where insecurity was prevailing. He further identified Ruhashya and Nyakizu as examples. Witness RWV09, T. 8 June 2011, p. 50. The witness conceded that Cyahinda Parish was in Nyakizu commune, but stated that gendarmes, not ESO soldiers were sent there, while ESO soldiers were sent to Ruhashya commune. T. 8 June 2011, p. 51.

[721] *See* II.13.2.

[722] *See* Witness RWV09, T. 8 June 2011, pp. 14, 48-51.

[723] Witness RWV11, T. 2 June 2011, p. 41. Witness RWV11 testified that a person positioned at the northern entrance could see someone at the southern entrance. T. 2 June 2011, p. 41.

[724] Witness CKN10 saw the members of the Ruhutinyanya family leave the Camp escorted by ESO soldiers. Witness CKN10, T. 26 May 2011, pp. 43-44. Notably, Witness ZML07 testified that they followed the Ruhutinyanya family's vehicle in an ESO pickup truck. *See* II.4.1.

reservations about Witness CKN10's credibility, and these reservations extend to this evidence as well.

310. Notwithstanding these denials, the Chamber observes that Witness Dufitumukiza only identified Chief Warrant Officer Kanyashyamba commanding around 11 ESO soldiers. In this regard, the Prosecution evidence does not support the assertion that all the soldiers present and participating in the Cyahinda Parish attack came from the ESO. Indeed, other evidence in the record, consistent with Witness Dufitumukiza's account, reflects that ESO soldiers played supporting roles in larger attacks.[725] The denials that trucks did not leave from the ESO Camp does not undermine the otherwise compelling and first-hand accounts of Witnesses ZBK and ZZC that lorries carrying soldiers arrived at Cyahinda Parish on the same day. Likewise, the Defence evidence does not raise reasonable doubts in Witness Dufitumukiza's evidence that some of the soldiers were ESO soldiers, including Chief Warrant Officer Kanyashyamba.

311. Based on the foregoing, the collective record establishes beyond reasonable doubt that soldiers, including a contingent of around 11 ESO soldiers and Chief Warrant Kanyashyamba, were among the assailants who participated in the attack on Cyahinda Parish around 18 April 1994. The actions of ESO soldiers directly contributed to the killing of thousands of displaced civilians who were primarily Tutsis. The Chamber shall next consider the implication of these conclusions as it relates to Nizeyimana.

(v) Nizeyimana's Involvement in the Attack

312. Turning next to Nizeyimana's involvement in the attack on Cyahinda Parish, the Chamber observes that there is no direct evidence of him ordering, instigating or authorising the assault. Similarly, there is no evidence placing him at the scene during the attack.

313. Nonetheless, the Chamber observes that it is undisputed that Nizeyimana was part of a team sent to evaluate the security situation at Cyahinda Parish. Ostensibly, this delegation, which included a priest as well as Butare's Tutsi prefect, was sent to ease the tensions between the refugees and the gendarmes that had been deployed to "protect" them. Nonetheless, the only significant event that followed the visit of the security delegation was the highly coordinated and heavily armed attack on Cyahinda Parish, which relied a great deal on the offensive efforts of soldiers, as well as the supporting firepower of ESO soldiers.

314. The attack on Cyahinda Parish must necessarily be considered in the context of ESO's function in the region as well as Nizeyimana's particular position. The ESO was the Butare and Gikongoro prefectures' operational command centre.[726] Of particular significance, Nizeyimana's experience within the offices of the S2 and S3 – which were charged with intelligence as well as training and operations – lends considerable circumstantial support for his involvement in the planning and execution of this military operation, particularly as it related to the involvement of ESO soldiers.[727] There is Defence evidence that Chief Warrant

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[725] *See* II.5.1.
[726] *See* III.2.2.2.
[727] *See* III.2.2.2. Indeed, while the Chamber has elsewhere expressed its reservations about the credibility of Witness OUV03, it considers his concessions that Nizeyimana, particularly after the death of the President Juvénal Habyarimana, focused on gathering and assessing information as it related to the war front credible in light of other evidence regarding Nizeyimana's responsibilities around that time. *See* Witness OUV03, T. 31 May 2011, pp. 12-13, 17; T. 1 June 2011, p. 9. *See also* III.2.2.2.

Officer Kanyashyamba reported directly to Lieutenant Colonel Tharcisse Muvunyi.[728] Nonetheless, Prosecution and Defence evidence also reflects that Kanyashyamba worked with Nizeyimana and that Nizeyimana had power over or gave orders to Kanyashyamba.[729]

315. It is inconceivable that such a tactical assault, which involved ESO soldiers utilising specialised arms, would have occurred in Nyakizu commune, Butare prefecture without the approval of the ESO command. Moreover, Nizeyimana's presence at the Cyahinda Parish necessarily allowed him to examine – from military intelligence and operations perspectives – the strengths and weaknesses of the displaced Tutsis who had fortified themselves within Cyahinda Parish's grounds and successfully staved off initial armed assaults by the *bourgmestre* and the gendarmes. Notably, the weaponry later utilised by ESO soldiers had the power to weaken structural safe havens for the refugees within the parish facilities and eliminate numbers of them from a safe distance.

316. When viewed in light of Nizeyimana's subsequent return to the ESO Camp, the immediacy of the ensuing attack after the visit and the participation of ESO soldiers (including Kanyashyamba) in it, the only reasonable conclusion is that Nizeyimana both contributed to the planning of the following military operation and that he authorised the participation of ESO soldiers in it as well.[730] Indeed, the Chamber has no doubt that the participation of the ESO soldiers and the weaponry utilised reflect Nizeyimana's on the ground assessment of the situation at Cyahinda Parish and was a direct result of Nizeyimana's contributions to the planning and authorisation of this assault. The Chamber shall consider the implications of these conclusions in its Legal Findings (III).

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[728] *See* Witness Bunani, T. 13 June 2011, p. 19; Witness OUV03, T. 31 May 2011, pp. 18-19, 24, T. 1 June 2011, p. 9.

[729] Defence Witness OUV03, T. 31 May 2011, pp. 17-18 ("MR. PRESIDENT: [Nizeyimana] was very busy. But he was working all alone in the whole – in the issue of deciphering intelligence and communicating it, all that he was doing all alone single-handedly or without any soldier participating in it? THE WITNESS: I told you that Warrant Officer Kanyashyamba was one of the people who worked under his orders."); Defence Witness RWV09, T. 8 June 2011, pp. 10-11 (testifying that around 15 April 1994, Nizeyimana was the S2/S3 officer and that Chief Warrant Officers Kanyeshyamba and Nzampanima were within those departments); Prosecution Witness Gahizi, T. 8 February 2011, pp. 27-28 (testifying that Nizeyimana had "powers over a group of soldiers" that looted, which included Warrant Officer Kanyashyamba). The Chamber has considered Witness Gahizi's evidence with appropriate caution. *See* II.6.2. However, his general observations in this instance are supported by Defence evidence and are compelling.

[730] In this regard, the Defence evidence that Nizeyimana was replaced as the S2/S3 on 17 or 18 April 1994 by Second Lieutenant Gakwerere, even if credited, in no way raises doubts about Nizeyimana's participation at least in the planning and authorisation phases of this attack.

5. BUTARE UNIVERSITY, MID-APRIL TO MAY 1994

5.1 Killing of Tutsi Civilians

Introduction

317. The Indictment alleges that from on or about 16 April 1994, Nizeyimana ordered and instigated soldiers from the FAR, ESO, Ngoma Camp, Butare Gendarmerie Camp and *Interahamwe*, who were members of the joint criminal enterprise, to kill many Tutsi civilians at the National University of Rwanda in Butare ("Butare University"). Specifically, under Nizeyimana's authorisation, Chief Warrant Office Damien Ntamuhanga engaged a number of subordinate FAR soldiers from his platoon, including Sergeant Major Innocent Sibomana and others, and exercised his command to target the civilian victims, using lists and identity cards to assist with that purpose. The Prosecution relies on the evidence of Witnesses ZCB, Jules Kayibanda, ZBH, Anaclet Dufitumukiza, ZT and BDE. Prosecution Witnesses AZM and ZAP also provided relevant evidence.[731]

318. The Defence generally submits that Nizeyimana was not involved in the attack on the Butare University and that there exists little evidence of him ordering or instigating others to target civilian victims. Moreover, the Presidential Guard, rather than ESO soldiers were likely responsible for the attack and the events that occurred between 20 April 1994 and the end of that month. Furthermore, the Defence challenges the credibility of Prosecution Witnesses Jules Kayibanda, ZCB, ZBH and ZT. Defence Witnesses BEJ01, Martin Mukeshimana, Joseph Ngezahayo, MAL06, Martin Mutarutinya and ZML02 provided relevant evidence.[732]

Evidence

Prosecution Witness ZCB

319. In April 1994, Witness ZCB, a Tutsi, was a student at the Butare University.[733] Sometime before 21 April, a meeting was held at the stadium, presided over by the Vice-Rector of the university, Jean Berchmans Nshimyumuremyi.[734] Nizeyimana, who was introduced to the students by Berchmans as the military officer in charge of security, was also present.[735] The meeting was convened in order to clarify the security situation at the university.[736] In responding to a question by a student about the insecurity at the university, Berchmans told them that the students who felt unsafe could write their names down on a list and the university administration would provide them with transport back to their native areas.[737] Nizeyimana confirmed that the soldiers would escort the buses to the various

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[731] Indictment, para. 14(i); Prosecution Closing Brief, paras. 12-129, 133-152; T. 7 December 2011, p. 34 (Prosecution Closing Arguments).
[732] Defence Closing Brief, paras. 12, 177, 181, 464, 468, 470-472, 474-486; T. 7 December 2011, p. 51 (Defence Closing Arguments).
[733] Witness ZCB, T. 17 January 2011, p. 30; Exhibit P1 (Witness ZCB's Personal Information Sheet).
[734] Witness ZCB, T. 17 January 2011, p. 31.
[735] Witness ZCB, T. 17 January 2011, pp. 31-33. Witness ZCB remembered that Nizeyimana was wearing a military uniform that had three stars on his shoulder stripes and a beret. T. 17 January 2011, p. 32.
[736] Witness ZCB, T. 17 January 2011, p. 33.
[737] Witness ZCB, T. 17 January 2011, p. 34.

regions.[738] He asserted that there were enough soldiers to provide security and reminded the students that the country's enemy was the Tutsi.[739] The meeting, which was attended by more than 100 students, lasted for about an hour and a half to two hours, after which the students who felt unsafe put their names on a list.[740]

320. Approximately one or two days later, a second meeting, which lasted only 10 or 15 minutes, was held at the stadium during the afternoon.[741] Berchmans informed the students that the program had changed and that there were no buses available to transport the students back to their native regions.[742] Nizeyimana was in attendance at this meeting as well.[743] The tension increased and people were afraid that there was a hidden agenda.[744] After the meeting, Witness ZCB and other students returned to their rooms.[745] Some students fled or hid in their bedrooms.[746]

321. On or around 21 April 1994, at about 3.00 p.m., the soldiers arrived at the university campus.[747] As Witness ZBC was standing by his door, a student ran past him crying out for help.[748] She said that a huge number of soldiers carrying weapons had just entered the campus.[749] Witness ZCB tried to seek refuge in another room, because his room was "known". Specifically, he had received threats there before and was referred to as an *Inkotanyi*.[750] The witness was eventually discovered by the soldiers.[751] There was one soldier wearing a uniform which was unfamiliar him.[752] He had heard rumours that Presidential Guard soldiers were in town.[753] This soldier was accompanied by two ESO soldiers and two students.[754] He knew they were from the ESO because they were young and their uniforms were somewhat worn out.[755] Each soldier was carrying a rifle and the two young soldiers had grenades.[756]

322. The soldier, whom he thought to be a member of the Presidential Guard, called out Witness ZCB's name, which was contained on a list, and asked the witness to confirm

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[738] Witness ZCB, T. 17 January 2011, p. 34.
[739] Witness ZCB, T. 17 January 2011, p. 34.
[740] Witness ZCB, T. 17 January 2011, p. 34.
[741] Witness ZCB, T. 17 January 2011, pp. 36-37.
[742] Witness ZCB, T. 17 January 2011, p. 36.
[743] Witness ZCB, T. 17 January 2011, pp. 36-37.
[744] Witness ZCB, T. 17 January 2011, p. 37.
[745] Witness ZCB, T. 17 January 2011, p. 37.
[746] Witness ZCB, T. 17 January 2011, p. 37.
[747] Witness ZCB, T. 17 January 2011, pp. 35, 37.
[748] Witness ZCB, T. 17 January 2011, p. 37.
[749] Witness ZCB, T. 17 January 2011, p. 37.
[750] Witness ZCB, T. 17 January 2011, p. 37.
[751] Witness ZCB, T. 17 January 2011, p. 38.
[752] Witness ZCB, T. 17 January 2011, pp. 38-39.
[753] Witness ZCB, T. 17 January 2011, p. 38. Witness ZCB did not specify when he heard the rumour that the Presidential Guard was in town.
[754] Witness ZCB, T. 17 January 2011, p. 38.
[755] Witness ZCB, T. 17 January 2011, p. 38 ("Q. What is the significance of those two soldiers being young and them coming from ESO? A. During that period, there were some ESO students who were referred to as the *Nouvelle Formule* students. These were young people who had hardly finished their third year in secondary school. They came into ESO and they started receiving training at ESO. And that is why I told myself that these had to be students from ESO."). T. 17 January 2011, p. 58.
[756] Witness ZCB, T. 17 January 2011, pp. 38-39.

whether it was him.[757] When the Presidential Guard showed him the list, he was able to discern several pages of lists containing names thereon.[758] His name was third on the list, and he saw the name of a friend, who was also a Tutsi.[759] The soldiers then dragged him to his room, and asked him to give them the "attack plan against Butare" and any weapon or rifle he was concealing.[760] When Witness ZCB answered that he had no such plan, they ransacked his room.[761]

323. Having found nothing, they became aggressive and hit him on the head, causing Witness ZCB to lose consciousness.[762] Eventually the two ESO soldiers grabbed him by the belt and brought him to a location next to the restaurant, where the witness saw about 20 other Tutsi students.[763] Other soldiers were still looking for students they had labelled as "accomplices of the enemy".[764] They were everywhere, walking around the university.[765] The witness was unable to estimate how many soldiers there were in total.[766]

324. Up until that point, it did not appear as though any of the students had been severely attacked yet.[767] However, all students who were arrested were subsequently taken to a long corridor, which passed in front of the student hall known as "Viet" or "Vietnam", where they thought they would be killed.[768] They were brutally shoved while being led away, with people screaming and begging.[769] It was a scene of violence and humiliation.[770] The soldiers who were accompanying them each had their own personal weapon, though Witness ZCB did not know the exact type of weapons.[771] An "influential" female friend saw him and tried to persuade the soldier that he was neither a soldier, nor an *Inyenzi*, to no avail.[772]

325. The soldiers continued to lead the arrested students down a path that passed by the water tower.[773] They left the paved road and took a dirt road which was quite dark, where they were attacked by students carrying traditional weapons, such as iron rods and clubs.[774] Most of these students were members of the MRND or the CDR.[775] Witness ZCB was struck

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[757] Witness ZCB, T. 17 January 2011, pp. 38-39.
[758] Witness ZCB, T. 17 January 2011, p. 39.
[759] Witness ZCB, T. 17 January 2011, p. 39.
[760] Witness ZCB, T. 17 January 2011, p. 41; T. 18 January 2011, p. 5.
[761] Witness ZCB, T. 17 January 2011, p. 41.
[762] Witness ZCB, T. 17 January 2011, p. 41.
[763] Witness ZCB, T. 17 January 2011, pp. 41-42.
[764] Witness ZCB, T. 17 January 2011, p. 41.
[765] Witness ZCB, T. 17 January 2011, p. 42.
[766] Witness ZCB, T. 17 January 2011, p. 42.
[767] Witness ZCB, T. 17 January 2011, p. 42.
[768] Witness ZCB, T. 17 January 2011, pp. 42-43.
[769] Witness ZCB, T. 17 January 2011, p. 43.
[770] Witness ZCB, T. 17 January 2011, p. 43.
[771] Witness ZCB, T. 17 January 2011, p. 43.
[772] Witness ZCB, T. 17 January 2011, pp. 43, 47 ("A. If I say that she was influential, it is because I had not known her for a long time, but in the few days preceding the killings which were perpetrated at the campus, she had been able to contact me because I had attended the same secondary school as her elder sister who lived in – who lived out of Rwanda at the time. And that elder sister sent her a letter asking her to greet me, and the girl then looked for me and contacted me. We got to know each other and we met, and that is how I told her how I had known her elder sister in secondary school."). *See also* Exhibit P1 (Witness ZCB's Personal Information Sheet), which contains the name of the female student. T. 18 January 2011, p. 5.
[773] Witness ZCB, T. 17 January 2011, pp. 43-44.
[774] Witness ZCB, T. 17 January 2011, p. 44.
[775] Witness ZCB, T. 17 January 2011, p. 53.

by some iron rods and clubs too.[776] It was as if the students were working with the soldiers who were leading them to their death.[777] Both groups were involved in acts of torture against the arrested students.[778] Witness ZCB had not yet heard gunshots at this point.[779] Some people fell on the ground, because they were being beaten.[780] It was impossible to flee.[781]

326. As they were about to leave the campus by tarmac road, Witness ZCB was hit on the head with a club and fell down.[782] When he was on the ground, he heard the voice of the female student who had tried to intervene on his behalf earlier.[783] She was in the company of a soldier from the Presidential Guard.[784] This time she was able to convince the soldiers to let him go.[785] Witness ZCB thought that she was affiliated with the MRND or the CDR and was playing a major role in the operation.[786]

327. Witness ZCB then saw the other victims lying on the ground, covered in blood.[787] He believed some to be dead, others were agonising.[788] Witness ZCB went into hiding and was eventually assisted in leaving the university area by a soldier he thought to be from the ESO.[789]

Prosecution Witness Jules Kayibanda

328. In April 1994, Witness Kayibanda, a Hutu, was a student at the Butare University.[790] On 20 April, around 2.00 or 3.00 p.m. Kayibanda attended a meeting led by the Vice-Rector of the university, Jean Berchmans Nshimyumuremyi, with all the students at the stadium.[791] Berchmans was accompanied by civilian and military figures of authority.[792] He recognised the military figures, because they wore their camouflage uniforms.[793] The primary point emphasised by Berchmans during this meeting was that the students had to start carrying their identification cards on them at all times, as opposed to their student cards.[794] The reason

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[776] Witness ZCB, T. 17 January 2011, p. 44.
[777] Witness ZCB, T. 17 January 2011, p. 44.
[778] Witness ZCB, T. 17 January 2011, pp. 45-46.
[779] Witness ZCB, T. 17 January 2011, p. 45.
[780] Witness ZCB, T. 17 January 2011, p. 46.
[781] Witness ZCB, T. 17 January 2011, p. 46.
[782] Witness ZCB, T. 17 January 2011, p. 46. Witness ZCB was not able to identify who hit him over the head with a club, due to the chaos that reigned.
[783] Witness ZCB, T. 17 January 2011, p. 46.
[784] Witness ZCB, T. 17 January 2011, p. 46.
[785] Witness ZCB, T. 17 January 2011, p. 47.
[786] Witness ZCB, T. 17 January 2011, p. 47.
[787] Witness ZCB, T. 17 January 2011, p. 50.
[788] Witness ZCB, T. 17 January 2011, p. 50.
[789] Witness ZCB, T. 17 January 2011, pp. 51-53.
[790] Witness Kayibanda, T. 2 February 2011, p. 39; Exhibit P17 (Witness Kayibanda's Personal Information Sheet). Witness Kayibanda was detained in Rwanda for eight years for genocide related crimes. He was released in 2003 as part of a Presidential pardon. Witness Kayibanda admitted to having been incarcerated for having been part of a "criminal association", for the possession of illegal weapons and for looting. T. 2 February 2011, p. 63; T. 3 February 2011, pp. 20, 36.
[791] Witness Kayibanda, T. 2 February 2011, pp. 42-44.
[792] Witness Kayibanda, T. 2 February 2011, p. 44. Witness Kayibanda did not recall the exact day, but knew the meeting took place on 20 April 1994.
[793] Witness Kayibanda, T. 2 February 2011, p. 45.
[794] Witness Kayibanda, T. 2 February 2011, pp. 44-45. Berchmans further announced a temporary suspension of the classes and discussed the death of a student by the name of "Zozo". T. 2 February 2011, p. 45.

being that the identification cards contained one's ethnicity.[795] The students protested the decision of carrying these cards but to no avail.[796]

329. The following day, 21 April 1994, approximately 10 soldiers entered the university campus, with a weapon pulled by a vehicle.[797] Witness Kayibanda watched as they convened the committee of the general association of Rwandan students, who gave the soldiers a list of students, containing their names, the room in which they resided and their ethnicity.[798] Once the soldiers had the list, they left.[799] Around 1.00 or 2.00 p.m. that same day, approximately 10 soldiers, equipped with firearms, returned to "use those lists".[800] A rumour had circulated that some *Inyenzis* were hiding on campus, which is why the soldiers came with the lists.[801] On this occasion, a student was "hacked" and subsequently died in the hospital.[802] The soldiers also "brought" a group of students who were characterised as accomplices of the *Inyenzis*.[803]

330. Witness Kayibanda thought the soldiers who came in the first group were Presidential Guards based on the new uniforms they were wearing.[804] The second group of soldiers appeared to be young.[805] They were amongst the gendarmes, who wore red berets, and the Presidential Guard.[806] Later on, a student by the name of Sibomana, who was often referred to as "Sergeant", told the witness that he was coming from the ESO.[807] There were other waves of attacks and subsequently some soldiers arrived who were supposed to ensure the security at the university.[808] In reality, however, they were looking out for victims who could have escaped.[809] Sibomana, who spent the day at the campus, told him these "elements" came from the ESO.[810]

331. The third attack occurred on the same day in the evening.[811] Approximately 600 visibly young soldiers surrounded the entire campus so that no one could escape.[812] They were wearing their "normal" uniform, some with black berets and some with helmets similar to those worn by motorcyclists.[813] Among the soldiers were members of the Presidential Guard and gendarmes wearing red berets.[814] Explosions could be heard everywhere, and the

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[795] Witness Kayibanda, T. 2 February 2011, p. 45.
[796] Witness Kayibanda, T. 2 February 2011, pp. 45-46.
[797] Witness Kayibanda, T. 2 February 2011, p. 47.
[798] Witness Kayibanda, T. 2 February 2011, pp. 47-48.
[799] Witness Kayibanda, T. 2 February 2011, p. 48.
[800] Witness Kayibanda, T. 2 February 2011, pp. 48, 50.
[801] Witness Kayibanda, T. 2 February 2011, p. 50.
[802] Witness Kayibanda, T. 2 February 2011, p. 50.
[803] Witness Kayibanda, T. 2 February 2011, p. 50.
[804] Witness Kayibanda, T. 2 February 2011, p. 48.
[805] Witness Kayibanda, T. 2 February 2011, p. 48. Witness Kayibanda divided the young soldiers up into three age categories: some between the ages of 17 to 20, some around the age of 25 and some in their 30s. T. 2 February 2011, p. 49.
[806] Witness Kayibanda, T. 2 February 2011, p. 48.
[807] Witness Kayibanda, T. 2 February 2011, p. 50.
[808] Witness Kayibanda, T. 2 February 2011, p. 50.
[809] Witness Kayibanda, T. 2 February 2011, p. 50.
[810] Witness Kayibanda, T. 2 February 2011, p. 50.
[811] Witness Kayibanda, T. 2 February 2011, p. 50.
[812] Witness Kayibanda, T. 2 February 2011, pp. 50-51.
[813] Witness Kayibanda, T. 2 February 2011, p. 51.
[814] Witness Kayibanda, T. 2 February 2011, p. 51.

young soldiers were armed with Kalashnikovs and different types of grenades.[815] The soldiers found the students at the restaurant, where they started calling out different names.[816] Witness Kayibanda soon realised that they were calling out names of students who had not yet arrived.[817] The soldiers then asked the students to exit the restaurant, presenting their identification cards.[818] The students were separated into Tutsis, who were led to the handball pitch, and Hutus, who were sent back to their rooms.[819] Witness Kayibanda, a Hutu, was sent back to his room.[820]

332. Shortly thereafter, the soldiers systematically searched the rooms without even looking at the lists, because they thought students were hiding there.[821] When they knocked on Witness Kayibanda's door, the young soldiers asked him why he was not helping to defend against the enemies, or Tutsis.[822] Witness Kayibanda was led out by them and assisted them in carrying out their search.[823] Once they found an enemy, they would take them to a "sorting center" that was prepared by the "professional" soldiers.[824] The head of Witness Kayibanda's group would hand over the identity cards that they had taken from the students and, if the professional soldier decided the student had to pass through a roadblock, that victim would not return.[825]

333. There were three blocks at the university, but all victims who were "arrested" were taken to the same place.[826] Witness Kayibanda did not know how many students were taken from the campus that night.[827] The search for students continued on into the next morning, when they also canvassed the woods surrounding the campus.[828]

334. Witness Kayibanda did not know who commanded this attack and did not see anyone issuing orders throughout the assault.[829] He just knew that Sibomana was acting as a liaison between the soldiers and provided them with some information once they got to the campus.[830] He saw soldiers kill and carry out their operations, but did not see a coordination of the various groups participating in the attacks.[831]

Prosecution Witness BDE

335. Witness BDE, a Hutu, was a *nouvelle formule* cadet at the ESO camp in April 1994.[832] She knew three people who had carried out killings at the university.[833] The first was

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[815] Witness Kayibanda, T. 2 February 2011, p. 51.
[816] Witness Kayibanda, T. 2 February 2011, p. 51.
[817] Witness Kayibanda, T. 2 February 2011, p. 51.
[818] Witness Kayibanda, T. 2 February 2011, p. 51.
[819] Witness Kayibanda, T. 2 February 2011, p. 51.
[820] Witness Kayibanda, T. 2 February 2011, p. 51.
[821] Witness Kayibanda, T. 2 February 2011, p. 51.
[822] Witness Kayibanda, T. 2 February 2011, p. 52.
[823] Witness Kayibanda, T. 2 February 2011, p. 52.
[824] Witness Kayibanda, T. 2 February 2011, p. 52.
[825] Witness Kayibanda, T. 2 February 2011, p. 52.
[826] Witness Kayibanda, T. 2 February 2011, p. 53.
[827] Witness Kayibanda, T. 2 February 2011, p. 53.
[828] Witness Kayibanda, T. 2 February 2011, p. 54.
[829] Witness Kayibanda, T. 2 February 2011, p. 65.
[830] Witness Kayibanda, T. 2 February 2011, p. 65.
[831] Witness Kayibanda, T. 2 February 2011, p. 65.
[832] Witness BDE, T. 28 January 2011, pp. 8-9; T. 31 January 2011, p. 51.

Sergeant Major Sibomana, who was also a student at the university.[834] The second was an old Corporal called Sekimonyo.[835] The third was an ESO cadet, Fulgence Niyibizi, who announced that he would kill up to 100 Tutsis.[836] She knew they had carried out the killings, because Fulgence told her he was working jointly with Sekimonyo and Sibomana, who was leading the *Interahamwe*.[837]

Prosecution Witness AZM

336. Witness AZM, a Hutu, was a member of the prefecture security committee in Butare in April 1994.[838] He heard at a security committee meeting a few days after 19 April, from either Vice-Rector Jean Berchmans Nshimyumuremyi or the area Commander Tharcisse Muvunyi, that university students had been killed.[839] Muvunyi asked Berchmans during the meeting whether he had enough soldiers at his disposal, to which he responded that their numbers were adequate.[840] At a following meeting, Berchmans announced that he no longer needed the food stamps he had requested, because the people for whom he was seeking assistance were no longer alive.[841]

Prosecution Witness ZT

337. In April 1994, Witness ZT was a cadet at the ESO.[842] Witness ZT stated that Nizeyimana had deployed Innocent Sibomana, who was also a student, to the university.[843]

Prosecution Witness Anaclet Dufitumukiza

338. Witness Dufitumukiza, a Tutsi, was a corporal in the gendarmerie at the Tumba Camp in April 1994.[844] The witness knew that Second Lieutenant Gakwerere, who was based at the ESO, led attacks on the university.[845] Witness Dufitumukiza believed that Gakwerere was entrusted with the task of exterminating all Tutsis.[846] He never saw Gakwerere at the university, but heard from other people that he could enter the campus.[847]

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[833] Witness BDE, T. 28 January 2011, p. 30.
[834] Witness BDE, T. 28 January 2011, p. 30; T. 31 January 2011, p. 58.
[835] Witness BDE, T. 28 January 2011, p. 30.
[836] Witness BDE, T. 28 January 2011, pp. 30-31; T. 31 January 2011, p. 42.
[837] Witness BDE, T. 28 January 2011, p. 31.
[838] Witness AZM, T. 20 January 2011, pp. 58, 72; Exhibit P6 (Witness AZM's Personal Information Sheet). At the time of his testimony, Witness AZM was incarcerated for genocide related crimes. T. 20 January 2011, pp. 58-59; T. 24 January 2011, p. 30. He has been in two different prisons since 1999. T. 24 February 2011, p. 30. He pleaded guilty to genocide related crimes in 2002. T. 24 January 2011, pp. 35-36, T. 24 January 2011, pp. 50-51. He prepared a statement for the Gacaca court in 2012. T. 24 January 2011, pp. 50-51.
[839] Witness AZM, T. 20 January 2011, p. 72.
[840] Witness AZM, T. 20 January 2011, p. 72.
[841] Witness AZM, T. 20 January 2011, p. 72.
[842] Witness ZT, T. 7 February 2011, p. 7; Exhibit P19 (Witness ZT's Personal Information Sheet).
[843] Witness ZT, T. 7 February 2011, p. 14. Witness ZT did not explain the basis for her knowledge.
[844] Witness Dufitumukiza, T. 19 January 2011, pp. 71-72; Exhibit P5 (Witness Dufitumukiza's Personal Information Sheet).
[845] Witness Dufitumukiza, T. 20 January 2011, pp. 12-13.
[846] Witness Dufitumukiza, T. 20 January 2011, p. 14.
[847] Witness Dufitumukiza, T. 20 January 2011, pp. 18-19 ("A. For example, there was Mr. Placide who today lives in Rwanda. I always discussed with Placide about Gakwerere. There was also another Gakwerere who was

Prosecution Witness ZAP's Rule 92*bis* Statement

339. Witness ZAP was at Rosalie Gicanda's house in April 1994.[848] On 20 April, Witness ZAP was taken in a vehicle, along with Rosalie Gicanda by soldiers, who subsequently stopped at the ESO.[849] The leader of the soldiers and a few others exited the vehicle and entered the ESO Camp.[850] Other soldiers approached the car and said that they had discovered some *Inyenzi* and that they would treat them the same way they had treated the university students.[851] They told the witness they had just warmed their bayonets.[852]

Defence Witness Martin Mukeshimana

340. In 1994, Witness Mukeshimana, a Hutu, was a medical student at the Butare University.[853] Between 19 and 21 April there was a meeting of about 100 students at the Kamuniza stadium, presided over by the Vice-Rector Jean Berchmans Nshimyumuremyi.[854] Nizeyimana was not present at this meeting, nor was there any other soldier there.[855] The primary issues discussed were security at the university and the delivery of food to students, as well as transport for students who wanted to return to their areas of origin.[856] The meeting lasted less than an hour.[857] While food was provided after the meeting, the transport never materialised because of the insecurity in getting to the various regions to which the students wanted to be transported.[858] Witness Mukeshimana was not aware of another meeting taking place.[859] He did not know whether lists containing the names of students were created.[860]

341. Sometime after 20 April 1994, in the afternoon, Witness Mukeshimana saw about 10 armed soldiers enter the university campus.[861] He estimated their ages to range between 25 and 30 years.[862] He did not know where the soldiers came from and did not see any officers among this group.[863] He saw the soldiers enter the university residences and saw people on the ground at the basketball court around 4.00 p.m., whom he thought soldiers had told to sit

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a gendarme who gave me information. Gakwerere was the one who helped me to meet Madam Catherine. There were also other people from ESO; for example, Mr. Kaliganere, who was assigned at ESO. He also gave me information. Those were my main three sources of information.").
[848] Exhibit P40D(E), p. 2.
[849] Exhibit P40D(E), pp. 2-3.
[850] Exhibit P40D(E), p. 3.
[851] Exhibit P40D(E), p. 3.
[852] Exhibit P40D(E), p. 3.
[853] Witness Mukeshimana, T. 23 May 2011, p. 30; Exhibit D42 (Witness Mukeshimana's Personal Information Sheet).
[854] Witness Mukeshimana, T. 23 May 2011, pp. 34, 52.
[855] Witness Mukeshimana, T. 23 May 2011, p. 36. Witness Mukeshimana had never seen or heard of Nizeyimana during his time spent as a student in Butare. T. 23 May 2011, p. 45.
[856] Witness Mukeshimana, T. 23 May 2011, pp. 34-35.
[857] Witness Mukeshimana, T. 23 May 2011, p. 36.
[858] Witness Mukeshimana, T. 23 May 2011, p. 36.
[859] Witness Mukeshimana, T. 23 May 2011, p. 36.
[860] Witness Mukeshimana, T. 23 May 2011, p. 43.
[861] Witness Mukeshimana, T. 23 May 2011, pp. 37, 43.
[862] Witness Mukeshimana, T. 23 May 2011, p. 37.
[863] Witness Mukeshimana, T. 23 May 2011, p. 37 ("Q. How would you recognise an officer? A. If they are wearing those things that they wear on their shoulders, then I would recognise them. But I also imagine that you'd have people accompanying them and people to whom they can give direct orders. Those two cases would ident -- would indicate to me that there is an officer.").

there.[864] Once he saw two people at the basketball court, another day about five people.[865] He did not know on what basis those students were selected and did not know what happened to them subsequently.[866] Witness Mukeshimana was frightened when the soldiers entered the campus and remained in his room while they were there.[867]

342. To his knowledge, no one was killed or died at the university in April 1994.[868] He only once recalls seeing the decomposing body of someone alleged to be a Hutu behind the Cambodia hostel, but Witness Mukeshimana did not know whether the body had just been dumped there or whether it was in fact killed there.[869]

Defence Witness ZML02

343. In April 1994, Witness ZML02, a Hutu, was a student at the Butare University.[870] She returned from her native region to the Butare University on 18 April.[871] The witness registered as a student who was seeking refuge and was allocated a room.[872]

344. Around 20 April 1994, a meeting was held shortly after breakfast at the stadium, chaired by the Executive-Secretary Rudatsikira and Vice-Rector Jean Berchmans Nshimyumuremyi.[873] During this meeting, they discussed the distribution of lodging for people who were fleeing, food and transportation for students who wanted to return to their native regions.[874] The university said that it was impossible to arrange buses to bring the students back to their native regions.[875] The meeting lasted about one and a half hours.[876] Witness ZML02 estimated there to be about 80 students at the university around that time.[877] No one else addressed the students at this meeting and there were no soldiers present.[878]

345. On 21 April 1994, soldiers arrived at the university, entered the restaurant and asked the students to present their identification cards.[879] They entered through the main door of the university and walked past the hostels towards the restaurant.[880] Witness ZML02 saw the soldiers arrive around 5.00 p.m., which is when the students used to take their meal.[881] They were stopped by soldiers when they reached the restaurant and were asked to show their identity cards.[882] Witness ZLM02 and her friend were allowed to enter, but others had to

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[864] Witness Mukeshimana, T. 23 May 2011, pp. 37, 42, 54.
[865] Witness Mukeshimana, T. 23 May 2011, pp. 38, 54, 56-57. Witness Mukeshimana later suggested that he simply did not look well enough the first time, and when he looked again, he saw five people instead of two.
[866] Witness Mukeshimana, T. 23 May 2011, pp. 38-39.
[867] Witness Mukeshimana, T. 23 May 2011, pp. 39, 54.
[868] Witness Mukeshimana, T. 23 May 2011, p. 39.
[869] Witness Mukeshimana, T. 23 May 2011, p. 39.
[870] Witness ZML02, T. 17 May 2011, p. 5; Exhibit D34 (Witness ZML02's Personal Information Sheet).
[871] Witness ZML02, T. 17 May 2011, pp. 4-5, 15.
[872] Witness ZML02, T. 17 May 2011, pp. 4, 15, 23.
[873] Witness ZML02, T. 17 May 2011, pp. 4, 15, 23.
[874] Witness ZML02, T. 17 May 2011, pp. 5-6, 15, 22-23.
[875] Witness ZML02, T. 17 May 2011, p. 24.
[876] Witness ZML02, T. 17 May 2011, p. 22.
[877] Witness ZML02, T. 17 May 2011, pp. 10-11.
[878] Witness ZML02, T. 17 May 2011, p. 6.
[879] Witness ZML02, T. 17 May 2011, pp. 11-12.
[880] Witness ZML02, T. 17 May 2011, p. 12.
[881] Witness ZML02, T. 17 May 2011, pp. 12, 27. Witness ZML02 saw the soldiers as she was exiting the hostel by the name of "Viet". T. 17 May 2011, p. 27.
[882] Witness ZML02, T. 17 May 2011, pp. 12, 27.

remain outside.[883] She did not see what happened to the Tutsi students who were not allowed to enter the restaurant.[884] Some of those students returned, some others did not.[885] It was only on this first day that the soldiers checked the identity cards of the students.[886]

346. The soldiers were armed and dressed in camouflage uniforms and berets.[887] They did not tell her where they were from, but she thought they were members of the Presidential Guard who had been manning a roadblock 200 metres from the university.[888] She saw about eight soldiers walking around in "Indian file" and there were others that could be found between the restaurant and the gymnasium, though she could not recall how many.[889] She did not see any list.[890] Witness ZML02 did not see any of her Hutu classmates assist the soldiers in rounding people up.[891] She heard that over the next few days, the soldiers searched the university and its surroundings for Tutsi students.[892]

347. The soldiers returned the next day at almost the same time, but they did not find many students at the restaurant, because the students were scared and avoided coming for their meals.[893] Witness ZLM02 did not see the soldiers kill anyone while they were at the restaurant or on campus.[894] She did hear that people had been killed far outside the university campus.[895]

Defence Witness Martin Mutarutinya

348. In April 1994, Witness Mutarutinya, a Hutu, was a student at the Butare University.[896] On or about 21 April, around 6.00 p.m., Witness Mutarutinya was in the university refectory with approximately 100 other students.[897] They had just started eating when he saw two armed people take position at the entrance of the refectory.[898] He later heard there were more than two armed people.[899] The armed person at the entrance compelled persons to show their identity cards when they entered.[900] Witness Mutarutinya showed his card when he left the restaurant and was directed towards his hostel.[901] He noticed that Hutus were directed

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[883] Witness ZML02, T. 17 May 2011, pp. 12, 28, 30.
[884] Witness ZML02, T. 17 May 2011, pp. 12, 27.
[885] Witness ZML02, T. 17 May 2011, pp. 13, 30.
[886] Witness ZML02, T. 17 May 2011, p. 30.
[887] Witness ZML02, T. 17 May 2011, pp. 12, 29.
[888] Witness ZML02, T. 17 May 2011, p. 12.
[889] Witness ZML02, T. 17 May 2011, p. 13.
[890] Witness ZML02, T. 17 May 2011, p. 29.
[891] Witness ZML02, T. 17 May 2011, p. 30.
[892] Witness ZML02, T. 17 May 2011, p. 31.
[893] Witness ZML02, T. 17 May 2011, p. 14.
[894] Witness ZML02, T. 17 May 2011, p. 14.
[895] Witness ZML02, T. 17 May 2011, p. 14.
[896] Witness Mutarutinya, T. 23 May 2011, p. 4; Exhibit D41 (Witness Mutarutinya's Personal Information Sheet).
[897] Witness Mutarutinya, T. 23 May 2011, pp. 7, 19. Witness Mutarutinya knew the incident occurred at least five days after President Sindikubwabo's speech. T. 23 May 2011, pp. 17-18.
[898] Witness Mutarutinya, T. 23 May 2011, pp. 7, 19.
[899] Witness Mutarutinya, T. 23 May 2011, p. 7.
[900] Witness Mutarutinya, T. 23 May 2011, p. 7.
[901] Witness Mutarutinya, T. 23 May 2011, pp. 7, 20-21.

towards their hostels, whereas Tutsis were told to go to the basketball pitch, which was opposite the restaurant.[902] He heard that four students had been sent to that pitch.[903]

349. When he exited the restaurant, he noticed that one armed person was wearing a green military uniform with a black beret.[904] He carried a weapon and his face looked old and wrinkled.[905] Witness Mutarutinya did not know what unit this soldier came from, but subsequently heard that he, and two or three others, were members of the Presidential Guard.[906] He did not see any students assisting these soldiers when he was at the refectory.[907] Witness Mutarutinya assumed that those directed to the basketball court must have been killed, because he heard gun shots from the direction of the arboretum, a small artificial forest, shortly after he got to his room.[908] The soldiers were not receiving assistance from other students.[909]

350. In the days following this incursion, the student body at the campus decreased.[910] Many students were fearful and sought refuge elsewhere, as they had heard of subsequent abductions of students.[911] He did not see the students being abducted, but heard that armed civilians and soldiers took them away.[912]

Defence Witness Joseph Ngezahayo

351. In April 1994, Witness Ngezahayo, a Hutu, was a student and worked as a laundry man for Jean Nepo Hategekimana at the ESO.[913] About two weeks after President Habyarimana's plane was shot down, the witness walked over to the university to have something to eat around 11.40 a.m.[914] On that day, around 12.30 or 1.00 p.m., about a dozen soldiers entered the campus.[915] The oldest could not have been more than 30, but they were generally between 27 and 28 years old.[916] Witness Ngezahayo knew the ESO soldiers well and was therefore able to conclude that these soldiers were not from this camp.[917] Instead, the

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[902] Witness Mutarutinya, T. 23 May 2011, pp. 7, 20-21. Witness Mutarutinya did not personally see the Tutsi students being directed to the basketball pitch, but he heard this happened from other students. T. 23 May 2011, pp. 7, 20.
[903] Witness Mutarutinya, T. 23 May 2011, p. 7.
[904] Witness Mutarutinya, T. 23 May 2011, p. 8.
[905] Witness Mutarutinya, T. 23 May 2011, p. 8.
[906] Witness Mutarutinya, T. 23 May 2011, pp. 8, 21. Witness Mutarutinya did not specify who told him the soldier was a member of the Presidential Guard.
[907] Witness Mutarutinya, T. 23 May 2011, p. 8.
[908] Witness Mutarutinya, T. 23 May 2011, p. 8.
[909] Witness Mutarutinya, T. 23 May 2011, p. 8.
[910] Witness Mutarutinya, T. 23 May 2011, p. 8.
[911] Witness Mutarutinya, T. 23 May 2011, pp. 8-9.
[912] Witness Mutarutinya, T. 23 May 2011, pp. 9, 17.
[913] Witness Ngezahayo, T. 24 May 2011, p. 45; Exhibit D44 (Witness Ngezayaho's Personal Information Sheet).
[914] Witness Ngezahayo, T. 24 May 2011, pp. 48-49, 64, 69. Witness Ngezahayo did not end up eating that day and left the university hungry. T. 24 May 2011, p. 64.
[915] Witness Ngezahayo, T. 24 May 2011, pp. 49, 51. Witness Ngezahayo subsequently thought it happened between 1.00 and 1.30 p.m. T. 24 May 2011, p. 51.
[916] Witness Ngezahayo, T. 24 May 2011, pp. 49, 69.
[917] Witness Ngezahayo, T. 24 May 2011, p. 49

soldiers told him they were from Kigali.[918] Witness Ngezahayo knew there were no officers among the group, because he did not see any stars on their epaulettes.[919]

352. The soldiers first went to the student service before going towards the hostel.[920] Once there, they said that they were looking for students who may have been hiding there.[921] The soldiers, who were assisted by students and who were mostly affiliated with MRND, searched the hostels and took some students to the basketball court located in front of the refectory.[922] Witness Ngezahayo watched the event unfold from his location in front of the restaurant *des connards,* which is about 11 metres from the basketball pitch.[923] Once at the basketball court, the soldiers asked the students to present their identity cards and put between 28 to 30 Tutsis to one side.[924] The soldiers did not check his identification card, because it was clear from his clothes that he was not a student.[925]

353. Around 2.00 p.m., the soldiers took the Tutsi students to the INRS, which was located outside the campus on the other side of the tarmac road.[926] Witness Ngezahayo followed the soldiers as they took the students away until he got to the edge of the campus.[927] He believes the students were killed, because he did not see them return to the university thereafter. [928] On that occasion, Witness Ngezahayo saw soldiers from the Presidential Guard kill a Hutu tailor named Cassien in a banana grove close to the university campus.[929] He spent about 10 minutes at the university on this occasion and then went home.[930]

354. The following day, Witness Ngezahayo returned to the university around 8.00 a.m. to bring some clothes he had for students.[931] Standing next to guava trees outside the student department, the witness saw the soldiers return that day.[932] Witness Ngezahayo concluded they were the same group of soldiers based on their uniforms and the size of the group.[933] They asked the student department for the master key to enter all student rooms. However, he did not see them enter the university on this occasion.[934] After having collected the master key, the witness overheard students, who were accompanying the soldiers, bragging that those who thought they had locked themselves inside their room were going to "get it from

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[918] Witness Ngezahayo, T. 24 May 2011, p. 49.
[919] Witness Ngezahayo, T. 24 May 2011, p. 49.
[920] Witness Ngezahayo, T. 24 May 2011, pp. 50, 65.
[921] Witness Ngezahayo, T. 24 May 2011, p. 50.
[922] Witness Ngezahayo, T. 24 May 2011, pp. 50-51, 64, 66-68. Specifically, Witness Ngezahayo saw them enter the Misereor hostel. T. 24 May 2011, pp. 64, 66.
[923] Witness Ngezahayo, T. 24 May 2011, pp. 51-52, 57, 63. Witness Ngezahayo stated on cross-examination that he had been sitting on a cement block, which was in the middle of the refectory and the basketball court. T. 24 May, 2011, pp. 63, 68.
[924] Witness Ngezahayo, T. 24 May 2011, pp. 50, 54.
[925] Witness Ngezahayo, T. 24 May 2011, pp. 53, 61.
[926] Witness Ngezahayo, T. 24 May 2011, pp. 50-52. Witness Ngezahayo knew the Tutsi students were taken there, because he was present and witnessed it all. T. 24 May 2011, p. 51. Witness Ngezahayo did not explain what the INRS was, but stated that it was on the other side of the tarmac road, outside the University. He noted that there was a museum at the INRS. T. 24 May 2011, pp. 50-51.
[927] Witness Ngezahayo, T. 24 May 2011, p. 68.
[928] Witness Ngezahayo, T. 24 May 2011, pp. 51, 70.
[929] Witness Ngezahayo, T. 24 May 2011, p. 58.
[930] Witness Ngezahayo, T. 24 May 2011, pp. 63, 65.
[931] Witness Ngezahayo, T. 24 May 2011, pp. 53, 69.
[932] Witness Ngezahayo, T. 24 May 2011, pp. 51, 53, 61-62.
[933] Witness Ngezahayo, T. 24 May 2011, p. 54.
[934] Witness Ngezahayo, T. 24 May 2011, p. 57.

us" now that they had the master key.[935] Witness Ngezahayo spent approximately one hour at the university on this occasion.[936]

355. Not more than five students were arrested that day and were taken to the national laboratory.[937] These students did not return to the campus either.[938] Witness Ngezahayo was told by 15-year-old kids, who had followed the students, that they had been killed at the IRNS.[939] The witness thought the soldiers had spent the night at the *Groupe Scolaire*.[940] The soldiers did not return to the university after this second occasion.[941] Witness Ngezahayo did not speak to the soldiers on either occasion.[942] He was about five metres from the soldiers.[943]

Defence Witness MAL06

356. In April 1994, Witness MAL06, a Hutu, worked at the Butare University.[944] On or around 25 April, at about 5.00 p.m., eight armed soldiers entered the refectory known as *de Salaud* and asked students for their identity cards.[945] There were less than 20 students inside the refectory at the time.[946] Witness MAL06 was inside the refectory and saw some soldiers come in and others waited outside.[947] They did not ask him to show his identity card.[948] At some point they asked all students to exit the restaurant, after which they continued checking the identity cards outside.[949] Witness MAL06 did not see whether the soldiers had a list of names.[950] Some of the students were taken away, though Witness MAL06 did not know why.[951] He heard later from other students that those taken away had been killed.[952] The witness saw some students pointing out their colleagues and showing them to soldiers.[953]

357. The soldiers were wearing new uniforms and new black berets, not usually seen in Butare, and were acting hostile.[954] The following day, students were saying that the soldiers in the refectory had been members of the Presidential Guard.[955] While the uniforms may have been the same, he did not recognise the faces of these soldiers. Consequently, he knew that they were not from the ESO.[956] Moreover, they acted different from ESO soldiers.[957]

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[935] Witness Ngezahayo, T. 24 May 2011, p. 62.
[936] Witness Ngezahayo, T. 24 May 2011, p. 69.
[937] Witness Ngezahayo, T. 24 May 2011, pp. 54, 69.
[938] Witness Ngezahayo, T. 24 May 2011, p. 57.
[939] Witness Ngezahayo, T. 24 May 2011, p. 70.
[940] Witness Ngezahayo, T. 24 May 2011, pp. 56-57.
[941] Witness Ngezahayo, T. 24 May 2011, p. 57.
[942] Witness Ngezahayo, T. 24 May 2011, pp. 61, 70.
[943] Witness Ngezahayo, T. 24 May 2011, p. 61.
[944] Witness MAL06, T. 16 May 2011, p. 35; Exhibit D32 (Witness MAL06's Personal Information Sheet).
[945] Witness MAL06, T. 16 May 2011, pp. 37-38, 48, 54.
[946] Witness MAL06, T. 16 May 2011, pp. 53, 55.
[947] Witness MAL06, T. 16 May 2011, pp. 38, 48, 51.
[948] Witness MAL06, T. 16 May 2011, pp. 38-39.
[949] Witness MAL06, T. 16 May 2011, pp. 50, 53.
[950] Witness MAL06, T. 16 May 2011, p. 54.
[951] Witness MAL06, T. 16 May 2011, pp. 37-38.
[952] Witness MAL06, T. 16 May 2011, pp. 38, 54.
[953] Witness MAL06, T. 16 May 2011, p. 54.
[954] Witness MAL06, T. 16 May 2011, pp. 38, 41.
[955] Witness MAL06, T. 16 May 2011, pp. 39, 55.
[956] Witness MAL06, T. 16 May 2011, pp. 40-41 ("JUDGE FREMR: Mr. Witness, could you briefly describe the uniform of ESO soldiers? THE WITNESS: ESO soldiers had normal military uniforms. So they had a normal

358. The next day, the same soldiers returned to the university campus and asked where the various hostels were located.[958] This time they requested that Witness MAL06 show them his identity card.[959] Witness MAL06 did not see or hear about students getting killed at the university while he was working there.[960] He stopped working about three days after the second visit by the soldiers, because he was afraid he would get killed.[961] A colleague had alerted him not to come, because he may get hurt.[962]

Defence Witness BEJ01

359. Witness BEJ01, a Hutu, lived in Butare town in 1994.[963] Witness BEJ01 had been given a list by his colleagues at the university, which contained the names of approximately 50 to 70 families, who wanted to flee Butare by bus.[964] He summarised the list and gave it to the Vice-Rector of Butare University, Jean Berchmans Nshimiyumuremyi around 12 April.[965] No one was transported out of Butare by bus.[966] The majority of the families contained on that list survived.[967] Witness BEJ01 did not go to the university after 12 April.[968]

Defence Witness OUV03

360. In April 1994, Witness OUV03, a Hutu, was an instructor at the ESO.[969] When Nizeyimana left the ESO Camp, he would tell Witness OUV03, so that the latter could get in touch with him should the need arise, including when he went to locations such as the

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uniform. Indeed, the difference, as I told you, between those soldiers who arrived and – it's, in fact – that I did not recognise – I noticed that it was the first time I was seeing their faces. That is why I said a while ago that these were new people who had arrived at the restaurant. JUDGE FREMR: Okay, you are talking about faces, but I would be more interested about the differences as to the look of uniforms if any. THE WITNESS: ESO soldiers had a normal military uniform. MR. PRESIDENT: Mr. Witness, what is a normal military uniform? What colour is normal? THE WITNESS: They had a camouflage uniform and black berets. JUDGE FREMR: Okay, and those soldiers who came to the university, what kind of – or, what colour was their uniform and berets? THE WITNESS: Their berets were also black, but they had new uniforms. If you look at their behaviour, you could notice that they were different from the soldiers that we knew or that we were used to. JUDGE FREMR: But as to the colour of the uniform, was the same? ... JUDGE FREMR: I would like to know whether the colour of the uniform was the same like the colour of the uniform of ESO soldiers. THE WITNESS: Yes, they ad -- the uniforms had the same colour as the uniforms of the ESO soldiers.").

[957] Witness MAL06, T. 16 May 2011, p. 41. Witness MAL06 did not explain how their behaviour differed from the ESO soldiers.

[958] Witness MAL06, T. 16 May 2011, p. 39.

[959] Witness MAL06, T. 16 May 2011, p. 39.

[960] Witness MAL06, T. 16 May 2011, p. 39.

[961] Witness MAL06, T. 16 May 2011, pp. 39-40.

[962] Witness MAL06, T. 16 May 2011, p. 40.

[963] Witness BEJ01, T. 9 June 2011, pp. 20, 27; Exhibit D60 (Witness BEJ01's Personal Information Sheet). At the time of his testimony, Witness BEJ01 had been convicted for genocide related crimes. Witness BEJ01, T. 9 June 2007, pp. 9-10, 33.

[964] Witness BEJ01, T. 9 June 2011, pp. 27-28.

[965] Witness BEJ01, T. 9 June 2011, pp. 27-29.

[966] Witness BEJ01, T. 9 June 2011, p. 29.

[967] Witness BEJ01, T. 9 June 2011, pp. 29-30. Witness BEJ01 was not asked what the "other reasons" were, nor did he explain what he meant. However, because Karenzi was a Tutsi, he agreed that Karenzi was a "designated target".

[968] Witness BEJ01, T. 9 June 2011, p. 29.

[969] Witness OUV03, T. 30 May 2011, p. 62; Exhibit D51 (Witness OUV03's Personal Information Sheet).

university.[970] Witness OUV03 did not recall the date upon which Nizeyimana went to the university.[971]

Deliberations

361. The Prosecution relies on Witnesses ZCB, Kayibanda, ZBH, BDE, AZM, ZT, Dufitumukiza and ZAP to establish that Nizeyimana ordered or instigated soldiers, including Chief Warrant Officer Damien Ntamuhanga and Innocent Sibomana, members of the gendarmerie and *Interahamwe* to target civilian victims using lists and identity cards at the university from on or about 16 April 1994.

362. The Defence does not dispute that a meeting was held at the stadium or that an attack took place at the university towards the end of April 1994. Instead, it denies any involvement on the part of Nizeyimana, who was not even in Butare at the time, or ESO soldiers.

(i) Meetings Chaired by Vice-Rector Jean Berchmans Nshimiyumuremyi at the Stadium

363. The evidence demonstrates that a meeting was held on or around 20 April 1994 at the stadium in Butare, chaired by the Vice-Rector of the university, Jean Berchmans Nshimiyumuremyi. Prosecution Witnesses ZCB and Kayibanda and Defence Witnesses Mukeshimana and ZML02 provided first-hand evidence of this meeting that was attended by between 80 and 100 students, and the topics discussed during the approximately one hour to an hour and a half long gathering.[972] Specifically, Berchmans spoke about the security situation at the university.[973] Witnesses ZCB, Mukeshimana and ZML02 all recounted that Berchmans discussed the option of arranging buses to transport students back to their native regions, should they wish to do so.[974]

364. According to Witness ZCB, Berchmans instructed the students who wished to make use of the system of buses to write down their names on a list.[975] While no other witness who was present at this meeting provided evidence of the discussion of this list, Witness BEJ01 provides circumstantial corroboration for the practice thereof. Witness BEJ01 was responsible for compiling names of university staff members who wanted to flee Butare, which he complied with and handed over to Berchmans on or around 12 April 1994.[976] Moreover, Witnesses Mukeshimana and ZML02 both heard Berchmans discuss the option of arranging buses for students who wanted to flee Butare.[977] The creation of lists to facilitate

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[970] Witness OUV03, T. 31 May 2011, p. 49.
[971] Witness OUV03, T. 31 May 2011, p. 49.
[972] Prosecution Witness ZCB, T. 17 January 2011, pp. 31, 33-34 (attended a meeting with more than 100 students sometime before 21 April, which lasted about an hour and a half); Prosecution Witness Kayibanda, 2 February 2011, pp. 42-44 (attended a meeting on 20 April); Defence Witness Mukeshimana, T. 23 May 2011, pp. 34, 36, 52 (attended a meeting between 19 and 21 April that lasted less than an hour with about 100 students); Defence Witness ZML02, T. 17 May 2011, pp. 39-40 (attended a meeting around 20 April with 80 other students).
[973] Witness ZCB, T. 17 January 2011, p. 34; Witness Mukeshimana, T. 23 May 2011, pp. 34-35; Witness ZML02, T. 17 May 2011, p. 24.
[974] Witness ZCB, T. 17 January 2011, p. 34; Witness Mukeshimana, T. 23 May 2011, pp. 34-35; Witness ZML02, T. 17 May 2011, p. 24.
[975] Witness ZCB, T. 17 January 2011, p. 34.
[976] Witness BEJ01, T. 9 June 2011, pp. 27-29.
[977] Witness Mukeshimana, T. 23 May 2011, pp. 34-35; Witness ZML02, T. 17 May 2011, p. 24.

the transfer of these students appears to be a logical procedure, particularly in light of a similar process that was followed earlier with respect to the university staff.

365. Moreover, both Witnesses Mukeshimana and ZML02 did not indicate their desire to leave the university for their native regions and may therefore not have been aware of the procedures other students followed to make known their intent to leave.[978] It appears that only students who feared remaining in Butare by virtue of the increase in violence, such as Witness ZCB, would have put their names on a list.[979] In light of Witness ZCB's first-hand testimony, supported by the circumstantial evidence of Defence Witnesses BEJ01, Mukeshimana and ZML02, the Chamber is satisfied that lists of student names were compiled after the 20 April 1994 meeting.

366. Turning to the link between the creation of these lists and Nizeyimana, the Chamber observes that the Prosecution has presented no direct evidence suggesting Nizeyimana was responsible for these lists or was in any way connected thereto. Witness ZCB is the sole witness to have identified Nizeyimana at the meeting. According to him, Berchmans specifically introduced him as "Captain Nizeyimana" and noted that he convened the meeting "in order to clarify the situation and that he was with a military officer in charge of securities so that they could see how they could resolve the problem".[980]

367. According to Witness ZCB, Nizeyimana also spoke, confirming his assistance in escorting the buses with students back to their native regions and reminding the students that the Tutsis were the enemy. Witness Kayibanda provides circumstantial corroboration for Witness ZCB's evidence, having seen military figures of authority at the meeting. Notwithstanding, Witness Kayibanda did not identify any particular individual and did not make reference to a military official speaking at the meeting, specifically cautioning the students about the Tutsi enemy. Notably, Defence Witnesses Mukeshimana and ZML02 did not see Nizeyimana or any other military figures at this meeting.

368. While Witness ZCB saw that the soldier was wearing a military uniform with three stripes on his shoulder and a beret, he was not asked whether he knew Nizeyimana prior to this meeting or had ever heard of him before this date.[981] Indeed, it is unclear how long Witness ZCB had resided in Butare as a student before this meeting occurred, and he did not indicate that he had any prior knowledge of the existence of Nizeyimana. This raises questions about the quality of his identification.

369. The Defence confronted Witness ZCB with a prior statement made to Tribunal investigators in 2003, detailing his account of the 20 April 1994 meeting. Notably, this statement does not reference Nizeyimana by name, but instead states that the Vice-Rector was accompanied "by a high-ranking military officer whom [he] thought was a captain".[982] The witness explained that the investigators had come to talk to him about Berchmans and that he therefore did not consider it pertinent to specifically reference Nizeyimana by

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[978] Indeed, Witness ZML02 came to the university from her native region to seek refuge on campus. *See* Witness ZML02, T. 17 May 2011, pp. 4-5, 15. Similarly, Witness Mukeshimana did not deny the existence of the lists, but stated that he did not know whether they were created. Witness Mukeshimana, T. 23 May 2011, p. 43.
[979] Witness ZCB, T. 18 January 2011, p. 34.
[980] Witness ZCB, T. 18 January 2011, pp. 32-34.
[981] Witness ZCB, T. 17 January 2011, p. 32.
[982] Witness ZCB, T. 18 January 2011, pp. 9-10; Exhibit D1(E) (Witness ZCB's prior statement to Tribunal investigators), 2003, p. 3.

name.[983] The Chamber considers it reasonable that the witness may have focused on details surrounding Berchmans when questioned specifically about him.

370. However, given the absence of Nizeyimana's name in Witness ZCB's prior statement, the general nature of his identification, the uncorroborated evidence of Nizeyimana's speech before the students and Witnesses Mukeshimana and ZML02's denial of the presence of soldiers at this meeting, the Chamber does not find that the Prosecution met its burden of proving that Nizeyimana was in fact present at this gathering.[984]

371. Witness ZCB is the only witness to provide evidence of a second meeting approximately one or two days after the 20 April 1994 meeting, during which Nizeyimana was present. This meeting at the stadium only lasted about 10 to 15 minutes and was meant to inform the students that the plan to evacuate students out of Butare to their native regions would not go forward. The Chamber observes that Witnesses Mukeshimana and ZML02 provide circumstantial evidence to the extent that they knew that the buses would not be provided by the university and the plan to transport the students back to their homes had been cancelled.[985]

372. However, none of the other witnesses who were present at the first meeting knew of a second meeting immediately following 20 April 1994. Indeed, the majority of witnesses, including Witness ZCB, described soldiers entering the campus the following day, on or around 21 April. Only Witness ZML02 spoke of a second meeting, but this occurred well after the campus was attacked by soldiers on 28 April and was convened to discuss the manner in which students could contribute to securing the campus.[986] In light of the absence of any evidence in support of Witness ZCB's testimony regarding the second meeting, which Nizeyimana is said to have attended, the Chamber cannot find beyond a reasonable doubt that this gathering in fact took place.

(ii) Attack on Butare University, Around 21 April 1994

373. The evidence reflects that on an evening shortly after President Théodore Sindikubwabo's speech in Butare, armed and uniformed soldiers entered the university campus, searched its premises and separated Tutsi students from other students.[987] The soldiers searched the student residences and entered the restaurant, where they asked those inside to present their identity cards. Tutsi students were subsequently gathered at the basketball court, outside the restaurant and killed outside the campus.

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[983] Witness ZCB, T. 18 January 2011, pp. 10-11, 17.

[984] The Chamber notes that the Defence objected to Witness ZCB's evidence of Nizeyimana's presence at this meeting on the basis of notice. *See* Witness ZCB, T. 17 January 2011, pp. 32, 36, 58; Defence Motion for Exclusion of Evidence, 29 April 2011, paras. 39-40. Given the Chamber's finding that it does not intend to rely on Witness ZCB's evidence as it relates to Nizeyimana's presence at the meeting, the Chamber need not address the objections raised by the Defence.

[985] Witness Mukeshimana, T. 23 May 2011, p. 36; Witness ZML02, T. 17 May 2011, p. 24.

[986] Witness ZML02, T. 17 May 2011, pp. 7, 23, 29.

[987] *See, e.g.*, Prosecution Witness ZBC, T. 17 January 2011, pp. 34-37; Prosecution Witness Kayibanda, T. 2 February 2011, pp. 47-54; Defence Witness Mukeshimana, T. 23 May 2011, pp. 37, 42-43, 42, 54; Defence Witness Mutarutinya, T. 23 May 2011, pp. 7, 17-21; Defence Witness Ngezahayo, T. 24 May 2011, pp. 48-50, 64, 69; Defence Witness MAL06, T. 16 May 2011, pp. 37-39, 48, 54-55; Defence Witness ZML02, T. 17 May 2011, pp. 11-12, 27-30.

374. In this context, the Prosecution argues that Nizeyimana orchestrated the identification and killing of Tutsi students at the university. The Chamber observes that the Indictment is ambiguous as to the date upon which this attack is to have taken place. Indeed, Indictment paragraph 14(i) does not provide a date, whereas Indictment paragraph 14(ii) describes an attack on or about 19 April 1994. The Defence witnesses concur that an attack took place at the university, during which students were killed. However, the evidence diverges in respect to the date upon which the assault took place.

375. Contrary to the Indictment, the Prosecution and Defence evidence uniformly suggests that an attack took place *after* 19 April 1994. Indeed, Prosecution Witnesses Kayibanda and ZCB and Defence Witnesses Mutarutinya and ZML02 testified that an attack on the university took place on 21 April.[988] Defence Witness Mukeshimana noted that the attack occurred "sometime after 20 April in the afternoon", while Defence Witness Ngezahayo placed the event about two weeks after President Habyarimana's place crash. By contrast, Defence Witness MAL06 noted that an attack took place on or around 25 April.

376. Despite the ambiguity in dates, Prosecution Witnesses Kayibanda and ZCB and Defence Witnesses Mukeshimana, Ngezahayo, Mutarutinya, MAL06 and ZML02 all provide a very similar narrative with regards to the soldiers' arrival and subsequent operations at the university. Indeed, Prosecution Witnesses Kayibanda and Defence Witnesses Mutarutinya, MAL06 and ZML02 described how soldiers entered the university restaurant around the evening, between 5.00 and 6.00 p.m.[989] The soldiers asked the students to show their identity cards and the students were separated according to their ethnicity. They were subsequently taken to the basketball court outside the restaurant, where other students, taken from their rooms, were gathered as well.[990] Further corroboration for this evidence is provided by Witness ZCB, who was himself taken from the hostels and initially gathered at a location next to the restaurant with other Tutsi students.[991]

377. Defence Witness Ngezahayo saw about a dozen soldiers enter the campus around 12.30 or 1.00 p.m., go towards the hostels looking for students and take them to the basketball court, where they were asked to show their identity cards.[992] Similarly, Witness Mukeshimana saw about 10 soldiers enter the campus and go the university residences. He subsequently saw people, whom he thought were forced to be there by the soldiers, sitting on the ground at the basketball pitch around 4.00 p.m.[993] Given the similarity of the first-hand accounts of the manner in which the soldiers operated, the approximate timing of their arrival

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[988] The Chamber notes that Witness ZBH provides evidence about an attack on 22 April 1994, during which students were identified and killed by civilians and soldiers alike. The Chamber shall discuss his evidence as it relates to this attack under Indictment paragraph 14(iii).

[989] Prosecution Witness Kayibanda, T. 2 February 2011, p. 51; Defence Witness MAL06, T. 16 May 2011, pp. 37-38, 48, 54; Defence Witness ZML02, T. 17 May 2011, pp. 11-12. Witnesses Kayibanda, Ngezahayo and Mukeshimana described seeing between 10 and 12 soldiers enter the premises on 21 April 1994. *See* Witness Kayibanda, T. 2 February 2011, pp. 48-50; Witness Ngezahayo, T. 24 May 2011, pp. 49, 51; Witness Mukeshimana, T. 23 May, 2011, pp. 37, 43.

[990] Witness Kayibanda, T. 2 February 2011, p. 51; Witness Mutarutinya, T. 23 May 2011, pp. 7, 20-21.

[991] Witness ZCB, T. 17 January 2011, pp. 41-42.

[992] Witness Ngezahayo, T. 24 May 2011, pp. 49-50.

[993] Witness Mukeshimana, T. 23 May 2011, pp. 37, 42, 54.

and the number of soldiers present, the Chamber is satisfied that they in fact are testifying about the same attack, which occurred on or about 21 April 1994.[994]

378. Turning to the tools used by the soldiers to identify civilian victims at the university campus, Prosecution Witnesses Kayibanda, ZCB and Defence Witness Ngezahayo observed how the soldiers entered the hostels in search of students.[995] Witness Kayibanda described the search as "systematic", as soldiers moved through the hostels using lists to identify and target civilian victims.[996] Indeed, when Witness ZCB was discovered at his hostel, a soldier, whom he thought to be a Presidential Guard, showed him a list which contained his name and asked the witness to confirm who he was.[997] When he looked at the list, he recognised another name contained thereon, who he identified as Tutsi.[998] Further support for the practice of separation of Tutsis was provided by Witness Ngezahayo. He saw soldiers ask for identity cards and then separate between 28 and 30 Tutsi students at the basketball pitch.[999]

379. Defence Witness ZML02, who was on her way to the restaurant when she was stopped by the soldiers and asked to identify herself, did not see anyone using lists that day. However, Witness ZML02, after having been asked to show her identity card, was allowed to enter the restaurant and would not have seen the assailants move around the hostels with lists. The fact that she did not see lists being used at the university is therefore of limited probative value. The Chamber is satisfied, based on the totality of the evidence, that the assailants who were at the campus used identification cards and lists to target civilian victims, specifically those with the Tutsi ethnicity.

380. However, the Chamber observes that there exists no direct evidence linking the lists that were created during the meeting at the stadium on or around 20 April 1994, with the lists that were used to identify and separate Tutsi students at the university. Indeed, Witness Kayibanda noted that the general association of Rwandan students handed the lists over to the soldiers, Witness ZCB identified a member of the Presidential Guard with a list.[1000] While it is entirely plausible that the various assailants at the university were distributed lists for use when identifying Tutsi students, the only direct evidence in regards to the creation thereof implicates the Vice-Rector Berchmans, who instructed the students to put down their names if they wanted to be transported back to their native regions. As noted above, there is nothing on the record that demonstrates Nizeyimana was involved in the creation and usage of such lists.

381. The evidence demonstrates that the students who were separated and brought to the basketball pitch were subsequently led away and killed. Witness ZBC, who was led away with a group of students by soldiers, while other MRND and CDR affiliated students beat them with iron clubs and bars. At some point he heard gunshots too. Witness ZCB believed they were being led to their death and thought he saw victims on the ground, whom he thought to be dead, before he was saved. Similarly, Witness Kayibanda noted that he saw the

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[994] Given the passage of time, the Chamber considers it reasonable that Witness MAL06 may have been mistaken in regards to the date upon which the attack occurred.
[995] Prosecution Witness Kayibanda, T. 2 February 2011, p. 51; Prosecution Witness ZCB, T. 17 January 2011, p. 38; Defence Witness Ngezahayo, T. 24 May 2011, pp. 50, 64, 66-68.
[996] Witness Kayibanda, T. 2 February 2011, p. 51.
[997] Witness ZCB, T. 17 January 2011, pp. 38-39.
[998] Witness ZCB, T. 17 January 2011, p. 39.
[999] Witness Ngezahayo, T. 24 May 2011, pp. 50, 54, 64, 66-68.
[1000] Witness Kayibanda, T. 2 February 2011, pp. 47-48; Witness ZCB, T. 17 January 2011, pp. 38-39.

soldiers "kill and carry out their operations".[1001] Their first-hand evidence is supported by Defence Witnesses Mutarutinya and Ngezahayo, who presumed that the students who were taken from the basketball pitch were subsequently killed.[1002]

382. Prosecution Witnesses AZM and ZAP provide further second-hand circumstantial support for the fate suffered by the civilian victims at the university. Witness AZM heard from either Vice-Rector Berchmans or Colonel Muvunyi at a security committee meeting a few days after 19 April 1994 that Butare University students had been killed.[1003] Similarly, Witness ZAP, when, being taken away by ESO soldiers, was told she would suffer the same fate as the university students.[1004] They told the witness they had just warmed their bayonets.[1005] The Chamber has no doubt that assailants entered the university's campus, identified and targeted Tutsis, after which those identified as such were killed.

383. The critical question, consequently, for the Chamber is whether Nizeyimana can be held responsible for these killings. At the outset, the Chamber notes that the Prosecution presented no evidence of Chief Warrant Officer Damien Ntamuhanga's involvement in the attack as alleged by Indictment paragraph 14(i). Indeed, not one witness referred to Ntamuhanga having been present at the university or having engaged in targeting civilians at this location. The allegation in regards to his engagement of other soldiers upon authorisation of Nizeyimana to target civilian victims is dismissed. Similarly, there is no evidence of Nizeyimana having been present at the university during the attack that took place on 21 April 1994.

384. The Chamber shall turn to the identity of the soldiers who participated in the attack on the university. Prosecution Witnesses ZCB and Kayibanda provided first-hand evidence of ESO soldiers who were involved in the attack at the university. Specifically, Witness ZCB recounted how he was tracked down at his hostel, interrogated in his room and led away by soldiers to a location next to the restaurant. From there, he and other students were taken along a path by the soldiers, to what he thought would be his death. Witness ZCB identified a member of the Presidential Guard who carried a list with his name on it. However, he consistently implicated ESO soldiers in his abduction from the hostel and subsequent walk to where he thought he would be killed.

385. Specifically, Witness ZCB identified two young soldiers that he thought came from the ESO based on their youth and worn-out uniforms. They were accompanying the Presidential Guard, who was carrying a list with Witness ZCB's name contained thereon. The ESO soldiers interrogated him in his room and eventually led him to the basketball pitch. When taken to another location with approximately 20 other students by the ESO soldiers, they were beaten by both soldiers and students affiliated with the MRND and CDR along the way.[1006] The Chamber considers that Witness ZCB's close physical proximity with the soldiers would have given him ample opportunity to observe and identify the soldiers in his company. Furthermore, the record gives considerable circumstantial support to the

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[1001] Witness Kayibanda, T. 2 February 2011, p. 65.
[1002] Witness Mutarutinya, T. 23 May 2011, p. 8; Witness Ngezahayo, T. 24 May 2011, pp. 51, 70.
[1003] Witness AZM, T. 20 January 2011, p. 72.
[1004] Exhibit P40D(E), p. 3.
[1005] Exhibit P40D(E), p. 3.
[1006] Witness ZCB, T. 17 January 2011, pp. 51-53.

proposition that ESO soldiers could be distinguished among those from other camps based on their relative youth.[1007]

386. Witness ZCB's evidence is supported by Witness Kayibanda, who also provided first-hand evidence of the attack. Before turning to the merits of his evidence, the Chamber shall first assess his general credibility. The Defence challenges Witness Kayibanda's credibility on the basis of contradictory evidence in regards to a prior encounter with Defence Witness Dimitri.[1008]

387. Witness Kayibanda testified in court that he met with Defence Witness Dimitri in 2008, who represented to him that she worked for the Tribunal's Office of the Prosecutor.[1009] On cross-examination, Witness Kayibanda confirmed that his meetings with Witness Dimitri were related to the defence of Désiré Munyaneza, who was facing trial in Canada on charges of genocide.[1010] He insisted that he refused to testify on behalf of Munyaneza and similarly refused to appear before the Kenya rogatory commission.[1011] Witness Kayibanda's reasons for refusing to do so elicited contradictory and confusing responses, ranging from his conscience preventing him from testifying on behalf of someone charged with genocide related crimes, to having been threatened by two police officers in Kigali, to not having any relevant information about Munyaneza.[1012]

388. When confronted with two written declarations of his intent to testify on behalf of Munyaneza, Witness Kayibanda asserted that he had not accepted Witness Dimitri's proposal to provide evidence and gave confusing explanations for the presence of his signature on the documents.[1013] The Chamber notes that it is readily apparent from the documents that

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[1007] *See, e.g.*, Defence Witness KEN06, T. 20 September 2011, pp. 4, 29 (joined ESO's *nouvelle formule* as a 13-year-old in 1989); Prosecution Witness AZD, T. 31 January 2011, pp. 76-77 (testifying that ESO soldiers could be distinguished from Ngoma Camp soldiers based on age and that the oldest cadets from the first batch were ages 15 to 17); Defence Witness Nsabimana, T. 18 May 2011, p. 70 (ESO soldiers could be "recognised from the fact that they were young"). Indeed, the *nouvelle formule* model allowed cadets to enter ESO after finishing primary school. *See, e.g.*, Prosecution Witness ZAK, T. 24 January 2011, p. 62; Prosecution Witness ZAW, T. 26 January 2011, p. 4; Prosecution Witness AZD, T. 31 January 2011, p. 69; Prosecution Witness YAA, T. 1 February 2011, p. 64; Defence Witness Basesayabo, T. 9 May 2011, p. 24; *cf.* Defence Witness OUV03, T. 30 January 2011, pp. 65-66 (distinguishing the *nouvelle formule* cadets from ordinary ESO cadets on the basis that the latter took people who had already completed three years of secondary school).

[1008] Defence Closing Brief, paras. 479-480.

[1009] Witness Kayibanda, T. 2 February 2011, pp. 62-63. Witness Kayibanda met with Witness Dimitri a total of three times. T. 3 February 2011, p. 9; T. 3 February 2011, p. 21. During cross-examination, Witness Kayibanda again stated that he did not know that Witness Dimitri was the Defence counsel for Munyaneza. T. 3 February 2011, p. 28.

[1010] Witness Kayibanda, T. 3 February 2011, pp. 10-13; 17-18; 21-24; 27-30; *see also* Exhibit D11 (Declaration of Witness Kayibanda); Exhibit D12 (Declaration on Witness Kayibanda). After testifying extensively about refusing Defence Witness Dimitri's request that he testify in the defence of Munyaneza, the witness continued to assert that he did not understand that Witness Dimitri was acting as defence counsel for Munyaneza. While the record reflects that Witness Kayibanda may have been confused at some point during his meeting with Witness Dimitri, the Chamber has no doubt that he understood that the meetings on 3 and 5 January were related to the defence of Munyaneza.

[1011] Witness Kayibanda, T. 3 February 2011, pp. 11-13, 16, 29.

[1012] Witness Kayibanda, T. 2 February 2011, p. 62; T. 3 February 2011, pp. 12, 16, 18, 24-25, 36. Witness Kayibanda later admitted that he knew Munyaneza very well. T. 3 February 2011, p. 21.

[1013] Witness Kayibanda, T. 3 February 2011, pp. 11-13; Exhibit D11 (Declaration by Witness Kayibanda), 3 January 2008; Exhibit D12 (Declaration by Witness Kayibanda), 5 January 2008. Witness Kayibanda was subsequently shown an e-mail to Dimitri, which he confirmed was his that also exhibited his intent to testify on

Witness Dimitri's status as a Defence counsel must have been known to Kayibanda. Specifically, both declarations contain a paragraph in which Kayibanda, who has initialled the page, affirms that he met with members of the Defence team for Munyaneza.[1014] Both of the documents are signed by Witnesses Kayibanda and Dimitri alike.[1015] Notwithstanding, Kayibanda continued to insist he was unaware of Witness Dimitri's status as Defence counsel, despite overwhelming evidence to the contrary. Witness Kayibanda's inconsistent evidence in regards to his knowledge of Witness Dimitri's status as a Defence counsel and the reasons for which he declined to testify on behalf of Munyaneza, raises questions about the quality of his evidence.

389. Additionally, Witness Kayibanda admitted to having assisted soldiers in the attack on students at the university on 21 April 1994.[1016] Given his prior incarceration and status as a possible accomplice, as well as his less than truthful account about the nature of his meetings with Witness Dimitri, the Chamber shall approach his evidence with appropriate caution.[1017]

390. Turning to the merits of his evidence, Witness Kayibanda testified that he saw a number of soldiers enter the university who appeared to be young.[1018] Moreover, the witness identified a student commanding soldiers at the campus, Innocent Sibomana, also known as "Sergeant", who told the witness he was at the ESO.[1019] Sibomana further informed Witness Kayibanda that the "elements" who came to the university in subsequent waves, and were supposed to provide security, were ESO soldiers. Witness Kayibanda noted that Sibomana acted as a "liaison" between the soldiers and that he provided "some information" to the soldiers once they got to the campus.[1020]

391. The presence of Innocent Sibomana at the university finds support by Prosecution Witness ZT, who saw Sibomana in the vicinity, on an unspecified date in April 1994, with Tutsis whom she thought he was going to kill.[1021] Similarly Prosecution Witness BDE heard from Fulgence Niyibizi that Sibomana was involved in the killings at the university.[1022] Witness AZD also saw Sibomana at a roadblock around the university.[1023] Based on the combined evidence of Witnesses Kayibanda, BDE and ZT, the Chamber concludes that Innocent Sibomana, a soldier who was studying at the Butare University, and thereby under ESO's *de jure* authority, was present at the university on 21 April, commanding soldiers.

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behalf of Munyaneza. Witness Kayibanda, T. 3 February 2011, pp. 22-23; Exhibit D10 (E-mail from Witness Kayibanda to Witness Dimitri), 4 January 2008.

[1014] Exhibit D11 (Declaration by Witness Kayibanda), p. 2; Exhibit D12 (Declaration by Witness Kayibanda), p. 2.

[1015] Exhibit D11 (Declaration by Witness Kayibanda), p. 3; Exhibit D12 (Declaration by Witness Kayibanda), p. 3.

[1016] Witness Kayibanda, T. 2 February 2011, p. 63; T. 3 February 2011, pp. 20, 36.

[1017] Witness Kayibanda was detained in Rwanda for eight years for genocide related crimes. He was released in 2003 as part of a Presidential pardon. Witness Kayibanda admitted to have been incarcerated for having been part of a "criminal association", for the possession of illegal weapons and for looting. Witness Kayibanda, T. 2 February 2011, p. 63; T. 3 February 2011, pp. 20, 36.

[1018] Witness Kayibanda, T. 27 January 2011, pp. 48-49.

[1019] Witness Kayibanda, T. 2 February 2011, p. 50.

[1020] Witness Kayibanda, T. 2 February 2011, p. 65. Kayibanda did not provide any further details or indicate to which soldiers he provided details or what type of information was disseminated.

[1021] Witness ZT, T. 7 February 2011, p. 14. *See also* II.7.3.8.

[1022] Witness BDE, T. 28 January 2011, p. 30; T. 31 January 2011, p. 51.

[1023] Witness AZD, T. 31 January 2011, p. 75. *See also* II.7.3.8.

392. Prosecution Witnesses BDE and Dufitumukiza provided additional second-hand evidence of specific ESO soldiers whom they believed were generally involved in killing Tutsis at the university. Witness BDE "knew" that Corporal Sekimonyo and Fulgence Niyibizi, both ESO soldiers, carried out killings at the university.[1024] While Witness BDE's evidence provides circumstantial corroboration for Witness Kayibanda's testimony in regards to Sibomana's presence at the campus, there is no further support on the record for the presence of Corporal Sekimonyo and Fulgence Niyibizi at the university. Given the second-hand and uncorroborated nature of her evidence, the Chamber considers it of limited probative value in this regard.

393. In addition, Witness Dufitumukiza testified that he knew that Second Lieutenant Gakwerere was present and led attacks on students at the university.[1025] However, Witness Dufitumukiza admittedly never saw Second Lieutenant Gakwerere at the university and did not explain his basis for knowing that Gakwerere was involved or the precise nature of his involvement. While Witness Dufitumukiza's impressions of Gakwerere's activities are relevant and probative, they do not establish facts beyond reasonable doubt. His evidence of Gakwerere's presence at the university is corroborated by Witness ZBH, who noted Gakwerere's presence at the university on 22 April 1994, in addition to Corporal Rutayisire, alias Rubaga, and Corporal Mazimpaka.[1026] Notwithstanding, his evidence too remains general and vague in nature and does not detail the extent to which, if at all, these soldiers were involved in specific crimes at the university. Their evidence fails to establish findings beyond a reasonable doubt.

394. Having broadly viewed the record as it relates to the involvement of ESO soldiers in this particular attack on the Butare University, the Chamber notes the striking similarities regarding the descriptions of how ESO soldiers conducted themselves. Like Witness ZCB, Witness Kayibanda also testified that the ESO soldiers appeared to work in concert with members of the Presidential Guard and the gendarmerie. Specifically, the ESO soldiers, after having identified students, brought the victims to a "sorting centre" that was prepared by the "professional soldiers", who would then decide what would become of the victim.[1027] Like Witness ZCB's account, they played a supporting role of removing and detaining those identified as Tutsis.

395. In the Chamber's view, the presence of ESO soldiers at the university is not inconsistent with Prosecution and Defence evidence of an "older" group of soldiers who arrived at the university on or around 21 April 1994, wearing new uniforms and black berets. Prosecution Witnesses ZCB and Kayibanda as well as Defence Witnesses Mutarutinya, MAL06 and ZML02 all described soldiers whom they were unable to identify with certainty, but whom they uniformly thought to have been members of the Presidential Guard.[1028]

[1024] Witness BDE, T. 28 January 2011, p. 30; T. 31 January 2011, p. 58.

[1025] The Chamber notes that the Defence objected to Witness Dufitumukiza's evidence of Second Lieutenant Gakwerere's involvement at the university on the basis of notice. *See* Defence Motion for Exclusion of Evidence, 29 April 2011, paras. 45-46, 48. In light of the Chamber's decision not to rely on his evidence regarding Gakwerere, the Chamber need not address this objection.

[1026] Witness ZBH, T. 8 February 2011, pp. 47-48.

[1027] *See, e.g.*, Witness Kayibanda, T. 2 February 2011, p. 52.

[1028] Witness ZCB, T. 17 January 2011, pp. 38, 58 (saw one soldier who was wearing a uniform that was new to him and heard rumours that the Presidential Guard was in town); Witness Kayibanda, T. 2 February 2011, pp. 48-49 (thought the soldiers in the first group were Presidential Guard based on their new uniforms); Witness Mutarutinya, T. 23 May 2011, p. 8 (saw a soldier in a green military uniform with a black beret, who looked old

Further circumstantial support is provided by Defence Witnesses Mukeshimana and Ngezahayo, who saw soldiers who were between 28 and 30 years-old.[1029] Witness Ngezahayo added that these soldiers acted different from the ESO soldiers, whom he knew, and that one of the soldiers had told him he was from Kigali.[1030]

396. The record demonstrates that the Presidential Guard was present at the university on 21 April 1994 and appeared to be leading this operation. Nonetheless, ESO soldiers provided direct and substantial assistance in the identification and separation of Tutsi students. The fact that they assisted the Presidential Guard in their operations, and thus played a more secondary role in the assault, only lends further support to their identification as ESO soldiers. Their young age and inexperience in comparison to the operational capabilities of the Presidential Guard would reasonably have resulted in the ESO soldiers taking on a more supporting role during this attack on Tutsi university students.

397. The evidence also reflects that students assisted soldiers in their operations at the university. Indeed, Witness Kayibanda, himself a student, admitted to having assisted the soldiers in identifying and targeting Tutsi students at the university.[1031] Witness ZCB noted that students accompanied the soldiers when they were identifying Tutsi students in his hostel. Defence Witness Ngezahayo also provided evidence of the participation by students affiliated with the MRND in the attacks on the university.[1032]

398. Accordingly, the evidence assessed above demonstrates that ESO soldiers were present and contributing to the crimes committed at the university on or about 21 April 1994.[1033] Their central role in the separation, detention and ultimate attack on students identified as Tutsis demonstrates beyond question that those participating in the attack held genocidal intent. While the evidence is less direct about ESO soldiers actually killing students during the attack on the university, there is no question that the assault on the university intended the killing of Tutsi students. The evidence is clear that the contribution made by the ESO soldiers to the accomplishment of this goal was substantial and significant.

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and wrinkled. He subsequently heard that this was a Presidential Guard); Witness MAL06, T. 16 May 2011, pp. 38, 41 (saw soldiers wearing new uniforms with black berets not usually seen in Butare, whom students said were members of the Presidential Guard); Witness ZML02, T. 17 May 2011, p. 12 (saw soldiers wearing camouflage uniforms and black berets, whom she thought to be Presidential Guard, based on their presence at a roadblock in the vicinity).

[1029] Witness Mukeshimana, T. 23 May 2011, p. 37; Witness Ngezahayo, T. 24 May 2011, pp. 46, 69.

[1030] Witness Ngezahayo, T. 24 May 3011, p. 49.

[1031] Witness Kayibanda, T. 2 February 2011, p. 52.

[1032] Witness Ngezahayo, T. 24 May 2011, pp. 51, 68.

[1033] Nizeyimana cannot be held liable for the crimes committed by Presidential Guards as the Indictment is materially defective as it relates to the pleading of their criminal conduct. The Chamber repeatedly instructed the Prosecution to clearly delineate the camps encompassed within "FAR soldiers" in relation to several Indictment paragraphs, including this one. *See, e.g.*, Decision on Prosecutor's Request for Leave to File an Amended Indictment, 25 February 2010, paras. 17, 28, Order II; Decision on Nizeyimana's Preliminary Motion on Defects in the Amended Indictment ("June 2010 Decision"), 9 June 2010, para. 29; Decision on Nizeyimana's Motion to Order the Prosecutor to Conform with a Trial Chamber Decision and Strike Parts of the June 18 Amended Indictment ("July 2010 Decision"), 12 July 2010, paras. 6-7; Decision on Defence Preliminary Motion on Defects in the Indictment ("December 2010 Decision"), 16 December 2010, paras. 47-51. However, the Prosecution never included the Presidential Guard therein, nor was it included in paragraph 5 of the Indictment, which lists the members of the Joint Criminal Enterprise. Moreover, the body of the Prosecution Pre-Trial Brief does not include Presidential Guard as perpetrators of the killings at the university. *See* Pre-Trial Brief, paras. 125-132. Similarly, the will-say statement of Witnesses ZBC, annexed to the Prosecution Pre-Trial Brief, does not make reference to Presidential Guards. *See* Witness ZBC's will-say statement, pp. 35-36.

399. Notwithstanding, there is no evidence directly implicating Nizeyimana in this attack, and the record fails to demonstrate that he provided substantial or significant assistance to the crimes committed during it. Moreover, having considered the entire record, as well as the Chamber's considerations of Nizeyimana's authority during the relevant period, the Chamber is not satisfied that Nizeyimana may be held liable as a superior.[1034] In particular, given the involvement of Presidential Guards, the record may be interpreted to reasonably reflect that ESO units were re-subordinated within a command structure of this more elite operational force. Under the circumstances, and particularly in light of the dearth of any evidence linking this assault to Nizeyimana, the Chamber is not satisfied that the record reflects that Nizeyimana exercised effective control over the ESO soldiers contributing to this operation.[1035]

[1034] *See* III.2.2.2.

[1035] *See Blagojević and Jokić* Appeal Judgement, paras. 300-304 (affirming the Trial Chamber's determination that while a superior exercised "command control" over a subordinate who had committed crimes, the presence of a parallel authority who was present in the area and issuing orders and instructions, raised doubts that the Defendant exercised "effective control" over that subordinate).

5.2 Sexual Violence

Introduction

400. The Indictment alleges that on or about 19 April 1994, attacks occurred at the university against students identified as Tutsi, during which gunshots were fired and female victims were targeted by soldiers from the FAR, ESO, Ngoma Camp and Butare Gendarmerie Camp and *Interahamwe* militia who committed crimes of sexual violence.[1036]

401. The Prosecution does not point to any evidence in support of the allegation that female victims were targeted by soldiers, who committed acts of sexual violence against them. However, Witness ZCB provided relevant testimony. The Defence challenges Nizeyimana's responsibility in relation to attacks at the university.[1037]

Evidence

Prosecution Witness ZCB

402. On or about 21 April 1994, Witness ZCB saw ESO soldiers abduct some girls from their rooms.[1038] When they were being taken out of their rooms, the girls were screaming, leading him to believe that the soldiers were taking them away to harm them.[1039] Indeed, from what Witness ZCB observed, the girls were being abducted so that they could be raped.[1040] He subsequently saw one of the girls, who confirmed that she had been raped.[1041] Witness ZCB knew the soldiers who took the girls were from the ESO, because they were young and were wearing worn-out uniforms.[1042] According to him, "everybody at the university knew that those soldiers belonged to the military camp known as ESO".[1043]

Deliberations

403. The Chamber has discussed above evidence regarding the attack on civilian victims at the university, including the use of lists and identification cards, under Indictment paragraph 14(i). Given the Prosecution's failure to clearly delineate the evidence according to the Indictment paragraph, the Chamber shall focus on the allegation of sexual violence, the only crime pleaded in Indictment paragraph 14(ii). Prosecution Witness ZCB is the sole witness who testified to acts of sexual violence perpetrated against women at the university by ESO soldiers.

404. Witness ZCB's evidence is circumstantial and second-hand. He saw girls being taken from their rooms by ESO soldiers, but he did not see what happened to them following their abductions. Witness ZCB inferred that the soldiers intended to harm them. The only manner

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[1036] Indictment, para. 14 (ii).
[1037] Defence Closing Brief, paras. 492-493; T. 7 December 2011, p. 51 (Defence Closing Arguments).
[1038] Witness ZCB, T. 17 January 2011, p. 53.
[1039] Witness ZCB, T. 17 January 2011, p. 53.
[1040] Witness ZCB, T. 17 January 2011, p. 56.
[1041] Witness ZCB, T. 17 January 2011, p. 56.
[1042] Witness ZCB, T. 17 January 2011, p. 53. Witness ZCB did not know the exact unit the ESO soldiers belonged to. T. 17 January 2011, p. 53.
[1043] Witness ZCB, T. 17 January 2011, p. 53.

in which he was able to verify whether the girls were raped, is when he spoke to one on an unidentified date afterward. She confirmed what happened to her.

405. There is considerable credible evidence that soldiers engaged in sexual violence against women during this period. Nonetheless, Witness ZCB's circumstantial and second-hand evidence is vague both to the timing of his discussion with his source and her identity. In this context, the Prosecution has failed to establish facts based on its exacting burden of proof. Indeed, its failure to even cite this evidence raises questions as to whether it continues to pursue this allegation and whether it could be a basis for conviction.[1044] This allegation is dismissed.

[1044] *Ntagerura et al.* Appeal Judgement, paras. 146-150, 164 (the Appeals Chamber has held that it may also be unfair to convict an accused based on allegations that no longer appear to be pursued by the Prosecution).

5.3 Killing of Four Women by Nizeyimana

Introduction

406. The Indictment alleges that on or about 22 April 1994, Nizeyimana led unknown FAR soldiers and *Interahamwe* to the university and personally shot and killed four female civilians identified as Tutsi in a building at the university. The Prosecution relies on Witness ZBH.[1045] The Defence challenges Witness ZBH's credibility and submits that his evidence is uncorroborated and fabricated.[1046]

Evidence

Prosecution Witness ZBH

407. In April 1994, Witness ZBH, a Hutu, was a civilian who had previously worked as a "helper" at ESO in 1991.[1047] He was recruited into killing Tutsis during the genocide by soldiers from the ESO and Ngoma Camps, who would round civilians up in town or at roadblocks and tell them they had "work" for them to do.[1048]

408. On or around 22 April 1994, Witness ZBH was taken with a big group of youths to the ESO Camp, from where they were transported to the Butare University in the company of soldiers.[1049] Their leader at the time was Arsène Shalom Ntahobali, who carried a list of young Tutsi students who were at the university.[1050] Witness ZBH did not know how Shalom got or put together that list.[1051] He generally testified, however, that Nizeyimana was working closely with Shalom.[1052] They both issued orders to them when they were waiting to be transported at the ESO.[1053] Lieutenant Gakwerere, Corporal Rutayisire, alias Rubaga, and Corporal Mazimpaka were present at the university as well.[1054]

409. On their way to the university, Witness ZBH saw Nizeyimana pass them by.[1055] Nizeyimana spoke to the soldiers who were manning the roadblock in front of the university to inform them of the group's arrival.[1056] When Witness ZBH and his group got to the

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[1045] Indictment, para. 14 (iii); Prosecution Closing Brief, paras. 152-153.
[1046] Defence Closing Brief, para. 494; T. 7 December 2011, p. 39 (Defence Closing Arguments).
[1047] Witness ZBH, T. 8 February 2011, pp. 35-36; Exhibit P21 (Witness ZBH's Personal Information Sheet). At the time of his testimony, Witness ZBH was incarcerated for genocide related crimes. *See* II.3.4.
[1048] Witness ZBH, T. 8 February 2011, pp. 37, 40 ("A. I would like to tell the Chamber that the commanders of camp Ngoma and ESO, including Tharcisse Muvunyi, who was a colonel; and Captain Ildéphonse Nizeyimana; Colonel Alphonse Nteziryayo; Ildéphonse Hategekimana, who was the commander of the Ngoma camp; Lieutenant Alphonse Nteziryayo; Second Lieutenant Modeste Gatsinzi and many others compelled us and sensitised us to understand Tutsis as being our enemies and that we had to do everything in our power to get rid of them.").
[1049] Witness ZBH, T. 8 February 2011, pp. 46-47, 50.
[1050] Witness ZBH, T. 8 February 2011, p. 46.
[1051] Witness ZBH, T. 8 February 2011, p. 47.
[1052] Witness ZBH, T. 8 February 2011, p. 47.
[1053] Witness ZBH, T. 8 February 2011, pp. 49-50.
[1054] Witness ZBH, T. 8 February 2011, pp. 47-48.
[1055] Witness ZBH, T. 8 February 2011, p. 49.
[1056] Witness ZBH, T. 8 February 2011, p. 49.

roadblock, they were allowed to pass and left Nizeyimana there.[1057] Before they even started killing students, Witness ZBH saw Nizeyimana personally fire his pistol and shoot four girls at the residence called Cambodia.[1058] Nizeyimana thereby showed them an example.[1059] Nizeyimana said that he had killed those girls because they did not obey his orders or fulfil his needs.[1060] They left the bodies there and went to the rooms of the students in that residence.[1061]

410. The youths surrounded the students' dormitories, while the woods around the university were encircled by soldiers.[1062] Many were killed, including those who were in the arboretum.[1063] The students in the hostels had locked themselves in, but Witness ZBH's group broke through the doors and killed the students.[1064] In addition to his group of youths, there was a group from the ESO and another group guarding the forest around the university.[1065] After they finished the killing of the students under the supervision of the soldiers, they took the students' mattresses, clothes and shoes.[1066] They spent approximately two hours at the university.[1067]

Deliberations

411. The Chamber notes that Witness ZBH is the sole witness to testify about Nizeyimana leading soldiers and *Interahamwe* to the university and Nizeyimana having personally shot and killed four girls in front of the Cambodia residence on campus on or about 22 April 1994. The Chamber has elsewhere considered in detail the context in which Witness ZBH testified and his general credibility and determined that his evidence is to be approached with caution.[1068] The same analysis applies here.

412. Witness ZBH, a civilian who admitted to collaborating with soldiers in an attack on students at the university on or around 22 April 1994, testified that a group of civilians led by Shalom was rounded up and brought to the ESO where they received orders, including some from Nizeyimana. Upon receiving the orders, they joined the ESO soldiers and set out for the university, where they expected to loot property and identify and kill students. Before turning to the merits, the Chamber will discuss credibility issues specific to this allegation.

[1057] Witness ZBH, T. 8 February 2011, p. 49. Witness ZBH subsequently stated that Nizeyimana entered his vehicle, passed through the roadblock, after which the group followed him to the university. T. 8 February 2011, p. 50.
[1058] Witness ZBH, T. 8 February 2011, pp. 59-61.
[1059] Witness ZBH, T. 8 February 2011, p. 59.
[1060] Witness ZBH, T. 8 February 2011, pp. 59-60. Witness ZBH stated earlier that "it was said" at the time that Nizeyimana shot the girls because they did not obey him, instead of having heard Nizeyimana say this himself. T. 8 February 2011, p. 59.
[1061] Witness ZBH, T. 8 February 2011, p. 60.
[1062] Witness ZBH, T. 8 February 2011, p. 46.
[1063] Witness ZBH, T. 8 February 2011, p. 46.
[1064] Witness ZBH, T. 8 February 2011, p. 46.
[1065] Witness ZBH, T. 8 February 2011, p. 46.
[1066] Witness ZBH, T. 8 February 2011, p. 50.
[1067] Witness ZBH, T. 8 February 2011, p. 50.
[1068] *See* II.3.4.

413. Witness ZBH confessed to, and was convicted for, his involvement in the killings at the university and other genocide related crimes.[1069] Nonetheless, when questioned about his involvement in the various incidents to which he testified, Witness ZBH consistently deflected any responsibility on his part and instead insisted he was "forced" or tricked by soldiers to participate in killings.[1070]

414. However, Witness ZBH's testimony is largely consistent with his 2003 confession to the extent that he provides evidence on the involvement of Nizeyimana and Shalom Ntahobali.[1071] Witness ZBH's confession before the Gacaca court about Nizeyimana's involvement in the crime was made in 2003, while the witness was incarcerated.[1072] The Chamber observes that prior consistent statements do not bolster a witness's credibility.[1073] Whatever ulterior motives Witness ZBH has to provide testimony inculpating Nizeyimana, the Chamber has no reasonable concerns it has been tainted by his incarceration.

415. Turning to the ability of Witness ZBH to identify the specific soldiers, the Chamber has elsewhere noted that his position as a "helper" at the ESO in 1991, as well as his admitted collaboration with soldiers during the genocide, would have allowed him to identify soldiers

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[1069] Witness ZBH, T. 8 February 2011, pp. 35-36; Exhibit P21 (Witness ZBH's Personal Information Sheet); Exhibit D15B (Witness ZBH's Prior Confession).

[1070] Witness ZBH, T. 8 February 2011, pp. 37 ("Q. In 1994, did you have any knowledge about soldiers from ESO committing any acts of violence against civilians in Butare town? And if so, can you name some of the places where the violence occurred. Just briefly. A. Still in that respect, I would say we were involved in the killings, and we wouldn't have committed those killings without the help of soldiers. As a matter of fact, all the investigators who come and meet me are told that. I would like to tell the Chamber that the commanders of camp Ngoma and ESO, including Tharcisse Muvunyi, who was a colonel; and Captain Ildéphonse Nizeyimana; Colonel Alphonse Nteziryayo; Ildéphonse Hategekimana, who was the commander of the Ngoma camp; Lieutenant Alphonse Nteziryayo; Second Lieutenant Modeste Gatsinzi and many others compelled us and sensitised us to understand Tutsis as being our enemies and that we had to do everything in our power to get rid of them. As a matter of fact, during that time there were battles everywhere. Gatsinzi, Muvunyi and Nizeyimana told us that if we did not get rid of those people who belonged to the other ethnic group, those people would later on harm us, and that is why the soldiers compelled us and forced us to be involved in the attacks against the Tutsis who had sought refuge in various areas."), 39 ("A. We were led by soldiers who had come from Ngoma camp and from ESO camp. As I told you earlier, anyone who did not want to collaborate with them would at times be killed. All members of the public were therefore obliged to participate in those operations. That is how we killed people."); ("A. I only killed because the accused incited me to kill."), 40 ("A. Often soldiers would take people throughout the town or at roadblocks. That is how they gathered us. They found us either in town or at roadblocks. They often said that they would give us work without specifying what that work was. And when we got to sites – the various sites we could not refuse doing what they had asked us to do because they had the power."), 54 ("A. If soldiers had not dragged us to kill those people I would not have been in prison today, Mr. President. You have to understand that we could not have resisted those soldiers when they gave us those orders. ... So what I'm saying is that if it had not – if I had not been compelled to kill under duress I would not have done so.").

[1071] *See* Exhibit D15B (Witness ZBH's Prior Confession), p. 33; Witness ZBH, T. 9 February 2011, p. 48. The Defence argued that Witness ZBH, who kept a copy of his confession, had modified the one that he gave to the Prosecution in 2010, adding Nizeyimana's name in several places after the fact. Defence Closing Brief, paras. 170-179. In particular, it argues that the exhibited confession reveals that a reference to Nizeyimana's involvement in the killing of the four girls was included at the bottom of the page, thereby inferring that it had been added at a later date. Defence Closing Brief, para. 177. Given the Chamber's conclusions, it need not make any determination as to whether Witness ZBH modified his confession as it relates to this allegation.

[1072] Exhibit D15B (Witness ZBH's Prior Confession).

[1073] *Ntakirutimana* Appeal Judgement, para. 147.

from the ESO.[1074] This position is certain as it relates to higher ranking officers, such as Nizeyimana, who were well known in and around Butare at the time.

416. The Chamber observes that Defence Witnesses Ngezahayo, ZML02 and Mutarutinya, provide support for the continuation of attacks on students following 21 April 1994. Indeed, Witness Ngezahayo, who was at the university the day following the main attack, saw the soldiers return and conduct searches in the student hostels.[1075] Similarly, Witness ZML02 also saw soldiers return to the campus on 22 April.[1076] Witness Mutarutinya noted that he continued to hear stories about students being abducted following the main attack on 21 April by armed civilians and soldiers.[1077]

417. Notwithstanding his ability to identify Nizeyimana and the general corroboration for the continuation of the attack on 22 April 1994, there are no other witnesses who saw Nizeyimana at the university on that day and no evidence, other than Witness ZBH's testimony, was presented of the murder of the four girls by Nizeyimana. Similarly, there is no corroboration for the collaboration described by Witness ZBH between Nizeyimana and Arsène Shalom Ntahobali. Only Defence Witness OUV03 noted that Nizeyimana would let him know where he went, including at the university, so Witness OUV03 could get in touch with him should the need arise.[1078] However, Witness OUV03 did not provide any context or details in support of Nizeyimana's presence at the university. Indeed, the witness did not mention a date or the reasons for which Nizeyimana went to the university.

418. Given the caution with which it decided to approach Witness ZBH's evidence and the uncorroborated nature of his testimony, the Chamber is unable to conclude beyond a reasonable doubt that Nizeyimana led a group of soldiers and *Interahamwe* to the university, where he shot and killed four girls in the presence of Witness ZBH on or around 22 April 1994. This allegation is dismissed.

[1074] *See* II.3.4; II.11. Witness ZBH was not questioned on the amount of time spent at the ESO as a helper in 1991. *See* Witness ZBH, T. 8 February 2011, pp. 35-36; T. 9 February 2011, p. 51; Exhibit P21 (Witness ZBH's Personal Information Sheet).
[1075] Witness Ngezahayo, T. 24 May 2011, pp. 51, 53, 61-62.
[1076] Witness ZML02, T. 17 May 2011, p. 14.
[1077] Witness Mutarutinya, T. 23 May 2011, pp. 9, 17.
[1078] Witness OUV03, T. 31 May 2011, p. 49.

5.4 Killings near the Butare University Laboratory

Introduction

419. The indictment alleges that during the period of late April and May 1994, civilians identified as Tutsi were taken to the university where many were killed at the site of a large pit near the university laboratory by soldiers from the FAR, ESO, Ngoma Camp and Butare Gendarmerie Camp and *Interahamwe*.[1079] The Prosecution does not point to any evidence in support of this allegation. The Defence did not address this allegation, because no evidence was presented in relation thereto.[1080]

Deliberations

420. The Chamber observes that the Prosecution failed to point to any evidence in support of the allegation that Tutsi civilians were killed at the sit of a large pit near the university laboratory between late April and May 1994. After having conducted a careful review of the record, the Chamber finds no evidence related to killings other than those summarised and assessed above. Accordingly, the Chamber dismisses this allegation.

[1079] Indictment, para 14 (iv).
[1080] Defence Closing Brief, para. 495.

6. TARGETED ATTACKS IN BUTARE TOWN, LATE APRIL 1994

6.1 Killing at Vincent Ntezimana's Home

Introduction

421. The Indictment alleges that, in late April or early May 1994, the Accused along with Vincent Ntezimana ordered the killing of a female youth identified as Tutsi. After Ntezimana provided a knife, the assailant killed the woman in Ntezimana's home. The Prosecution relies on the evidence of Witness AJP.[1081] The Defence challenges the credibility of Witness AJP, emphasising his status as an accomplice and suggesting that this event occurred in May 1994. Defence Witness BEJ01, BUV02 and Valens Hahirwa provided relevant evidence.[1082]

Evidence

Prosecution Witness AJP

422. Witness AJP, a Hutu, lived in Butare town in 1994.[1083] He was a former ESO cadet with close ties to Nizeyimana.[1084] Around 23 and 24 April, two young women who were living with Nizeyimana were asked to move to Vincent Ntezimana's home. The women had revealed that soldiers staying with Nizeyimana were involved in killing and looting.[1085]

423. On an unspecified day – after 21 April 1994, but prior to the killing of the Ngarambe family – Nizeyimana, Vincent Ntezimana and Doctor Jean Mukimbiri, ordered Witness AJP and one of Nizeyimana's escorts to kill the two women for their indiscretions.[1086] Nizeyimana

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[1081] Indictment, para. 28; Prosecution Closing Brief, paras. 439-461. The Prosecution also cites to the evidence of Prosecution Rebuttal Witness Antoinette Bizimenyera in support of Witness AJP's testimony. *See* Prosecution Closing Brief, para. 443. The Chamber allowed rebuttal evidence for the purpose of refuting evidence of a new matter arising from the Defence case. It expressly warned that rebuttal evidence could not be used to "re-open or perfect" the Prosecution case. Decision on Prosecutor's Motion for Leave to Present Evidence in Rebuttal to the Alibi Evidence (TC), 7 June 2011, para. 20; *see also* Decision on Extremely Urgent Motion for Reconsideration of Trial Chamber 7 June 2011,on Prosecutor's Motion for Leave to Present Evidence in Rebuttal to the Alibi Evidence (TC), 15 June 2011, para. 28. Consequently, the Chamber shall not consider this "fresh evidence", as the Prosecution has not demonstrated factors that would allow evidence from Witness Bizimenyera to be used for purposes other than rebuttal. *See Kordić and Čerkez* Appeal Judgement, para. 222 *quoting Čelebići* Appeal Judgement para. 283.

[1082] Defence Closing Brief, paras. 18, 191-192, 198-207; T. 7 December 2011, pp. 39-41 (Defence Closing Arguments).

[1083] Witness AJP, T. 14 February 2011, p. 81; T. 15 February 2011, pp. 3-4, 7, 34, 64, 67-69; Exhibit P28 (Witness AJP's Personal Information Sheet). In 2001, immediately upon being arrested, Witness AJP confessed to his participation in the genocide in Butare through killing and looting. Witness AJP, T. 15 February 2011, pp. 36, 54-57, 75; T. 17 February 2011, pp. 11-12. He was tried by a Gacaca court in 2007, sentenced to 12 years' imprisonment. He was released days later in light of the fact that he had already served half his sentence and that he was entitled to a sentence reduction based on his confession. Witness AJP, T. 15 February 2011, pp. 36, 49, 57-59. At the time of his testimony, Witness AJP was living in exile and awaiting the outcome of his appeal against a subsequent rape conviction pertaining to an incident after the genocide. Witness AJP, T. 15 February 2011, pp. 36-42, 44-49; *see also* Hahirwa, T. 14 June 2011, pp. 33-36; Exhibit D69 (Various Rwandan Judicial Documents).

[1084] Witness AJP, T. 14 February 2011, pp. 80-81; T. 15 February 2011, pp. 3-4, 7, 34, 64, 67-69.

[1085] Witness AJP, T, 15 February 2011, pp. 11-12.

[1086] Witness AJP, T. 15 February 2011, pp. 11-13, 69, 73. Witness AJP emphasised that this occurred after 21 April 1994. Witness AJP, T. 15 February 2011, p. 13. *See also* II.6.4.

threatened to kill Witness AJP if he did not carry out the order.[1087] Wearing a military uniform and carrying a rifle Nizeyimana had given him, the witness and the soldier found the young women at Ntezimana's home.[1088] The witness and the soldier, who was a *nouvelle formule* cadet, escorted them to a forested area nearby and each shot one of the women.[1089]

424. The witness presumed that the young woman he had shot was dead, as she did not return to Ntezimana's home the following day.[1090] However, around 10.00 a.m., Ntezimana scolded the witness at his work, asking why he had not killed the girl.[1091] Nizeyimana also called the witness and asked the same question.[1092] That evening, the witness found Nizeyimana, Mukimbiri and Ntezimana at Nizeyimana's home.[1093] They ordered him to kill, causing the witness to fear that he would be killed if he did not follow the orders.[1094]

425. Witness AJP and Rudasingwa left and found the girl at Ntezimana's home.[1095] There, Ntezimana, who was also present, had a knife given to Longin Rudasingwa, stating that the witness should no longer use a rifle.[1096] Rudasingwa gave Witness AJP the knife and he killed her.[1097] They put her corpse in a vehicle and left her in the same wooded area where he had shot her the night before.[1098]

Defence Witness BEJ01

426. Witness BEJ01, a Hutu, lived in Butare town in 1994.[1099] Around 14 May 1994, or shortly thereafter, Witness BEJ01 returned to Vincent Ntezimana's home, where Caritas, a member of the house staff, informed the witness that a paramilitary soldier had almost beat a woman to death.[1100] Witness BEJ01 walked into Ntezimana's yard and, a few minutes later, observed Witness AJP kill a young girl with a knife.[1101] The witness believed that she was a Hutu and that she previously "went out" often with Witness AJP.[1102] Longin Rudasingwa and Jean Marie Vianney Valois were also at Ntezimana's house at this time, although the witness was unsure if they witnessed the murder.[1103]

[1087] Witness AJP, T. 15 February 2011, p. 69.
[1088] Witness AJP, T. 15 February 2011, pp. 10-11, 67; T. 17 February 2011, p. 3.
[1089] Witness AJP, T. 15 February 2011, pp. 11-12; T. 17 February 2011, pp. 4, 6. Witness AJP could not recall the name of the cadet but described him as one who "used to come to Nizeyimana's home". He recalled that one was named Busharire. T. 15 February 2011, p. 11.
[1090] Witness AJP, T. 15 February 2011, p. 11.
[1091] Witness AJP, T. 15 February 2011, p. 11.
[1092] Witness AJP, T. 15 February 2011, p. 11.
[1093] Witness AJP, T. 15 February 2011, p. 12; T. 17 February 2011, p. 6.
[1094] Witness AJP, T. 15 February 2011, pp. 12, 69.
[1095] Witness AJP, T. 15 February 2011, p. 12.
[1096] Witness AJP, T. 15 February 2011, p. 12; T. 17 February 2011, pp. 2, 6. Witness AJP did not know whether Longin Rudwasinga was a Tutsi. T. 17 February 2011, p. 2.
[1097] Witness AJP, T. 15 February 2011, p. 12; T. 15 February 2011, pp. 67, 75; T. 17 February 2011, pp. 4, 6-8.
[1098] Witness AJP, T. 15 February 2011, p. 12.
[1099] Witness BEJ01, T. 9 June 2011, pp. 20, 27; Exhibit D60 (Witness BEJ01's Personal Information Sheet). At the time of his testimony, Witness BEJ01 had been convicted for genocide related crimes. T. 9 June 2007, pp. 11, 33.
[1100] Witness BEJ01, T. 9 June 2011, pp. 9-11.
[1101] Witness BEJ01, T. 9 June 2011, pp. 9-11, 32.
[1102] Witness BEJ01, T. 9 June 2011, p. 14.
[1103] Witness BEJ01, T. 9 June 2011, p. 10.

427. Witness BEJO1 believed that the victim was a Hutu, but, fearful of Witness AJP, he did not ask why he had killed the girl.[1104] Similarly, Witness BEJ01 did not speak about the incident with Nizeyimana, who, at that time, was not living in Butare.[1105]

Defence Witness BUV02

428. Witness BUV02, a Hutu, was detained from 1997 to 2007 for genocide related charges.[1106] He confessed to genocide related crimes and was sentenced to 24 years' imprisonment by a Gacaca court in May 2007.[1107] He was released immediately, having already been incarcerated for 10 years and assigned six years of community service as probation.[1108] He was later acquitted by a court of first instance.[1109]

429. Witnesses BUV02 and AJP were incarcerated together and the latter was a member of the *Ukuri* committee in prison.[1110] This committee had been established to encourage prisoners to tell the truth and confess to crimes.[1111] Witness AJP reviewed confessions and frequently encouraged prisoners to make false accusations against certain persons.[1112] On an unidentified occasion, Witness AJP asked Witness BUV02 to falsely allege that Nizeyimana established and controlled roadblocks.[1113]

430. Witness BUV02 heard Witness AJP give a public confession between 2002 and 2004 as well as discuss his crimes while the two were incarcerated together.[1114] Witness AJP stated that Nizeyimana had ordered Witness AJP to commit the killings in Butare town.[1115] While Witness BUV02 was not with Witness AJP for these crimes, he believed that the allegations against Nizeyimana were fabricated.[1116]

431. During the genocide, Witness BUV02 observed Witness AJP in a military uniform driving in a white Peugeot pickup.[1117] He testified generally that this vehicle was used to "transport killers".[1118]

Defence Witness Valens Hahirwa

432. Valens Hahirwa was a Defence investigator for Nizeyimana at the time of his testimony.[1119] He went to the Prosecutor's office in Nyamagabe, Rwanda (formerly Gikongoro).[1120] Among other things, he obtained a copy of a 2010 Rwandan judgment, which

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[1104] Witness BEJ01, T. 9 June 2011, pp. 12-14, 32-33.
[1105] Witness BEJ01, T. 9 June 2011, pp. 11, 14-15.
[1106] Witness BUV02, T. 10 May 2011, p. 53; Exhibit D26 (Witness BUV02's Personal Information Sheet).
[1107] Witness BUV02, T. 10 May 2011, pp. 53-54; T. 11 May 2011, pp. 2-4.
[1108] Witness BUV02, T. 10 May 2011, p. 54; T. 11 May 2011, p. 5.
[1109] Witness BUV02, T. 10 May 2011, p. 54; T. 11 May 2011, p. 5.
[1110] Witness BUV02, T. 10 May 2011, pp. 57, 59-60, 65.
[1111] Witness BUV02, T. 10 May 2011, pp. 58-59.
[1112] Witness BUV02, T. 10 May 2011, pp. 61-62, 67-70.
[1113] Witness BUV02, T. 10 May 2011, pp. 63, 70-71.
[1114] Witness BUV02, T. 10 May 2011, pp. 57-58, 64.
[1115] Witness BUV02, T. 10 May 2011, pp. 63-64, 70.
[1116] Witness BUV02, T. 10 May 2011, pp. 64-67, 70-71.
[1117] Witness BUV02, T. 10 May 2011, p. 57.
[1118] Witness BUV02, T. 10 May 2011, p. 57.
[1119] Witness Hahirwa, T. 11 May 2011, p. 58; Exhibit D28 (Witness Hahirwa's Personal Information Sheet).
[1120] Witness Hahirwa, T. 14 June 2011, pp. 33-35; Exhibit D69 (Various Rwandan Judicial Documents).

had found Witness AJP guilty of the rape of a minor. The judgement ordered Witness AJP's immediate arrest.[1121] Nyamagabe prosecutors, who continued to have possession of the case file, were unaware of any appeal being filed.[1122]

Deliberations

433. The Prosecution and Defence evidence reflects that during the genocide, Witness AJP killed a girl near Vincent Ntezimana's home using a knife. Ntezimana's home was in the immediate vicinity of Nizeyimana's.[1123] In this context, the Chamber must consider whether Nizeyimana ordered Witness AJP to kill the girl. Before assessing the merits of this allegation, the Chamber notes that the Prosecution has conceded that the evidence, which does not establish the victim's ethnicity as Tutsi, cannot support the Indictment's genocide count (Count 1).[1124]

434. The Chamber will first review the context in which Witness AJP testified. Witness AJP confessed to, and was convicted for, the killing of this young woman in Rwanda.[1125] Notably, his statements to Tribunal investigators about Nizeyimana's involvement in the crime were made in 2003 and 2005, while the witness was incarcerated.[1126]

435. To the extent that Witness AJP has consistently implicated Nizeyimana in the killing of this young woman through confessions to Rwandan prosecutors or Tribunal investigators, the Chamber observes that prior consistent statements do not bolster a witness's credibility.[1127] Indeed, it is the Chamber's view that on each of these occasions, Witness AJP's allegations against the Accused may have been motivated by a desire to deflect responsibility for his crimes and obtain lenient treatment from Rwandan judicial or prison authorities.[1128]

[1121] Witness Hahirwa, T. 14 June 2011, pp. 33-35; Exhibit D69 (Various Rwandan Judicial Documents).
[1122] Witness Hahirwa, T. 14 June 2011, pp. 35-36.
[1123] *See* Witness AJP, T. 15 February 2011, p. 4 (Nizeyimana's home was 200 to 300 metres from Ntezimana's house); Witness BEJ01, T. 9 June 2011, p. 20 (Nizeyimana and Ntezimana lived close to each other).
[1124] *See* Prosecution Closing, Brief, paras. 440-442.
[1125] Witness AJP, T. 15 February 2011, pp. 54-55, 75; T. 17 February 2011, pp. 11-12.
[1126] *See, e.g.*, Witness AJP, T. 15 February 2011, pp. 51-52 (confirming the contents of his 2003 statement to Tribunal investigators, which was given while imprisoned).
[1127] *Ntakirutimana* Appeal Judgement, para. 147.
[1128] The evidence reflects that prisoners in the Karubanda prison who confessed to crimes were moved to a separate section of the prison nicknamed "Arusha". Prosecution Witness AZM, T. 24 January 2011, p. 36; Prosecution Witness AJP, T. 15 February 2011, p. 61; Prosecution Witness Kayibanda, T. 3 February 2011, p. 38; Prosecution Witness ZBH, T. 9 February 2011, p. 34; Defence Witness BUV02, T. 10 May 2011, p. 59; Defence Witness ZML10, T. 16 May 2011, p. 13. There, prisoners had more spacious accommodations, greater access to water and bathroom facilities and longer family visits than those in the prison's other wings. Prosecution Witness AJP, T. 15 February 2011, pp. 59-62; Defence Witness BUV02, T. 10 May 2011, p. 59; Defence Witness ZML10, T. 16 May 2011, p. 14; *but see* Prosecution Witness ZBH, T. 9 February 2011, pp. 34-35 (denying that detainees in the "Arusha" block were given preferential treatment or had better living conditions). However, the evidence of Prosecution Witnesses AJP, AZM and ZBH reflect that prisoners were transferred to ensure the security of those who confessed from attacks from other prisoners, who might have been implicated in these confessions. Witness AJP, T. 15 February 2011, p. 61; Witness AZM, T. 24 January 2011, pp. 17, 36; Witness ZBH, T. 9 February 2011, pp. 34-35. However, Defence Witness BUV02 denied that there were any security concerns and that the purpose of moving prisoners to another wing was only to reward them for having confessed. Witness BUV02, T. 10 May 2011, pp. 71-72; *cf.* Defence Witness ZML10, T. 16 May 2011, p. 13 (was not worried about being in danger when transferred to Arusha facility of Butare's central prison). Witness AJP explained that more generous visitation rights were granted to him in order to facilitate his

436. In an attempt to bolster these very suspicions, the Defence presented evidence that Witness AJP did fabricate allegations against persons – including Nizyeimana – while incarcerated. Specifically, Witness BUV02 testified that Witness AJP asked him to falsely allege that Nizeyimana was involved in the administration of roadblocks.

437. In the Chamber's view, Witness BUV02's account of Witness AJP asking him to fabricate allegations against Nizeyimana was remarkably sparse, failing to indicate where and when the conversation (or conversations) took place.[1129] In contrast with Witness BUV02's evidence, Prosecution Witness ZBH heard that Witness AJP had destroyed confessions that *implicated* Nizeyimana. He explained that Witness AJP was close with the captain and had set up a roadblock with Nizeyimana near the captain's home and thus he was friendly towards soldiers.[1130]

438. It is undisputed that, while incarcerated, Witness AJP was part of the *Ukuri*, a committee established to encourage prisoners to confess.[1131] Likewise, the record reflects that Witness AJP encouraged and organised confessions of co-detainees.[1132] Prosecution Witness Jules Kayibanda, who was incarcerated with Witness AJP, confirmed that Witness AJP reviewed confessions, but his evidence does not reflect that he forced prisoners to falsely implicate persons.[1133] Witness AZM, who was also incarcerated with Witness AJP, had no knowledge of Witness AJP reviewing confessions or returning them to prisoners.[1134] Defence Witness ZML10, who was a member of the *Ukuri* committee with Witness AJP, was not asked any questions as to whether Witness AJP sought to influence prisoners' confessions.[1135] In the Chamber's view, Witness BUV02's evidence of Witness AJP attempting to obtain fabricated confessions implicating Nizeyimana is far from conclusive, although it is possible that he was actively involved in monitoring (and possibly altering) their content.[1136]

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role in obtaining confessions from those outside the prison given his position in the *Ukuri* and that this was not a reward for having confessed. Witness AJP, T. 15 February 2011, pp. 61–62. Witness AJP stated that prisoners did not know whether making confessional statements would secure their release or not. Witness AJP, T. 15 February 2011, p. 61. Witness FAX testified that Witness AJP received clemency in his 2007 Gacaca proceeding because he confessed to his crimes and implicated co-perpetrators. Prosecution Witness FAX, T. 17 February 2011, pp. 42, 44-45.

[1129] Witness BUV02, T. 10 May 2011, p. 63 ("MR. PRESIDENT: For instance, you, what did he tell you to do? THE WITNESS: For example, as someone who lived in that town, he found me in that town, and he knew that I knew Nizeyimana. So he begged me to assist him. Since we were members of the same committee, he was telling me, 'I don't know if Nizeyimana is still alive or not, but you need to help me to support my allegations.' That is one example. MR. PRESIDENT: What did he tell you to do to support his allegation, and what was the allegation? THE WITNESS: He asked me to make allegations against Nizeyimana and to state that he erected roadblocks and controlling these roadblocks.").

[1130] Witness ZBH, T. 9 February 2011, pp. 33-34.

[1131] Prosecution Witness AZM, T. 24 January 2011, p. 35; Prosecution Witness Kayibanda, T. 3 February 2011, p. 38; Prosecution Witness AJP, T. 15 February 2011, p. 60; Prosecution Witness ZBH, T. 9 February 2011, p. 33-34; Defence Witness BUV02, T. 10 May 2011, pp. 59, 71-72. *See also* Defence Witness ZML10, T. 16 May 2011, p. 12 *and* Exhibit D31 (*Ukuri* Letter).

[1132] Prosecution Witness AJP, T. 15 February 2011, pp. 59-60, 62, T. 17 February 2011, pp.13-14; Prosecution Witness Kayibanda, T. 3 February 2011, p. 38; Defence Witness BUVO2, T. 10 May 2011, pp. 61-62.

[1133] Witness Kayibanda, T. 3 February 2011, p. 38.

[1134] Witness AZM, T. 24 January 2011, pp. 35-37.

[1135] Witness ZML10, T. 16 May 2011, pp. 12-14; Exhibit D31 (*Ukuri* Letter).

[1136] Witnesses AJP and AZM explained that Witness AJP received no remuneration for working with the *Ukuri* and was treated like any other prisoner. Prosecution Witness AJP, T. 15 February 2011, p. 59; Prosecution

439. Of greater significance, Witness BUV02 conceded that he was not with Witness AJP when he killed persons allegedly on Nizeyimana's orders, which would include this particular event.[1137] Rather, he only expressed his belief that Witness AJP was lying about Nizeyimana's involvement in this crime. The Chamber also has some reservations about other aspects of Witness BUV02's evidence.[1138] While his testimony is disputed and far from dispositive, it is sufficient to justify careful scrutiny of Witness AJP's testimony and view it with appropriate caution.

440. Furthermore, although Witness AJP had completed his sentence for this particular crime when testifying before the Tribunal, he was living in exile, pending the appeal of a subsequent criminal conviction for rape that occurred after the genocide. Contrary to Witness AJP's assertions that he was not required to be incarcerated while the appeal was pending, Rwandan judicial documents suggest otherwise.[1139] Indeed, Defence evidence, although far from conclusive, tends to suggest that Witness AJP has not appealed his conviction.[1140]

441. Witness AJP's refusal to acknowledge his fugitive status raises concerns about his general credibility.[1141] Moreover, the Chamber observes that the witness acceded that his prior cooperation with his prosecution for the genocide led to the government extending him certain benefits, which upset victims of the genocide.[1142] This context raises the possibility that Witness AJP is now motivated to testify against Nizeyimana in order to positively impact his ongoing criminal proceedings and to assist him in reintegrating into Rwanda. These circumstances also warrant a cautious analysis of this witness's evidence.

442. Finally, Witness AJP's evidence tends to reflect that his family had a falling out with Nizeyimana's while they were in exile.[1143] The possibility that Witness AJP remained angered by a dispute between their families cannot be ignored.[1144]

443. Turning to the allegation at issue, the Defence has challenged Witness AJP's evidence through alleged inconsistencies among his prior statements to Tribunal investigators as well as a Belgian judicial document concerning this particular crime. For example, the witness testified that he first shot the victim and then returned the following day and killed her using

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Witness AZM, T. 24 January 2011, p. 37. However, the evidence shows that Witness AJP, by virtue of his position, was permitted to leave the prison in order to visit the prosecutor's office in Butare. Prosecution Witness Kayibanda, T. 3 February 2011, p. 38 (Witness AJP went to the prosecutor's office accompanied by a warder); Prosecution Witness AJP, T. 15 February 2011, p. 61; *but see* Defence Witness BUVO2, T. 10 May 2011. p. 72 (Witness AJP could go to the prosecutor's office in civilian clothing without an escort).

[1137] Witness BUV02, T. 10 May 2011, pp. 65-66.

[1138] For example, Witness BUV02's explanation as to how he was subsequently acquitted by the court of first instance after having committed crimes in the genocide and then confessed to them is less than clear. Witness BUV02, T. 10 May 2011, p. 54; T. 11 May 2011, pp. 2-5.

[1139] Witness AJP, T. 15 February 2011, pp. 36-42, 44-49; *see also* Witness Hahirwa, T. 14 June 2011, pp. 33-36; Exhibit D69 (Various Rwandan Judicial Documents).

[1140] Witness Hahirwa, T. 14 June 2011, pp. 35-36.

[1141] *See, e.g.*, Witness AJP, T. 15 February 2011, pp. 37-38, 40, 48-49. Notably, Witness AJP initially conceded that he was a wanted man in Rwanda. T. 15 February 2011, pp. 36-37.

[1142] Witness AJP, T. 15 February 2011, pp. 48-49. *See also* T. 15 February 2011, pp. 57, 59 (explaining the sentence reduction he received for having confessed to his crimes).

[1143] *See* Witness AJP, T. 15 February 2011, p. 35.

[1144] *Cf.* Witness BUV02, T. 10 May 2011, p. 65 (speculating that Witness AJP may have fabricated evidence against Nizeyimana because of a "grudge").

a knife. However, his 2003 statement to Tribunal investigators reflects that the witness had said that he returned and shot the woman for a second time before killing her with a knife.[1145]

444. The Chamber observes that the witness's own accounts were confusing. At first, he appeared to testify (and later accept) that he had shot the girl again on the second occasion.[1146] However, he later clarified by emphasising that when he shot the girl, she did not die and that he subsequently killed her based on the follow-up instructions he had received.[1147] He suggested that the Tribunal investigator was mistaken in recording that he shot the woman on the second day as well.[1148]

445. The Chamber finds the witness's explanation reasonable, particularly in light of his 2005 statement to Tribunal investigators. That account, like much of his testimony, reflects that he was prevented from shooting the woman on the second occasion and was instead given a knife to kill her.[1149]

446. Moreover, the Chamber considers that the fundamental features of the excerpts of Witness AJP's statements to Tribunal investigators from 2003 and 2005 are remarkably consistent with his evidence before the Tribunal.[1150] Indeed, Defence evidence confirms that Witness AJP killed this girl. The exact details of how he effectuated it do not impact Witness AJP's evidence that he did. In the Chamber's view, how the witness killed the girl is not material as to whether Nizeyimana ordered him to do it.[1151]

447. The Defence next sought to challenge Witness AJP's evidence through excerpts from a Belgian judicial document pertaining to this killing. In particular, the excerpt read into the

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[1145] *See* Witness AJP, T. 17 February 2011, pp. 3-4 (excerpt from 2003 statement to Tribunal investigators).
[1146] *See* Witness AJP, T. 15 February 2011, p. 12 ("A. ... So when I got to Dr. Vincent Ntezimana's house, I shot the girl, but she did not die there. So he told me that I should not I should no longer use the rifle. He, Dr. Vincent Ntezimana, took a knife from a house help and gave the knife to Longin. Longin gave me the knife, and I finished off the young girl. ..."); T. 17 February 2011, pp. 4 ("Q. So ... you testified last time that you were an experienced soldier. Are you telling the Court seriously that you couldn't kill her with a gun when you tried twice? You tried one day, you couldn't kill her and you and you shot her a second time and you couldn't kill her. And then you had to use a knife. Is that what you're telling the Court today? A. Yes, Counsel. That's how things happened."), 6 ("Q. ... So did you shoot her the second day or not? Did you shoot her and fail the second day or not, yes or no? A. As the first day I shot the young girl we made her get out of Dr. Vincent Ntezimana's house, took her to a wood and shot her, she did not die, she was wounded, she returned to Dr. Ntezimana's house. On the second day I shot the girl, but Ntezimana prevented me from shooting again in his house. Ntezimana sent a house help to get a knife which he or she gave to Rudasingwa. Rudasingwa gave the knife to me and I used the knife to finish off the girl.").
[1147] *See* Witness AJP, T. 17 February 2011, pp. 6-7.
[1148] *See* Witness AJP, T. 17 February 2011, pp. 6, 8.
[1149] Witness AJP, T. 17 February 2011, p. 6 (excerpt from Witness AJP's 2005 statement to Tribunal investigators).
[1150] *See* Witness AJP, T. 17 February 2011, pp. 3-4 (excerpt Witness AJP's 2003 statement to Tribunal investigators), 6 (excerpt from Witness AJP's 2005 statement to Tribunal investigators).
[1151] In this regard, the Chamber recalls its previous decisions denying Defence requests to recall Witness AJP or alternatively admit his confession to Rwandan authorities. *See* Decision on Nizeyimana Defence Motion for Recall of Prosecution Witness AJP or Admission of Documentary Evidence (TC), 7 July 2011 ("July 2011 Decision"); Decision on Motion for Reconsideration of the 7 July 2011 Decision on Nizeyimana Defence Motion for Recall of Prosecution Witness AJP or Admission of Documentary Evidence (TC), 5 August 2011; In its motion, the Defence argued that Witness AJP's confession indicates that he killed her with a rifle instead of a knife. *See* Nizeyimana Defence Motion for Recall of Prosecution Witness AJP or Admission of Documentary Evidence, 22 June 2011, paras. 20-24. The Chamber reiterates that it considers that the impeachment value of such a prior statement to be of limited probative value in light of the otherwise extensive cross-examination on this issue. *See* July 2011 Decision, para. 10.

record reflected that the event occurred in mid-May 1994.[1152] Notably, however, this document also reflects that this information was provided by Vincent Ntezimana, not the witness.[1153] The witness denied having made this statement to Belgian authorities.[1154] Indeed, the relevant Belgian judicial determination reflects that that proceeding had concluded that the crime fell within an unspecified period between 6 April and 27 May.[1155]

448. The Defence also challenged Witness AJP's evidence as it related to Longin Rudasingwa's involvement in the killing of the girl. It argued that, notwithstanding Witness AJP's 2005 public confession of Rudasingwa's involvement, Rudasingwa remained a free man, working as a dentist in Kigali.[1156] It further suggested that Rudasingwa was a Tutsi.[1157]

449. The Defence has not supported its contentions with any evidence. Indeed, Witness BEJ01 testified that a Longin "Ndasingwa" was at Ntezimana's home when the girl was killed, although the witness was unsure if he observed it.[1158] Furthermore, the possibility that Longin Rudasingwa has not been prosecuted in Rwanda (or anywhere else) for his purported involvement in this killing does not necessarily reflect inaccuracies in Witness AJP's account or impact his credibility.

450. Turning to the merits of Witness AJP's evidence, the Chamber has no doubts about the witness's ability to identify Nizeyimana. His evidence about his time at the ESO as a cadet in the accelerated training program starting in 1991 is clear and coherent.[1159] He correctly identified Nizeyimana as the S2/S3 officer, which is not refuted by the Defence.[1160] Furthermore, the core circumstances regarding the relatively close working and personal relationship between Witness AJP and Nizeyimana are compelling.[1161] Parts of Witness AJP's description of his relationship with Nizeyimana, including a continuous presence at Nizeyimana's home into April 1994, are corroborated by Defence evidence.[1162]

451. Rather, the Defence challenges Witness AJP's version of events through the testimony of Witness BEJ01. Notably, Witness BEJ01's evidence confirms that Vincent Ntezimana was involved, in and convicted for, his participation in this killing.[1163] However, Witness BEJ01 refuted that Nizeyimana had anything to do with the crime, testifying that he was not in Butare. Indeed, Witness BEJ01 testified that this event occurred on 14 May 1994,

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[1152] *See* Witness AJP, T. 17 February 2011, p. 9.
[1153] *See* Witness AJP, T. 17 February 2011, p. 10. Indeed, the Chamber observes that the ultimate findings of the Belgian judicial authorities indicate that this crime was committed between 6 April and 27 May 1994. *See* Exhibit P52 (Multiple Accused Judgement), p. 43.
[1154] *See* Witness AJP, T. 17 February 2011, pp. 10-11. Witness AJP stated that he had testified in Ntezimana's trial in Belgium. *See* Witness AJP, T. 17 February 2011, pp. 9, 11.
[1155] Exhibit P52 (Multiple Accused Judgement).
[1156] *See* Witness AJP, T. 15 February 2011, pp. 75-76.
[1157] Witness AJP, T. 17 February 2011, p. 2.
[1158] Witness BEJ01, T. 9 June 2011, p. 10.
[1159] *See* Witness AJP, T. 14 February 2011, pp. 78-79.
[1160] Witness AJP, T. 14 February 2011, p. 79.
[1161] *See* Witness AJP, T. 14 February 2011, p. 80 (describing his direct working relationship with Nizeyimana for three to four months while at the ESO). *See* Witness AJP, T. 14 February 2011, p. 81, T. 15 February 2011, pp. 3-4, 7, 34, 64, 67-69 (reflecting that Witness AJP lived in the immediate proximity of Nizeyimana in 1993 and 1994).
[1162] *See* Witness BEJ01, T. 9 June 2011, pp. 9, 12-13, 32 (confirming Witness AJP's evidence about his immediate proximity to Nizeyimana in 1993 and 1994).
[1163] *See* Witness BEJ01, T. 9 June 2007, pp. 11, 33; Exhibit P52 (Multiple Accused Judgement).

a period in which Nizeyimana has presented alibi evidence that he was commanding a training centre at the Mata tea factory in Gikongoro prefecture.

452. At the outset, the Chamber observes that Witness BEJ01 had a close personal relationship with Nizeyimana. He viewed the Accused as a "close" friend and confirmed that his relationship with Nizeyimana guaranteed him relative security during the genocide.[1164] In this regard, the Chamber has some concerns about the impartiality of this witness. Indeed, Witness BEJ01's testimony, suggesting his innocence as it relates to this crime, is at odds with a judgement that imposed criminal liability upon him for it.[1165] The Prosecution has presented other evidence of Witness BEJ01's extremism.[1166] This raises further concerns about his accounting of this event.

453. Notwithstanding the frailties in the Defence evidence, it is for the Prosecution to prove its case beyond reasonable doubt. The Chamber has reservations about Witness AJP's uncorroborated explanation as to why Nizeyimana wanted this girl killed – namely because she had publicly discussed that soldiers from his home were looting and killing. Witness AJP's evidence fails to evince how Nizeyimana would have learned this. Notably, Witness AJP's evidence reflects that this appears to be the first order Nizeyimana had given him to kill, and that it occurred prior to the killings of the Ngarambe and Maniraho families.[1167] In that regard, his account fails to reflect what killings this girl would have been discussing.

454. While the Chamber views Witness BEJ01's evidence with caution, he places the killing at a time when Nizeyimana was not constantly present in Butare.[1168] Moreover, Witness BEJ01's testimony reflects that Witness AJP and the victim had a pre-existing relationship.[1169] Under the circumstances, the Chamber cannot exclude the reasonable possibility that this murder might have resulted from a deterioration of it.

455. Viewing Witness AJP's evidence with necessary caution, the Chamber is unable to make findings beyond a reasonable doubt about Nizeyimana's involvement in this crime based on Witness AJP's testimony alone. Mindful that much of Witness AJP's evidence is undisputed, or even supported by Defence evidence, his testimony regarding Nizeyimana's involvement is uncorroborated and contested. Likewise, Witness AJP's unsupported evidence fails to establish that Nizeyimana could be held liable as a superior for this particular killing. Based on the foregoing, this charge is dismissed.

[1164] *See* Witness BEJ01, T. 9 June 2007, pp. 19-20 (describing friendship with Nizeyimana), 26-27 (discussing security provided by relationship with Nizeyimana).
[1165] Exhibit P52 (Multiple Accused Judgement).
[1166] Exhibit P40B(E) (92*bis* Statement of Witness ZAE), p. 4.
[1167] Witness AJP, T. 15 February 2011, pp. 11, 13, 73.
[1168] *See* II.13.3.
[1169] *See* Witness BEJ01, T. 9 June 2011, pp. 12, 14.

6.2 Killing of Rosalie Gicanda and Others

Introduction

456. The Indictment alleges that on or about 21 April 1994, Nizeyimana ordered or authorised soldiers from the ESO, Ngoma Camp and the Butare Gendarmerie Camp, along with armed civilians, to kill Rosalie Gicanda. Specifically, following Nizeyimana's instructions, Second Lieutenant Bizimana took a number of subordinate FAR soldiers with him, including Corporal Aloys Mazimpaka and armed civilians, including Dr. Kageruga, to the home of Gicanda under the auspices of a search. As a result, soldiers acting under the orders and authorisation of Nizeyimana forcibly removed and killed Gicanda and other persons who were residing in her home. The Prosecution relies on Witnesses ZAP, ZAR, AZD, Justin Gahizi, BDE, ZAL, ZBH, ZY, ZT and AJP.[1170]

457. The Defence submits that the evidence fails to establish a link between Nizeyimana and the perpetrators of the murder of Rosalie Gicanda and others. Moreover, Nizeyimana was in Mata on a reconnaissance mission on or about 21 April 1994. It further challenges the credibility of Prosecution Witnesses AJP, ZBH, Gahizi and AZD. The Defence relies on Witnesses Aggripine Nyiranzabonimana, Emmanuel Habyarimana, Augustin Mushimiyimana, RWV11 and OUV03.[1171]

Evidence

Prosecution Witness ZAP's Rule 92*bis* Statement

458. Witness ZAP was at Rosalie Gicanda's house in April 1994.[1172] On 20 April, around noon, many soldiers arrived at Gicanda's house.[1173] Witness ZAP was with Gicanda in the garden of her residence, which was located at the Ngoma commune office.[1174] Inside the house there was a woman called Mukadi, who was sick, Jean Damascène Paris, Alphonse Sayidiya, Marie and servants called Awuleliya, Callixte Kayigamba and Anastase.[1175] Some soldiers climbed over the fence because the gate was closed, and then opened the gate for those still standing outside.[1176] The soldiers surrounded the compound, while others climbed trees.[1177]

459. After alerting Gicanda, Witness ZAP ran into the house, where she already found some soldiers.[1178] The soldiers said there were *Inyenzi* living in the house.[1179] When Gicanda

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[1170] Indictment, para. 23; Prosecution Closing Brief, paras. 286-324; T. 7 December 2011, pp. 25-27 (Prosecution Closing Arguments).
[1171] Defence Closing Brief, paras. 232-245; T. 7 December 2011, pp. 38-39, 41, 43, 45-46, 60 (Defence Closing Arguments).
[1172] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 2.
[1173] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 2.
[1174] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 2.
[1175] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 2. Witness ZAP did not specify the ethnicity of each of the person in Gicanda's residence, including her own. She only noted that Anastase had deleted his ethnic group in his identity card and replaced it with "Hutu", implying he was actually a Tutsi.
[1176] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 2.
[1177] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 2.
[1178] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 2.
[1179] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 2.

entered the residence, the soldiers' leader ordered everyone out and informed her that they had come to search for weapons.[1180] Gicanda informed the soldier that there were no weapons in the house and asked the soldier what they would do if they indeed found none.[1181] The soldier responded that he did not know.[1182]

460. The soldiers searched the house thoroughly and found letters written to Gicanda by a white lady called Marie Paul or Yvonne, documents and other personal effects belonging to Gicanda's family.[1183] Some of these items were given to the leader of the group of soldiers who she heard talking over a radio saying "jaguar, jaguar" and other words that the witness did not understand.[1184] Gicanda and other members of her household, including Witness ZAP, were ordered to board the vehicle belonging to the soldiers.[1185] When Gicanda asked to get her identity card, the soldier responded that they did not need them.[1186]

461. The vehicle carrying Gicanda and the others stopped at the ESO where the leader of the soldiers and a few other soldiers got out of the vehicle and entered the ESO.[1187] Other soldiers came and told them they had found *Inyenzi* and that they would treat them the same way they had treated the university students.[1188] They told them that they had just warmed their bayonets.[1189]

462. When the leader of the soldiers returned, they left the ESO and passed through the woods by the university, in the direction of "Kadahokwa".[1190] Along the way, the soldiers slapped and hit them with their fists and threatened to kill Mr. Damascène with a bayonet.[1191] They stopped at a bridge connecting the two woods after the small Mukura river and were ordered out of the vehicle.[1192] The soldiers fired into the air about three times.[1193] When Gicanda said she wanted to make a request, the soldiers shouted that it was not worth it because their hour had come.[1194] Their commander ordered the soldiers to shut up and granted Gicanda's request to say one prayer.[1195]

463. When they started reciting the prayer, the soldiers started shooting.[1196] Witness ZAP did not know what happened afterwards, because she immediately fell to the ground.[1197] When she regained consciousness, she noticed the soldiers were dragging them towards a ditch and left immediately.[1198] Gicanda was not yet dead, but could not speak and was

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[1180] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 2.
[1181] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 2.
[1182] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 2.
[1183] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 2.
[1184] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 3.
[1185] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 3.
[1186] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 3.
[1187] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 3.
[1188] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 3.
[1189] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 3.
[1190] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 3.
[1191] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 3.
[1192] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 3.
[1193] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 3.
[1194] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 3.
[1195] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 3.
[1196] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 3.
[1197] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 3.
[1198] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 3.

breathing heavily.[1199] Alphonse had sustained serious injuries and Witness ZAP had injuries to her leg and buttocks.[1200] Mr. Damascène and the servants were dead.[1201]

Prosecution Witness ZAR Rule 92*bis* Statement

464. Witness ZAR was at Gicanda's residence in April 1994.[1202] On an unspecified date, more than 10 soldiers, accompanied by Dr. Kageruka, came to Gicanda's house in a civilian double cabin vehicle.[1203] Witness ZAR did not know their names, but would have been able to recognise them if he saw them again.[1204] Some of the soldiers had climbed over the gate and opened the fence to let the others in.[1205] The military had surrounded the house and told Alphonse, who was a taxi driver, that all the people inside the residence had to get out and sit outside.[1206] He added that anyone who exited through the "other door" would be shot dead.[1207] Witness ZAP, Paris Damascène, Aureliya, Callixte, Grace, Alphonse and Rosalie Gicanda exited the house.[1208] Witness ZAR was already outside when they came out of the house.[1209]

465. The soldiers asked them whether *Inyenzi* were in the house, but they told them there were none.[1210] When the soldiers asked them what would happen if they found firearms or ammunition in the house, the soldiers responded that they would kill them in any case.[1211] Witness ZAR, Alphonse and Damascène were ordered to enter the house with the soldiers, who proceeded to search the residence.[1212] When they exited the house again, they were all ordered to board the vehicle.[1213] The soldiers asked for identity cards and upon seeing his, told Witness ZAR that he was an accomplice too.[1214] Their leader then ordered him to stay behind to take care of an old lady known as Mukazi, who was sick.[1215] Witness ZAR saw the abduction of Gicanda and the other residents take place, but did not know the circumstances of their death.[1216] However, a girl called Grace survived the abduction.[1217]

[1199] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 3.
[1200] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 3.
[1201] Exhibit P40D(E), (Witness ZAP's *Pro Justitia* Statement), p. 3.
[1202] Exhibit P40E(E), (Witness ZAR's *Pro Justitia* Statement), p. 2.
[1203] Exhibit P40E(E), (Witness ZAR's *Pro Justitia* Statement), pp. 2-3.
[1204] Exhibit P40E(E), (Witness ZAR's *Pro Justitia* Statement), p. 3.
[1205] Exhibit P40E(E), (Witness ZAR's *Pro Justitia* Statement), p. 2.
[1206] Exhibit P40E(E), (Witness ZAR's *Pro Justitia* Statement), p. 2.
[1207] Exhibit P40E(E), (Witness ZAR's *Pro Justitia* Statement), p. 2.
[1208] Exhibit P40E(E), (Witness ZAR's *Pro Justitia* Statement), p. 2. Witness ZAR did not specify the ethnicity of the residents, who exited the house.
[1209] Exhibit P40E(E), (Witness ZAR's *Pro Justitia* Statement), p. 2.
[1210] Exhibit P40E(E), (Witness ZAR's *Pro Justitia* Statement), p. 2.
[1211] Exhibit P40E(E), (Witness ZAR's *Pro Justitia* Statement), p. 2.
[1212] Exhibit P40E(E), (Witness ZAR's *Pro Justitia* Statement), p. 2.
[1213] Exhibit P40E(E), (Witness ZAR's *Pro Justitia* Statement), p. 2.
[1214] Exhibit P40E(E), (Witness ZAR's *Pro Justitia* Statement), p. 4.
[1215] Exhibit P40E(E), (Witness ZAR's *Pro Justitia* Statement), pp. 2-4.
[1216] Exhibit P40E(E), (Witness ZAR's *Pro Justitia* Statement), p. 4.
[1217] Exhibit P40E(E), (Witness ZAR's *Pro Justitia* Statement), p. 4.

Prosecution Witness ZBH

466. In April 1994, Witness ZBH, a Hutu, was a civilian who had previously worked as a "helper" at the ESO in 1991.[1218] Without specifying the date, Witness ZBH noted that he "was there" when Rosalie Gicanda was abducted, as he was playing tennis with his brother on a lawn that was located between the Butare main road and Queen Gicanda's residence.[1219] Gakwerere, alias Rwatsi, and Corporal Mazimpaka were involved in the abduction.[1220] Gicanda was taken alone, around midday, sometime prior to 20 April.[1221] There were other people in her house at the time, including a young driver, a boy whose name was Alphonse and a young girl who sold milk.[1222] Witness ZBH was not present when Gicanda was killed.[1223]

Prosecution Witness AZD

467. In April 1994, Witness AZD, a Tutsi with a Hutu identification card, was a non-commissioned officer at the ESO.[1224] He knew that Rosalie Gicanda, who was an "old lady", was the spouse of the former king of Rwanda, Mutara Rudahirwa, and that she lived in the Buye area.[1225] Sometime between 20 and 25 April, between 7.00 and 8.00 p.m., he was in the ESO officers' mess when he heard Second Lieutenant Bizimana, nicknamed "Rwatsi" and Second Lieutenant Gakwerere report to Nizeyimana that they had just killed Gicanda "by torture".[1226] Witness AZD could clearly hear what they said because he was only a few metres away from them when they spoke to Nizeyimana.[1227]

Prosecution Witness Justin Gahizi

468. In April 1994, Witness Gahizi was a sergeant at the ESO.[1228] On an unspecified date, Witness Gahizi was in the officers' mess in the evening with several other people when he overheard Nizeyimana speaking to Second Lieutenant Jean Pierre Bizimana, also known as "Rwatsi".[1229] Specifically, Witness Gahizi heard Nizeyimana ask what happened, to which Bizimana responded: "Mission accomplished: we have killed Rose Gicanda".[1230] It was known at the time that he had killed Gicanda in the small wooded area, which was behind the

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[1218] Witness ZBH, T. 8 February 2011, pp. 35-36; Exhibit P21 (Witness ZBH's Personal Information Sheet).
[1219] Witness ZBH, T. 8 February 2011, p. 49. Witness ZBH later clarified that he "saw" the abduction while he was playing tennis with his brother. T. 9 February 2011, p. 4.
[1220] Witness ZBH, T. 8 February 2011, p. 49.
[1221] Witness ZBH, T. 9 February 2011, p. 4. Witness ZBH did not recall the exact date of Gicanda's abduction, but knew it took place "prior to the incident at the hospital", which he estimated to have occurred after 20 April 1994. T. 9 February 2011, p. 4.
[1222] Witness ZBH, T. 9 February 2011, p. 4. Witness ZBH did not specify what happened to the other people in Gicanda's house.
[1223] Witness ZBH, T. 9 February 2011, p. 3.
[1224] Witness AZD, T. 31 January 2011, p. 64; Exhibit P15 (Witness AZD's Personal Information Sheet).
[1225] Witness AZD, T. 31 January 2011, p. 78.
[1226] Witness AZD, T. 31 January 2011, p. 78; T. 1 February 2011, p. 48.
[1227] Witness AZD, T. 31 January 2011, p. 79.
[1228] Witness Gahizi, T. 7 February 2011, p. 22; Exhibit P20 (Witness Gahizi's Personal Information Sheet).
[1229] Witness Gahizi, T. 7 February 2011, pp. 29-30.
[1230] Witness Gahizi, T. 7 February 2011, p. 30. Upon repeating Bizimana's statement, Witness Gahizi, recalled him saying: "Mission accomplished, we have killed Gicanda" without referring to her first name. T. 7 February 2011, p. 30.

museum.[1231] Nizeyimana smiled and seemed satisfied, buying beers for persons within the officers' mess.[1232] The mess was narrow, which made it possible for everyone to hear what was being said.[1233]

Prosecution Witness AJP

469. Witness AJP, a Hutu, lived in Butare town in 1994.[1234] On an unspecified date, Nizeyimana informed Witness AJP that Rosalie Gicanda was killed by Second Lieutenant Bizimana.[1235]

Prosecution Witness BDE

470. Witness BDE, a Hutu, was a cadet at the ESO in April 1994.[1236] On an unspecified date, Witness BDE heard from a young man, Gaston Lyonso, who was in her class and posted to guard Second Lieutenant Bizimana's house, that Nizeyimana had ordered Second Lieutenants Bizimana and Gakwerere to "bring Rosalie Gicanda, the former queen of the country".[1237] Upon those instructions they went to get Gicanda and killed her immediately.[1238]

Prosecution Witness ZY

471. Witness ZY, a Tutsi, was a cadet at the ESO in April 1994.[1239] She knew about Rosalie Gicanda from her history class and knew that the former queen lived behind the Huye stadium in Butare town.[1240] On an unspecified date, at a time when killings had not yet commenced in Butare, Witness ZY was at the ESO cafeteria when cadets from the third batch

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[1231] Witness Gahizi, T. 7 February 2011, p. 30. During cross-examination, Witness Gahizi identified that his prior statement given to Tribunal investigators mistakenly reads that the queen was killed in May instead of April. *See* T. 8 February 2011, p. 4 ("THE WITNESS: Okay. I am there. At the end of page K0246675, on the last paragraph, there is something which states second line: 'It was in the month of May.' They wrote in May instead of writing April. That is why I said that it is possible for me to notice other mistakes in this document. But since I am here myself, I can point out those mistakes as we go on. That is why I suggested that we should carry on. BY MR. PHILPOT: Q. Unfortunately, that is not how we are going to do it, sir. You've pointed out that one mistake about the month of May instead of April for the killing of the queen.").
[1232] Witness Gahizi, T. 7 February 2011, p. 31.
[1233] Witness Gahizi, T. 7 February 2011, p. 30.
[1234] Witness AJP, T. 14 February 2011, p. 81; T. 15 February 2011, pp. 3-4, 7, 34, 64, 67-69; Exhibit P28 (Witness AJP's Personal Information Sheet). In 2001, immediately upon being arrested, Witness AJP confessed to his participation in the genocide in Butare through killing and looting. Witness AJP, T. 15 February 2011, pp. 36, 54-57, 75; T. 17 February 2011, pp. 11-12. He was tried by a Gacaca court in 2007, sentenced to 12 years imprisonment. He was released days later in light of the fact that he had already served half his sentence and that he was entitled to a sentence reduction based on his confession. Witness AJP, T. 15 February 2011, pp. 36, 49, 57-59. At the time of his testimony, Witness AJP was living in exile and awaiting the outcome of his appeal against a subsequent rape conviction pertaining to an incident after the genocide. Witness AJP, T. 15 February 2011, pp. 36-42, 44-49; *see also* Witness Hahirwa, T. 14 June 2011, pp. 33-36; Exhibit D69 (Various Rwandan Judicial Documents).
[1235] Witness AJP, T. 15 February 2011, p. 26.
[1236] Witness BDE, T. 28 January 2011, pp. 8-9; Exhibit P13 (Witness BDE's Personal Information Sheet).
[1237] Witness BDE, T. 28 January 2011, pp. 29-30.
[1238] Witness BDE, T. 28 January 2011, p. 29.
[1239] Witness ZY, T. 26 January 2011, p. 45; Exhibit P11 (Witness ZY's Personal Information Sheet).
[1240] Witness ZY, T. 26 January 2011, pp. 68-69, 71. Witness ZY did not know Gicanda's ethnicity. T. 26 January 2011, p. 68.

arrived and said that they "committed an abomination" by killing the Queen of Rwanda.[1241] They also stated that they had killed "everybody who was at Gicanda's house".[1242] They specified that they had gone there with the third batch commander, Bizimana, who was nicknamed "Rwatsi", but that Nizeyimana had killed her.[1243]

Prosecution Witness ZT

472. In April 1994, Witness ZT, a Tutsi, was a cadet at the ESO.[1244] Witness ZT knew that Rosalie Gicanda, the former Queen of Rwanda, lived in Butare town and was killed during the "war".[1245] Specifically, on an unspecified date, the witness was in the refectory when a young ESO cadet named Léonard Musabyimana was bragging about having killed some "big people".[1246] When asked to identify such individuals, he stated that he was among the group that removed Gicanda from her house and stated that "Rwatsi", the nickname of Lieutenant Bizimana, had "took her away".[1247] The witness interpreted this to mean that Bizimana had killed the queen.[1248]

Prosecution Witness ZAL

473. In April 1994, Witness ZAL, a Tutsi, worked at the Butare University Hospital.[1249] At an unidentified time, Witness ZAL was with a group of unspecified persons who identified a soldier named Mazimpaka.[1250] A person among the group informed the witness that Mazimpaka had stated he had killed "Queen Gicanda" and feared that the situation would degenerate in the hospital in light of his presence.[1251] However, the witness later learned from a girl admitted into the hospital that Mazimpaka stated he was tired of killing and that, in fact, he assisted persons at the hospital.[1252]

Defence Witness OUV03

474. In April 1994, Witness OUV03, a Hutu, was an officer at the ESO.[1253] On 21 April, around 8.30 p.m., Witness OUV03 heard from Chief Warrant Officer Damien Ntamuhanga that Second Lieutenant Bizimana had killed Rosalie Gicanda.[1254] Since Ntamuhanga told Witness OUV03 about the incident, he assumed that it meant that Ntamuhanga had already drawn up a report and submitted it to the superior officer, so that the military police work

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[1241] Witness ZY, T. 26 January 2011, p. 69.
[1242] Witness ZY, T. 26 January 2011, p. 70.
[1243] Witness ZY, T. 26 January 2011, p. 69.
[1244] Witness ZT, T. 7 February 2011, p. 7; Exhibit P19 (Witness ZT's Personal Information Sheet).
[1245] Witness ZT, T. 7 February 2011, p. 13.
[1246] Witness ZT, T. 7 February 2011, p. 14.
[1247] Witness ZT, T. 7 February 2011, pp. 8, 14.
[1248] Witness ZT, T. 7 February 2011, pp. 14-13.
[1249] Witness ZAL, T. 14 February 2011, p. 36; Exhibit P26 (Witness ZAL's Personal Information Sheet).
[1250] Witness ZAL, T. 14 February 2011, pp. 36, 39.
[1251] Witness ZAL, T. 14 February 2011, p. 39.
[1252] Witness ZAL, T. 14 February 2011, pp. 36, 39.
[1253] Witness OUV03, T. 30 May 2011, p. 62; Exhibit D51 (Witness OUV03's Personal Information Sheet).
[1254] Witness OUV03, T. 31 May 2011, pp. 37, 43-45. Witness OUV03 said he could not have received that information from Bizimana himself, because Bizimana would not "have denounced himself". T. 31 May 2011, p. 43.

could be done.[1255] He thought Ntamuhanga provided him with this information, because he believed Witness OUV03 would not leave the ESO.[1256] Given that Witness OUV03 did not move from his post a lot, some information got to him "belatedly".[1257]

475. It was incumbent upon the ESO camp commander to punish Bizimana.[1258] On 21 April 1994, Witness OUV03 thought that Bizimana had been arrested; however he later heard that Bizimana had been ordered to stop working on the grounds that he was going to be arrested for the crime he had committed.[1259] On 24 April he heard that Bizimana had in fact been arrested, together with all the members of the anti-looting section.[1260] Colonel Muvunyi was the one who arrested him and wanted him to be handed over to the courts.[1261] Unfortunately they fled before he could be handed over to the proper authorities.[1262]

Defence Witness RWV11

476. In April 1994, Witness RWV11, a Hutu, was an instructor at the ESO.[1263] On 22 April, when Witness RWV11 returned from Mata, he was informed by Sergeant Mugiraneza that Rosalie Gicanda had been killed by members of the anti-looting unit led by Second Lieutenant Pierre Bizimana, alias Rwatsi.[1264] Members of that unit went to Gicanda's residence and said they saw weapons in her house.[1265] Witness RWV11 was shocked by this, because he knew that conducting searches was not part of their mission.[1266] He was moved by this incident, because these soldiers were in charge of protecting people and instead they killed them.[1267] The people who killed Gicanda were not punished by their superiors.[1268]

Defence Witness BUV02

477. In April 1994, Witness BUV02, a Hutu, was a cook in Butare.[1269] He spoke to Second Lieutenant Bizimana around 2.00 or 3.00 p.m. only hours after Rosalie Gicanda, a Tutsi, and members of her family were killed.[1270] He could not confirm what day this incident took place, but knew that the killing occurred shortly after President Sindikubwabo's speech.[1271] Witness BUV02 was at a bar when Bizimana and a group of approximately eight soldiers

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[1255] Witness OUV03, T. 31 May 2011, p. 45.
[1256] Witness OUV03, T. 31 May 2011, p. 44.
[1257] Witness OUV03, T. 31 May 2011, p. 44.
[1258] Witness OUV03, T. 31 May 2011, p. 45.
[1259] Witness OUV03, T. 31 May 2011, p. 47.
[1260] Witness OUV03, T. 31 May 2011, p. 47.
[1261] Witness OUV03, T. 31 May 2011, p. 37.
[1262] Witness OUV03, T. 31 May 2011, p. 37.
[1263] Witness RWV11, T. 2 June 2011, p. 8; Exhibit D53 (Witness RWV11's Personal Information Sheet).
[1264] Witness RWV11, T. 2 June 2011, p. 34.
[1265] Witness RWV11, T. 2 June 2011, p. 34.
[1266] Witness RWV11, T. 2 June 2011, p. 34.
[1267] Witness RWV11, T. 2 June 2011, p. 34.
[1268] Witness RWV11, T. 2 June 2011, pp. 34-35 ("A. I was very hurt by the fact that the ESO commander did not punish those soldiers, and I am sure that the section responsible for those crimes continued working with impunity, and that saddened me.").
[1269] Witness BUV02, T. 10 May 2011, p. 51; Exhibit D26 (Witness BUV02's Personal Information Sheet).
[1270] Witness BUV02, T. 10 May 2011, pp. 74-75.
[1271] Witness BUV02, T. 10 May 2011, p. 74. Witness BUV02 was unable to be more specific in terms of the date. He did not elaborate on how shortly after President Sindikubwabo's death Gicanda was killed.

came in looking for a drink to celebrate.[1272] They had arrived in a red Toyota Stout, which was parked not far from the bar.[1273] Bizimana told the witness that "[t]he situation is serious I've just killed the queen don't be indifferent".[1274]

478. Bizimana further told him that they had searched Gicanda's house, then abducted her, and killed her at another location.[1275] Specifically, they passed by Mpare and Musange and that she was killed on the river, Akadahokwa.[1276] Bizimana said that he had killed Gicanda to set an example and to show that even prominent people could be killed.[1277] Bizimana was with Sergeants Mazimpaka and Birasa when they killed Gicanda.[1278] Both Mazimpaka and Birasa were at the bar with Bizimana, and Mazimpaka was talking to the witness with Bizimana about the murder of the queen.[1279]

Defence Witness ZML07

479. Witness ZML07, a Hutu, was a cadet at the ESO in April 1994.[1280] After Rosalie Gicanda was killed, he was told by someone who had been there that Second Lieutenant Jean Pierre Bizimana led the operation that resulted in her murder.[1281] The ESO soldiers, led by Bizimana, had gone to Gicanda's house on the pretext of conducting a search for military equipment.[1282] Moreover, Emanuel Manilakiza, a cadet in the third batch, told the witness that he had been on the mission to Gicanda and that Ignace Bwenge and Mukomeza, both ESO cadets, were there as well.[1283]

Defence Witness Emmanuel Habyarimana

480. In April 1994, Witness Habyarimana, a Hutu, was a senior officer in the Rwandan army.[1284] On 21 April, in the evening, Witness Habyarimana met with Lieutenant Colonel Muvunyi in the officers' mess, when he heard that Gicanda had been killed.[1285] Colonel Muvunyi confirmed that she had indeed been killed.[1286] Witness Habyarimana did not want to believe it, because Queen Gicanda came from his native area and had been like a mother to him; he knew her well.[1287] Muvunyi was also "complaining about it" and said he would conduct investigations to ensure that the person who committed this crime would be punished.[1288]

[1272] Witness BUV02, T. 10 May 2011, pp. 76-77.
[1273] Witness BUV02, T. 10 May 2011, p. 77.
[1274] Witness BUV02, T. 10 May 2011, p. 76.
[1275] Witness BUV02, T. 10 May 2011, pp. 75-76.
[1276] Witness BUV02, T. 10 May 2011, p. 76.
[1277] Witness BUV02, T. 10 May 2011, p. 75.
[1278] Witness BUV02, T. 10 May 2011, p. 75.
[1279] Witness BUV02, T. 10 May 2011, pp. 75-76.
[1280] Witness ZML07, T. 18 May 2011, p. 5; Exhibit D35 (Witness ZML07's Personal Information Sheet).
[1281] Witness ZML07, T. 18 May 2011, p. 32. *See* Exhibit D37 (Names of Soldiers).
[1282] Witness ZML07, T. 18 May 2011, p. 32. *See also* Exhibit D37 (Names of Soldiers).
[1283] Witness ZML07, T. 18 May 2011, p. 32; Exhibit D37 (Names of Soldiers).
[1284] Witness Habyarimana, T. 25 May 2011, pp. 3-4; Exhibit D45 (Witness Habyarimana's Personal Information Sheet).
[1285] Witness Habyarimana, T. 25 May 2011, p. 44.
[1286] Witness Habyarimana, T. 25 May 2011, p. 44.
[1287] Witness Habyarimana, T. 25 May 2011, p. 44.
[1288] Witness Habyarimana, T. 25 May 2011, p. 44.

Defence Witness Aggripine Nyiranzabonimana

481. Witness Nyiranzabonimana, a Hutu, was a teacher in Butare in April 1994.[1289] While Witness Nyiranzabonimana was unsure of the exact date, she heard about Rosalie Gicanda's killing around the same time as the members of the Matabaro family were murdered.[1290]

Defence Witness CKN10

482. Witness CKN10, a Hutu, was an ESO cadet in April 1994.[1291] On an unspecified date, Félicien Mugiraneza, a cadet at the ESO, told Witness CKN10 that he had been present with Second Lieutenant Jean Pierre Bizimana when Rosalie Gicanda was killed.[1292]

Defence Witness Augustin Mushimiyimana

483. Witness Mushimiyimana, a Hutu, was an officer based at the flight squadron at Kanombe airport in April 1994.[1293] Witness Mushimiyimana heard people talk about Rosalie Gicanda's death on the morning of 22 April.[1294] However, he did not know whether she had been killed the evening prior or that same morning.[1295]

Deliberations

484. The Prosecution and Defence evidence indicates that the former Queen of Rwanda, Rosalie Gicanda, was abducted and killed by a group of soldiers led by Second Lieutenant Jean Pierre Bizimana.[1296] Sometime in April 1994, soldiers came to Gicanda's house,

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[1289] Witness Nyiranzabonimana, T. 9 June 2011, p. 71; Exhibit D62 (Witness Nyiranzabonimana's Personal Information Sheet).
[1290] Witness Nyiranzabonimana, T. 10 June 2011, p. 25.
[1291] Witness CKN10, T. 26 May 2011, p. 35; Exhibit D50 (Witness CKN10's Personal Information Sheet).
[1292] Witness CKN10, T. 30 May 2011, pp. 47-48.
[1293] Witness Mushimiyimana, T. 13 June 2011, pp. 52-53; Exhibit D65 (Witness Mushimiyimana's Personal Information Sheet).
[1294] Witness Mushimiyimana, T. 13 June 2011, p. 55.
[1295] Witness Mushimiyimana, T. 13 June 2011, p. 55.
[1296] *See, e.g.*, Exhibit P40D(E) (Witness ZAP's *Pro Justitia* Statement), p. 3 (soldiers ordered them to get into a vehicle, drove them to a location after the small Mukura river and shot at them when they exited the vehicle. Gicanda was badly wounded); Exhibit P40E(E) (Witness ZAR's *Pro Justitia* Statement), pp. 2-3 (inhabitants of Gicanda's house were forced to board a double cabin vehicle by soldiers); Prosecution Witness AZD, T. 31 January 2011, p. 78 (Gicanda was killed by Second Lieutenant Bizimana); Prosecution Witness Gahizi, T. 7 February 2011, p. 30 (Second Lieutenant Bizimana, alias Rwatsi, admitted to killing Gicanda); Prosecution Witness BDE, T. 28 January 2011, p. 29 (heard that Second Lieutenant Bizimana killed Gicanda); Prosecution Witness ZAL, T. 14 February 2011, p. 39 (heard that Gicanda had been killed); Prosecution Witness ZY, T. 26 January 2011, p. 69 (heard that Gicanda had been killed by Second Lieutenant Bizimana, alias Rwatsi); Prosecution Witness ZT, T. 7 February 2011, p. 13 (heard that Second Lieutenant Bizimana, alias Rwatsi, had killed Gicanda); Prosecution Witness AJP, T. 15 February 2011, p. 26 (heard that Second Lieutenant Bizimana had killed Gicanda); Defence Witness OUV03, T. 31 May 2011, pp. 37, 44-45 (heard that Second Lieutenant Bizimana had killed Gicanda); Defence Witness RWV11, T. 2 June 2011, pp. 74-75 (heard that members of the anti-looting unit led by Second Lieutenant Bizimana, alias Rwatsi, had killed Gicanda); Defence Witness BUV02, T. 10 May 2011, pp. 75-76 (heard from Second Lieutenant Bizimana that he had abducted and killed Gicanda); Defence Witness ZML07, T. 18 May 2011, p. 32 (was told that Gicanda had been killed in an operation led by Second Lieutenant Bizimana); Defence Witness Habyarimana, T. 25 May 2011, p. 44 (heard that Gicanda had been killed); Defence Witness Nyiranzabonimana, T. 10 June 2011, p. 25 (heard that Gicanda had been killed); Defence Witness Mushiyimana, T. 13 June 2011, p. 55 (heard that Gicanda had been killed);

conducted a search and ordered nearly everyone out of the residence. The soldiers then made several of the individuals, including Rosalie Gicanda, board the soldiers' vehicle, after which they took them to another location. The soldiers then fired on those removed from the house.

485. The Chamber observes that the statements of Prosecution Witnesses ZAP and ZAR, admitted pursuant to Rule 92*bis*, provide the only first-hand accounts of the abduction of Gicanda and others from the queen's home by soldiers.[1297] Similarly, Witness ZAP's statement is the only first-hand evidence regarding the ensuing killing of Gicanda and others by those soldiers. Their evidence was not subjected to cross-examination. Other Trial Chambers have limited the use of statements admitted pursuant to Rule 92*bis* so that the evidence contained in such statements "may lead to a conviction only if there is other evidence which corroborates the statement[s]".[1298]

486. Nonetheless, the general features of Witnesses ZAP and ZAR's accounts are not disputed. Prosecution and Defence evidence, although circumstantial and second-hand, corroborate the 92*bis* statements and confirm that Gicanda and several others found in her home were killed by soldiers. Moreover, the record demonstrates that Gicanda, the former Queen of Rwanda, was a Tutsi.[1299] The Chamber considers these facts established beyond reasonable doubt based on a broad review of the record.

487. Furthermore, the Defence and Prosecution evidence confirms that this attack was committed by ESO soldiers led by Second Lieutenant Bizimana.[1300] Specifically, Prosecution Witnesses AZD, Gahizi, BDE, ZY, ZT and AJP and Defence Witnesses OUV03, BUV02, ZML07 and CKN10 all gave evidence tending to implicate Second Lieutenant Jean Pierre Bizimana in the killing of Gicanda and others taken from her home. Although indirect, there is also evidence from multiple sources that ESO soldiers Second Lieutenant Gakwerere and

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Defence Witness CKN10, T. 30 May 2011, pp. 47-48 (heard from an ESO cadet that he had been with Second Lieutenant Bizimana when Gicanda was killed).

[1297] The Chamber observes that Witness ZBH also testified to having observed soldiers entering Gicanda's home and remove her. The Chamber recalls the need to view Witness ZBH's evidence with caution. *See* II.3.4.. It considers his evidence, of having observed the abduction of Gicanda while playing tennis near her house, *prima facie* unbelievable. His evidence tends to reflect that Gicanda was removed alone. Witness ZBH, T. 9 February 2011, p. 4. Furthermore, given other accounts that soldiers had to scale a fence to get to the property, it is not at all clear that he could have seen the abduction. Exhibit P40D(E) (Witness ZAP's *Pro Justitia* Statement), p. 2; Exhibit P40E(E) (Witness ZAR's *Pro Justitia* Statement), p. 2. The Chamber places no value in his evidence to the extent that it suggests that he saw this event.

[1298] *The Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-T, First Decision on Prosecution's Motion for Admission of Witness Statements and Prior Testimony Pursuant to Rule 92*bis* (TC), 12 June 2003, para. 25. This approach was affirmed by the Appeals Chamber. *Blagojević and Jokić* Appeal Judgement, para. 318. *Cf. The Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.6, Decision on Appeals Against Decision Admitting Transcript of Jadranko Prlić's Questioning into Evidence (AC), 23 November 2007, paras. 53 ("Unacceptable infringement of the rights of the defence ... occur when a conviction is based solely, or in a decisive manner, on the depositions of a witness whom the accused has had no opportunity to examine or to have examined either during investigation or at trial."), 59.

[1299] *See* Defence Witness BUV02, T. 10 May 2011, p. 75 (Gicanda, a Tutsi was a "great personality" as the former wife of the Rwandan king). *Cf.* Prosecution Witness AZD, T. 1 February 2011, p. 49 (confirming the accuracy of a prior statement, in which he stated that Gicanda "was killed because she was a Tutsi").

[1300] The Defence acknowledges the extensive Prosecution and Defence evidence implicating Second Lieutenant Bizimana and ESO soldiers in this killing, and that remedial actions were taken at the ESO in light of the event. *See* Defence Closing Brief, paras. 238, 242.

Corporal Mazimpaka were among the assailants.[1301] Moreover, Prosecution and Defence evidence also tends to implicate ESO soldiers from the third batch.[1302]

488. The Chamber has considered the individual credibility of the witnesses. It notes fundamental consistencies among the evidence and the diversity of sources of this information. Furthermore, many of the out-of-court sources appeared to be participants in the attack, thus raising the reliability of the hearsay evidence presented to the Chamber. The fact that these sources were implicating themselves in the attack also tends to bolster their hearsay statements, which are self-incriminatory. The Chamber finds that the record is sufficiently credible and reliable to conclude beyond reasonable doubt that Second Lieutenant Bizimana commanded a group ESO soldiers in the abduction and killing of Gicanda and others taken from her house.[1303]

489. In this context, the Chamber must assess Nizeyimana's involvement in this incident. The Defence argues that the Prosecution evidence tending to implicate Nizeyimana is unbelievable.[1304] Moreover, the Defence submits that the killing occurred on 21 April 1994, when Nizeyimana was on a reconnaissance mission at the Mata tea factory in Gikongoro prefecture. In the Defence's view, this necessarily undermines Nizeyimana's contribution.[1305] The Chamber shall assess the merits of the evidence implicating Nizeyimana in light of these arguments below.

(i) Nizeyimana's Involvement in the Killing of Rosalie Gicanda and Others

490. The Prosecution alleges that Second Lieutenant Bizimana and other soldiers, under the orders or authorisation of Nizeyimana, killed Gicanda and others residing at her home.[1306] In this regard, the Chamber notes that Witness ZY heard that Nizeyimana, in fact, killed Gicanda.[1307] While aspects of her evidence are corroborated – namely the presence of Second Lieutenant Bizimana and ESO soldiers in this attack – this detail is not corroborated. Indeed, it is contrary to other evidence in the record as it relates to who killed Gicanda. Her hearsay evidence is insufficient to establish that Nizeyimana physically killed Gicanda.

[1301] Prosecution Witness AZD, T. 31 January 2011, pp. 78-79, T. 1 February 2011, p. 48 (overheard Second Lieutenants Bizimana and Gakwerere inform Nizeyimana of the murder of Gicanda); Prosecution Witness BDE, T. 28 January 2011, p. 29 (heard that Second Lieutenants Bizimana and Gakwerere killed Gicanda); Prosecution Witness ZAL, T. 14 February 2011, p. 39 (heard that Mazimpaka was part of the group that had killed Gicanda); Defence Witness BUV02, T. 10 May 2011, p. 75 (saw Mazimpaka with Bizimana, both of whom spoke about their involvement in the murder of Gicanda).

[1302] Prosecution Witness ZY, T. 26 January 2011, p. 69 (cadets in the third batch were involved in the murder of Gicanda); Defence Witness ZML07, T. 18 May 2011, p. 32; Exhibit D37 (Names of Soldiers) (Emanuel Manilakiza, a cadet in the third batch, told the witness that he had been on the mission to Gicanda).

[1303] The Defence arguments reflect Second Lieutenant Bizimana and Corporal Aloys Mazimpaka were convicted in Rwanda for the killing of Gicanda, that numerous sources in this trial implicate them and that the evidence, although weak, "establishes how the murder might have occurred *and the identity of the perpetrators*". *See* Defence Closing Brief, paras. 233 (emphasis added), 238-243; *see also* T. 7 December 2011, p. 60 (Defence Closing Arguments) (" ... the evidence is fairly clear about who [murdered Queen Gicanda]. Second Lieutenant Bizimana and Corporal Aloys Mazimpaka are in jail in Rwanda today for participating in that crime.").

[1304] Defence Closing Brief, paras. 240-245.

[1305] Defence Closing Brief, paras. 233-234, 245.

[1306] Indictment, para. 23.

[1307] Witness ZY, T. 26 January 2011, p. 69.

491. Turning to other evidence of Nizeyimana's involvement, there is no direct evidence of Nizeyimana issuing orders or authorising the killing of Gicanda in advance. Nonetheless, Witness BDE heard from a cadet guarding Second Lieutenant Bizimana's home that Nizeyimana ordered Bizimana and Second Lieutenant Gakwerere to "bring Rosalie Gicanda". Upon those instructions they left and immediately killed her.[1308] Before reviewing the merits of this evidence, the Chamber shall address general credibility challenges to this witness.

492. The Defence argues that Witness BDE met "frequently" with others to discuss testifying against Nizeyimana. While Witness BDE confirmed that she met with Prosecution Witnesses Gahizi and ZT, she expressly denied discussing the merits of her evidence with them.[1309] The Defence did not raise this issue when cross-examining Witnesses Gahizi or ZT. The Defence arguments are unfounded. Nothing in Witness BDE's evidence reflects questionable overlaps with that provided by Witnesses Gahizi and ZT. Indeed, her testimony related to this particular allegation is distinct from the other witnesses.

493. Turning to Witness BDE's evidence, she heard from a cadet called Gaston Lyonso that Nizeyimana ordered Second Lieutenants Bizimana and Gakwerere to "bring Rosalie Gicanda". Upon those instructions, they left and immediately killed her.[1310] This evidence is hearsay. While it reflects that her source was guarding Bizimana's house, allowing the *possibility* that he overheard this conversation among Nizeyimana, Bizimana and Gakwerere, it is not clear that he did.[1311] Similarly, Witness BDE does not provide a date upon which her conversation with Lyonso took place, raising more questions about the directness of the information. This evidence alone is insufficient to support findings beyond reasonable doubt.

494. Notwithstanding, Prosecution Witnesses AZD and Gahizi testified to having overheard Bizimana report to Nizeyimana, while in the ESO officers' mess, that Gicanda had been killed.[1312] Moreover, Witness AJP testified that Nizeyimana informed him and unidentified others that Second Lieutenant Bizimana had killed Gicanda.[1313] The Chamber shall first address general credibility concerns as it relates to these witnesses before turning to the merits of their evidence.

495. The Chamber has elsewhere considered in detail the context in which Witness AZD testified and found him generally credible.[1314] The same analysis applies here. The Defence submits that Witness AZD lied about the discussion that took place between Nizeyimana and Bizimana. Specifically, it points to Witness AZD's prior statement to Tribunal investigators, which indicates that Witness YAA was present for the conversation. However, Witness YAA testified that he was not in Butare at the time.[1315]

496. Witness AZD did not mention Witness YAA's name during his examination-in-chief when describing the conversation in the officers' mess. Indeed, Witness YAA's presence at the mess was only elicited during cross-examination when he was requested to read the

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[1308] Witness BDE, T. 28 January 2011, p. 29.
[1309] Witness BDE, T. 31 January 2011, pp. 30-32.
[1310] Witness BDE, T. 28 January 2011, pp. 29-30.
[1311] Witness BDE, T. 28 January 2011, p. 29.
[1312] Witness AZD, T. 31 January 2011, pp. 78-79; T. 1 February 2011, p. 48; Witness Gahizi, T. 7 February 2011, p. 30.
[1313] Witness AJP, T. 15 February 2011, p. 26.
[1314] *See* II.4.1.
[1315] Defence Closing Brief, para. 108; Witness YAA, T. 1 February 2011, pp. 62-63.

excerpt of his prior statement relating to Gicanda's killing. Witness AZD was asked generally to confirm if the contents of the statement were accurate, which he did.[1316] He was not asked specifically about Witness YAA's presence during that conversation.

497. Witness YAA testified that he was absent from Butare from 12 or 13 April until mid May 1994.[1317] Consequently, he would not have been present during a conversation that took place between 20 and 25 April in the ESO officers' mess, as described by Witness AZD. However, the Chamber does not consider Witness YAA's presence during this conversation material to Witness AZD's testimony.

498. Indeed, the excerpt of Witness AZD's statement to Tribunal investigators is otherwise consistent with the fundamental and material aspects of his testimony. Specifically, it recounts how Second Lieutenants Bizimana and Gakwerere killed the queen in the last part of April 1994. It reflects that Witness AZD was in the officers' mess when Bizimana and Gakwerere reported to Nizeyimana that they had carried out his instructions in relation to this killing.[1318] The inconsistency regarding the presence of Witness YAA does not raise doubt with respect to Witness AZD's otherwise compelling evidence.

499. Turning to Witness Gahizi, the Chamber considers that he was a difficult witness. Much of his testimony was dilatory, and he was non-responsive to questions asked. Moreover, Witness Gahizi testified that Nizeyimana had detained him in 1994.[1319] Having fully considered his demeanour and the witness's admitted fractious past with Nizeyimana, the Chamber is mindful of the possibly partial nature of his evidence.[1320]

500. Indeed, aspects of his evidence appear exaggerated to generally inculpate Nizeyimana and inconsistent with his prior evidence in the *Muvunyi* case. Specifically, Witness Gahizi

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[1316] Witness AZD, T. 1 February 2011, p. 49.
[1317] *See, e.g.*, Witness YAA, T. 1 February 2011, pp. 62-63, 66-67.
[1318] *See* Witness AZD, T. 1 February 2011, p. 49 (reading excerpts of Witness AZD's statement to Tribunal investigators).
[1319] The Defence argues that Gahizi's evidence before the Chamber that he was detained by Nizeyimana is both a lie, as Nizeyimana was no longer in Butare town, and inconsistent with a prior statement Witness Gahizi gave to Tribunal investigators in 2002. Defence Closing Brief, para. 89. Notably, the Chamber has elsewhere determined that Nizeyimana has not raised the reasonable possibility that he only once returned to Butare town after being assigned to command the Mata training facility. *See* II.13.3. Furthermore, Witness Gahizi testified that Nizeyimana ordered him jailed, although his detention was brief due to the chaos of people evacuating camp. T. 7 February 2011, pp. 41, 44. Upon cross-examination, the witness confirmed that he was detained in May and remained in detention until sometime in June, which is also reflected in his statement to Tribunal investigators. T. 8 February 2011, pp. 19-21. The Chamber finds no reasonable inconsistency.
[1320] As other evidence of Gahizi's bias, the Defence refers to Witness Gahizi as a "key organizer" for the Prosecution, arguing that he tried to recruit Witness KEN06 to testify on behalf of the Prosecution and assisted Witness BDE in preparing for her testimony. Defence Closing Brief, para. 85. Witness Gahizi was not challenged by the Defence with these propositions during his testimony. Witness BDE expressly denied that she and Witness Gahizi had discussed the contents of their testimonies. *See* Witness BDE, T. 31 January 2011, p. 31. Witness KEN06 testified that she and Gahizi met after Nizeyimana's arrest in 2009. He asked the witness if she could give evidence. The witness indicated that she "was going to speak the truth ... about Nizeyimana" and that she and Gahizi "were not able to come to an agreement on that". Nonetheless, the witness testified that she did not know that Gahizi was a Prosecution witness and refused to testify about what Gahizi asked her to provide evidence on. Witness KEN06, T. 20 September 2011, pp. 44-46. The Chamber does not find that Witness KEN06's evidence amounts to a *prima facie* showing that Gahizi attempted to influence her to falsely incriminate Nizeyimana. Their respective testimonies reflect that they held vastly different opinions about Nizeyimana's involvement in the genocide. That the two did not agree on Nizeyimana's role (or lack thereof) is understandable and indeed a reasonable outcome.

testified before this Chamber that the Accused had "supernatural powers" that inspired fear in Butare inhabitants.[1321] The sitness noted that Nizeyimana had a "monopoly of power" even during meetings that Lieutenant Colonel Tharcisse Muvunyi attended.[1322] According to Witness Gahizi, Nizeyimana was more feared than Muvunyi, and Muvunyi could not oppose his decisions.[1323]

501. By contrast, Witness Gahizi testified in the *Muvunyi* trial that Nizeyimana "could not have done anything without the support of Colonel Muvunyi".[1324] In an attempt to explain the discrepancy, Witness Gahizi essentially rejected his prior testimony and insisted that Nizeyimana's decisions could not be opposed by anyone and that he was "the most powerful". He added that this did not mean that Muvunyi was unaware of Nizeyimana's actions and that they were acting together during the killings.[1325] He gave examples of Nizeyimana travelling without Muvunyi's authorisation as evidence of Nizeyimana's unrestricted power.[1326] The Chamber does not find Witness Gahizi's explanations entirely convincing.

502. Moreover, Witness Gahizi testified that the situation at the ESO was not such that its administrative officials were "overwhelmed".[1327] By contrast, in the *Muvunyi* trial, he gave evidence that the situation in April 1994 was not "normal" and that it "was beyond the control of those in charge".[1328] In an attempt to explain the apparent discrepancy, Witness Gahizi stated that Nizeyimana became "abnormal" or had a "disorder in his mind" and that he had decided to kill.[1329] The remainder of his explanation appeared unresponsive to highlighted inconsistency.[1330] Again, Witness Gahizi's explanations were not compelling.

503. Accordingly, the Chamber has doubts about Witness Gahizi's evidence attributing absolute power to Nizeyimana, exceeding that of Muvunyi. It has reservations that his evidence demonstrates that Nizeyimana had complete control over ESO soldiers. The Chamber also has concerns about the witness's bias against the Accused. It shall assess his evidence with appropriate caution.

504. Turning to Witness AJP, the Chamber has elsewhere discussed in detail the context in which the witness testified and determined that it would view his evidence with the appropriate caution.[1331] The same concerns apply in this context. Witness AJP's prior conviction as an accomplice in the genocide warrants caution and his apparent status as a fugitive raises further concerns. Specifically, the Chamber considers that his testimony before the Tribunal may be motivated by a desire to positively impact his ongoing criminal proceedings and increase his ability to reintegrate into Rwanda. Finally, the deterioration of

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[1321] Witness Gahizi, T. 8 February 2011, p. 23.
[1322] Witness Gahizi, T. 7 February 2011, p. 26.
[1323] Witness Gahizi, T. 8 February 2011, p. 23.
[1324] Witness Gahizi, T. 8 February 2011, pp. 23-24.
[1325] Witness Gahizi, T. 8 February 2011, pp. 24-25.
[1326] Witness Gahizi, T. 8 February 2011, p. 25.
[1327] Witness Gahizi, T. 8 February 2011, p. 27.
[1328] Witness Gahizi, T. 8 February 2011, p. 28.
[1329] Witness Gahizi, T. 8 February 2011, pp. 28-29.
[1330] Witness Gahizi, T. 8 February 2011, p. 29.
[1331] *See* II.6.1.

his relationship with Nizeyimana while the two were in exile further suggests that his evidence implicating the Accused should be treated with caution.[1332]

505. Having assessed the general credibility concerns pertaining to Witnesses AZD, Gahizi and AJP, the Chamber now turns to the merits of their respective evidence. The Chamber finds, and the Defence does not dispute, that Witnesses AZD and Gahizi, as ESO officers, would have been in a position to identify both Nizeyimana and Second Lieutenant Bizimana. Likewise, there is no dispute that Witness AJP could identify Nizeyimana in April 1994. Parts of Witness AJP's description of his relationship with Nizeyimana, including a continuous presence at Nizeyimana's home into April 1994, are corroborated by Defence evidence.[1333]

506. Witnesses AZD and Gahizi provided strikingly consistent accounts. Witness AZD testified that he was in the officers' mess between 7.00 and 8.00 p.m. when he overheard Second Lieutenants Bizimana and Gakwerere report to Nizeyimana that they had just killed Gicanda.[1334] Witness AZD said they had spoken in the "national language" and that it meant that they had "[k]illed in a special manner, somehow killed by torture".[1335]

507. Witness Gahizi generally testified that persons who committed killings returned "in the evenings".[1336] As one example, he explained how he overheard a conversation between Second Lieutenant Bizimana and Nizeyimana, which also took place in the officers' mess. Upon questioning by Nizeyimana, Bizimana responded: "Mission accomplished. We killed Rose Gicanda".[1337]

508. Similarly, both witnesses testified that the mess was small, allowing the witnesses and others to hear what was being said.[1338] Having considered the differences concerning what each witness heard, the Chamber finds them immaterial, particularly in light of the considerable passage of time since the event. The core elements of their evidence are fundamentally consistent – namely that Nizeyimana was being informed that Gicanda had been killed. Notable differences do emerge, however. Specifically, Witness AZD described Second Lieutenant Gakwerere reporting the event alongside Bizimana,[1339] while Witness

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[1332] *See* II.6.1.
[1333] *See* II.6.1.
[1334] Witness AZD, T. 31 January 2011, p. 78; T. 1 February 2011, pp. 48-49.
[1335] Witness AZD, T. 31 January 2011, p. 78.
[1336] Witness Gahizi, T. 7 February 2011, p. 30.
[1337] Witness Gahizi, T. 7 February 2011, p. 30. Upon repeating this Bizimana's statement, Witness Gahizi, recalled him saying: "Mission accomplished, we have killed Gicanda" without referring to her first name. T. 7 February 2011, p. 30.
[1338] Witness AZD, T. 31 January 2011, p. 79 ("A. ... So you can imagine what the dimensions of an officers' mess is. It was not a big building, so I was able to clearly hear what they were saying."); Witness Gahizi, T. 7 February 2011, pp. 30 ("A. We had a small or narrow officers' mess, so everyone could hear what was being said. The distance was similar to that between the end of this courtroom and the Judges' bench. I can't give you the distance in metres. You see, in a bar when you are at a counter, chairs and stools are close to one another.), 31 ("A. ... For example, the distance was similar to the distance between me and the lady in front of me. The officers' mess was very narrow.").
[1339] Witness AZD, T. 31 January 2011, p. 78 ("Q. Do you have any knowledge about what happened to her in 1994? A. I do. She was killed during the 1994 genocide by people whom -- who I was able to recognise. Second Lieutenant Bizimana -- *sous-lieutenant* Bizimana who had been nicknamed Rwatsi, and *sous-lieutenant* Gakwerere."); T. 1 February 2011, p. 48 ("Q. Thank you, sir. Yesterday, you described the -- at the officers' mess when you overheard Bizimana telling Nizeyimana that he'd killed Gicanda; do you remember that, telling

Gahizi made no reference to Gakwerere's presence. Witness Gahizi was not asked if anyone accompanied Bizimana. He did not testify that Gakwerere was not present. Indeed, his evidence reflects that Bizimana was among others when Bizimana arrived in the officers' mess.[1340] The Chamber considers Witness Gahizi's failure to refer to Second Lieutenant Gakwerere's presence does not raise doubts about his or Witness AZD's otherwise consistent and credible testimonies.

509. Likewise, Witness Gahizi discussed Nizeyimana demonstrating his satisfaction with the report of Gicanda's death by buying beers for persons in the officers' mess.[1341] Witness AZD was not questioned about Nizeyimana's reaction and did not volunteer evidence corroborating this aspect of Witness Gahizi's account. The Chamber also considers this difference immaterial.

510. Offering further circumstantial support of these accounts is Witness AJP's testimony that Nizeyimana informed him and others that Bizimana had killed Gicanda. The witness's evidence was remarkably brief. He did not provide a date upon which this discussion took place, specify a location or explain who was with him when Nizeyimana told "us" about the killing. Nonetheless, Witness AJP's close relationship with Nizeyimana is not disputed and his continuous presence at Nizeyimana's home around the time Gicanda was killed is corroborated by Defence evidence.[1342] When viewed in light of the testimonies of Witnesses BDE, AZD and Gahizi, the Chamber considers Witness AJP's evidence compelling.

511. Indeed, that the Second Lieutenant would report this event to Nizeyimana appears highly plausible given Nizeyimana's tenure in the S2/S3 office, where he was charged with intelligence and operations, and when viewed in the context of other missions carried out by Bizimana. Of particular significance, Bizimana and ESO cadets implicated in Gicanda's killing by Defence Witness ZML07 – Emanuel Manilakiza, Ignace Bwenge and Mukomeza – were also among those that led members of the Ruhutinyanya family to their deaths.[1343] Moreover, the Chamber has determined that Bizimana's actions in relation to the Ruhutinyanya family – days before Gicanda's killing – were done in part on Nizeyimana's orders.[1344] There is general evidence that Nizeyimana and Bizimana were close,[1345] further bolstering the first-hand accounts that Bizimana reported this event to Nizeyimana and that the two were acting in coordination at this time.

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us that yesterday? A. I remember that. It was Second Lieutenant Bizimana, and Second Lieutenant Gakwerere who were saying this to Captain Nizeyimana. That I do remember.").

[1340] Witness Gahizi, T. 7 February 2011, p. 30 ("Q. Mr. Gahizi, how do you know that Second Lieutenant Bizimana was involved in the death of Rosalie Gicanda? A. You see, it's difficult for me to be brief when answering that question. *Those people were coming back in the evenings from killings.* ... Q. And who did Second Lieutenant Bizimana say "mission accomplished, we have killed Gicanda" to? Who was he speaking to when he said that? A. Okay. Let me be clear. There were several people in the officers' mess. *Each evening when people returned from carrying out killings they would give an account of what had happened on that specific day.* ...") (emphasis added).

[1341] Witness Gahizi, T. 7 February 2011, p. 31.

[1342] *See* II.6.1.

[1343] Witness ZML07, T. 18 May 2011, pp. 32-33; Exhibit D37 (Names of Soldiers). Consistent with Witness ZML07's testimony, Witness ZY also identified members of the third batch as being involved in the killing of Gicanda. Witness ZY, T. 26 January 2011, p. 69.

[1344] *See* II.4.1.

[1345] *See* Witness AZD, T. 1 February 2011, pp. 7-8; Witness AJP, T. 15 February 2011, p. 6; Witness BDE, T. 28 January 2011, pp. 28-29; Witness ZAW, T. 26 January 2011, p. 10.

512. Indeed, other evidence tends to reflect that Gicanda's killing was not conducted by a rogue element within the ESO, but a coordinated effort with persons who were not necessarily present. Specifically, Prosecution Witness ZAP heard the soldiers communicating via radio saying "Jaguar, Jaguar".[1346] While it is not clear that Nizeyimana is the "Jaguar", the line of communication via radio suggests that this was a coordinated endeavour, during which the perpetrators kept others, who were not present, abreast of the situation at Gicanda's house.[1347] Witness ZAP further noted that they made a stop at the ESO before continuing to the location where they were finally shot.[1348]

513. Finally, the Chamber considers that the evidence of Defence Witness BUV02 offers further circumstantial support for Bizimana's participation in Gicanda's killing, which was sanctioned by the ESO's command. Witness BUV02 also heard Bizimana boast about having killed Gicanda between 2.00 and 3.00 p.m. while at a bar. According to the witness, the murder had happened that same day just hours before Bizimana came to the bar to celebrate.[1349] In the Chamber's view, the fact that Bizimana was sharing this news openly lends further credence to other evidence that the mission was condoned by Bizimana's hierarchical superiors, including Nizeyimana.[1350]

514. The Chamber considers that these circumstances compellingly corroborate the first-hand accounts of Witnesses AZD and Gahizi that Bizimana reported the killing to Nizeyimana, Witness BDE's second-hand evidence that Nizeyimana ordered Bizimana and Gakwerere to take action with respect to Gicanda, and Witness AJP's evidence that Nizeyimana informed him that Bizimana had killed Gicanda.

515. Indeed, Defence evidence that this killing was unsanctioned is far from dispositive, particularly as it relates to Nizeyimana. For example, Defence Witness Habyarimana heard from Muvunyi on the night of 21 April 1994 that an investigation into the killing would be conducted.[1351] Likewise, Defence Witness OUV03 testified that he heard that Bizimana was ultimately arrested, but was later released before he could be handed over to the proper authorities.[1352] There is no evidence that Nizeyimana reported this incident, despite his legal obligation to do so.[1353]

516. The Chamber has no general credibility reservations as it relates to Witness Habyarimana. Notwithstanding, he was at the ESO Camp that evening for the purposes of relocating his family in order to protect them.[1354] He testified to having expressed considerable grief as it related to Gicanda's death, because she was someone from his native

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[1346] Exhibit P40D(E) (Witness ZAP's *Pro Justitia* Statement), p. 3. It is not apparent from Witness ZAP's evidence who the soldier was communicating with. Witness OUV03 had not heard of the call sign "Jaguar" or whether this was Nizeyimana's code name. Witness OUV03, T. 31 May 2011, pp. 56-57. Witness OUV03 admitted that he did not have a radio and could therefore not verify what code signals or names were used. T. 31 May 2011, p. 57.
[1347] Exhibit P40D(E) (Witness ZAP's *Pro Justitia* Statement), p. 3.
[1348] Exhibit P40D(E) (Witness ZAP's *Pro Justitia* Statement), p. 3.
[1349] Witness BUV02, T. 10 May 2011, pp. 74-76.
[1350] The Chamber notes that Witness BUV02's evidence of Bizimana being in a bar that afternoon is not inconsistent with the testimonies of Witnesses AZD and Gahizi that they saw Bizimana report the event later in the evening or, as Witness AZD specified, between 7.00 and 8.00 p.m. Witness AZD, T. 31 January 2011, p. 79.
[1351] Witness Habyarimana, T. 25 May 2011, p. 44.
[1352] Witness OUV03, T. 31 May 2011, p. 37.
[1353] *See* III.2.2.2.
[1354] Witness Habyarimana, T. 25 May 2011, p. 43.

area who grew up with his mother and had been almost a mother to him.[1355] Moreover, Witness Habyarimana had a substantial history and high rank within the Rwandan army at that time.[1356] Considering these factors, the Chamber considers that Muvunyi would have had felt compelled to assure Witness Habyarimana that the situation at the ESO and in Butare town was under control and that the shocking killing of the former Queen of Rwanda would be investigated.

517. Indeed, Defence Witness OUV03's evidence that Bizimana was arrested fails to establish his basis for knowledge that it occurred.[1357] It is inconsistent with Defence Witness RWV11's evidence that Bizimana was not punished,[1358] as well as with the Prosecution evidence discussed above. The Chamber considers that this aspect of Witness OUV03's evidence lacks reliability and credibility.

518. Notwithstanding, the Defence argues that Gicanda was killed when Nizeyimana was away at the Mata tea factory conducting a reconnaissance mission. Consequently, the Chamber shall assess the evidence as it relates to the timing of the event and determine if this raises doubt with respect to the Prosecution evidence considered above.

(ii) Timing of Rosalie Gicanda's Killing

519. The Defence argues that the evidence establishes that Gicanda was killed on 21 April 1994, when Nizeyimana was away from Butare town. It relies on the testimonies of Defence Witnesses OUV03, Habyarimana, RWV11, Mushimiyimana and Nyiranzabonimana for this proposition.

520. Defence Witnesses OUV03 and Habyarimana learned of the murder on the evening of 21 April 1994, whereas Defence Witnesses RWV11 and Mushimiyimana heard about the incident on 22 April. Witness OUV03 noted that Bizimana had already killed Gicanda by the time he heard the information and stated that, at times, he would receive information "belatedly" because he never left his post.[1359] It is therefore not evident, based on his testimony, when Gicanda was killed and if this in fact occurred on 21 April, when he received the news. Witness Habyarimana saw Colonel Muvunyi around 10.00 p.m. on 21 April and heard from him that Gicanda was killed. However, his evidence fails to indicate that the murder necessarily occurred on that date.[1360]

[1355] Witness Habyarimana, T. 25 May 2011, p. 44. Further circumstantial evidence that Witness Habyarimana was opposed to the genocide might be reflected by the fact that he was fully re-integrated into the RPF government's army, rising to the rank of Brigadier General before he left Rwanda in 2003. T. 25 May 2011, pp. 3, 5.

[1356] Witness Habyarimana, T. 25 May 2011, pp. 3-6. Witness Habyarimana enrolled in the ESM in 1974 and was ultimately appointed Minister of Defence in 2000.

[1357] Witness OUV03, T. 31 May 2011, p. 47.

[1358] Witness RWV11, T. 2 June 2011, pp. 34-35.

[1359] Witness OUV03, T. 31 May 2011, p. 44.

[1360] Witness Habyarimana, T. 25 May 2011, pp. 43-44 ("Q. Did you have any other discussions with Lieutenant Colonel Muvunyi? A. Mr. President, there was nothing particular about the discussions. As usual I stopped at the officers' mess. That was after 10 p.m., after my family had settled down. And Lieutenant Colonel Muvunyi was there. I was surprised to see he was talking about the death of Queen Gicanda.").

521. Similarly, Witness RWV11 heard upon his return from Mata on 22 April 1994 that the former Queen had been killed.[1361] He did not specify when the killing occurred, other than indicating that it happened while he was not in Butare.[1362] Presumably, his evidence suggests that it occurred on 21 or 22 April, when he testified that he was on a reconnaissance mission to Mata.[1363] Notably, the Chamber has expressed reservations about this evidence.

522. Witness Mushimiyimana heard about Gicanda's death on the morning of 22 April 1994, but he did not know the date of her murder.[1364] Witness Nyiranzabonimana heard about Gicanda's murder and testified that it occurred "during the same period Matabaro and other people were murdered".[1365] This statement is ambiguous as to timing. Specifically, in addition to testifying about the killing of the Matabaro family on the evening of 21 April,[1366] she also provided evidence that Maniraho and Ngarambe were killed the night of 20 to 21 April.[1367] Consequently, her evidence is not necessarily inconsistent with evidence placing Gicanda's killing around 20 April 1994. Ultimately, her testimony reflects that she was unsure about the date.[1368]

523. Other Prosecution and Defence evidence places the murder earlier. Specifically, Prosecution Witness ZAP, who was abducted and shot along with Gicanda, stated that the incident took place around noon on 20 April 1994.[1369] Similarly, Defence Witness BUV02 recalled speaking to Bizimana about the incident just hours after the queen was killed.[1370] He could not recall the exact date, and, indeed, could not confirm that it occurred on 20 April. However, he agreed that it occurred "shortly after the speech of President Sindikubwabo".[1371] Prosecution Witness ZY testified that she heard about the killings of Gicanda when killings had not yet commenced in Butare.[1372] She believed it happened "prior to the president's speech".[1373]

524. Consistent with this evidence, Prosecution Witness AZD testified that he heard Second Lieutenants Bizimana and Gakwerere inform Nizeyimana that they had killed Gicanda between 20 and 25 April 1994.[1374] The Chamber observes that Witness AZD frequently struggled to recall the dates of events, including this one, noting the considerable passage of time between them and his testimony.[1375] The Chamber does not consider that this raises doubt with respect to his first-hand account.

[1361] Witness RWV11, T. 2 June 2011, p. 34.
[1362] Witness RWV11, T. 2 June 2011, p. 34.
[1363] Witness RWV11, T. 2 June 2011, pp. 33-34. *See also* II.13.2.
[1364] Witness Mushimiyimana, T. 13 June 2011, p. 55.
[1365] Witness Nyiranzabonimana, T. 10 June 2011, p. 25.
[1366] *See* II.6.6.
[1367] *See* II.6.4.
[1368] Witness Nyiranzabonimana, T. 10 June 2011, pp. 25, 28.
[1369] Exhibit P40D(E) (Witness ZAP's *Pro Justitia* Statement), p. 2. The Chamber recalls that it admitted Witness ZAP's statement pursuant to Rule 92*bis* on the basis that the deceased's statement is cumulative in nature and corroborates evidence given by other witnesses, mitigating the prejudice caused to the Defence by its inability to cross-examine the witness. *See* Decision on Prosecution Motion to Admit into Evidence the Statements of Six Deceased Witnesses ("Rule 92*bis* Decision"), 20 October 2010, paras. 13-15.
[1370] Witness BUV02, T. 10 May 2011, pp. 74-75.
[1371] Witness BUV02, T. 10 May 2011, p. 74.
[1372] Witness ZY, T. 26 January 2011, p. 69.
[1373] Witness ZY, T. 26 January 2011, pp. 69-70.
[1374] Witness AZD, T. 31 January 2011, p. 79.
[1375] Witness AZD, T. 31 January 2011, pp. 77, 79; T. 1 February 2011, pp. 17, 45-46, 48.

525. Witness Gahizi did not testify about the date he heard Bizimana report Gicanda's killing to Nizeyimana. Nonetheless, he noted that his prior statement to Tribunal investigators incorrectly reflected that this occurred in May rather than April 1994.[1376] The Defence cross-examined him on the basis that he had not yet returned to Butare by 20 April.

526. Specifically, Witness Gahizi testified that he returned to the ESO from Kigali around "the second week after the President's plane crashed".[1377] On cross-examination, Witness Gahizi was confronted with a prior statement that states that he was assigned to guard the MECATR military school in Kimihura on 6 April 1994 and remained at this position "for about two weeks", whereas during his testimony the witness denied having spent the full two weeks at this position.[1378]

527. The witness repeated that while he could not provide the exact date, he was certain that he left for Butare during the second week of April 1994 and, in any event, arrived in Butare before 20 April.[1379] Witness ZT, who was also questioned about when she saw Witness Gahizi in Butare. Although initially reluctant to answer questions, she ultimately could only confirm that she saw him in Butare "during the war".[1380] The Chamber accepts that Witness Gahizi may not have been in a position to provide specific dates, given the passage of time. The Chamber is satisfied that his prior statement does not raise doubts that he returned to the ESO sometime before 20 April and would have been in a position to observe the conversation between Bizimana and Nizeyimana.

528. Finally, the Chamber considers the evidence of Witnesses ZAP, ZY and BUV02, which tends to reflect that the killing of Gicanda took place during the initial phases of the genocide in Butare town, on or around 20 April 1994, compelling when viewed in context. Indeed, Defence Witness BUV02's evidence suggests that Queen Gicanda was killed before the violence in Butare erupted in order to set the tone for the killings that were to commence shortly after Sindikubwabo's speech. This is also reflected in Witness ZY's evidence, which indicates Gicanda's murder was one of the first prominent killings in Butare town. It is further supported by Witness AZD's evidence that he could have heard soldiers report the killing to Nizeyimana as early as 20 April (or as late as 25 April).

529. The Chamber is satisfied that the record demonstrates that Rosalie Gicanda, an "old lady" who clearly posed no military threat, was intended to set the tone for future killings of Tutsis in Butare.[1381] Given Gicanda's prominence and when viewed in the context of targeted killings of Tutsis that followed, it is clear that her murder intended to make a striking example that Tutsis, as well as Hutus perceived as sympathetic to the plight of the Tutsis, were the enemy. In light of the above, even if the Chamber were to accept as reasonably possibly true Nizeyimana's alibi for 21 or 22 April 1994, it would not raise doubt about his involvement in this crime and that Bizimana reported it to him.

[1376] Witness Gahizi, T. 8 February 2011, p. 4.

[1377] Witness Gahizi, T. 7 February 2011, p. 24. Witness Gahizi recalled having seen Nizeyimana the day after here returned to the ESO. T. 7 February 2011, p. 24. On cross-examination, the witness reiterated that he left at the beginning of the second week after the plane crash. T. 7 February 2011, p. 55.

[1378] Witness Gahizi, T. 7 February 2011, pp. 55, 59-62. The prior statement to Tribunal investigators was not admitted into evidence.

[1379] Witness Gahizi, T. 7 February 2011, pp. 55, 62-63; T. 8 February 2011, p. 10.

[1380] Witness ZT, T. 10 February 2011, p. 85.

[1381] Witness AZD, T. 31 January 2011, p. 78, T. 1 February 2011, p. 48; Witness Gahizi, T. 7 February 2011, p. 30.

(iii) Conclusion

530. Based on the foregoing, the Chamber finds that Second Lieutenant Bizimana led a group of ESO soldiers in the killing of Rosalie Gicanda and others taken from her household on or around 20 April 1994.[1382] The evidence further reflects that Bizimana reported this killing to Nizeyimana. Under the circumstances, the Chamber has no doubt that Nizeyimana authorised this particular killing, which was intended to make a striking example that Tutsis as well as Hutus perceived as sympathetic to the plight of the Tutsis were the enemy. The Chamber considers that Nizeyimana continued to offer moral support and encouragement to the attackers, and Second Lieutenant Bizimana in particular, upon learning of the killing. The Chamber shall discuss the implications of these conclusions in its Legal Findings (III).

[1382] The Chamber considers any variation between the date provided in the Indictment ("on or about 21 April 1994") and the Chamber's finding immaterial. *See, e.g.*, *Rutaganda* Appeal Judgement, para. 302; *Kunarac et al.* Appeal Judgement, para. 217. The pleading reflects an approximation and pre-trial filings give notice that this formulation could include 20 April 1994. *See* Pre-Trial Brief, Annex para. 4 (p. 40). Moreover, given the prominence of one the victims of the attack – Rosalie Gicanda, the former Queen of Rwanda – as well as the Indictment's specificity regarding the nature of the attack and the identity of the attackers, the information provided to Nizeyimana was sufficient to allow him to prepare his Defence as it related to this event, occurring "on" or "about" 21 April. *See Muvunyi II* Appeal Judgement, para. 29.

6.3 Rape at Rosalie Gicanda's Home

Introduction

531. The Indictment alleges that upon order or instigation of Nizeyimana, approximately one dozen FAR soldiers were present at the residence of Gicanda's house in April 1994, during the rape of a female Tutsi of about 18 to 20 years old. The soldiers were from the ESO and Ngoma Camps and included Sergeant Ngirinshuti. The Prosecution relies on Witness BUR.[1383] The Defence challenges the credibility of Witness BUR.[1384]

Evidence

Prosecution Witness BUR

532. In April 1994, Witness BUR, a Hutu, testified that he was a sergeant at the ESO in Butare.[1385] Following an assembly on 7 April, Nizeyimana instructed Witness BUR to go to Rosalie Gicanda's house.[1386] Gicanda's house was located downhill from the Ngoma commune building.[1387] Around mid-April, Nizeyimana assigned the witness to go to Gicanda's house again, because a lot of refugees had arrived in Butare town and he was supposed to see whether there were *Inkotayi* among them at her residence.[1388] Witness BUR went to her house but Gicanda was not there.[1389] Instead, when he reached the door in search of *Inkotanyi*, he saw soldiers from the Ngoma Camp and heard a girl inside the house shout.[1390] The section commander, Sergeant Ngirinshuti, was standing at the door.[1391]

533. When Witness BUR went past him to see who was shouting, he saw a soldier on top of a young girl, who was about 18 to 20 years old, lying on a mattress, while other soldiers were watching.[1392] The girl looked like she was a Tutsi.[1393] Witness BUR went outside and when he asked Ngirinshuti what was happening, the latter responded that Witness BUR ought to know that part of the instructions they received was to rape girls.[1394] Witness BUR replied that he was aware of the instructions and moved on to continue his search for *Inkotanyi*.[1395] There was nothing Witness BUR could do for this girl who was being raped, because in assisting her, he would be disobeying orders that were already given.[1396] He did not find any *Inkotanyi* in Gicanda's house that day.[1397]

[1383] Indictment, para. 31(i); Prosecution Closing Brief, para. 201.
[1384] Defence Closing Brief, paras. 153-168, 441; T. 7 December 2011, pp. 38-39, 41, 55, 60 (Defence Closing Arguments).
[1385] Witness BUR, T. 2 February 2011, p. 74; Exhibit P18 (Witness BUR's Personal Information Sheet).
[1386] Witness BUR, T. 3 February 2011, pp. 54, 59.
[1387] Witness BUR, T. 3 February 2011, p. 61.
[1388] Witness BUR, T. 3 February 2011, pp. 56-57, 60, 62.
[1389] Witness BUR, T. 3 February 2011, p. 60.
[1390] Witness BUR, T. 3 February 2011, p. 61.
[1391] Witness BUR, T. 3 February 2011, p. 61.
[1392] Witness BUR, T. 3 February 2011, p. 61.
[1393] Witness BUR, T. 3 February 2011, p. 61.
[1394] Witness BUR, T. 3 February 2011, p. 61.
[1395] Witness BUR, T. 3 February 2011, p. 61.
[1396] Witness BUR, T. 3 February 2011, pp. 61-62.
[1397] Witness BUR, T. 3 February 2011, p. 62.

Deliberations

534. Prosecution Witness BUR is the sole witness to provide evidence of the rape of a young girl, aged 18 to 20 years, at Gicanda's residence, by more than a dozen soldiers from the ESO and Ngoma Camps in April 1994. At the outset, the Chamber has elsewhere considered in detail the context in which Witness BUR testified. It concluded that his evidence is unreliable.[1398]

535. The same reasoning applies in the context of this event. Specifically, the Chamber has considerable doubts that Witness BUR was in Butare during at the time of this purported rape and the events leading up to it. The Defence challenged that Witness BUR was assigned to the ESO in April 1994 or was even in Butare during that month, based on Rwandan Gacaca court records from February 2010. As summarised elsewhere, the relevant excerpt reflects that Witness BUR testified in a Gacaca proceeding and was asked if he was in Butare during the genocide. His recorded response was that he was a member of the Para Commando Battalion living in Kigali, that he went to Gitarama, left Gitarama for Gikongoro on 25 April, and left Gikongoro for Butare around 4 May. He went back to Gikongoro on 7 May.[1399]

536. The Chamber found his explanation as it related to the inconsistencies unconvincing and that his evidence lacked basic credibility.[1400] The Chamber reiterates its doubts that Witness BUR was in Butare in April 1994 or that he was assigned to the ESO. Indeed, his description of this assault at Gicanda's residence is not corroborated by any other evidence in the record, and it is unclear whether the witness is describing the abduction of Gicanda and others found in her household.[1401]

537. Given the lack of basic credibility and the uncorroborated nature of Witness BUR's evidence, the Prosecution has not proved beyond reasonable doubt that a rape of the young girl at Gicanda's residence occurred around mid-April 1994. This allegation is dismissed.

[1398] *See* II.2.
[1399] *See* II.2.
[1400] *See* II.2.
[1401] Specifically, a number of Prosecution and Defence witnesses testified about the abduction and murder of Rosalie Gicanda and others found in her household, but none mentioned the rape of a young girl at her house. Similarly, none of the witnesses testified about the presence of Ngoma soldiers generally, or Sergeant Ngirinshuti in particular. *See* II.6.2.

6.4 Killing of the Ngarambe and Maniraho Families

Introduction

538. The Indictment alleges that around 20 April 1994, soldiers and militiamen acting on the orders or instigation of Nizeyimana killed a Tutsi man known as Jérôme Ngarambe and members of his family near his home. On the same evening, soldiers, including Sub Lieutenant Ndayambaje, and militiamen killed Jean Marie Vianney Maniraho and his family on Nizeyimana's orders. Prosecution Witnesses AJP, AZM, YAP and ZBE provided relevant evidence.[1402]

539. The Defence confirms that Maniraho and Ngarambe were killed on the evening of 20 to 21 April 1994. However, Witness AJP's evidence implicating Nizeyimana lacks credibility. Defence Witnesses MOL08, Aggripine Nyiranzabonimana, Irénée Hitayezu, Vincent Ntamagezo, BEJ01 and CKN20 provided relevant evidence.[1403]

Evidence

Prosecution Witness AJP

540. Witness AJP, a Hutu, lived in Butare town in 1994.[1404] He was a former ESO cadet with close ties to Nizeyimana.[1405] The witness estimated that on 24 or 25 April, Nizeyimana ordered him and six soldiers to go to Jérôme Ngarambe's home to kill the family and loot the residence.[1406] The group was comprised of ESO soldiers from Nizeyimana's house and Ngoma camp soldiers staying with Lieutenant Hategekimana.[1407] They were divided into a group responsible for killing the Ngarambe family and another tasked with looting the household.[1408] Nizeyimana placed Witness AJP in charge of the operation.[1409]

541. Once at the Ngarambe house, they entered and found several persons inside.[1410] Soldiers responsible for killing the occupants removed them from the house and departed.[1411] Witness AJP, who was in charge of the looters, continued to search for a television set and cupboard, but only found the former.[1412]

[1402] Indictment, paras. 20-21, 39; Prosecution Closing Brief, paras. 356-399. T. 7 December 2011, p. 11 (Prosecution Closing Arguments).
[1403] Defence Closing Brief, paras. 10, 189, 192-197, 199-207, 209, 211, 213, 218-219, 537; T. 7 December 2011, pp. 39-41, 52, 63 (Defence Closing Arguments). The Chamber has elsewhere set forth the evidence of Defence Witnesses BUV02 and Valens Hahirwa as it relates to Prosecution Witness AJP's credibility. *See* II.6.1. It is incorporated by reference and is considered here as well.
[1404] Witness AJP, T. 14 February 2011, p. 81; T. 15 February 2011, pp. 3-4, 7, 34, 64, 67-69; Exhibit P28 (Witness AJP's Personal Information Sheet). *See also* II.6.1.
[1405] *See* II.6.1.
[1406] Witness AJP, T. 15 February 2011, pp. 13, 18-20, 68, 72-73.
[1407] Witness AJP, T. 15 February 2011, pp. 19-21. Witness AJP clarified that the ESO soldiers and the Ngoma camp soldiers wore different uniforms. Furthermore, the ESO soldiers were "relatively young", while the Ngoma camp soldiers were "adults". T. 15 February 2011, p. 20.
[1408] Witness AJP, T. 15 February 2011, pp. 18-21.
[1409] Witness AJP, T. 15 February 2011, pp. 21, 68-69.
[1410] Witness AJP, T. 15 February 2011, p. 21.
[1411] Witness AJP, T. 15 February 2011, pp. 13, 21.
[1412] Witness AJP, T. 15 February 2011, pp. 18-21.

542. When returning to Nizeyimana's home, Witness AJP saw that another group of soldiers had been stopped near the EFOTEC school by Second Lieutenant Alphonse Ndayambaje and soldiers accompanying him.[1413] Witness AJP spoke with Ndayambaje and told him that they had been sent by Nizeyimana.[1414] Ndayambaje let them pass, and the soldiers transporting the persons taken from the Ngarambe home went towards a nearby wooded area, while Witness AJP and his group returned to Nizeyimana's home, dropping off the looted television.[1415] Witness AJP later learned from the soldiers that they had killed the persons in the wooded area.[1416]

543. Later that evening, Nizeyimana sent Witness AJP and six or seven ESO and Ngoma camp soldiers to kill the Maniraho family.[1417] They went to the Maniraho home, about 150 metres from Nizeyimana's house, and found over six bodies strewn throughout the living room.[1418] Witness AJP and the soldiers left, but found civilians conducting night patrols, who said that soldiers in a military jeep killed those in the Maniraho household.[1419] Witness AJP believed that the civilians were referring to Second Lieutenant Alphonse Ndayambaje and the soldiers accompanying him.[1420] Nizeyimana was informed that the members of the Maniraho family had been found already killed.[1421]

Prosecution Witness AZM

544. Witness AZM, a Hutu, lived in Butare town and worked at Karubanda prison in 1994.[1422] From 21 April, Prefect Sylvain Nsabimana ordered the witness and prisoners to bury the corpses of people killed in Butare.[1423] On 21 April, he was asked to assist in the burial of bodies in the wooded area of Kabutare, situated below the psychiatric centre referred to as CAREAS, about 200 metres from the road leading through Butare town.[1424] When he arrived there around 10.30 a.m., soldiers in a Toyota Dyna with a "carrier" behind it shot at the witness and others.[1425] While fleeing towards town, they came across bodies and Witness AZM recognised one of them as Jérôme Ngarambe.[1426]

545. Later, Witness AZM and others arrived in "Rutaba", where an elderly woman asked the group to return to the wooded area to find her daughter.[1427] They did, and Witness AZM saw a young woman, who had been shot in the knee and with her skirt pulled up, alive but in

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[1413] Witness AJP, T. 15 February 2011, pp. 6, 19, 21.
[1414] Witness AJP, T. 15 February 2011, p. 19.
[1415] Witness AJP, T. 15 February 2011, pp. 19-21.
[1416] Witness AJP, T. 15 February 2011, p. 21.
[1417] Witness AJP, T. 15 February 2011, pp. 21-22.
[1418] Witness AJP, T. 15 February 2011, pp. 21-22.
[1419] Witness AJP, T. 15 February 2011, pp. 21-22.
[1420] Witness AJP, T. 15 February 2011, pp. 21-22.
[1421] Witness AJP, T. 15 February 2011, pp. 21-22.
[1422] Witness AZM, T. 20 January 2011, pp. 58-59; Exhibit P6 (Witness AZM's Personal Information Sheet). At the time of his testimony, Witness AZM was incarcerated. T. 20 January 2011, pp. 58-59, T. 24 January 2011, p. 30. He pleaded guilty to genocide related crimes in 2002. T. 24 January 2011, pp. 35-36, T. 24 January 2011, pp. 50-51. He prepared a statement for the Gacaca court in 2012. T. 24 January 2011, pp. 50-51.
[1423] Witness AZM, T. 20 January 2011, pp. 61-62.
[1424] Witness AZM, T. 20 January 2011, p. 77. Witness AZM generally testified that soldiers dragged persons out of vehicles or transported persons to this wooded area and killed them there. T. 20 January 2011, p. 77.
[1425] Witness AZM, T. 20 January 2011, pp. 77-78.
[1426] Witness AZM, T. 20 January 2011, pp. 77-78.
[1427] Witness AZM, T. 20 January 2011, p. 78.

"critical condition".[1428] They returned her to her home.[1429] The witness later learned that the old woman was Ngarambe's wife and that the younger girl was his daughter.[1430]

Prosecution Witness YAP

546. Witness YAP, a Tutsi, worked at the Butare University Hospital in April 1994.[1431] Maniraho, a Hutu and university lecturer was one of the first victims of the genocide.[1432] He lived in the Taba neighborhood, close to Nizeyimana.[1433]

Prosecution Witness ZBE's Rule 92*bis* Statement

547. Witness ZBE stated that around 7.30 p.m. on 19 or 20 April 1994, he heard that Professor Jean Marie Maniraho and his entire family had been killed.[1434] On a meeting conducted on 17 April, Maniraho had asked why soldiers were deployed in the streets.[1435]

Defence Witness MOL08

548. Witness MOL08, a Tutsi, lived in Butare town in 1994 and in the immediate proximity of the home of Jean Marie Vianney Maniraho, a Hutu married to a Tutsi.[1436] Around 8.00 p.m. on the evening of 20 to 21 April, Witness MOL08 heard gunshots.[1437] She did not see what happened, but her night watchman told her that the Maniraho family had been killed.[1438] Subsequent discussions, as well as persons in Witness MOL08's neighbourhood, including her husband, revealed that people believed that ESO soldiers shot the Maniraho family.[1439]

549. The following day, on 21 April 1994, Jérôme Ngarambe's daughter and son came to Witness MOL08's home before 7.00 a.m. and asked for assistance.[1440] The daughter and son had been shot, and the daughter explained that her entire family had been removed from the home and killed, including her father.[1441] They wanted to be taken to the hospital and arrangements were made for them to be transported there.[1442]

[1428] Witness AZM, T. 20 January 2011, p. 78. Witness AZM testified to his belief that the girl, later identified as Jérôme Ngarambe's daughter, had been raped. T. 20 January 2011, pp. 78-79. The Chamber observes that the Prosecution conceded that this particular crime was not pleaded in the Indictment and that Nizeyimana could not be convicted for the rape of Ngarambe's daughter. T. 24 January 2011, p. 43.
[1429] Witness AZM, T. 20 January 2011, p. 78.
[1430] Witness AZM, T. 20 January 2011, p. 78.
[1431] Witness YAP, T. 21 February 2011, p. 38; Exhibit P32 (Witness YAP's Personal Information Sheet).
[1432] Witness YAP, T. 21 February 2011, p. 44.
[1433] Witness YAP, T. 21 February 2011, p. 44. Witness YAP also testified that during a security meeting at Huye stadium in 1993, over which Ngoma commune *Bourgmestre* Joseph Kanyabashi presided, Maniraho had asked why only persons from the north were being protected. T. 21 February 2011, pp. 43-44.
[1434] Exhibit P40C (Witness ZBE's *Pro Justitia* Statement), p. 4.
[1435] Exhibit P40C (Witness ZBE's *Pro Justitia* Statement), p. 4.
[1436] Witness MOL08, T. 10 May 2011, pp. 5, 8, 13, 20-21; Exhibit D24 (Witness MOL08's Personal Information Sheet).
[1437] Witness MOL08, T. 10 May 2011, pp. 9-10, 18.
[1438] Witness MOL08, T. 10 May 2011, pp. 9, 17-18.
[1439] Witness MOL08, T. 10 May 2011, pp. 20-21.
[1440] Witness MOL08, T. 10 May 2011, pp. 9, 18.
[1441] Witness MOL08, T. 10 May 2011, pp. 9, 18.
[1442] Witness MOL08, T. 10 May 2011, pp. 9, 18.

Defence Witness Aggripine Nyiranzabonimana

550. Witness Nyiranzabonimana, a Hutu, lived in Butare town in April 1994 approximately 100 metres from Nizeyimana's home.[1443] On the evening of 20 to 21 April, the witness heard gunshots.[1444] The following day, she learned that Maniraho, a university lecturer who lived nearby, was killed as was Jérôme Ngarambe.[1445] She could not recall who informed her of Maniraho's death, but persons had seen his corpse and it was common knowledge.[1446]

Defence Witness Irénée Hitayezu

551. Witness Hitayezu, a Hutu, was an ESO cadet and returned from vacation to the ESO Camp on 20 April 1994.[1447] Upon arrival, the witness's superior assigned him to reinforce the guards at Nizeyimana's residence.[1448] He held this post from 20 to 23 April, beginning at 6.00 p.m. each evening and continuing through the night.[1449] Nizeyimana's family was present during that time.[1450] However, Nizeyimana only stayed at his home on the night of 23 to 24 April.[1451]

Defence Witness Vincent Ntamagezo

552. Witness Ntamagezo, a Hutu, was a private cadet in the ESO's third batch in April 1994.[1452] On 21 April, Chief Warrant Officer Ntamuhanga assigned the witness to carry out patrols with the Military Police platoon in Butare to provide security from the unrest and the looting.[1453] Around 7.30 p.m. that evening, the witness heard gunshots in the Buye neighbourhood.[1454] His patrol arrived and found civilians carrying traditional weapons and some with firearms.[1455] The looters fired on the soldiers, prompting the soldiers to return fire, which resulted in the killing of two of the assailants.[1456] Ntamuhanga ordered the soldiers to leave the looters without making any arrests.[1457]

553. Witness Ntamagezo's patrol carried on, travelling past Marcel Gatzinzi's home.[1458] About 80 metres from where they had their previous confrontation, Witness Ntamagezo saw

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[1443] Witness Nyiranzabonimana, T. 9 June 2011, p. 71; T. 10 June 2011, pp. 8-9, 13-14; Exhibit D62 (Witness Nyiranzabonimana's Personal Information Sheet); Exhibit D63 (Sketch). Witness Nyiranzabonimana explained that the homes of Sub Prefect Zéphanie and Doctor Isidore Barahira were situated between her home and Nizeyimana's. T. 9 June 2011, p. 71; T. 10 June 2011, pp. 8-9, 14-15.
[1444] Witness Nyiranzabonimana, T. 10 June 2011, pp. 2-3, 23, 30.
[1445] Witness Nyiranzabonimana, T. 10 June 2011, pp. 3, 15-17, 19, 23; Exhibit D63 (Sketch).
[1446] Witness Nyiranzabonimana, T. 10 June 2011, p. 3.
[1447] Witness Hitayezu, T. 9 June 2011, pp. 51-52, 55, 65-66; Exhibit D61 (Witness Hitayezu's Personal Information Sheet).
[1448] Witness Hitayezu, T. 9 June 2011, p. 52.
[1449] Witness Hitayezu, T. 9 June 2011, pp. 52, 61-64.
[1450] Witness Hitayezu, T. 9 June 2011, pp. 53-54, 62-64.
[1451] Witness Hitayezu, T. 9 June 2011, p. 52.
[1452] Witness Ntamagezo, T. 8 June 2011, p. 55; Exhibit D59 (Witness Ntamagezo's Personal Information Sheet).
[1453] Witness Ntamagezo, T. 8 June 2011, pp. 58-59.
[1454] Witness Ntamagezo, T. 8 June 2011, pp. 59. 75-76.
[1455] Witness Ntamagezo, T. 8 June 2011, pp. 59, 75-76.
[1456] Witness Ntamagezo, T. 8 June 2011, p. 59.
[1457] Witness Ntamagezo, T. 8 June 2011, pp. 60, 76.
[1458] Witness Ntamagezo, T. 8 June 2011, p. 60.

two corpses near a gutter.[1459] Chief Warrant Officer Ntamuhanga identified one of the individuals as Maniraho, a person the witness did not know.[1460]

Defence Witness BEJ01

554. Witness BEJ01, a Hutu, lived in Butare town in 1994.[1461] He confirmed that he had heard about the killing of the Maniraho family in their home on the evening of 22 April.[1462] This was the same day the witness found the corpse of Pierre Claver Karenzi's wife, Alphonsine Mukamusoni.[1463]

Defence Witness CKN20

555. Witness CKN20, a Hutu, worked in the Ngoma commune office in April 1994.[1464] He learned from an unidentified communal police officer that Maniraho, a university lecturer, was killed on 20 April.[1465] He did not know how Maniraho was killed.[1466]

Deliberations

556. The Prosecution and Defence evidence confirms that Jérôme Ngarambe and members of his family, as well as Jean Marie Vianney Maniraho and members of his family, were killed on the same evening in April 1994. The Prosecution relies primarily on the first-hand account of Witness AJP as it relates to the murder of Ngarambe and his family, and his second-hand accounts about the killings of the Maniraho family. The Defence, while conceding that Maniraho and Ngarambe were killed, disputes Nizeyimana's involvement. The Chamber shall address the events in turn.

(i) Killing of Jérôme Ngarambe and His Family

557. Witness AJP testified that Nizeyimana placed him in charge of a mix of ESO and Ngoma camp soldiers and ordered the group to go to Jérôme Ngarambe's home to kill the family and loot the residence. According to Witness AJP, Ngarambe and his family were subsequently removed from their residence and taken to a wooded area by soldiers from his group. He later learned that they were killed.

558. At the outset, the Chamber has elsewhere considered in detail the context in which Witness AJP testified. It concluded that his evidence should be approached with the appropriate caution.[1467] The same concerns exist as it relates to these allegations.

[1459] Witness Ntamagezo, T. 8 June 2011, pp. 60, 76.
[1460] Witness Ntamagezo, T. 8 June 2011, p. 60.
[1461] Witness BEJ01, T. 9 June 2011, pp. 19-20, 27; Exhibit D60 (Witness BEJ01's Personal Information Sheet). At the time of his testimony, Witness BEJ01 was convicted for genocide related crimes. T. 9 June 2007, pp. 11, 33. *See also* II.6.1.
[1462] Witness BEJ01, T. 9 June 2011, p. 32.
[1463] Witness BEJ01, T. 9 June 2011, pp. 31, 33.
[1464] Witness CKN20, T. 15 June 2011, p. 4; Exhibit D70 (Witness CKN20's Personal Information Sheet).
[1465] Witness CKN20, T. 15 June 2011, p. 8.
[1466] Witness CKN20, T. 15 June 2011, p. 8.
[1467] *See* II.6.1.

559. Specifically, Witness AJP confessed in Rwanda to participating in the killing of the Ngarambe family.[1468] To the extent he has consistently implicated the Accused in this crime, either through his confession or while giving statements to Tribunal investigators, the possibility that such allegations were made with the aim of obtaining lenient treatment from Rwandan prison or judicial officials cannot be ignored.[1469]

560. Similarly, Witness AJP's apparent status as a fugitive also raises concerns that his testimony before the Tribunal may also be motivated by a desire to positively impact his ongoing criminal proceedings and ability to reintegrate into Rwanda.[1470] Finally, the deterioration of his relationship with Nizeyimana while the two were in exile further suggests that his evidence implicating the Accused should be treated with caution.[1471]

561. Turning to the merits of Witness AJP's evidence, the Defence does not dispute – and the Chamber has no doubt – that he could identify Nizeyimana in April 1994.[1472] Instead, the Defence has challenged Witness AJP's credibility, arguing that his testimony, which indicates that the killings occurred on 24 or 25 April, is incorrect.

562. While Witness AJP estimated that the killing of the Ngarambe and Maniraho families occurred around the evening of 24 or 25 April 1994, he conceded that he could not recall the precise date.[1473] It is reasonable that Witness AJP did not exactly recall the timing of these killings. However, a closer review of his evidence reveals that it is generally consistent with other evidence about when they occurred.

563. Specifically, when linking the slaughter of the Ngarambe family (as well as the Maniraho family) with other events in Butare, Witness AJP stated that they occurred around the time killings commenced generally in Butare town.[1474] It is undisputed and the record reflects that President Théodore Sindikubwabo's 19 April 1994 speech in Butare was a turning point, with violence occurring on a much larger scale from that moment forward.[1475]

564. Thus, Witness AJP's description aligns with the consistent testimonies of Prosecution Witness AZM and Defence Witnesses MOL08, Nyiranzabonimana and CKN20, who suggested that the killings of the Ngarambe family (and the Maniraho family) occurred on the

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[1468] Witness AJP, T. 15 February 2011, p. 55. *See also* Witness FAX, T. 17 February 2011, pp. 34, 41-42, 44-45 (reviewing Gacaca court forms from Witnss AJP's proceeding and noting that he confessed to his crimes) *and* Exhibit D19 (Gacaca Court Form), p. 5 translated at T. 17 February 2011, p. 41 (indicating that Witness AJP was among a "group of killers who devastated Butare town in collaboration with Captain Nizeyimana").
[1469] *See* II.6.1.
[1470] *See* II.6.1.
[1471] *See* II.6.1.
[1472] *See* II.6.1.
[1473] Witness AJP, T. 15 February 2011, pp. 18 ("Q. ... When was it, approximately, in terms of date, that you were sent to his house? A. It was around the 24th or 25th of April that we went to Jérôme Ngarambe's house. I can't recall the precise date, but it was around those dates, because it was at ... the onset of the killings. As a matter of fact, the Matabaros were the first to be exterminated and two days later Jérôme Ngarambe's family was attacked."), 68 ("A. ... When the killings started in Butare, ... He sent us to go kill members of the Ngarambe family."), 73 ("Q. But you testified today that Maniraho, Ngarambe – was on the 24th. Is that not correct, sir? A. Maybe I jumbled up the date, but I confirm that both families were attacked on the same night. I, however, had to add that Matabaro's family was killed before the members of those other two families were killed.").
[1474] Witness AJP, T. 15 February 2011, pp. 18, 68.
[1475] *See, e.g.,* Defence Closing Brief, para. 10; T. 7 December 2011, pp. 37, 49, 62 (Defence Closing Arguments). *See also* II.6.2-II.7.3.

evening of 20 April 1994.[1476] Unlike Witness AJP, Witnesses AZM, MOL08 and Nyiranzabonimana gave compelling explanations as to how they could recall the date of these events.[1477] Witness CKN20 did not explain how he remembered the date, but he was certain that the killings occurred on 20 April.[1478]

565. Ultimately, any ambiguity in Witness AJP's evidence about the timing of the killings is immaterial. The evidence unequivocally demonstrates that the killing of Ngarambe and members of his family (and the Manirahos) occurred on the evening of 20 to 21 April 1994.[1479]

566. The critical questions are whether Nizeyimana ordered Witness AJP and soldiers to kill Ngarambe and his family, and whether the soldiers did in fact kill them. As noted above, the Chamber must carefully scrutinise Witness AJP's evidence, which lacks direct corroboration on these particular points.

567. Witness AJP's evidence about the nature of the killings finds strong circumstantial support. He only saw soldiers taking the Ngarambe family in the direction of a wooded area and heard about their killings. However, Witness AZM observed Jérôme Ngarambe's corpse on the morning of 21 April 1994 in that same wooded area. On the same day, Witness AZM found Ngarambe's daughter, who had been shot in the knee. Similarly, Defence Witness MOL08 also spoke with Ngarambe's daughter and son early on the morning of 21 April. They had been shot and explained that the family had been removed from their home and killed. Based on the foregoing, the Chamber concludes that Jérôme Ngarambe and certain members of his family were removed from their household and killed.

568. Witness AJP's evidence that Nizeyimana ordered him and soldiers to kill the Ngarambe family lacks direct corroboration. Defence Witness Hitayezu testified that he was

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[1476] Furthermore, Witness AJP also linked this event as occurring while he resided at a certain location. Witness AJP, T. 15 February 2011, p. 68. Notably, his and other evidence suggests that he had stopped living at that location by 24 April 1994. *See, e.g.*, Witness AJP, T. 15 February 2011, p. 4 (testified that he stopped residing at this particular location on 24 April 1994); Witness BEJ01, T. 9 June 2011, pp. 11-12, 32 (testified that Witness AJP had moved his residence from a particular location on 24 April 1994). Consequently, a close review of this evidence reveals that these events occurred *prior to* 24 April 1994.

[1477] Witness AZM recalled the date he saw Ngarambe's body and recovered his daughter with precision – 21 April 1994 – explaining that it was the third day "after" President Théodore Sindikubwabo's address in Butare on 19 April, an event he attended. *See* Prosecution Witness AZM, T. 20 January 2011, pp. 69, 77. Witness MOL08 explained that Ngarambe was a friend and the Manirahos were neighbours and that their killings were "touching" events for her. Defence Witness MOL08, T. 10 May 2011, pp. 9-10. Moreover, she recalled that the events occurred prior to her departure from Butare town on 21 April. T. 10 May 2011, pp. 11-12, 17-18, 25-26. Witness Nyiranzabonimana provided an exact date for the incident and linked it in time with President Théodore Sindikubwabo's speech. Defence Witness Nyiranzabonimana, T. 10 June 2011, pp. 2-3, 23.

[1478] Witness CKN20, T. 15 June 2011, p. 8 ("A. I don't know under what circumstances, but I know that [Maniraho] was killed on the 20th of April. I do not know at what time and where he was killed, but I know that he was killed on that day."). The Chamber has elsewhere expressed concerns about Witness CKN20's evidence as it relates to the Matabaro killings. *See* II.6.6.

[1479] The Chamber observes that Witness BEJ01 testified that this event occurred on 21 April 1994. The Chamber considers the probative value of his evidence on this point weak. His evidence about the killings was brief, and failed to reveal any direct knowledge of the events. Moreover, the date was suggested to him as part of a compound question that he merely confirmed. Defence Witness BEJ01, T. 9 June 2011, p. 32 ("Q. Mr. Witness, you heard about the massacre of the Maniraho family on the 22nd of April 1994; correct? A. If I remember well, yes."). The Chamber has also considered the brief testimony of Witness BXF, who testified having learned about the killing of Maniraho. The questioning is not clear as to what date counsel or the witness are referring to. Prosecution Witness BXF, T. 22 February 2011, pp. 42-43.

posted at Nizeyimana's home starting on 20 April 1994 and that Nizeyimana was not there that evening. The Chamber views Hitayezu's evidence with considerable suspicion. As a soldier assigned to Nizeyimana's home – and the neighbourhood in which the killing took place – he is a potential accomplice in the crime described by Witness AJP. The Chamber has elsewhere discussed in detail many of its concerns relating to his evidence.[1480]

569. Notwithstanding the frailties within the Defence evidence, there is no direct corroboration that ESO soldiers killed Ngarambe and members of his family.[1481] In the Chamber's view, Witness AJP's evidence alone fails to demonstrate that Nizeyimana ordered, instigated or otherwise significantly or substantially contributed to these killings. Similarly, ambiguity as it relates to the identity of the perpetrators raises reasonable doubt that the perpetrators were Nizeyimana's subordinates over whom he exercised effective control.[1482]

(ii) Killing of Jean-Marie Maniraho and His Family

570. It is undisputed that Jean-Marie Vianney Maniraho, a Hutu and university lecturer, as well as members of his family were killed. Furthermore, the Chamber has no doubt that they were slaughtered on the evening of 20 to 21 April 1994.

571. Witness AJP testified that Nizeyimana ordered him and soldiers to kill the Maniraho family after they had returned from the Ngarambe home. However, when they arrived at the Maniraho household, they found that the family members were already dead. The witness heard from civilians conducting night patrols that soldiers in a military jeep had killed the family. He concluded that the civilians were describing Second Lieutenant Alphonse Ndayambaje and the soldiers accompanying him based on the witness's prior interaction with them that evening.[1483] Witness AJP also testified that Nizeyimana was informed that the Maniraho family had already been killed.[1484]

[1480] *See* II.6.6.

[1481] Of the soldiers alleged to have participated in this particular attack, the Indictment only alleges the participation of ESO soldiers. Indictment, para. 20.

[1482] The Defence objected to Witness AZM's testimony as it relates to evidence that Jérôme Ngarambe's daughter was raped. Defence Motion for Exclusion of Evidence, 29 April 2011, paras. 49-51. Given the Chambers findings in regards to this allegation, it need not further address the notice objection.

[1483] Considering Witness AJP's evidence in its entirety, it is clear that the civilians identified the perpetrators of the Maniraho family killings as soldiers driving a military jeep – and not by name. Witness AJP's reference to "Ndayambaje" while testifying clearly reflects his own conclusion that Ndayambaje and the soldiers accompanying him were the perpetrators based on the description he received from the persons with whom he talked and the witness's prior interaction with Ndayambaje that evening. *See* Witness AJP, T. 15 February 2011, pp. 21 ("A. ... So we returned, and on our way we met people on night patrols. They were civilians. We asked them who had killed members of the Maniraho family. They told us that they had been killed by soldiers who had gone there in a military vehicle, namely, a group commanded by Ndayambaje."), 22 ("Q. And what did you see when you arrived at the Maniraho's house? A. As I've just told you, we went into Maniraho's house and we found that members of his family had just been killed and that the bodies were strewn in the living room. When we left the house we asked people on night patrol who had killed those people. And they told us that they had been killed by soldiers who were in a military jeep, which I told you about earlier on.").

[1484] Witness AJP, T. 15 February 2011, pp. 21-22 ("A. ... So we informed Nizeyimana that we found members of the Maniraho family ... had already been killed.").

572. At the outset, it is undisputed that Alphonse Ndayambaje was an ESO soldier.[1485] Moreover, Witness AJP's second-hand evidence that ESO soldiers killed the Maniraho family finds some circumstantial corroboration. Specifically, Defence Witness MOL08, an immediate neighbour of Maniraho, heard gunshots on the evening of 20 to 21 April 1994, was immediately informed that the Manirahos were killed, and later heard that ESO soldiers were the perpetrators.

573. However, Witness MOL08's evidence is of limited probative value. Witness MOL08 did not see the killings. While her watchman informed her of the Maniraho murders immediately after she heard gunshots, her evidence does not reflect him identifying the perpetrators.[1486] Instead, she later heard "neighbours" discuss that ESO soldiers were responsible. However, it is not clear how anyone identified the perpetrators as ESO soldiers.[1487]

574. By contrast, Defence Witness Ntamagezo inferred that armed civilians or looters were responsible for the murder of Maniraho on 21 April 1994. The Chamber finds his account generally unreliable. Indeed, Witness Ntamagezo's testimony surrounding the circumstances of Maniraho's death is inconsistent with the evidence on the record. Notably, he is the only witness to suggest that Maniraho was killed outside of his household. According to Witness Ntamagezo, they were patrolling the neighbourhood, as part of their duties in the Military Police platoon, when they were eventually fired upon by armed looters, after which they killed two of the assailants.[1488] Despite the apparent shoot-out, with deadly consequences, Chief Warrant Officer Ntamuhanga only spoke to the looters and then let them go without arresting anyone or following up on the incident.[1489] This account does not ring true, particularly in light of the mandate of the Military Police platoon to provide security from the unrest and the looting.

575. By testifying to the presence of armed looters in the neighbourhood, the witness appears to shift the responsibility for the murder of the Maniraho family away from the soldiers and suggest instead that armed civilians had killed them. The Chamber has serious concerns about this evidence, which is unsupported by the record.[1490] These concerns are

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[1485] *See* Defence Closing Brief, paras. 83, 561. *See also* Prosecution Witness BDE, T. 28 January 2011, pp. 15-16 (listing "Second Lieutenant Alphonse Ndayambaje" among the ESO officers present at a 7 April 1994 assembly); Defence Witness CKN10, T. 26 May 2011, p. 37 (describing Second Lieutenant Ndayambaje as responsible for the ESO's third batch); Defence Witness Ruzindana, T. 1 June 2011, pp. 24-25 (an ESO soldier in 1994 who testified that "Ndayambaje" was his platoon leader); Defence Witness Ntamagezo, T. 8 June 2011, p. 55 (identifying "Ndayambaje" being replaced by Gwaterere as the witness's batch commander); Defence Witness Bunani, T. 13 June 2011, pp. 19-20 (describing "Second Lieutenant Ndayambaje" as leading the Mata training centre upon Nizeyimana's transfer to Nyanza). *Cf.* Exhibit D48 (Rwandan Army Situation Report, 1 March 1994), p. 4 (listing Alphonse Ndayambaje as an instructor at the ESO).

[1486] Witness MOL08, T. 10 May 2011, pp. 17-18.

[1487] Witness MOL08, T. 10 May 2011, pp. 20-21. *See also* T. 10 May 2011, p. 9 (generally testifying that "people in uniform" killed Maniraho, although she did not see this).

[1488] Witness Ntamagezo, T. 8 June 2011, p. 59.

[1489] Witness Ntamagezo, T. 8 June 2011, pp. 60, 76.

[1490] Indeed, there is Prosecution evidence that members of the unit Witness Ntamagezo was a part of was in fact participating in killings during the genocide. *See* Witness AZD, T. 1 February 2011, p. 10. *Cf.* Witness BDE, T. 31 January 2011, p. 56

exascerbated in light of evidence led by the Prosecution that Witness Ntamagezo had a close personal relationship with Nizeyimana, as they both had come from "the north".[1491]

576. Witness Ntamagezo then happened to see two corpses about 80 metres from where the shoot-out had taken place and was told by Ntamuhanga that one of the bodies was that of Maniraho. The witness did not know Maniraho prior to this incident and his identification of the body is based solely on hearsay and thus of limited probative value.[1492]

577. The Chamber, having reviewed Witness Ntamagezo's demeanour, did not find him credible. Furthermore, Witness Ntamagezo's evidence about the date – 21 April 1994 – is not reliable. While he emphasised that it occurred on 21 April, he could not recall what day of the week that was, and his attempts to emphasise his basis for knowledge only grew more suspicious upon further examination.[1493] The Chamber observes that the witness admitted that did not keep a diary in which he took down notes at the time, and was therefore "not in a position to remember all the dates".[1494] Indeed, Witness Ntamagezo was generally unable to provide specific dates for other incidents put to him, except dates critical to Nizeyimana's defence.[1495] Given the totality of the circumstances, the Chamber finds that Witness Ntamagezo's evidence lacks basic credibility.

578. Notwithstanding the unbelievability of Witness Ntamagezo's evidence, other evidence in the record provides no further clarity as to who the perpetrators were. The mere proximity of Nizeyimana's home to the crime scene fails to demonstrate his involvement in or control over the perpetrators. Indeed, another significant military commander, Ildéphonse Hategekimana, commander of the Ngoma Camp, lived just as close.[1496]

579. Given the need to view Witness AJP's evidence with caution, the second-hand nature of his account and the absence of sufficient corroboration, the Chamber is unable to determine who killed the Maniraho family beyond reasonable doubt. Consequently, the

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[1491] Witness BDE, T. 31 January 2011, p. 28. The Chamber has considered Defence evidence that there were no divisions between ESO soldiers based on what regions they came from or ethnicities. *See* Witness ZML07, T. 18 May 2011, p. 23; Witness CKN10, T. 26 May 2011, p. 41; Witness RWV11, T. 2 June 2011, pp. 16-17; RWV09, T. 8 June 2011, pp. 18-19; Witness Ruzindana, T. 1 June 2011, p. 27; Witness ZML13, T. 6 June 2011, p. 47. The Chamber considers much of this evidence lacks credibility. Moreover, it is very general and does not raise any doubts with respect to specific evidence of Nizeyimana's particular relationships with particular soldiers.

[1492] Witness Ntamagezo, T. 8 June 2011, pp. 60, 76.

[1493] Witness Ntamagezo, T. 8 June 2011, p. 66-67.

[1494] Witness Ntamagezo, T. 8 June 2011, pp. 66, 77.

[1495] Witness Ntamagezo, T. 8 June 2011, pp. 62-63 (the witness was unable to recall meetings with the Defence that took place only a year before his testimony; he knew that he had met with the Defence on two occasions, but could only establish the months during which he met with them), 66 (when asked whether he saw Nizeyimana on 3 April, he was unable to remember), 74 (could only estimate that President Sindikubwabo spoke on 18 or 19 April 1994, notwithstanding that this event marked the commencement of killings in Butare), 77 (Witness Ntamagezo was unable to recall when he left the ESO and the date upon which he finally left Rwandan, other than recalling that it was during the month of July), 77-78, 80 (his evidence explaining how he could recall that the second mission to Mata occurred on 26 April, withered under questioning to the point where he asked not to be questioned further on the issue).

[1496] *See* Prosecution Witness AJP, T. 15 February 2011, pp. 6-7; Prosecution Witness ZBH, T. 8 February 2011, p. 67; T. 9 February 2011, pp. 33-34; Prosecution Witness BUQ, T. 17 February 2011, p. 56; Defence Witness Nyiranzabonimana, T. 10 June 2011, p. 18.

record also fails to demonstrate that Nizeyimana can be held criminally responsible for these crimes.[1497]

[1497] The Defence objected to Witness YAP's testimony that Maniraho attended a meeting during which he asked why only people from the north were being protected on the basis that it lacked notice. Defence Motion for Exclusion of Evidence, 29 April 2011, paras. 80-82. Given the Chambers findings in regards to this allegation, it need not further address the notice objection.

6.5 Killing of Pierre Karenzi and Alphonsine Mukamusoni

Introduction

580. The Indictment alleges that around 21 April 1994, Nizeyimana ordered ESO soldiers to kill Professor Pierre Claver Karenzi, a Tutsi, at the roadblock outside Hotel Faucon in Butare town, and that soldiers acting on his orders or authority did so. On the same day, FAR soldiers acting under the authority or orders of Nizeyimana, also went to Karenzi's home and killed his wife, Alphonsine Mukamusoni. Prosecution Witnesses ZBA, AZM, AZD, Laurien Ntezimana and ZBE provided relevant evidence.[1498]

581. The Defence argues that the soldiers who killed Karenzi and Mukamusoni were members of the Presidential Guards posted at Séraphin Bararengana's house, rather than ESO soldiers. Moreover, Nizeyimana was not present in Butare during the relevant dates but was instead posted at the Mata training centre in Gikongoro. Lastly, the Defence challenges the credibility of Prosecution Witnesses AZM, AZD and ZBH. Defence Witnesses Rose Nyirasafari, BEJ01, Emmanuel Habyarimana and Aggripine Nyiranzabonimana provided relevant evidence.[1499]

Evidence

Prosecution Witness ZBA

582. Witness ZBA, a Tutsi staying at the Karenzi house in April 1994, testified that Professor Pierre Karenzi was a Tutsi lecturer at the National University of Rwanda.[1500] On 21 April, Karenzi received a telephone call warning him that people were coming to attack his house.[1501] He told the children, including Witness ZBA, to hide in the ceiling, which they did.[1502] The assailants arrived that day around 3.00 p.m. and took Karenzi with them.[1503] Before abducting Karenzi, Witness ZBA heard them ask Karenzi where his wife and children were.[1504] Karenzi called out to his wife who was present, but he responded that his children were not there.[1505] The assailants then left with Karenzi and Witness ZBA never saw him again after this incident.[1506]

583. The attackers subsequently returned to the Karenzi house that day, where they asked Karenzi's wife, Alphonsine Mukamusoni, for money.[1507] From her hiding place in the ceiling,

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[1498] Indictment, paras. 25-26; Prosecution Closing Brief, paras. 325-327, 331-339, 353-355; T. 7 December 2011, p. 25 (Prosecution Closing Arguments).
[1499] Defence Closing Brief, paras. 10, 13, 29, 109, 129, 271-287, 292; T. 7 December 2011, pp. 39, 41, 43-44, 59 (Defence Closing Arguments). *See* II.11 for a detailed analysis of Witness ZBH's general credibility. *See also* II.13.2.
[1500] Witness ZBA, T. 24 February 2011, pp. 5-6; Exhibit P38 (Witness ZBA's Personal Information Sheet).
[1501] Witness ZBA, T. 24 February 2011, pp. 8-9.
[1502] Witness ZBA, T. 24 February 2011, p. 9.
[1503] Witness ZBA, T. 24 February 2011, pp. 8-10.
[1504] Witness ZBA, T. 24 February 2011, p. 9. The ceiling in which the children were hiding was above the door, allowing them to hear the events as they unfolded.
[1505] Witness ZBA, T. 24 February 2011, p. 9.
[1506] Witness ZBA, T. 24 February 2011, p. 9.
[1507] Witness ZBA, T. 24 February 2011, p. 9.

Witness ZBA heard Mukamusoni respond that she had already given it all away.[1508] The assailants then entered the house and called their colleagues, who the witness was later told were guards of President Juvénal Habyarimana's brother, Bararengana, who lived nearby.[1509] The witness overheard the intruders express confusion over Mukamusoni's ethnicity, noting that her nose did not look like a Tutsi.[1510] However, a neighbour named Vincent confirmed that she was a Tutsi.[1511] A few moments later, the witness heard two gunshots and the attackers discussing not having asked Mukamusoni for the whereabouts of the television before having killed her.[1512] The assailants left in their vehicles.[1513] When she came out of her hiding place in the ceiling, Witness ZBA saw Mukamusoni dead on the floor.[1514]

Prosecution Witness AZM

584. Witness AZM, a Hutu, was a member of the prefecture security committee in Butare in April 1994.[1515] He knew Karenzi was a Tutsi Professor at the National University of Rwanda and an MRND member.[1516] On an unspecified date, the witness saw Karenzi standing with a soldier at the roadblock outside Hotel Faucon, as the soldier was checking Karenzi's "luggage and documents".[1517] When the witness returned to the same roadblock 20 minutes later, he saw Karenzi's body by the roadblock and was told by a soldier that he had just killed Karenzi with two bullets.[1518] The soldier explained that Karenzi was in the possession of documents that were critical of a "given" organisation.[1519]

585. Witness AZM believed that the soldier who killed Karenzi was from the ESO, as he was told by Tharcisse Muvunyi at a meeting at the Huye stadium on 14 April 1994 that the soldiers in charge of this roadblock were from the ESO.[1520] He further noted that the soldier who was manning this roadblock was "clearly" a soldier from the ESO, "[b]ased on the information that [he] had, and taking into account his [young] age".[1521]

[1508] Witness ZBA, T. 24 February 2011, p. 9.
[1509] Witness ZBA, T. 24 February 2011, p. 9. Witness ZBA did not elaborate on who the persons were that said that the soldiers were presidential guard, nor when she learned of this.
[1510] Witness ZBA, T. 24 February 2011, p. 9.
[1511] Witness ZBA, T. 24 February 2011, p. 9. *See* Witness BEJ01, T. 9 June 2011, p. 31.
[1512] Witness ZBA, T. 24 February 2011, p. 9.
[1513] Witness ZBA, T. 24 February 2011, p. 9.
[1514] Witness ZBA, T. 24 February 2011, p. 10.
[1515] Witness AZM, T. 20 January 2011, pp. 58, 72; Exhibit P6 (Witness AZM's Personal Information Sheet). At the time of his testimony, Witness AZM was incarcerated for genocide related crimes. T. 20 January 2011, pp. 58-59; T. 24 January 2011, p. 30. He has been in two different prisons since 1999. T. 24 February 2011, p. 30. He pleaded guilty to genocide related crimes in 2002. T. 24 January 2011, pp. 35-36, T. 24 January 2011, pp. 50-51. He prepared a statement for the Gacaca court in 2012. T. 24 January 2011, pp. 50-51.
[1516] Witness AZM, T. 20 January 2011, p. 76.
[1517] Witness AZM, T. 20 January 2011, pp. 74, 76. When asked to provide examples of roadblocks in Butare manned by soldiers, Witness AZM noted that the roadblock outside Hotel Faucon was one such an example. T. 20 January 2011, pp. 72-73.
[1518] Witness AZM, T. 20 January 2011, pp. 74, 76.
[1519] Witness AZM, T. 20 January 2011, pp. 74-75.
[1520] Witness AZM, T. 20 January 2011, pp. 73-74.
[1521] Witness AZM, T. 20 January 2011, p. 76.

Prosecution Witness AZD

586. In April 1994, Witness AZD, a Tutsi bearing a Hutu identity card, was a non-commissioned officer at the ESO.[1522] He explained that Professor Karenzi was a well-known Tutsi professor who served on the central committee of the MRND party.[1523] Sometime after 19 April, Witness AZD saw Karenzi's body as he was passing through the roadblock in front of Hotel Faucon.[1524] The soldier manning this roadblock was a first sergeant from the ESO, whose name he no longer recalled.[1525] Civilians were also posted at the Hotel Faucon roadblock.[1526]

Prosecution Witness Laurien Ntezimana

587. Witness Ntezimana, a Hutu, lived in Ngoma about three kilometres from the centre of Butare town and was in charge of the theological animation at the Catholic diocese in Butare in April 1994.[1527] Some time before 19 April, he received a phone call informing him that Professor Karenzi had been killed in front of Hotel Faucon.[1528] He did not witness the incident.[1529] Witness Ntezimana thought that the soldiers manning the roadblock at Hotel Faucon were from the ESO.[1530]

588. Witness Ntezimana recounted how, on one occasion, a soldier manning the Hotel Faucon roadblock refused to let him pass, despite orders from Lieutenant Ildéphonse Hategekimana.[1531] The soldier replied that he did not have to abide by Hategekimana's orders.[1532] A warrant officer, who the witness believed was from the ESO, arrived and asked the soldier to let Witness Ntezimana pass.[1533] The soldier then allowed him through.[1534] The witness inferred from the soldier's responses that he was from the ESO rather than Ngoma Camp.[1535]

Prosecution Witness ZBE 92*bis* Statement

589. Witness ZBE was a lecturer at the Butare University in April 1994.[1536] After having attended a town meeting organised by Prefect Juvénal Habyarimana, Professor Karenzi,

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[1522] Witness AZD, T. 31 January 2011, p. 64; Exhibit P15 (Witness AZD's Personal Information Sheet).
[1523] Witness AZD, T. 31 January 2011, p. 77.
[1524] Witness AZD, T. 31 January 2011, p. 77. Witness AZD subsequently elaborated and noted that he saw Karenzi's body "after the beginning of May". T. 31 January 2011, pp. 77-78.
[1525] Witness AZD, T. 31 January 2011, pp. 75-76. Witness AZD could distinguish the soldiers from the different camps, because he had seen them at ESO. He could further identify the ESO soldiers based on their identifiable insignia and the young age of the cadets. T. 31 January 2011, pp. 76-77.
[1526] Witness AZD, T. 31 January 2011, p. 75.
[1527] Witness Ntezimana, T. 14 February 2011, pp. 60-61; Exhibit P27 (Witness Ntezimana's Personal Information Sheet).
[1528] Witness Ntezimana, T. 14 February 2011, pp. 69-70. Witness Ntezimana thought it was his cousin, Joseph Kanyabashi, who had telephoned him to inform him of Karenzi's death. T. 14 February 2011, p. 70.
[1529] Witness Ntezimana, T. 14 February 2011, pp. 75-76.
[1530] Witness Ntezimana, T. 14 February 2011, pp. 64-65, 75.
[1531] Witness Ntezimana, T. 14 February 2011, p. 64.
[1532] Witness Ntezimana, T. 14 February 2011, p. 64.
[1533] Witness Ntezimana, T. 14 February 2011, p. 64.
[1534] Witness Ntezimana, T. 14 February 2011, p. 64.
[1535] Witness Ntezimana, T. 14 February 2011, pp. 64-65.
[1536] Exhibit P40C(E) (Witness ZBE's *Pro Justitia* Statement), p. 1.

Vincent Ntezimana and the witness tried to ensure the security in their neighbourhood and its surrounding streets.[1537] On a Wednesday, around 22 April, he placed a phone call to Karenzi, during which they both expressed that they were worried.[1538] They arranged to meet the following day, but Karenzi was killed in front of Hotel Faucon before the appointment took place.[1539]

Defence Witness Rose Nyirasafari

590. Witness Nyirasafari, who has been married to Nizeyimana since 1995, was a student at the National University of Rwanda, living in Butare town in April 1994.[1540] She knew Professor Karenzi and had gone to primary school with his daughter, Solange.[1541] One day, she saw more than five Presidential Guard soldiers escorting Karenzi in the direction of Hotel Faucon.[1542] The witness recognised the faces of two of the soldiers as Presidential Guards who had guarded the home of her neighbour, Doctor Bararengana, the brother of President Juvénal Habyarimana.[1543] The following day, the witness told Solange, who came to see her, that she had seen her father escorted by soldiers the previous day.[1544] Solange confirmed that Karenzi had been killed near Hotel Faucon.[1545]

Defence Witness BEJ01

591. Witness BEJ01, a Hutu, lived in Butare town in 1994.[1546] He heard on the evening of 21 April that Karenzi, a Tutsi whom the witness considered a friend, had been killed.[1547] He telephoned the Karenzi house, but there was no answer.[1548] The following day, on 22 April, he visited the Karenzi house and observed Karenzi's wife, Alphonsine Mukamusoni's corpse on the floor.[1549]

[1537] Exhibit P40C(E) (Witness ZBE's *Pro Justitia* Statement), pp. 2-3.
[1538] Exhibit P40C(E) (Witness ZBE's *Pro Justitia* Statement), p. 3. Witness ZBE noted that he while he was not sure of the date, he knew the conversation took place on a Wednesday. 22 April 1994 was a Friday, which would render 20 April 1994 a Wednesday.
[1539] Exhibit P40C(E) (Witness ZBE's *Pro Justitia* Statement), pp. 3-4. Witness ZBE did not explain how he found out about Karenzi's death.
[1540] Witness Nyirasafari, T. 16 June 2011, pp. 37, 40, 43; Exhibit D74 (Witness Nyirasafari's Personal Information Sheet). Witness Nyirasafari stated that her mother was a Hutu and her father a Tutsi. President Sindikubwabo was her maternal uncle. T. 16 June 2011, p. 43. A prior Personal Information Sheet noted the witness's ethnicity as Hutu. She explained that the Defence had made a mistake, and that in fact she is a Tutsi. T. 16 June 2011, p. 44.
[1541] Witness Nyirasafari, T. 16 June 2011, pp. 38, 47.
[1542] Witness Nyirasafari, T. 16 June 2011, pp. 38, 47. Witness Nyirasafari could see the road they were walking on from her house. T. 16 June 2011, p. 38.
[1543] Witness Nyirasafari, T. 16 June 2011, pp. 38-39, 46-47. Witness Nyirasafari stated that Presidential Guards had been guarding Bararengana's house since 1992. T. 16 June 2011, p. 47.
[1544] Witness Nyirasafari, T. 16 June 2011, pp. 38, 47.
[1545] Witness Nyirasafari, T. 16 June 2011, pp. 38, 47.
[1546] Witness BEJ01, T. 9 June 2011, pp. 20, 27; Exhibit D60 (Witness BEJ01's Personal Information Sheet). At the time of his testimony, Witness BEJ01 had been convicted for genocide related crimes. Witness BEJ01, T. 9 June 2007, pp. 11, 33.
[1547] Witness BEJ01, T. 9 June 2011, pp. 30-32. Witness BEJ01 was not asked about the location of Karenzi's death, nor the perpetrators.
[1548] Witness BEJ01, T. 9 June 2011, p. 30.
[1549] Witness BEJ01, T. 9 June 2011, pp. 30-32.

592. Witness BEJ01 was given a list by his colleagues at the university which contained the names of approximately 50 to 70 families, including Professor Karenzi's family, who wanted to flee Butare by bus.[1550] He summarised the list and gave it to the Vice-Rector of the Butare University, Jean Berchmans, around 12 April.[1551] The majority of the families contained on that list survived, leading the witness to note that Karenzi and his family were killed for "other reasons".[1552]

Defence Witness Emmanuel Habyarimana

593. In April 1994, Witness Habyarimana, a Hutu, was an S2/S3 military officer, who was the director of studies at *École Superieur Militaire* in Kigali and responsible for training officers for the war effort.[1553] On 21 April in the evening, the witness took his family and brought them to a house at the ESO Camp.[1554] The following morning on 22 April, he passed by Hotel Ibis and saw the bodies of people who had been killed there, including Professor Karenzi, who was the witness's former physics lecturer.[1555] A former classmate, named Gatwaza, and many others were among the dead.[1556] It was evident to him that the bodies had been shot and killed early that morning.[1557]

594. While the witness was standing there, Lieutenant Colonel Nteziryayo passed by the Hotel and together they condemned the death of those people.[1558] The passersby did not know who killed the people, but informed Habyarimana that they had come early in the morning, killed the people, and had been dressed in banana leaves.[1559] From where the witness was standing at the Hotel Ibis, he could not see any soldiers or gendarmes in the immediate vicinity.[1560] He informed Muvunyi of the incident, who said he would "carry on with the matter".[1561]

[1550] Witness BEJ01, T. 9 June 2011, pp. 27-28.
[1551] Witness BEJ01, T. 9 June 2011, pp. 27-29.
[1552] Witness BEJ01, T. 9 June 2011, p. 29. Witness BEJ01 was not asked what the "other reasons" were, nor did he explain what he meant. He did agree that because Karenzi was a Tutsi, he was a "designated target". T. 9 June 2011, p. 30.
[1553] Witness Habyarimana, T. 25 May 2011, pp. 3-4, 6; Exhibit D45 (Witness Habyarimana's Personal Information Sheet).
[1554] Witness Habyarimana, T. 25 May 2011, p. 43. Witness Habyarimana met with Muvunyi at the ESO that evening but did not see Nizeyimana there. T. 25 May 2011, p. 45.
[1555] Witness Habyarimana, T. 25 May 2011, p. 44.
[1556] Witness Habyarimana, T. 25 May 2011, p. 44.
[1557] Witness Habyarimana, T. 25 May 2011, p. 44. Witness Habyarimana did not explain how it was "evident" to him that Karenzi had been killed that morning, other than noting that passersby had informed him that Karenzi had been killed early in the morning.
[1558] Witness Habyarimana, T. 25 May 2011, p. 44.
[1559] Witness Habyarimana, T. 25 May 2011, pp. 44-45.
[1560] Witness Habyarimana, T. 25 May 2011, p. 45.
[1561] Witness Habyarimana, T. 25 May 2011, p. 45.

Defence Witness Aggripine Nyiranzabonimana

595. In April 1994, Witness Nyiranzabonimana, a Hutu, was a school teacher living in Buye cellule, Butare town.[1562] On 21 April, the witness heard that Professor Karenzi had been killed in front of Hotel Faucon.[1563]

Deliberations

596. The Prosecution and Defence evidence confirms that Professor Pierre Claver Karenzi, a Tutsi civilian, was killed around 21 April 1994, and that his wife, Alphonsine Mukamusoni was killed the same day at their house. Assailants abducted Karenzi from his home in Butare and killed him. The record further establishes that Mukamusoni was killed on the same day.

597. In this context, the Chamber must determine whether ESO soldiers killed Karenzi and Mukamusoni, or if Nizeyimana can be held criminally responsible for the killings. The Chamber shall address these issues in turn.

(i) Killing of Pierre Claver Karenzi

598. The Prosecution argues that ESO soldiers abducted Karenzi from his house and killed him at a roadblock in front of Hotel Faucon on 21 April 1994. It points to evidence from Witness ZBA, who was at the house when Karenzi was taken and heard the assailants remove him from the residence. Witness AZM saw Karenzi standing with a soldier at the roadblock outside Hotel Faucon, as the soldier was checking Karenzi's "luggage and documents".[1564] When he returned to the same roadblock 20 minutes later, he saw Karenzi's corpse, and a soldier who checked him stated that he had just killed Karenzi with two bullets.[1565] Similarly, Witness AZD saw Karenzi's corpse at the Hotel Faucon roadblock around the date offered by Witness ZBA, which was manned by ESO soldiers. Finally, Witnesses ZBE and Ntezimana heard that Karenzi had been killed at the Hotel Faucon roadblock around the same time described by Witness ZBA, but were not present when this occurred and did not see his corpse there.

599. At the outset, the Chamber observes that there is no direct evidence regarding Nizeyimana having ordered or instigated this killing. The Prosecution refers to Witness BEJ01 to show that the Karenzi family was specifically targeted. The Chamber notes that it has elsewhere considered in detail the context in which Witness BEJ01 testified. It concluded that his evidence should be approached with the appropriate caution.[1566] The same concerns exist in relation to this allegation. Notably, Witness BEJ01 was convicted, and is currently serving his sentence for his involvement in the murder of Karenzi and may therefore seek to mitigate or present in a more favourable light the events surrounding the killing of the

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[1562] Witness Nyiranzabonimana, T. 9 June 2011, p. 71; Exhibit D62 (Witness Nyiranzabonimana's Personal Information Sheet).
[1563] Witness Nyiranzabonimana, T. 10 June 2011, pp. 3, 13. Witness Nyiranzabonimana did not know the Karenzi family; she had simply heard that Professor Karenzi had been killed in front of Hotel Faucon.
[1564] Witness AZM, T. 20 January 2011, pp. 74, 76. When asked to provide examples of roadblocks in Butare manned by soldiers, Witness AZM noted that the roadblock outside Hotel Faucon was one such an example. T. 20 January 2011, p. 73.
[1565] Witness AZM, T. 20 January 2011, pp. 74, 76.
[1566] *See* II.6.1.

Karenzi family.[1567] Likewise, he had a close personal relationship with Nizeyimana, which is relevant to the assessment of his general credibility.[1568]

600. The Chamber notes that Witness BEJ01's evidence is second-hand and does not reveal any knowledge on his part regarding the identity of the killers. Witness BEJ01 recounts how he compiled a list of people wishing to flee Butare, which included Karenzi's family. He presented this list to the Vice-Rector of the Butare University, Jean Berchmans Nshimiyumuremyi at a meeting around 12 April 1994.[1569] The Prosecution, however, presented no further evidence connecting the list to Nizeyimana's involvement in the killing of Karenzi or Mukamusoni.[1570] This evidence is therefore far from dispositive.

601. Turning to evidence regarding Karenzi's abduction, Witness ZBA is the only Prosecution witness to testify directly to this issue. Notably, she was hiding in the ceiling of Karenzi's home when Karenzi was removed from it and could not visually identify the assailants. The Defence does not challenge Witness ZBA's evidence or general credibility.[1571] Witness ZBA's family and the Karenzi's were friends, and she was also friends with Karenzi's daughter, Solange.[1572] She had been staying at the Karenzi household since January 1994.[1573] It is evident that she knew the family and was close with them. Moreover, Witness ZBA fled with the Karenzi children to the Benebikira convent after the attack on the house, where she met Witness QCQ.[1574] The Chamber finds her evidence to be clear, unembellished and consistent with other testimonies.

602. Since she did not see the assailants, Witness ZBA's identification was limited to having heard them "call for their colleagues" when they returned to the house after abducting Karenzi.[1575] According to her testimony, the colleagues "were said to be Bararengana's guards".[1576] However, the witness did not describe the source or timing of this identifying information and no further questions were posed in this regard. Consequently, her evidence concerning the identification of the assailants is of limited probative value.

[1567] *See* Exhibit P52 (Judgement), pp. 30, 42. Witness BEJ01 was acquitted of the murder of Mukamusoni. Witness BEJ01's conviction of the murder of Karenzi was on the basis of compiling "lists of individuals". The judgement does not provide any further details of the witness's exact involvement in the murder, other than noting that Witness BEJ01 committed intentional homicide on the person of Karenzi.

[1568] *See* II.6.1.

[1569] *See* Witness BEJ01, T. 9 June 2011, pp. 27-29; Exhibit P52 (Judgement, June 2001), pp. 43-44.

[1570] The Chamber notes that the Prosecution refers to the creation of lists of students, which were handed over to the Vice-Rector of the University, Jean-Berchmans Nshimiyumuremyi, at a meeting during which Nizeyimana was present. *See* Witness ZCB, T. 17 January 2011, pp. 32-34. However, it is not clear from the evidence whether this relates to the same list created by Witness BEJ01. In fact, Witness BEJ01's list was drawn up around 12 April 1994, whereas the meeting to which Witness ZCB referred took place "some days prior" to the attack on the university on 21 April. There is thus nothing in the record that shows that these lists were one and the same.

[1571] The Defence elected not to cross-examine Witness ZBA, and it did not challenge her evidence in its Closing Brief or during Closing Arguments. *See* Witness ZBA, T. 24 February 2011, p. 20; Defence Closing Brief, paras. 274, 288, 290; T. 7 December 2011, p. 59 (Defence Closing Arguments).

[1572] Witness ZBA, T. 24 February 2011, p. 5.

[1573] Witness ZBA, T. 24 February 2011, p. 5.

[1574] Witness QCQ, T. 23 February 2011, pp. 13, 17. *See also* II.11.

[1575] Witness ZBA, T. 24 February 2011, p. 9. Witness ZBA noted that she heard the attackers leave with Karenzi and stated "[t]hen the attackers came back and asked Karenzi's wife for money." The Chamber infers from this statement that she thought the attackers who returned were the same as those who had abducted Karenzi and left the house before.

[1576] Witness ZBA, T. 24 February 2011, p. 9.

603. The evidence of Defence Witness Nyirasafari tends to confirm Witness ZBA's second-hand evidence that Karenzi was taken by "Bararengana's guards". Specifically, Witness Nyirasafari testified that she saw Karenzi being taken away by Presidential Guards, who had been guarding Bararengana's house since 1992.[1577] However, as Nizeyimana's wife, the Chamber considers that Witness Nyirasafari had a clear incentive to testify in favour of her husband, and implicate soldiers who had no ostensible link to him. The Chamber therefore has concerns about the partiality of this witness. Furthermore, the Prosecution presented other evidence of Witness Nyirasafari's potential extremism and her close ties to former President Théodore Sindikubwabo.[1578] This raises further concerns about her general credibility.

604. Of greater significance, Witness Nyirasafari's evidence about observing soldiers was brief and non-descript. The absence of details explaining her point of reference is particularly concerning. Specifically, the witness did not identify the exact date and time of day when she saw Karenzi being escorted away by the soldiers. She simply noted that she was able to witness the event, as "[she] lived not far from the road, and [she] could see the road from [her] house".[1579] Her lack of detail in describing the event raises questions about the quality of her evidence. The ambiguities within her testimony, when viewed in light of the Chamber's concerns about her partiality, render it far from dispositive.

605. In light of the above, the record is ambiguous as to the identity of the assailants who came to the Karenzi household and removed him. The record could reasonably reflect that Presidential Guards were the perpetrators, although this is not certain. Moreover, reasonable doubts exist that soldiers from the ESO Camp removed Karenzi from his house. Nevertheless, the Chamber is satisfied that the evidence demonstrates that Karenzi was abducted and killed around 21 April 1994.[1580] The Chamber will next to turn to evaluate the circumstances of Karenzi's murder. In particular, the Chamber must determine where Karenzi was killed and by whom. These issues shall be addressed in turn.

606. Prosecution Witnesses AZM and AZD both testified that they passed through the roadblock in front of Hotel Faucon, where they saw Karenzi's body. At the outset, the Chamber is satisfied that both witnesses were in a position to accurately identify Karenzi in April 1994. Indeed, Witness AZM knew Karenzi and noted that he was a professor at the

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[1577] Witness Nyirasafari, T. 16 June 2011, pp. 38-39. *Cf.* Witness YAP, T. 21 February 2011, pp. 60-61 (testifying that when Dr. Bararengana had been assigned to the Butare University Hospital in 1990, Presidential Guards were present).

[1578] Witness Nyirasafari, T. 16 June 2011, pp. 37, 40, 43-44.

[1579] Witness Nyirasafari, T. 16 June 2011, p. 38.

[1580] Witness AZM and AZD did not specify the exact date they saw Karenzi's corpse, though Witness AZD thought it was sometime "after the 19th of April". Witness AZD, T. 31 January 2011, pp. 77-78. Witness AZD later suggested it may have been after the beginning of May. Witness AZD's timing of the event appears highly compelling in light of other evidence in the record. Specifically, Witness ZBA, who was present in the house when Karenzi was abducted, noted that this occurred on 21 April. Witness ZBA, T. 24 February 2011, pp. 8-9. Her recollection of the exact date and time of the event is compelling, in light of the highly personal nature of the abduction and subsequently killings around her. Furthermore, while Witness ZBE believed that he spoke to Karenzi on 22 April 1994, he recalled that the day was a Wednesday, which actually fell on 20 April. He too testified that Karenzi was dead by the following day, which would have been 21 April. Exhibit P40C (E) (Witness ZBE's *Pro Justitia* Statement), p. 5. Furthermore, Defence Witness Nyiranzabonimana heard that Karenzi had been killed during the day in front of Hotel Faucon on 21 April and Defence Witness BEJ01 heard that Karenzi was killed on 21 April 1994 and then went to their house the following day. Witness Nyiranzabonimana, T. 10 June 2011, pp. 3, 13; Witness BEJ01, T. 9 June 2011, pp. 30-32; *see also* II.6.4.

university and a member of the MRND.[1581] Similarly, Witness AZD knew Karenzi well, as he had gotten to know some university professors and regularly met with them, including Karenzi.[1582] Moreover, Karenzi was a well-known man in Butare due to his membership of the central committee of the MRND.[1583]

607. Before assessing the evidence of Witnesses AZM and AZD in further detail, the Chamber shall consider general challenges to their credibility as well as alleged inconsistencies as it relates to this event. The Defence presented evidence that Witness AZM lied on orders of the Rwandan government to protect people and that he implicated others in crimes to obtain privileges while in prison as a member of the *Ukuri* committee.[1584] The Chamber shall address these allegations in turn.

608. Witness AZM was incarcerated at the time of his testimony and his status as an accomplice witness may warrant that his evidence be treated with appropriate caution. Notwithstanding, the Chamber does not consider that his position within the *Ukuri* committee necessarily reflects that his evidence is fabricated or unreliable. Notably, Witness AZM denied having to provide the names of "important" people in order for his guilty pleas to be accepted, and the Defence presented no further evidence in support of this allegation.[1585]

609. Moreover, the Defence presented evidence that Witness AZM purposefully withheld the names "of people who were in positions of responsibility in the country" in order for his guilty pleas to be accepted.[1586] Specifically, when testifying about having drinks with officials on 6 April 1994 in court, Witness AZM admitted to having purposefully omitted the presence of Gatsinzi and Habyarabatuma in a 2002 statement to Tribunal investigators, because he was "compelled not to mention the names of officials at the time [they] were making statements because the authorities had forbidden [them] from doing so".[1587] His admitted willingness to misleadingly omit relevant information to Tribunal investigators, however reasonable his explanation, warrants that his evidence be treated with caution.

610. Turning to Witness AZD, the Chamber notes that it has elsewhere considered in detail the general context in which he testified.[1588] The same general credibility considerations apply with equal force as it relates to this allegation. The Chamber finds no ostensible reasons for viewing his evidence with caution.

611. The Chamber shall now turn to the merits of Witnesses AZM and AZD's evidence in relation to Karenzi's killing. Witness AZM testified that he saw Karenzi alive, standing next to a soldier at this roadblock when he passed through there one day.[1589] When he returned 20

[1581] Witness AZM, T. 20 January 2011, pp. 74, 76.
[1582] Witness AZD, T. 31 January 2011, p. 77.
[1583] Witness AZD, T. 31 January 2011, p. 77.
[1584] Defence Closing Brief, paras. 282-284. The Defence further suggests that Witness AZM, as a former member of the prefect security committee, had an interest in blaming "others" to avoid the wrath of the Rwandan government with regard to the committee. Defence Closing Brief, para. 279. It brought no clear evidence supporting this charge.
[1585] *See* Witness AZM, T. 24 January 2011, p. 37. The Chamber has assessed in greater detail implications of being a member of the *Ukuri* committee elsewhere and has considered it here. *See* II.6.1.
[1586] Witness AZM, T. 24 January 2011, pp. 27-28.
[1587] Witness AZM, T. 24 January 2011, pp. 22-25, 27-28.
[1588] *See* II.4.1.
[1589] Witness AZM, T. 20 January 2011, pp. 74, 76. ("Q. Mr. Witness, when you first passed through that roadblock, what was Karenzi doing at that time? A. He wasn't doing anything, he was just standing next to *that* soldier.") (Emphasis added). The Chamber notes the use of "that" soldier, suggesting that the soldier who

minutes later, the soldier who checked him told him that he had just shot Karenzi dead with two bullets.[1590] He told Witness AZM that Karenzi was carrying tracts, which the witness understood to be a document in a file Karenzi was carrying.[1591] Witness AZM confirmed Karenzi's death, as he could see Karenzi's body.[1592] Furthermore, Witness AZD also walked through the Hotel Faucon roadblock and saw Karenzi's body in its immediate vicinity.[1593] However, neither saw his murder occur.

612. The Chamber notes the circumstantial and second-hand nature of the evidence provided by both witnesses. While Witness AZM saw Karenzi's body at the Hotel Faucon roadblock, he did not see the actual killing and was only told the circumstances under which he was killed – namely shot with two bullets – by the soldier standing there. Similarly, Witness AZD only saw Karenzi's body at the roadblock as he was passing through, but did not specify the manner in which he was murdered or the timing thereof.

613. Notwithstanding, other evidence tends to support what is suggested by the testimonies of Witnesses AZM and AZD – namely, Karenzi was killed at or in the immediate vicinity of the Hotel Faucon roadblock. Specifically, Prosecution and Defence evidence confirms that Karenzi left his house alive.[1594] Furthermore, Prosecution Witnesses Ntezimana, ZBE and Defence Witnesses Nyirasafari and Nyiranzabonimana all heard that Karenzi had been killed at the Hotel Faucon roadblock.

614. One witness, Defence Witness Habyarimana, observed Karenzi's body elsewhere. Karenzi was his former lecturer of physics at the Butare University, so he knew him well and was in a position to recognise him.[1595] The witness – unlike every other witness who testified about this event – stated that he saw Karenzi's body from where he was standing in front of Hotel Ibis, rather than the Hotel Faucon.[1596] The Chamber notes that Hotel Ibis and Hotel Faucon are both situated on Butare's main road that runs through town.[1597] The close proximity of the hotels to each other would have possibly allowed the witness to see Karenzi's body from where he was standing at Hotel Ibis. The Chamber does not consider that his evidence reasonably amounts to a discrepancy with other evidence that Karenzi was killed near the Hotel Faucon.

615. Having considered the Defence evidence, the circumstantial and hearsay evidence of Witnesses AZM and AZD that Karenzi was killed at or in the immediate vicinity of the Hotel Faucon roadblock is compelling. Indeed, the record before the Chamber generally reflects that roadblocks were a locus for the killing operations against Tutsis, who were killed at the hands of soldiers and militia alike.[1598] Given Witness AZM's testimony that he saw Karenzi

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confessed to Witness AZM that he just killed Karenzi, was the same soldier whom Karenzi had been standing next to when passing by the roadblock the first time. However, Witness AZM was not asked to confirm whether this was indeed the same soldier he had seen standing with Karenzi the first time he passed through. The Chamber therefore cannot state with certainty that the soldier whom Witness AZM saw with Karenzi when he was alive and the soldier who told him he had shot Karenzi was one and the same.

[1590] Witness AZM, T. 20 January 2011, p. 74.

[1591] Witness AZM, T. 20 January 2011, p. 74.

[1592] *See* Witness AZM, T. 20 January 2011, pp. 74, 76

[1593] Witness AZD, T. 31 January 2011, p. 77. Witness AZD did not provide a more specific location of the body.

[1594] *See* Witness ZBA, T. 24 February 2011, pp. 8-10; Witness Habyarimana, T. 25 May 2011, pp. 38, 47.

[1595] Witness Habyarimana, T. 25 May 2011, p. 44.

[1596] *See* Witness Habyarimana, T. 25 May 2011, p. 44.

[1597] *See* Confidential Report on the Site Visit, 3 to 7 October 2011, p. 3.

[1598] *See* II.7.3.

alive at the Hotel Faucon roadblock, other evidence that Karenzi's body was seen near it, and further evidence that Karenzi was killed at it, the Chamber is satisfied, based on the totality of the evidence, that Karenzi was killed at or in the immediate vicinity of the Hotel Faucon roadblock. The Chamber shall now address the identity of those who killed Karenzi.

616. As noted above, Witness AZM identified the soldier who he saw detaining Karenzi and who later told the witness that he killed Karenzi as an ESO soldier. He relied on the fact that Colonel Tharcisse Muvunyi told him at a meeting at Huye stadium on 14 April 1994 that the roadblock in front of Hotel Faucon was manned by ESO soldiers. Moreover, Witness AZM often walked through this roadblock and noted that the soldiers manning it were "clearly" ESO soldiers. When he spoke to the soldier who admitted to having killed Karenzi, Witness AZM knew at once that he was from ESO, based on "information available to him" and the young age of the soldier.[1599] The Chamber notes that the soldier who spoke to him was in the process of checking Witness AZM as he passed through the roadblock.[1600]

617. While the witness did not mention the time of day when this occurred, his immediate proximity and unobstructed view of the soldier provide strong support for his ability to identify him.[1601] Moreover, Witness AZM had walked by the Hotel Faucon roadblock twice within a short period of time, allowing him more time to identify the soldiers present. The Chamber further considers that Witness AZM's prominent role in law enforcement in Butare town prior to and during April 1994 strengthen his ability to distinguish among various soldiers in Butare at that time. Indeed, he also referred to his position on the prefecture security committee as further evidence of his involvement with military figures.[1602] Based on the foregoing, the Chamber considers his identification of the soldier who admitted to killing Karenzi as an ESO soldier highly reliable.

618. Consistent with Witness AZM's testimony, there is considerable evidence that ESO soldiers manned this particular roadblock around this time. Notably, Witness AZD, himself an ESO soldier, saw other ESO soldiers, including a first sergeant whose name he no longer recalled, manning the roadblock when he saw Karenzi's body there.[1603] The Defence does not dispute, nor does the Chamber have any doubt, that Witness AZD, a non-commissioned ESO soldier in 1994, would have been in a position to identify ESO soldiers at the roadblock.[1604]

619. Moreover, various other Prosecution witnesses identified ESO soldiers at the Hotel Faucon roadblock around this time period.[1605] While two Defence witnesses deny the

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[1599] *See* Witness AZM, T. 20 January 2011, p. 76.
[1600] *See* Witness AZM, T. 20 January 2011, p. 74.
[1601] The Chamber recalls that the record does not reflect with certainty whether the soldier who killed Karenzi was the same soldier whom Witness AZM had seen Karenzi standing with the first time he passed through the Hotel Faucon roadblock.
[1602] *See* Witness AZM, T. 20 January 2011, pp. 62, 67-68, 72 ("A. Because of my duties, I was a member of the security committee and there I could meet military leaders.").
[1603] *See* Witness AZD, T. 31 January 2011, pp. 75-77.
[1604] *See* Witness AZD, T. 31 January 2011, p. 64; T. 1 February 2011, p. 6; Exhibit P15 (Witness AZD's Personal Information Sheet).
[1605] *See* II.7.3.5. *See also* Prosecution Witness ZBH, T. 8 February 2011, p. 56 (described a roadblock in front of Hotel Faucon that was manned "exclusively" by ESO soldiers; civilians also present there); Prosecution Witness ZAW, T. 26 January 2011, p. 8 (described roadblocks manned by ESO soldiers, including one in front of Hotel Faucon); Prosecution Witness BDE, T. 28 January 2011, pp. 19-20 (described how ESO soldiers were deployed to various "depots" around the city, including in front of Hotel Faucon); Prosecution Witness YAA, T. 1 February 2011, pp. 63-65 (described passing through a roadblock in front of Hotel Faucon around 12 or 13 April

presence of ESO soldiers at this roadblock, instead suggesting that only civilians manned this location,[1606] the Chamber finds that, read collectively, the record undoubtedly demonstrates that ESO soldiers were present at the Hotel Faucon roadblock when Karenzi was killed at or in the immediate vicinity of it around 21 April 1994.

620. Having determined that ESO soldiers manned the Hotel Faucon roadblock when Karenzi was killed at or in the immediate vicinity of it, the Chamber must now turn to the identity of the killers. As noted above, no witness provided a first-hand account of Karenzi's murder. Notably, Witness AZM saw Karenzi alive, being questioned by an ESO soldier who about 20 minutes later told the witness that he had shot and killed Karenzi with two bullets. Defence Witness Habyarimana mentioned seeing people he knew, including Karenzi, "who had been shot dead", offering circumstantial corroboration for Witness AZM's account of the manner in which Karenzi was killed.[1607]

621. The Chamber views Witness AZM's testimony with appropriate caution and notes that his account that an ESO soldier killed Karenzi is both circumstantial and hearsay. However, considerable circumstantial support renders it highly credible, and the Chamber finds it believable beyond reasonable doubt.[1608] First, it is undisputed that ESO soldiers were present at the Hotel Faucon roadblock around 21 April 1994 when Karenzi was killed.

1994, which was manned by approximately 12 ESO soldiers, dressed in military fatigues with rifles), T. 2 February 2011, p. 33 (described roadblocks being erected following orders by ESO authorities); Prosecution Witness Gahizi, T. 7 February 2011, pp. 34-36 (described a roadblock in front of Hotel Faucon after the second week following the President's plane crash, which was manned by ESO cadets); Prosecution Witness Ntezimana, T. 14 February 2011, pp. 64-65, 75 (thought the roadblock in front of Hotel Faucon was manned by ESO soldiers; specifically, a soldier at the roadblock refused to allow the witness passage notwithstanding that he had a *laisser-passez* issued by Ngoma Camp Lieutenant Hategekimana; the soldier subsequently told a soldier sent by Hategekimana instructing him to let the witness through that he did not take orders from Hategekimana; the witness was allowed witness passage after a warrant officer who the witness thought came from ESO asked the soldier to let the witness through); Defence Witness Ruzindana, T. 1. June 2011, p. 43 (passed through a roadblock in front of Hotel Faucon, though he did not specify who manned it); Defence Witness Hitayezu, T. 9 June 2011, p. 66 (crossed a roadblock in front of Hotel Faucon); Defence Witness Bunani, T. 13 June 2011, p. 14 (crossed a roadblock in front of Hotel Faucon). *But see* Prosecution Witness AZD, T. 31 January 2011, p. 75 (recalled seeing civilians at the Hotel Faucon roadblock as well); Defence Witness Habyarimana, T. 25 May 2011, pp. 44-45 (did not see soldiers around the Hotel Ibis area, and instead heard that people "dressed in banana leaves" were responsible for the killing of Karenzi).

[1606] Defence Witness Ntamagezo, T. 8 June 2011, p. 61 (described a roadblock in front of Hotel Faucon around 21 April 1994, which was manned by civilians); Defence Witness CKN10, T. 30 May 2011, pp. 9-10 (described passing through a roadblock in front of Hotel Faucon, manned by *Interahamwe*).

[1607] Witness Habyarimana, T. 25 May 2011, pp. 44-45. Witness AZM was not asked whether he saw the bullet wounds in Karenzi's body. He only testified that he in fact saw the body.

[1608] Mindful of the weaknesses in Witness AZM's evidence, the Chamber does not feel that Habyarimana's hearsay account that persons in banana leaves killed Karenzi raises further doubts. Habyarimana's evidence is significantly less probative than Witness AZM's. The source of Witness AZM's information was a soldier stationed at the roadblock who claimed to have observed the incident first-hand – indeed, stated that he killed the professor. By contrast, the basis of knowledge of the "passersby" who told Habyarimana, that persons in banana leaves killed Karenzi is unknown. *See* Witness Habyarimana, T. 25 May 2011, pp. 44 ("A. When we asked questions to passersby -- because this was in front of the Ibis and this is one of the major roads of the city -- they said that they didn't know who the killers were. They came early in the morning and they were dressed in -- in a certain type of clothing and then they killed people and they left."), 45 ("THE ENGLISH INTERPRETER: The witness said that the people who killed were dressed in banana leaves."). The possibility that their information is second-hand, or more attenuated, raises considerable doubts about its reliability.

Soldiers manning roadblocks were often armed, checking identities and, at times, participating in the killing of Tutsis.[1609]

622. In the Chamber's view, the only reasonable conclusion is that Karenzi was shot and killed by an ESO soldier who was in charge of security at this roadblock. In so finding, the Chamber has considered that other evidence reflects that civilians acting on the orders of soldiers carried out killings at roadblocks. Given that Karenzi was shot, that Witness AZM saw the professor being detained by an ESO soldier (rather than civilians) and the fact that the ESO soldier admitted to killing Karenzi, the combination of the circumstantial and hearsay evidence eliminates the natural weaknesses that apply to each type of evidence when considered individually. Furthermore, the hearsay evidence is particularly strong given the directness of the source – *i.e.* the killer himself – the immediacy in which the information was shared with Witness AZM and the inculpatory nature of the information given by the soldier. This eliminates any reasonable doubts that the killer was anyone other than that ESO soldier.

623. The Chamber recalls that Witness BEJ01, a civilian, was convicted for the murder of Karenzi. The Chamber notes that the judgement does not elaborate on the manner in which Witness BEJ01 killed Karenzi or contributed to the killing of Karenzi.[1610] In light of the evidence reflecting frequent collaboration between ESO soldiers and civilians in the murder of Tutsis, the Chamber does not consider that Witness BEJ01's conviction raises doubt that an ESO soldier positioned at the Hotel Faucon roadblock killed Karenzi. The Chamber shall discuss in its Legal Findings whether Nizeyimana may be held responsible for this killing.

(ii) Killing of Alphonsine Mukamusoni

624. There is no dispute that Alphonsine Mukamusoni was killed in her household around 21 April 1994. Witness ZBA saw her corpse on that day after hearing gunshots and the assailants leave. Similarly, Defence Witness BEJ01 called the house that day, and, having received no answer, went to the residence on 22 April and saw her dead.

625. The question remains as to who killed Alphonsine Mukamusoni. Notably, Witness ZBA was hiding in the ceiling when Mukamusoni was killed, and therefore was unable to visually identify the assailants. Likewise, she later heard from an unidentified source that the assailants were Presidential Guards, who were responsible for guarding Bararengana's house.[1611] As discussed above, Witness Nyirasafari testified – in relation to the Karenzi killing – that Presidential Guards escorted Karenzi from his house. In light of Witness ZBA's unexplained belief that those who abducted Karenzi returned and killed Mukamusoni, Witness Nyarisafari's account supports a reasonable inference that the same Presidential Guards returned to the home and killed Mukamusoni.

626. The Chamber has discussed the merits of this evidence above, noting its limited probative value. Nonetheless, the record fails to demonstrate that ESO soldiers ever went to Mukamusoni's house. It may be reasonable to conclude that Mukamusoni's killing was part of the same murder operation that led to Karenzi's death at the Hotel Faucon roadblock.

[1609] *See* II.7.1-II.7.3.

[1610] *See* Exhibit P52 (Judgement), p. 42 ("by act or omission … [c]omitted intentional homicide" on Karenzi).

[1611] Witness ZBA, T. 24 February 2011, p. 9. Witness ZBA's testimony indicates that she thought that Karenzi's abductors were the same people who came back to kill Mukamusoni. Witness ZBA, T. 24 February 2011. p. 9 ("We heard them leave and then tried to call for Karenzi's wife. When we called out for her, she told us to be quiet. Then the attackers came back and asked Karenzi's wife for money.").

However, the killings occurred at two different locations. Furthermore, the involvement of ESO soldiers in Karenzi's death relies primarily on their fixed positions at the Hotel Faucon roadblock and the operations they carried out at that specific location. Consequently, the evidence reasonably allows for the possibility that the unidentified assailants – possibly Presidential Guards – returned to Mukamusoni's home and killed her without any knowing, significant or substantial contribution from ESO soldiers posted at the Hotel Faucon roadblock.

627. Moreover, the Prosecution evidence fails to directly implicate Nizeyimana in this murder. Accordingly, the Chamber is in no position to determine that Nizeyimana had a significant or substantial contribution to Mukamusoni's killing. The record fails to demonstrate that subordinates over whom Nizeyimana exercised effective control perpetrated this murder. This allegation is dismissed.

6.6 Killing of Matabaro, Nyirinkwaya and Others

Introduction

628. The Indictment alleges that, around 20 April 1994, Nizeyimana led ESO soldiers to the homes of Jean Baptiste Matabaro and Zéphanie Nyirinkwaya. Following the Accused's instructions, these soldiers forcibly removed and killed members of the Matabaro, Nyirinkwaya, Hitimana, Ntakirutinka and Nyandwi families, as well as others in a field near Jean Baptiste Matabaro's home. Prosecution Witnesses BZC, BXF, ZBJ, AJP, Rony Zachariah and AZM provided relevant evidence.[1612]

629. The Defence challenges the accuracy and consistency of the Prosecution evidence and points to alibi evidence suggesting that Nizeyimana was not in Butare town on the evening of the killings. Defence Witnesses MOL08, CKN20, Aggripine Nyiranzabonimana, RWV08, Irénée Hitayezu and KEN06 provided relevant evidence.[1613]

Evidence

Prosecution Witness BZC

630. Starting around 6 April 1994, Witness BZC, a Tutsi, lived in the Matabaro compound, situated directly in front of Nizeyimana's home.[1614] The witness was there with five members of his family as well as neighbours Ignace Nyandwi, his son Kevin and a babysitter, as well as other people he could not recall.[1615] Around 6.00 p.m. on 22 April, about 10 ESO soldiers, wearing camouflage uniforms and black berets came to the house and told the approximately 20 people present, which did not include Matabaro, to leave.[1616]

631. As the witness exited, he saw Nizeyimana, from a metre away, wearing blue and white striped sports attire standing next to a soldier. The witness knew Nizeyimana, having regularly observed the captain in the neighbourhood during his current and prior visits to the Matabaro family.[1617]

[1612] Indictment, paras 22, 40. Prosecution Closing Brief, paras. 400-438; T. 7 December 2011, pp. 25-26 (Prosecution Closing Argments).

[1613] Defence Closing Brief, paras. 10, 13-14, 29, 50-51, 127-128, 135, 189, 194, 208-231; T. 7 December 2011, pp. 40-41, 47-49, 639 (Defence Closing Arguments). Reference is made to the testimony of Witness Marie Paul Spielmann. *See* Defence Closing Brief, para. 215; Prosecution Closing Brief, paras. 411, 413. The Chamber observes that an excerpt from of a statement signed by Witness Spielmann and Witness Zachariah was read into the record. *See* Witness Spielmann, T. 31 January 2011, pp. 14-15. Given the reference to "myself and Marie Paule", it appears to have been written by Witness Zachariah. *See* T. 31 January 2011, p. 15. Witness Spielmann was asked to confirm only one aspect of the statement – whether the perpetrators were identified as the Presidential Guard and *Interahamwe*. T. 31 January 2011, p. 16. She testified that she kept records once arriving in Bujumbura. T. 31 January 2011, p. 16. The Chamber has elsewhere, at length, discussed the Tribunal's preference for live testimony and that the mere reading of a statement into a record does not transform it into live testimony. *See* II.3.4. The same logic applies here. The Chamber, consequently, considers the evidence of Witness Spielmann, but in light of the above, will not summarise it in the evidence section.

[1614] Witness BZC, T. 22 February 2011, pp. 54-55; Exhibit P34 (Witness BZC's Personal Information Sheet).

[1615] Witness BZC, T. 22 February 2011, pp. 54-56, 57, 62, 76-77.

[1616] Witness BZC, T. 22 February 2011, pp. 57, 59-60, 71.

[1617] Witness BZC, T. 22 February 2011, pp. 55, 57, 59.

632. Once on the street, soldiers directed those leaving the Matabaro home to turn "right" and they entered the home of Sub Prefect Zéphanie Nyirinkwaya.[1618] However, five soldiers immediately ordered the group, and the 15 to 20 people at Nyirinkwaya's home, to leave.[1619]

633. As the group continued to move through Butare town, two to three soldiers on every corner directed them to turn right, then left and followed by another left, until they reached a cul-de-sac.[1620] There, the witness saw four to five silhouettes wearing light-coloured clothing, standing approximately 150 to 200 metres away, who he believed were Jean Baptiste Matabaro, Zéphanie Nyirinkwaya, Ignace Nyandwi and Théodore Hitimana.[1621] Immediately, the witness heard intermittent gunfire, then soldiers' footsteps coming towards them. He heard someone shout "execute" followed by continuous gunshots aimed at the witness, as well as those who accompanied him, which included elderly women and toddlers. The attack lasted approximately 45 minutes.[1622] About six to seven members of the group, including Witness BZC, escaped to a nearby bush where they remained throughout the night.[1623]

634. Around 5.00 a.m. the following morning, 23 April 1994, the survivors returned to the Matabaro compound and from there they went to the Burundian neighbour's house.[1624] Some of the injured were taken away by representatives of *Médecins Sans Frontières*, while the witness and the other remaining survivors escaped to Maraba commune.[1625]

Prosecution Witness BXF

635. In April 1994, Witness BXF, who carried a Hutu identity card, was staying at the Matabaro household with about 30 other people in Buye cellule, Butare town.[1626] This home was in the immediate proximity of Nizeyimana's residence.[1627] Witness BXF was unaware of the ethnicities of the other residents of Matabaro's house.[1628]

636. The witness believed that President Théodore Sindikubwabo met with government ministers and prefecture authorities on 20 April 1994, and he heard the President's resulting speech. Consequently, the witness's parents, feeling unsafe, planned to flee Butare with

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[1618] Witness BZC, T. 22 February 2011, pp. 57-58, 60.
[1619] Witness BZC, T. 22 February 2011, pp. 58, 60. Witness BZC elsewhere testified that Zéphanie Nyirinkwaya's property was to the left of the Matabaro compound. *See* T. 22 February 2011, p. 55.
[1620] Witness BZC, T. 22 February 2011, pp. 58-59.
[1621] Witness BZC, T. 22 February 2011, p. 60. These men had been together on the balcony when the soldiers arrived at the Matabaro compound and were not present when the others, including Witness BZC, were forced to leave. Witness BZC, T. 22 February 2011, pp. 58, 60.
[1622] Witness BZC, T. 22 February 2011, pp. 58-60, 70.
[1623] Witness BZC, T. 22 February 2011, pp. 58-61. The survivors included: Mrs. Matabaro, who had been shot in the stomach; Nyirinkwaya's son who had fallen badly in the gutter and said that he could not move; and a girl who had wounds to her chest and arm. Witness BZC's father was killed in the attack. T. 22 February 2011, pp. 58-59, 61-62.
[1624] Witness BZC, T. 22 February 2011, pp. 59, 61. Witness BZC could not recall the name of the neighbour. T. 22 February 2011, p. 54.
[1625] Witness BZC, T. 22 February 2011, pp. 59, 61, 71-72, 74. Witness BZC testified that the injured boy and girl were taken away by the representatives of *Médecins Sans Frontières* and believes that his mother may have accompanied them to the hospital.
[1626] Witness BXF, T. 22 February 2011, pp. 4, 6, 8, 12, 16. Witness BXF did not disclose his ethnicity, explaining that he was never taught whether he was Hutu or Tutsi. T. 22 February 2011, pp. 9, 14, 24, 28, 50; *see also* Exhibit P33 (Witness BXF's Personal Information Sheet).
[1627] Witness BXF, T. 22 February 2011, pp. 7-10.
[1628] Witness BXF, T. 22 February 2011, p. 15.

Witness BXF.[1629] However, on the day after the speech, 21 April, a soldier, whom the witness recognised from Nizeyimana's backyard, entered Matabaro's home and ordered the persons present, which included the witness's mother, two brothers, three sisters, and the mothers and children of the Ntakirutinka and Hitimana families to stay there.[1630] The soldier left the house but stood nearby, guarding the premises.[1631]

637. Around 5.30 or 6.00 p.m. the following day, 22 April 1994, Nizeyimana arrived at the Matabaro house wearing blue "sports clothing" with white stripes.[1632] Three or four soldiers in uniforms similar to those worn by soldiers the witness had previously seen posted at Nizeyimana's compound accompanied the captain.[1633] The soldiers ordered the witness, his mother, brothers, sisters, and the mother and children of the Ntakirutinka family to leave the house, stating they were searching for *Inyenzis*.[1634] Witness BXF then asked the soldiers whether they should show their identity cards, but the soldiers declined.[1635] As the soldiers were issuing orders, Witness BXF realised that his father and other male residents were missing, and he assumed that they had already been abducted.[1636]

638. While the soldiers were searching the compound, the witness and the others with whom he had left the Matabaro home went to hide at the home of Sub Prefect "Zéphanie".[1637] Five minutes later, two soldiers arrived and directed the group along with Zéphanie's wife and children toward a soldier's house near bushes by the French cultural centre, where they were met by another group of soldiers.[1638] There, the soldiers opened fire, and the witness fell to the ground where he found his mother had been shot in the stomach.[1639] After about 10 minutes, the shooting stopped, and the witness heard a soldier say that they had to loot the victims' property and would return to "finish off" any survivors.[1640] Witness BXF left his mother behind and went to his neighbour's house for the night.[1641]

639. The following morning, at 5.00 a.m., the witness found his mother where he had left her in "critical condition". He also saw that his "brother" and "sisters" had been shot in their heads.[1642] The witness went to get assistance from a doctor in the area, but while waiting on the road near a pit for an ambulance, soldiers in a truck arrived. They stated that they were looking for the "little *Inyenzi*", prompting the witness to flee.[1643]

[1629] Witness BXF, T. 22 February 2011, pp. 5, 13-14.
[1630] Witness BXF, T. 22 February 2011, pp. 12-14, 23.
[1631] Witness BXF, T. 22 February 2011, p. 14.
[1632] Witness BXF, T. 22 February 2011, pp. 14, 16-17, 19, 39-42. *See also* T. 22 February 2011, p. 18 ("I simply saw the presence of one of them who was in civilian clothes and I was able to recognize him because he was a neighbour.").
[1633] Witness BXF, T. 22 February 2011, pp. 17-18.
[1634] Witness BXF, T. 22 February 2011, pp. 17-19.
[1635] Witness BXF, T. 22 February 2011, pp. 17, 24-25.
[1636] Witness BXF, T. 22 February 2011, pp. 14-16.
[1637] Witness BXF, T. 22 February 2011, pp. 15, 18-20. Witness BXF, his mother, brothers and sisters as well as the Ntakirutinka wife and children walked passed Doctor Barahira's home before reaching the sub prefect's home. T. 22 February 2011, pp. 18-19.
[1638] Witness BXF, T. 22 February 2011, pp. 15, 19-20.
[1639] Witness BXF, T. 22 February 2011, pp. 15, 20.
[1640] Witness BXF, T. 22 February 2011, p. 20.
[1641] Witness BXF, T. 22 February 2011, p. 20.
[1642] Witness BXF, T. 22 February 2011, pp. 20-21, 23.
[1643] Witness BXF, T. 22 February 2011, p. 21.

640. Next, Witness BXF sought help from Dr. Jotham, director of the Butare University Hospital. Dr. Jotham, resigned to the hopelessness of the situation, advised the witness that his mother was unlikely to survive.[1644] The witness stayed with the Jothams for the night, accepting that, in the interest of his own survival, he had to abandon his efforts to save his mother. His mother died from the shooting, along with his father, sister, and brothers.[1645]

641. Dr. Jotham's wife arranged through General Marcel Gatsinzi's wife for the witness to stay with Gatsinzi's extended family who came from Kigali. The witness left after two weeks when a soldier wearing his father's watch threatened to take him out of the house.[1646] The witness went to stay with his aunt in Gikongoro, where he saw Nizeyimana several times. On each occasion, the captain was driving a red Volkswagen Jetta, which belonged to Matabaro in April 1994.[1647]

Prosecution Witness ZBJ

642. In April 1994, Witness ZBJ, a Tutsi, lived with approximately 40 others in the Matabaro compound in Buye cellule, Butare town, which was in front of Nizeyimana's home.[1648] Between 5.30 and 6.00 p.m. on 22 April 1994, soldiers came to the Matabaro house and ordered everyone in it to leave. As the witness exited, she saw Nizeyimana about two to three steps away from her, standing in a blue "tracksuit".[1649] She knew Nizeyimana from having lived across the street from the captain for approximately two years.[1650] She also recognised some of the soldiers as guards from Nizeyimana's house.[1651] There were about 10 soldiers in the compound.[1652]

643. While it was still daylight, the witness and Matabaro's wife went to the neighbouring house of Sub Prefect Zéphanie Nyirinkwaya. There she learned from Nyirinkwaya's wife that Matabaro, Nyirinkwaya and other men, who had been together on the balcony of the Matabaro compound, had been taken away by soldiers.[1653]

644. More soldiers arrived stating, "[H]ow come those idiots came here? Get out. Get out immediately".[1654] The witness hid with her cousin under a bed in one of the children's rooms. Nyirinkwaya's wife briefly entered the room accompanied by soldiers, who the witness identified by reference to their military boots. After she left, the witness heard single

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[1644] Witness BXF, T. 22 February 2011, p. 21.
[1645] Witness BXF, T. 22 February 2011, pp. 21, 23, 42.
[1646] Witness BXF, T. 22 February 2011, pp. 21-22, 43-49.
[1647] Witness BXF, T. 22 February 2011, pp. 23-24.
[1648] Witness ZBJ, T. 25 February 2011, pp. 3, 4, 10; Exhibit P39 (Witness ZBJ's Personal Information Sheet). Witness ZBJ's 1994 identification card indicated that she was Hutu. However, after discussions with an unidentified family member she now believes that she is, and defines herself as, a Tutsi. *See* T. 25 February 2011, p. 17.
[1649] Witness ZBJ, T. 25 February 2011, p. 8.
[1650] Witness ZBJ, T. 25 February 2011, pp. 4, 7-8.
[1651] Witness ZBJ, T. 25 February 2011, pp. 4-5, 12.
[1652] Witness ZBJ, T. 25 February 2011, p. 11.
[1653] Witness ZBJ, T. 25 February 2011, pp. 3, 8-9.
[1654] Witness ZBJ, T. 25 February 2011, p. 8.

gunshots followed by gunshots in "volleys", lasting for about 45 minutes.[1655] She and her cousin remained under the bed throughout the night.[1656]

645. On the morning of 23 April 1994, the witness and her cousin went to the neighbouring home of Ruzindaza, the President of the Court of First Instance.[1657] Although she knew the family well, Ruzindaza prohibited them from speaking to his wife, "Agrippine".[1658] He told them to return to their compound and ordered them to leave immediately upon seeing one of her brothers.[1659] Outside, she found her brother accompanied by others, including one of her cousins, whose breast was exposed and had a wounded arm.[1660]

646. They returned to the Matabaro compound. While there, Jean Marie Vianney Habyarabatuje, a friend of Matabaro's, called the home and told the witness that he had heard that soldiers had attacked the compound and killed everyone.[1661] He told her he would arrange to collect them with some soldiers from their neighbour's house, a lecturer at the EAVK school.[1662] When they arrived the lecturer panicked and left immediately.[1663] A short while later, Habyarabatuje arrived with unidentified "soldiers" in a "pickup truck". The witness recognised one person among the soldiers as Nyiramasuhuko's son, "Shalom". Shalom asked whether they were Matabaro's children, to which they responded no as they had all been killed.[1664] They then told the soldiers that they were maids after which they were escorted to the Maraba commune.[1665]

647. Almost all the people living at the Matabaro home as well as the 10 to 15 persons living in the Nyirinkwaya compound were killed on 22 April 1994. The victims included the witness's father, her mother, her younger brother and sister, her uncle, and many of her unidentified friends.[1666] The witness saw Nizeyimana again in Gikongoro in July in a red Volkswagen. The vehicle had belonged to Ignace Nyandwi, who was living at the Matabaro compound in April.[1667]

Prosecution Witness AJP

648. Witness AJP, a Hutu, lived in Butare town in April 1994.[1668] He was a former ESO cadet with close ties to Nizeyimana, and noted that the captain's home was directly behind the Matabaro compound and separated by only a fence.[1669] After 6 April, six ESO soldiers

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[1655] Witness ZBJ, T. 25 February 2011, pp. 8-9, 11.
[1656] Witness ZBJ, T. 25 February 2011, pp. 9, 13.
[1657] Witness ZBJ, T. 25 February 2011, pp. 3, 9.
[1658] Witness ZBJ, T. 25 February 2011, pp. 9, 12.
[1659] Witness ZBJ, T. 25 February 2011, pp. 9, 12.
[1660] Witness ZBJ, T. 25 February 2011, p. 10.
[1661] Witness ZBJ, T. 25 February 2011, pp. 13-14.
[1662] Witness ZBJ, T. 25 February 2011, pp. 13-15. Witness ZBJ identified the lecturer as Burundian, but it is not clear from her testimony whether it is he or the medical doctor who is named Barahira. T. 25 February 2011, pp. 3, 13.
[1663] Witness ZBJ, T. 25 February 2011, p. 14.
[1664] Witness ZBJ, T. 25 February 2011, p. 14.
[1665] Witness ZBJ, T. 25 February 2011, p. 14.
[1666] Witness ZBJ, T. 25 February 2011, pp. 12-13.
[1667] Witness ZBJ, T. 25 February 2011, pp. 5, 15-16.
[1668] Witness AJP, T. 14 February 2011, p. 81; T. 15 February 2011, pp. 3-4, 7, 34, 64, 67-69; Exhibit P28 (Witness AJP's Personal Information Sheet).
[1669] Witness AJP, T. 14 February 2011, pp. 80-81; T. 15 February 2011, pp. 3-4, 7, 13, 34, 64, 67-69.

acted as Nizeyimana's personal escort and different ESO soldiers regularly came to property following 20 April.[1670]

649. At an unspecified time, approximately two days prior to the attack on the Ngarambe family, which Witness AJP recalled took place on 24 or 25 April 1994, he was at Nizeyimana's home when he overheard Nizeyimana order soldiers to kill the Matabaro family.[1671] The witness remained at Nizeyimana's house with Nizeyimana, while the soldiers left. The soldiers returned between 8.00 and 8.30 p.m. that evening and informed Nizeyimana that they had completed the task.[1672]

650. Later, at an unspecified time, Nizeyimana ordered Witness AJP to go to the Matabaro compound and collect a Volkswagen Jetta vehicle.[1673] Witness AJP and Longin Rudasingwa took the vehicle to the Accused's house, and it was then transferred to the SORWAL premises by Rudasingwa, where it remained until Nizeyimana fled Butare.[1674] At that point, a SORWAL driver took the car to Cyangugu military camp, while the Accused followed in a military vehicle.[1675] While obtaining the vehicle from the Matabaro compound, the witness observed more than 10 corpses on the road leading to the EFOTEC near the Matabaro property.[1676]

Prosecution Witness Rony Zachariah

651. Witness Zachariah, a Luxembourg national, was a doctor for *Médecins Sans Frontiéres* working in Butare from on 20 February until 24 April 1994 and lived in the Buye area.[1677] On the morning of 22 April, Witness Zachariah drove to Sub Prefect Zéphanie's house to pick him up for a meeting.[1678] Coming from Buye cellule, the witness observed several bodies outside Zéphanie's house and got out to examine them.[1679] Then Zéphanie's sister-in-law ran to the witness, displaying a bullet wound in her chest.[1680] She said that the *Interahamwe* and a soldier of the Presidential Guard came to her home the previous night around 10.00 p.m., removed and killed her family members.[1681] As Zéphanie's sister-in-law was explaining, Witness Zachariah heard Zéphanie's son groaning in nearby gutter.[1682] Witness Zachariah found him with a bullet wound through his femur.[1683]

652. Witness Zachariah directed Zéphanie's sister-in-law to get into his vehicle and put Zéphanie's son in the vehicle as well. Two young soldiers, wearing plain green uniforms and

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[1670] Witness AJP, T. 15 February 2011, pp. 8, 10-12, 20.
[1671] Witness AJP, T. 15 February 2011, pp. 13, 18.
[1672] Witness AJP, T. 15 February 2011, pp. 13, 18-19, 72-73.
[1673] Witness AJP, T. 15 February 2011, p. 13.
[1674] Witness AJP, T. 15 February 2011, pp. 13-15.
[1675] Witness AJP, T. 15 February 2011, pp. 14-15. SORWAL is a factory which produces matches. T. 14 February 2011, p. 81.
[1676] Witness AJP, T. 15 February 2011, pp. 13-14. Witness AJP testified that the location where he saw the corpses is currently adjacent to le Petit Prince Hotel. T. 15 February 2011, pp. 13-14.
[1677] Witness Zachariah, T. 14 February 2011, pp. 3-4, 17; Exhibit P25 (Witness Zachariah's Personal Information Sheet).
[1678] Witness Zachariah, T. 14 February 2011, pp. 9, 17.
[1679] Witness Zachariah, T. 14 February 2011, pp. 18, 30-31.
[1680] Witness Zachariah, T. 14 February 2011, pp. 18-19.
[1681] Witness Zachariah, T. 14 February 2011, p. 19.
[1682] Witness Zachariah, T. 14 February 2011, pp. 19, 31.
[1683] Witness Zachariah, T. 14 February 2011, pp. 19, 31.

berets of a colour Witness Zachariah could not recall, approached and tried to pull the boy out.[1684] The soldiers, who appeared "young", "jittery" and inexperienced, asked for the victims' identification cards.[1685] While the soldiers pulled at the boy, Witness Zachariah, promising future treatment for the soldiers should they need it, managed to convince them to let the boy leave with him.[1686]

Prosecution Witness AZM

653. Witness AZM, a Hutu, was a member of the prefecture security committee in Butare in April 1994.[1687] He knew Jean Baptiste Matabaro, as they both worked under the ministry of justice, and he knew of the Matabaro family.[1688] The witness heard from a source that Matabaro, along with about 12 others, was taken by surprise at Matabaro's home and killed "before the actual genocide started in the Butare area".[1689] Zéphanie Nyirinkwaya, the sub prefect in charge of social welfare, was among those murdered.[1690] Most of the residents of Butare heard gunshots during the night of the attack and were curious to know what had happened.[1691]

Defence Witness Aggripine Nyiranzabonimana

654. Witness Nyiranzabonimana, a Hutu, was a teacher in April 1994 and lived in Buye cellule, Butare town on the same street as Matabaro, Nizeyimana and Sub Prefect Zéphanie.[1692] She was friends with the Matabaros and taught three of their children at Ngoma primary school. She had observed from their information forms that the children were Hutu.[1693] Though she did not know Sub Prefect Zéphanie well, she also believed that he was Hutu.[1694]

655. On the evening of 21 April 1994, the witness and her husband, Jean Baptiste Ruzindaza, returned home early, having heard gunshots the previous evening and learning of the deaths of the Maniraho family.[1695] After 8.00 p.m., the witness and Ruzindaza heard people passing outside their house, followed by about five minutes of gunshots.[1696] While the witness remained in the bedroom, Ruzindaza went to living room and called Nizeyimana seeking an explanation. He was informed that Nizeyimana was not there that night.[1697]

[1684] Witness Zachariah, T. 14 February 2011, pp. 19, 31.
[1685] Witness Zachariah, T. 14 February 2011, pp. 19, 31.
[1686] Witness Zachariah, T. 14 February 2011, pp. 19, 31.
[1687] Witness AZM, T. 20 January 2011, pp. 58, 72; T. 24 January 2011, p. 18; Exhibit P6 (Witness AZM's Personal Information Sheet).
[1688] Witness AZM, T. 20 January 2011, p. 71.
[1689] Witness AZM, T. 20 January 2011, pp. 71-72. Witness AZM noted that killings began in Butare on the night of 20 April 1994. T. 20 January 2011, p. 61. Witness AZM could not recall who told him about the killings. T. 20 January 2011, pp. 71-72.
[1690] Witness AZM, T. 20 January 2011, pp. 71-72.
[1691] Witness AZM, T. 20 January 2011, pp. 71-72.
[1692] Witness Nyiranzabonimana, T. 9 June 2011, p. 71; T. 10 June 2011, pp. 13, 15; Exhibit D62 (Witness Nyiranzabonimana's Personal Information Sheet); Exhibit D63 (Map Drawn by Witness Nyiranzabonimana).
[1693] Witness Nyiranzabonimana, T. 9 June 2011, pp. 71-72; T. 10 June 2011, pp. 13, 28.
[1694] Witness Nyiranzabonimana, T. 10 June 2011, p. 4.
[1695] Witness Nyiranzabonimana, T. 10 June 2011, p. 3.
[1696] Witness Nyiranzabonimana, T. 10 June 2011, pp. 3, 7, 30.
[1697] Witness Nyiranzabonimana, T. 10 June 2011, pp. 3-4, 7-10.

656. Around 5.00 a.m. the following morning, State Prosecutor Bushishi phoned and informed Ruzindaza that Matabaro and his family had been murdered.[1698] Ruzindaza then went outside, and saw bodies strewn along the road. Ruzindaza phoned Nizeyimana again, but Nizeyimana's wife told him that Nizeyimana was not home.[1699] Still searching for an explanation, Ruzindaza called prison management, who informed him that Sub Prefect Zéphanie had also been killed that night.[1700]

657. A few days after the incident, Witness Nyiranzabonimana saw one of Matabaro's sons at Dr. Jotham's house on her way to and from the market.[1701] Without explanation, she believed one of Matabaro's daughters also survived the shooting on 21 April 1994.[1702] The witness was unsure as to whether any of Zéphanie's family members survived.[1703]

Defence Witness Irénée Hitayezu

658. Witness Hitayezu, a Hutu, was an ESO cadet and returned from vacation to the ESO Camp on 20 April 1994.[1704] Upon arrival, the witness's unidentified superior assigned him to reinforce guards at Nizeyimana's residence.[1705] He held this post from 20 to 23 April, beginning at 6.00 p.m. each evening and continuing through the night.[1706] Nizeyimana's family was present during that time.[1707] However, Nizeyimana only stayed at his home on the night of 23 to 24 April.[1708]

659. On the second night of his assignment at Nizeyimana's home, from 21 to 22 April 1994, the witness was with Privates Bushalire and Ndayizeye.[1709] That evening, he heard gunfire and screaming, including that of young children, from a nearby house.[1710] They spoke with Nizeyimana's wife and the soldiers prepared to defend the residence.[1711] When the gunfire ceased, Private Ndayizeye peered through the gate and reported seeing civilians and people in military uniforms.[1712] He believed these to be the persons who had fired the shots at the nearby house.[1713] The witness denied that either he or Nizeyimana were involved in the attack.[1714]

[1698] Witness Nyiranzabonimana, T. 10 June 2011, pp. 4, 10.
[1699] Witness Nyiranzabonimana, T. 10 June 2011, pp. 4, 7-10, 23, 31, 34.
[1700] Witness Nyiranzabonimana, T. 10 June 2011, pp. 4, 31.
[1701] Witness Nyiranzabonimana, T. 10 June 2011, pp. 5, 28, 37-38.
[1702] Witness Nyiranzabonimana, T. 10 June 2011, p. 5. Witness Nyiranzabonimana did not explain the basis for her belief that the daughter had survived.
[1703] Witness Nyiranzabonimana, T. 10 June 2011, p. 5.
[1704] Witness Hitayezu, T. 9 June 2011, pp. 51-52, 55, 65-66; Exhibit D61 (Witness Hitayezu's Personal Information Sheet).
[1705] Witness Hitayezu, T. 9 June 2011, p. 52.
[1706] Witness Hitayezu, T. 9 June 2011, p. 52.
[1707] Witness Hitayezu, T. 9 June 2011, pp. 53-54.
[1708] Witness Hitayezu, T. 9 June 2011, p. 52.
[1709] Witness Hitayezu, T. 9 June 2011, pp. 53, 63.
[1710] Witness Hitayezu, T. 9 June 2011, pp. 53, 62-63. Hitayezu first testified that he heard "a lot of firing" on the night of 20 April 1994, when he first arrived at Nizeyimana's home. T. 9 June 2011, p. 53. However, upon further questioning, it appears he was referencing events that occurred the following night. T. 9 June 2011, p. 53.
[1711] Witness Hitayezu, T. 9 June 2011, pp. 53, 62-63.
[1712] Witness Hitayezu, T. 9 June 2011, p. 53.
[1713] Witness Hitayezu, T. 9 June 2011, p. 53.
[1714] Witness Hitayezu, T. 9 June 2011, pp. 53, 64.

Defence Witness MOL08

660. Witness MOL08, a Tutsi carrying a Hutu identity card, lived in Buye cellule, Butare town in 1994 and worked at the Butare University Hospital until 6 April.[1715] She was friends with the Matabaros and lived 400 to 500 metres away from them.[1716] She had never seen Nizeyimana.[1717]

661. On the evening of 20 April 1994, the witness heard gunshots.[1718] She later learned that the Maniraho family had been killed.[1719] The following morning, the witness and her neighbours, Jeanette and Antoine Ncunguyinka, decided to flee Butare the next day.[1720] The Ncunguyinkas went to the Matabaro home, while Witness MOL08 went to her parents' home in Muyaga commune.[1721] Two to three weeks later, the witness's husband came to Muyaga and told her that he heard that the Ncunguyikas and the Matabaros had been killed on 21 April.[1722]

Defence Witness CKN20

662. Witness CKN20, a Hutu, worked for the Ngoma commune office in 1994.[1723] Witness CKN20 worked closely with Matabaro in his role as deputy prosecutor and considered him a close friend.[1724]

663. Around 9:30 a.m. on 22 April 1994, a communal police officer told the witness that there had been a shooting in Buye cellule the previous night in which his friend, Matabaro, had been killed.[1725] The witness went directly to the "site of the incident", where he found bodies around the CFP training centre.[1726] Frightened, the witness did not inspect the bodies.[1727] He observed a deputy public prosecutor called "André", as well as a high ranking soldier, possibly a major or lieutenant colonel, at the scene.[1728]

664. The witness did not see any of the Matabaro children around that time or at any time afterwards.[1729] Matabaro's family members and guests were also killed in the incident, along with Sub Prefect Zéphanie Nyirinkwaya.[1730]

[1715] Witness MOL08, T. 10 May 2011, pp. 5, 8, 19; Exhibit D24 (Witness MOL08's Personal Information Sheet).
[1716] Witness MOL08, T. 10 May 2011, p. 25.
[1717] Witness MOL08, T. 10 May 2011, p. 25.
[1718] Witness MOL08, T. 10 May 2011, pp. 9, 18.
[1719] Witness MOL08, T. 10 May 2011, pp. 9, 17-18.
[1720] Witness MOL08, T. 10 May 2011, pp. 11-12.
[1721] Witness MOL08, T. 10 May 2011, pp. 11-12.
[1722] Witness MOL08, T. 10 May 2011, pp. 12, 21-23, 25-26.
[1723] Witness CKN20, T. 15 June 2011, pp. 2-3; Exhibit D70 (Witness CKN20's Personal Information Sheet).
[1724] Witness CKN20, T. 15 June 2011, p. 9.
[1725] Witness CKN20, T. 15 June 2011, p. 9.
[1726] Witness CKN20, T. 15 June 2011, pp. 10, 15-16.
[1727] Witness CKN20, T. 15 June 2011, p. 16.
[1728] Witness CKN20, T. 15 June 2011, pp. 10, 15.
[1729] Witness CKN20, T. 15 June 2011, p. 18.
[1730] Witness CKN20, T. 16 June 2011, p. 9.

Defence Witness KEN06

665. Witness KEN06, a Hutu, stayed at Nizeyimana's house from 18 April until 2 May 1994.[1731] Due to illness, she seldom left her bedroom during this time and never once went outside the compound.[1732] Donata Mutezimana, Nizeyimana's wife, her son and a house maid all stayed in the property. There were also guards posted outside the house.[1733]

666. On the night 21 April 1994, Witness KEN06 heard many gunshots coming "from the road that passed behind" the Nizeyimana family compound".[1734] Around 9.00 p.m. she overheard Donata talk on the phone in her bedroom. Donata said she was frightened because she was alone in the house, as her husband had gone on a mission to Gikongoro.[1735]

667. During the day of the 22 April 1994, Donata told the witness that their neighbours, Sub Prefect Zéphanie Nyirinkwaya and Jean Baptise Matabaro, had been killed the previous night, along with their respective families.[1736] Later, around 6.30 p.m., a military vehicle driven by a "lieutenant" came to the property, carrying soldiers to guard the house. They were accompanied by members of the Mukimbiri family.[1737]

668. Witness KEN06 saw Nizeyimana four times during her stay: once on the evening of the 18 April 1994, twice on 23 April (midday and evening) and once on the morning of 24 April, after which she did not see him again.[1738]

Deliberations

669. The evidence reflects that, in the last third of April 1994, the Ntakirutinka (or Ncunguyinka), Hitamana families and others, had taken refuge with the Matabaro family in their compound in Buye cellule, Butare town.[1739] The Matabaro property bordered Nizeyimana's residence.[1740]

[1731] Witness KEN06, T. 20 September 2011, pp. 6, 13, 16-17, 19-21, 26-27, 30-31, 37, 47; Exhibit D77 (Witness KEN06's Personal Information Sheet).
[1732] Witness KEN06, T. 20 September 2011, pp. 13, 32.
[1733] Witness KEN06, T. 20 September 2011, pp. 6, 14, 29, 40-41.
[1734] Witness KEN06, T. 20 September 2011, pp. 8-9.
[1735] Witness KEN06, T. 20 September 2011, pp. 8-9, 38.
[1736] Witness KEN06, T. 20 September 2011, p. 10 (four men came to the house and spoke with Donata, who then relayed the news about the killings to the witness).
[1737] Witness KEN06, T. 20 September 2011, pp. 10-11.
[1738] Witness KEN06, T. 20 September 2011, pp. 9, 11, 14-16, 39-40.
[1739] Prosecution Witness BZC, T. 22 February 2011, pp. 54, 56, 57, 62, 76-77; Prosecution Witness BXF, T. 22 February 2011, pp. 4, 6, 8, 12-14, 16, 23; Prosecution Witness ZBJ, T. 25 February 2011, pp. 3, 4, 10; Defence Witness MOL08, T. 10 May 2011, pp. 10-11.
[1740] Prosecution Witness AJP, T. 15 February 2011, p. 13 (the Matabaro compound was directly behind Nizeyimana's, separated by a "little fence"); Prosecution Witness BXF, T. 22 February 2011, p. 8 (there was a wall separating the two properties, the Nizeyimana property was visible from the Matabaro compound); Prosecution Witness BZC, T. 22 February 2011, p. 55 (Nizeyimana's property was behind the Matabaro compound); Prosecution Witness ZBJ, T. 25 February 2011, pp. 4, 25 (Nizeyimana's property was behind the Matabaro compound, separated by a fence, and visible); Defence Witness Nyiranzabonimana, T. 9 June 2011, p. 71 (the properties were adjacent to one another); Exhibit D63 (Map Drawn by Witness Nyiranzabonimana).

670. On an evening, soon after President Sindikubwabo's speech in Butare, armed and uniformed soldiers came to the Matabaro house, ordering everyone to leave the property.[1741] Several of these individuals fled to the nearby home of Sub Prefect Zéphanie Nyirinkwaya. Soldiers followed them there, ordering the people who left the Matabaro home as well as the individuals who were already at the Nyirinkwaya residence to leave.[1742]

671. The soldiers directed those outside to an area close by, where they opened fire on the group.[1743] Sustained gunfire was heard by others in the neighbourhood.[1744] Furthermore, Prosecution and Defence evidence demonstrates that, on the following day, bodies of the victims were discovered near to the Nyirinkwaya residence, where two survivors were recovered by *Médecins Sans Frontiéres* staff Witnesses Zachariah and Spielmann.[1745]

672. In this context, the Prosecution argues that Nizeyimana orchestrated the removal and subsequent killing of the Matabaro, Nyirinkwaya and other families on the evening of the 22 April 1994. Prosecution Witnesses BXF, BZC and ZBJ all identified Nizeyimana at the Matabaro compound, standing among soldiers identified as having guarded the Nizeyimana compound and who conducted rounds in the neighbourhood.[1746] They were directed towards an area near the property where soldiers were waiting for them.[1747] Witnesses BXF and BZC were present once soldiers started firing on the group.[1748] Notably, Witness BZC and ZBJ described that male heads of households had been separated from the group and heard gunshots that sounded like a targeted execution followed by unabated shooting.[1749] Witness AJP was present at Nizeyimana's home and heard him order ESO soldiers to murder Matabaro and his family.[1750]

673. The Prosecution seeks to further connect Nizeyimana to the Matabaro murders as he ordered Witness AJP to appropriate a red Volkswagen that was stationed at the

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[1741] *See, e.g.*, Witness BZC, T. 22 February 2011, pp. 57-60, 71; Witness BXF, T. 22 February 2011, pp. 17-19; Witness ZBJ, T. 25 February 2011, pp. 7-8.
[1742] Witness BZC, T. 22 February 2011, pp. 57-58, 60; Witness BXF, T. 22 February 2011, pp. 15, 18-20; Witness ZBJ, T. 25 February 2011, p. 8.
[1743] Witness BZC, T. 22 February 2011, pp. 58-60, 70; Witness BXF, T. 22 February 2011, pp. 15, 20; Witness ZBJ, T. 25 February 2011, pp. 9, 13.
[1744] Prosecution Witness BZC, T. 22 February 2011, pp. 58-60, 70-71; Prosecution Witness BXF, T. 22 February 2011, pp. 15, 20; Prosecution Witness ZBJ, T. 25 February 2011, pp. 9, 13; Prosecution Witness AZM, T. 20 January 2011, pp. 71-72; Defence Witness MOL08, T. 10 May 2011, pp. 9, 18; Defence Witness Hitayezu, T. 9 June 2011, pp. 53, 63; Defence Witness Nyiranzabonimana, T. 10 June 2011, pp. 3-4; Defence Rejoinder Witness KEN06, T. 20 September 2011, pp. 8-9.
[1745] Prosecution Witness BXF, T. 22 February 2011, pp. 21, 23; Prosecution Witness BZC, T. 22 February 2011, pp. 59, 71-72, 74; Prosecution Witness ZBJ, T. 25 February 2011, pp. 12-14, 26; Prosecution Witness Zachariah, T. 14 February 2011, pp. 18-19, 30-31; Prosecution Witness Spielmann, T. 31 January 2011, pp. 15-16; Defence Witness Nyiranzabonimana, T. 10 June 2011, pp. 4, 10, 23, 31.
[1746] Witness BZC, T. 22 February 2011, pp. 55, 57, 60; Witness BXF, T. 22 February 2011, pp. 14, 44; Witness ZBJ, T. 25 February 2011, pp. 8, 22, 26.
[1747] Witness BZC, T. 22 February 2011, pp. 57, 59-60; Witness BXF, T. 22 February 2011, pp. 15, 20.
[1748] Witness BZC, T. 22 February 2011, p. 58; Witness BXF, T. 22 February 2011, p. 20.
[1749] Witness BZC, T. 22 February 2011, pp. 58, 60, 70; Witness ZBJ, T. 25 February 2011, pp. 8-9. *Cf.* Witness BXF, T. 22 February 2011, pp. 14-16 (testifying that male residents were taken from the Matabaro home prior to him, his mother and siblings and other children were removed).
[1750] Witness AJP, T. 15 February 2011, pp. 13, 72.

compound.[1751] Witnesses ZBJ and BXF subsequently saw Nizeyimana driving this vehicle in Gikongoro.[1752]

674. The Defence witnesses concur that the attack took place and members of these families and people housed at their residences were killed. However, their evidence reflects that it occurred on the evening of 21 April 1994, rather than 22 April. Specifically, Witnesses Hitayezu, Nyiranzabonimana and KEN06 all heard gunfire on the night of 21 April.[1753] The next day, 22 April, Witnesses CKN20 and Nyiranzabonimana's husband saw corpses lying near the CFP centre.[1754] In addition, Prosecution Witness Zachariah, who evacuated the sub prefect's son and sister-in-law, testified that this happened on the morning of 22 April.[1755] Witnesses Zachariah and Spielmann learned from the victims that they had been attacked by Presidential Guards and *Interahamwe*.[1756]

675. The Defence denies the possibility of Nizeyimana's involvement with the killings, arguing that he was absent from Butare on the evening of the 21 April 1994.[1757] In particular, Witnesses Hitayezu and KEN06 testified that Nizeyimana had been away from his home prior to 21 April and returned on 23 April. Moreover, Witness Nyiranzabonimana's husband called Nizeyimana's home on the evening of 21 April and the early morning the following day, only to be told that he was not at home.[1758] The Defence considers the eye-witness accounts of BXF, BZC and ZBJ, to be inconclusive in regard to the time and date of the incident, as well as the identification of the Accused at the scene.[1759] Finally, the Defence argues that Prosecution and Defence evidence reflects that the victims were Hutu, rather than Tutsi.[1760]

676. In this context, the Chamber will first address the credibility challenges to the Prosecution Witnesses AJP, BXF, BZC and ZBJ. Furthermore, of central importance is the date of the attack. In addition, it must determine whether Nizeyimana was present at the attack, whether ESO soldiers participated, and finally whether Nizeyimana is liable for the deaths.

677. Turning first to the general credibility of the Prosecution witnesses, the Chamber has elsewhere discussed in detail its general concerns as it relates to Witness AJP and the need to approach his evidence with the appropriate caution.[1761] Such concerns apply with equal force to his evidence regarding Nizeyimana ordering soldiers to kill the Matabaro family. Of particular significance, Witness AJP's evidence of being inside Nizeyimana's home and

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[1751] Witness AJP, T. 15 February 2011, pp. 13-15.
[1752] Witness BXF, T. 22 February 2011, pp. 11, 23-24; Witness ZBJ, T. 25 February 2011, pp. 5, 15-16.
[1753] Defence Closing Brief, para. 210. Witness Hitayezu, T. 9 June 2011, pp. 53, 63-64; Witness Nyiranzabonimana, T. 10 June 2011, pp. 3-4, 7-10; Witness KEN06, T. 20 September 2011, pp. 7-10.
[1754] Witness Nyiranzabonimana, T. 10 June 2011, pp. 4, 7-10, 23, 31; Witness CKN20, T. 15 June 2011, pp. 9, 15-16, 21, 23-24.
[1755] Defence Closing Brief, para. 215. Witness Zachariah, T. 14 February 2011, pp. 18-19. As discussed in greater detail below, Witness Spielmann offered no direct evidence as to the date of the incident.
[1756] Witness Zachariah, T. 14 February 2011, p. 19; Witness Spielmann, T. 31 January 2011, p. 16.
[1757] *See* II.13.2.
[1758] Defence Closing Brief, paras. 212-214, 231. Witness Hitayezu, T. 9 June 2011, pp. 52-53, 63-64; Witness Nyiranzabonimana, T. 10 June 2011, pp. 3-4, 7-10, 23, 31; Witness KEN06, T. 20 September 2011, pp. 9, 11, 14-16, 39-40.
[1759] Defence Closing Brief, paras. 217-230.
[1760] Defence Closing Brief, para. 210.
[1761] II.6.1.

overhearing this command is uncorroborated. He is the only person to testify that the same soldiers returned between 8.00 and 8.30 p.m. and confirmed that the mission was complete.[1762]

678. As discussed elsewhere, the Chamber has no doubt that Witness AJP had a close personal relationship with Nizeyimana.[1763] Defence evidence confirms that around the time of these killings, Witness AJP was regularly at Nizeyimana's home, providing strong support that he would have been able to observe Nizeyimana issue orders to soldiers from that particular location.[1764]

679. Nonetheless, Witness AJP's evidence is remarkably brief. Moreover, it strays from that of Witnesses BXF, BZC and ZBJ in a material respect. Specifically, it tends to reflect that Nizeyimana did not accompany the soldiers while removing and killing members of the Matabaro and Nyirinkwaya families.[1765] Given the general credibility concerns pertaining to Witness AJP, as well as the lack of corroboration, the apparent inconsistency of his account raises fundamental doubts about its reliability in this instance.

680. Turning to the general credibility of Witnesses BXF, BZC and ZBJ, each of these witnesses knowingly obtained passports that were not their own in order to travel internationally. Specifically, these passports allowed Witnesses BZC and ZBJ to enter Europe from Africa, and facilitated travel into Canada for all of the witnesses.[1766]

681. That each witness knowingly used false immigration documents reflects a willingness to engage in fraudulent activities in contravention of the law. Such circumstances warrant cautious and careful scrutiny of their evidence in this proceeding.[1767] The Chamber considers, however, that their uses of false immigration documents appear to have been motivated by a desire to establish a better life in exile rather than their disregard for honesty.

[1762] Prosecution Witness AJP, T. 15 February 2011, pp. 13, 72.

[1763] II.6.1.

[1764] *See* Defence Witness BEJ01, T. 9 June 2011, pp. 11-12, 32.

[1765] *See* Witness AJP T. 15 February 2011, p. 72 ("Q. So you stayed with Nizeyimana till they came back and said, 'We've finished.' Correct? A. Correct, indeed."). The Prosecution argues that the English version of the transcripts is inaccurate, while the French and Kinyarwanda convey nuances that do not reflect the continued physical presence of both men in Nizeyimana's home, but only Witness AJP's continued presence there. Prosecution Closing Brief, para. 418 *citing* Witness AJP, T. 15 February 2011, p. 76 (French) ("*Q. Ainsi vous êtes resté avec Nizeyimana jusqu'à ce qu'il soit... vous êtes resté chez Nizeyimana jusqu'à ce qu'il soit rentré et qu'il vous ait dit que le travail était achevé; est-ce exact? R. C'est bien exact.*"). It was the Prosecution's obligation to confront ambiguities in Witness AJP's evidence at the time of his testimony. Its current argument requests the Chamber to engage in speculation. This is not convincing.

[1766] Witness BXF testified that he travelled from Belgium to Canada on a Belgian passport, which he had purchased for 2000 USD. It had the name and photograph of another person on it. Witness BXF, T. 22 February 2011, pp. 29-30, 36. Witness ZBJ also acquired a Belgian passport that contained the name and photograph of another person, which she used in order to travel to Belgium and Canada. Witness ZBJ, T. 25 February 2011, pp. 19-20; Witness BXF, T. 22 February 2011, p. 36. Witnesses BXF and ZBJ both "tore up" their passports before passing through Canadian immigration. Witness BXF, T. 22 February 2011, pp. 30-31; Witness ZBJ, T. 25 February 2011, p. 21. Witness BZC obtained a false French passport in order to allow him to travel to Belgium, which cost him 1000 USD. Witness BZC, T. 22 February 2011, p. 66. He spent between one month and one month and a half in Brussels, obtaining another passport from a friend, which he used to travel to Canada. T. 22 February 2011, pp. 66-67. He sent the passport back to Belgium after his arrival. T. 22 February 2011, p. 67.

[1767] *Cf. Nchamihigo* Appeal Judgement, para. 77 (the Trial Chamber abused its discretion in failing to consider other evidence inconsistent with a witness's testimony, particularly given the fact that the witness had been convicted for forgery and that his evidence was uncorroborated).

682. Consequently, while this prior bad conduct is relevant to the evaluation of their testimonies, the Chamber is not persuaded that the circumstances in which they testified in this proceeding provided similar motivations or incentives to lie to the Chamber or implicate Nizeyimana. It is not clear that anything is to be gained by these witnesses by participating in this trial. For example, while each witness was denied refugee status in Canada, Witnesses BZC and ZBJ have been granted permanent resident status on humanitarian grounds.[1768] Consequently, the Chamber is not concerned that their evidence about the attack, for example, is motivated by a desire to bolster any immigration or residency applications in Canada.[1769]

683. Furthermore, even if the Chamber had reasonable concerns that the witnesses' testimonies were motivated by a desire to bolster their residency status in Canada, there still remains no incentive to implicate Nizeyimana in that attack. Indeed, the evidence of Witnesses ZBJ and BXF reflects their belief that implicating Nizeyimana in the 22 April 1994 attack during their refugee application hearing led to adverse findings by the immigration judge.[1770] Consequently, the Chamber observes no subjectively held motivations by any of the witnesses to now implicate Nizeyimana in the attack and to do so in this context.

684. In fact, the circumstances suggest that the witnesses testified against Nizeyimana despite concerns that this might threaten their safety as well as that of their family members. These concerns justified the issuance of protective orders that allowed them to testify under a

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[1768] Witness BZC, T. 22 February 2011, p. 70; Witness ZBJ, T. 25 February 2011, pp. 22-24.

[1769] Witness BXF testified about applying for permanent residency status on humanitarian grounds, but he did not indicate if that process had concluded. Witness BXF, T. 22 February 2011, pp. 38-39. Notably, he arrived in Canada with Witness ZBJ nearly a decade before testifying in this proceeding. T. 22 February 2011, p. 29. In light of Witness BXF's continued presence in Canada, as well as the fact that the attack on the Matabaro home in April 1994 was the basis for which Witness ZBJ applied for and obtained permanent residency status (Witness ZBJ, T. 25 February 2011, pp. 22-24), it would appear that Witness BXF's request would have been granted as well.

[1770] *See* Witness ZBJ, T. 25 February 2011, p. 22 ("A. … And before the court, since the PIF was a summary, I remember Judge … asked me a question. I said that there was a captain in the PIF there was no name of the captain, but during the hearing Judge … asked me what was the name of the person. I gave the name of the person and he asked me who was that captain. I said the captain was Ildéphonse Nizeyimana. And before pronouncing that name, given the fact that it was not in the PIF, as soon as the judge asked me the question, we had prepared ourselves to the fact that we were going to narrate everything. So when I was asked that question, just like I do every day before mentioning his name, before thinking about what happened, I have to take in a deep breath just to have the courage to do it. So I took in a deep breath and told the judge it was Captain Ildéphonse Nizeyimana. That was not in the PIF. But I mentioned it at the hearing. Q. Was your claim for refugee status granted? A. It was denied, because the judge said that the person we talked about did not exist."); Witness BXF, T. 22 February 2011, p. 36 ("A. Yes. At one point the judge said that he was tired of hearing our accounts on the genocide. He said that there was no evidence to the effect that that person existed. If you have my immigration file, I think you will find that inside. Q. When you say 'there is no evidence that that person existed', who are you talking about? I just don't understand, sir. A. he judge was referring to Captain Nizeyimana, because when I was giving an explanation, I was talking about the genocide. And when the judge asked [Witness ZBJ] who had killed [the Matabaros, Witness ZBJ] answered Captain Nizeyimana had killed them. Upon hearing that, the judge asked [Witness ZBJ] to provide evidence that Captain Nizeyimana was someone who existed or who had existed. We didn't have an answer. It was only later that we had a report by the by Amnesty International which mentioned Captain Nizeyimana, but by that time our hearing had already been concluded.").

pseudonym.[1771] Furthermore, Witnesses BXF and ZBJ refused to provide Defence counsel with their immigration records because of continued concerns.[1772] These circumstances undermine the argument that the witnesses had any incentive to implicate Nizeyimana. Indeed, they reflect that the witnesses testified in this proceeding notwithstanding the negative consequences they feared such conduct might have on their personal lives.

685. The Chamber also observes that Witnesses BXF, BZC and ZBJ lived in the same city in Canada at the time of their testimonies.[1773] The record reflects that they met socially and occasionally discussed the attack that they survived.[1774] Similarly, Witnesses BXF, BZC and ZBJ met with Tribunal representatives in Canada the same day, although they spoke with them separately.[1775] Moreover, Witnesses BXF and BZC travelled to Arusha together and stayed in the same hotel.[1776]

686. There exists considerable overlap of the personal lives of these witnesses as well as their participation in this proceeding. These circumstances alone, however, are not indicative that the witnesses agreed to untruthfully implicate Nizeyimana in this crime.[1777] Indeed, while

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[1771] *See* Decision on Prosecutor's Third Motion for Protective Measures for the Victims and Witnesses to Crimes Alleged in the Indictment (TC), 4 November 2010, para. 4, pp. 4-7. *See also* Annex B to The Prosecutor's Third Motion for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment, 22 September 2010, Nos. 14, 17 and 42.

[1772] *See, e.g.*, Witness BXF, T. 22 February 2011, p. 37 ("Q. Okay. So I only have a very small part of your file. Would you consent that it be that the entire file be given to the Defence, sir? A. No. I will not agree to that. There are names of relatives who would not wish to have their names mentioned in this trial. They have even refused to appear as witnesses in the present matter and they don't want their names to be disclosed to the public."); Witness ZBC, T. 25 February 2011, p. 24 ("Q. Very well. Now, would you mind, upon going back to Canada, following up and trying to get those documents and transmit them to us through our colleagues on the Prosecution? A. Personally, I think that those are personal documents. They are members of my family who remained behind. ... our family does not consist only of me and the two who are here. There are other members who stayed behind. They are not do not agree with what we are doing; they feel threatened. And when I return to Canada I don't know whether my life is going to remain the same. It's, it's obvious that in view of the current situation I will be afraid, so I don't think that I will make continuous efforts to get those documents because that will place my life and the members of my family's lives family members remain in Rwanda, their lives too will be in danger.").

[1773] Witness BZC, T. 22 February 2011, pp. 65, 76 *and* Exhibit P34 (Witness BZC's Personal Information Sheet); Witness BXF, T. 22 February 2011, pp. 45, 48 *and* Exhibit P33 (Witness BXF's Personal Information Sheet); Prosecution Witness ZBJ, T. 25 February 2011, pp. 18, 23 *and* Exhibit P39 (Witness ZBJ's Personal Information Sheet).

[1774] *See, e.g.*, Witness BZC, T. 22 February 2011, pp. 65 (affirming that he often had social engagements with Witnesses BXF and ZBJ and that they discussed the events from "an emotional standpoint" with Witness BXF and ZBJ, but that they did not discuss them "in detail"), 76 (met Witness ZBJ frequently); Witness ZBJ, T. 25 February 2011, p. 26.

[1775] *See* Witness BXF, T. 22 February 2011, p. 48 (met with Tribunal investigators on the same day as Witnesses BZC and ZBJ); Witness BZC, T. 22 February 2011, p. 65 (met with Tribunal investigators together but "discussed with them separately").

[1776] Witness BZC, T. 22 February 2011, p. 65; Witness BXF, T. 22 February 2011, p. 26.

[1777] *See Kalimanzira* Appeal Judgement, para. 105 (finding appellant's arguments of collusion unconvincing even where two witnesses' testimonies converged more than their prior statements, that their stays in Arusha overlapped, and that they came from the same part of Rwanda); *Karera* Appeal Judgement, para. 234 (finding no error in the Chamber's conclusions that no collusion occurred notwithstanding that witnesses gave their statements to investigators on the same days at the same location, that they lived in the same area, travelled together to Arusha in connection with the trial, and had their meals together in the safe house). *See also Renzaho* Appeal Judgement, paras. 264-265 (affirming the Trial Chamber's reliance on accomplice witness evidence where the Chamber evaluated it with appropriate caution and acknowledged that their joint detention at the time of their testimonies could have allowed for collusion).

the observations of Witnesses BXF, BZC and ZBJ reflect compelling consistencies, their accounts, as summarised above, are different and demonstrate unique vantage points throughout the attack. Moreover, their evidence was not embellished or exaggerated, particularly as it related to Nizeyimana's role in the incident.

687. Of particular significance, the Defence evidence confirms that this attack occurred. With respect to at least two of the witnesses, it also confirms that they survived it.[1778] The Chamber has no doubts that Witnesses BXF, BZC and ZBJ were present during the removal of persons from the Matabaro and Nyirinkwaya homes and that Witnesses BXF and BZC were present among many that were killed in the ensuing attack. In this regard, the Chamber remarks that each member of this Bench considered the witnesses' evidence about this attack, individually and collectively, compelling.[1779]

688. The Chamber now turns to particular challenges raised by the Defence in light of prior statements given by Witnesses BXF, BZC and ZBJ. With respect to Witness BXF, the Defence challenged him with several discrepancies between his prior statement to Tribunal representatives and his testimony as it related primarily to events after the attack on those taken from the Matabaro and Nyirinkwaya households.[1780] In many cases, the witness acknowledged that there were errors in the statement, and provided explanations for them.[1781]

689. The witness confirmed that the statement had been read back to him and that he signed it. However, this occurred very quickly and the witness did not have time to review the statement in detail.[1782] The Chamber considers that the witness's explanations are reasonable and compelling. The discrepancies are immaterial, particularly in relation to

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[1778] Witness Nyiranzabonimana, T. 10 June 2011, pp. 4-5.

[1779] The law of this Tribunal affirmatively establishes that the first-hand observations of *viva voce* evidence by Judges are particularly important to the assessment of evidence. *See Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-A, Confidential Decision on Appellant's Extremely Urgent Motion for the Adjournment of Delivery of Judgement and for the Admission of Additional Evidence (AC), 5 July 2004, para. 15 (distinguishing between a Trial Chamber's observation of a witness giving *viva voce* testimony versus an immigration court judge's review of a recorded statement, and that the latter's adverse credibility assessment of the same witness could not have impacted the Trial Chamber's verdict).

[1780] *See* Witness BXF, T. 22 February 2011, pp. 43 (challenging the witness on whether he or Dr. Jotham's wife called Gatsinzi's wife on the witness's behalf), 46-47 (challenging the witness on whether Gatsinzi's wife threatened ESO soldiers that if they took the witness they would die), 48 (questioning the witness as to whether he saw Nizeyimana driving the red Jetta while staying at the Gatsinzi home), 49 (asking whether Nizeyimana ever came to the Gatsinzi house and threatened the witness), 50 (asking why he had indicated to investigators that he was a Tutsi).

[1781] Witness BXF, T. 22 February 2011, pp. 43, 47 (explaining that Dr. Jotham's wife, not the witness, called Gatsinzi's wife and that the witness stayed in the house of Gatsinzi's extended family), 46-47 (when questioned whether Gatsinzi's wife threatened ESO soldiers, the witness explained that ESO soldiers from Nizeyimana's house came there, but with respect to what Gatsinzi's wife did or said, the witness tacitly acknowledged that the statement to Tribunal investigators was incorrect, suggesting that he might not have expressed himself "clearly" and noting that the interview was done in a "hurry"), 47-48 (explaining that he only saw Nizeyimana after the attack in Gikongoro and did not see him driving a Jetta while at the Gatsinzi home; suggesting that he was not understood well during the interview, reiterating that it was done in a hurry; he received the document in English, in which he had no formal education), 49 (denying that Nizeyimana came to the Gatsinzi home where the witness was hiding, and that instructions for the witness to leave were not given directly to him by Gatsinzi's wife), 50 (denying that he told the interviewers that he was Tutsi, but thought that they believed he was). *See also* Witness BXF, T. 22 February 2011, pp. 49-50 (explaining that he saw errors in his statement when he arrived in Arusha and thought it was too late to change them, but that he might explain the errors to the Trial Chamber).

[1782] Witness BXF, T. 22 February 2011, p. 45.

whether or not Nizeyimana was involved in this attack. The do not impugn his credibility generally.

690. Turning to Witness BZC, the Defence challenged him with several aspects from his application for refugee status in Canada, which it argued were inconsistent with his testimony before the Tribunal. Of particular significance, the application recounts the 22 April 1994 attack, but includes no mention of the involvement of Nizeyimana, who was in civilian attire, and instead only refers to "people in military uniforms".[1783] The witness explained that Canadian immigration authorities had expressed their disinterest in events related to the genocide and, consequently, the witness's report did not provide all the relevant details.[1784]

691. Similarly, Witness ZBJ testified that she did not initially identify Nizeyimana as participating in the attack on her initial statement to Canadian authorities, which she filled out upon arriving in Canada.[1785] Only upon questioning from the hearing judge did she understand that she and the others would have to "narrate everything" related to the event.[1786]

692. The Chamber considers the explanations of Witnesses BZC and ZBJ about their initial omission of Nizeyimana's involvement in the attack reasonable and compelling. Indeed, Witness BXF, when asked if he recounted "in detail" the killing of particular family members when he filled in his initial statement to Canadian authorities, explained that he mentioned them "very briefly", knowing that he would have the "opportunity of appearing before a court".[1787]

693. Finally, Witness BZC's explanation about the disinterest of Canadian authorities in genocide related activities finds circumstantial support from the evidence of Witnesses BXF. He also testified that Canadian authorities seemed disinterested in events related to the genocide when considering his application.[1788]

694. The Defence raised several other challenges related to inconsistencies with Witness BZC's evidence before the Tribunal as well as his immigration application.[1789] Again, the witness explained that he streamlined the discussion relating to the 22 April 1994 attack given the absence of interest in genocide related issues. He added that the inaccuracies reflect his own attempts at an abbreviated narration of the event rather than mischaracterisations.[1790] The Chamber considers that the explanations are compelling. Moreover, much of the inconsistencies raised by the Defence are immaterial to the allegation at hand, particularly in

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[1783] Witness BZC, T. 22 February 2011, p. 80.
[1784] Witness BZC, T. 22 February 2011, p. 80.
[1785] Witness ZBJ, T. 25 February 2011, pp. 21-22.
[1786] Witness ZBJ, T. 25 February 2011, p. 22.
[1787] Witness BXF, T. 22 February 2011, p. 33.
[1788] *See* Witness BXF, T. 22 February 2011, p. 36 ("Q. And you told them pretty much the same series of events, the description that you've provided to the Court? A. Yes. At one point the judge said that he was tired of hearing our accounts on the genocide. He said that there was no evidence to the effect that that person existed. If you have my immigration file, I think you will find that inside.").
[1789] For example, Witness BZC's immigration application stated that 1) he lost consciousness during the attack; 2) he had not seen his mother since the attack; and 3) he did not know whether his three sisters had survived until three years after the attack. Witness BZC, T. 22 February 2011, pp. 80-82. The Defence also confronted Witness BZC with an aspect of the application that indicates that soldiers "separated five men ... and killed them one after the other." T. 22 February 2011, pp. 80-81. As explained by the witness, this summary, although abbreviated, is not inconsistent with his testimony. T. 22 February 2011, pp. 80-81. *See also* Witness BZC, T. 22 February 2011, pp. 58-61.
[1790] *See* Witness BZC, T. 22 February 2011, pp. 80-82.

light of its own concession that the attack happened and the absence of any evidence raising reasonable doubt that Witness BZC was present during it.

695. The Chamber recalls that the Defence sought to recall Witnesses BXF, BZC and ZBJ based on discrepancies between their evidence before the Tribunal and information they provided to Canadian immigration authorities. The Defence also sought to recall Witnesses BXF and ZBJ on the basis of adverse findings by the Canadian Immigration and Refugee Board. The Chamber denied the motion.[1791] The Defence did not otherwise seek to introduce into evidence the documents upon which they sought further cross-examination of these witnesses.

696. Turning to the merits of the testimonies of Witnesses BXF, BZC and ZBJ, the Chamber has no doubt that each witness was capable of identifying Nizeyimana at the time of this event.[1792] In so finding, the Chamber is mindful of the ages of the witnesses when the attack occurred.[1793] It considers that their respective ages bolster their identification of Nizeyimana, and that his presence would have left a particularly strong impression on each of them. Mindful of the limited probative value of in-court identifications, and the fact that Witness ZBJ's identification of Nizeyimana was determined to have no value,[1794] the Chamber observes that Witnesses BZC and BXF positively identified Nizeyimana.[1795]

697. Furthermore, all of the witnesses provided compelling and consistent descriptions of viewing Nizeyimana in civilian clothing and that he was positioned in the vicinity of the Matabaro home's veranda as they were led out of the house.[1796] The identifications were made from a short distance and while there was still daylight.[1797] While the evidence varies as to how many soldiers were around him, the Chamber considers such differences immaterial.[1798]

698. In assessing the identification evidence of Witnesses BXF, BZC and ZBJ, the Chamber is mindful of the interpretive nature of memory and notes that nearly 17 years have elapsed since the event and their testimonies before the Tribunal. Notably, the witnesses discussed the attack with each other. As noted previously, the Chamber has no concern that

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[1791] Confidential Decision on Nizeyimana Defence Motion to Recall Witnesses BXF, BZC and ZBJ (TC), 7 May 2012.
[1792] For the purposes of witness protection, the Chamber merely cites relevant sections of closed session transcripts without summarising the evidence. *See* Witness BXF, T. 22 February 2011, pp. 7-9, 24; Witness ZBJ, T. 25 February 2011, pp. 3-4. The Chamber is also satisfied beyond reasonable doubt that Witness BZC could identify Nizeyimana in April 1994, notwithstanding the materially different bases for his identification than those of Witnesses BXF and ZBJ. *See* Witness BZC, T. 22 February 2011, pp. 55, 61.
[1793] *See* Exhibits P33, P34 and P39 (Personal Information Sheet of Witnesses BXF, BZC and ZBJ, respectively), which provides the birth date of each witness. *See also* Witness BZC, T. 22 February 2011, p. 62 (testifying to his age on 22 April 1994).
[1794] Witness ZBJ, T. 25 February 2011, p. 15.
[1795] Witness BXF, T. 22 February 2011, p. 24; Witness BZC, T. 22 February 2011, p. 61.
[1796] Witness BXF, T. 22 February 2011, pp. 16-17; Witness BZC, T. 22 February 2011, pp. 58-59; Witness ZBJ, T. 25 February 2011, p. 8.
[1797] *See* Witness BXF, T. 22 February 2011, pp. 14, 16, 39; Witness BZC, T. 22 February 2011, pp. 57-59, 71; Witness ZBJ, T. 25 February 2011, pp. 9, 11.
[1798] *Compare* Witness BXF, T. 22 February 2011, pp. 14 (describing Nizeyimana "with his soldiers"), 17 (Nizeyimana accompanied by three or four soldiers), 44 (Nizeyimana was with "members of his escort team") *and* Witness ZBJ, T. 25 February 2011, pp. 8, 11 (once on the veranda saw Nizeyimana, among about 10 soldiers), *with* Witness BZC, T. 22 February 2011, p. 57 (observing Nizeyimana on the veranda with "a soldier next to him").

these circumstances reasonably demonstrate that the witnesses agreed to untruthfully implicate Nizeyimana in this crime. Moreover, the varying detail of the identification evidence and the demeanour of the witnesses during their testimonies eliminate any reasonable concerns that their evidence has been altered due to the aforementioned circumstances.

699. The Chamber next turns to the identification of the soldiers accompanying Nizeyimana and ultimately shepherding the people from the Matabaro and Nyirinkwaya homes to the place of attack. Witness BZC expressly identified them as ESO soldiers, "considering the fact that Nizeyimana was with them" and came from that camp.[1799] Notably, Witness ZBJ provided a compelling account as to how she could identify soldiers assigned to guard Nizeyimana's home.[1800] She expressly identified one soldier who participated in this event as having been previously posted at Nizeyimana's home.[1801] She highlighted that the soldiers were also remarkably young – in their early 20s.[1802] She provided the same description for soldiers that guarded Nizeyimana's home.[1803] Witness BXF initially identified the soldiers as Nizeyimana's "bodyguards".[1804] However, he later stated that he was only able to recognise one soldier among the group, who was Nizeyimana.[1805]

700. When viewing the evidence of Witness BZC, BXF and ZBJ in isolation, the only reasonable conclusion is that the soldiers at the Matabaro home were ESO soldiers.[1806] Nonetheless, this evidence must be considered in the context of the remainder of the record. The Defence evidence regarding the perpetrators of the attack is general or second-hand, and of relatively low probative value. None observed the removal or subsequent shooting. Furthermore, Defence Witness Hitayezu only heard from a fellow soldier that uniformed soldiers were seen around the time gunshots were heard. Even if deemed credible, his evidence is far from dispositive. Moreover, as a soldier positioned at Nizeyimana's home, he has a clear interest in distancing himself, and by implication Nizeyimana and ESO soldiers, from the attack that occurred a short distance away.

701. The Chamber also considers the evidence of Prosecution Witnesses Zachariah and Spielmann, who were told by two victims that the attack had been carried out by Presidential Guards and *Interahamwe*. At the outset, it must be recalled that the arrival of the Presidential Guards in Butare sparked ethnically driven violence within the Butare University Hospital, where Witnesses Zachariah and Spielmann worked until 24 April 1994.[1807] Consequently, the identification of Presidential Guards as the culprits in this instance would have had considerable personal resonance with these witnesses.

[1799] Witness BZC, T. 22 February 2011, p. 60.
[1800] *See* Witness ZBJ, T. 25 February 2011, pp. 4-5.
[1801] Witness ZBJ, T. 25 February 2011, p. 12.
[1802] Witness ZBC, T. 25 February 2011, p. 11.
[1803] Witness ZBJ, T. 25 February 2011, p. 5.
[1804] Witness BXF, T. 22 February 2011, p. 14.
[1805] Witness BXF, T. 22 February 2011, p. 18 ("Q. Did you recognise any of the soldiers? A. The truth is that I was scared and I was unable to look at their faces, so I could not look at them closely. I simply saw the presence of one of them who was in civilian clothes and I was able to recognise him because he was a neighbour.")
[1806] Again, the Chamber has no concern that the evidence of Witnesses BXF, BZC or ZBJ as it relates to uniformed soldiers has been impacted through their discussions, particularly in light of the differences in their evidence on this point.
[1807] *See* II.8.1.

702. However, the second-hand evidence of Witnesses Zachariah and Spielmann is not dispositive nor is it necessarily inconsistent with the evidence implicating ESO soldiers. Witnesses Zachariah and Spielmann did not speak with Prosecution Witnesses BXF, BZC and ZBJ about the identity of the perpetrators. Varying vantage points of the survivors and varying abilities to identify particular soldiers explains the differences among the identifications.

703. Moreover, Witness Zachariah's evidence of "young" and quite "jittery" soldiers trying to prevent the removal of survivors of the attack on the following morning is striking.[1808] The inexperience and youth of the soldiers offers strong circumstantial support that they came from the ESO Camp.[1809] The fact that they tried to prevent medical officials from removing and treating severely wounded survivors among the dead, at a minimum, reflects tacit cooperation with the obviously targeted attack that preceded Witness Zachariah's arrival. Consequently, the Chamber does not consider that the evidence of Witnesses Zachariah and Spielmann raises reasonable doubt in the otherwise compelling evidence implicating the ESO Camp soldiers in the attack the day before.

704. Having considered all the relevant evidence and evaluated the demeanour of each of the witnesses, the Chamber finds that the testimonies of Witnesses BZC and ZBJ, in particular, and to a lesser extent the testimony of Witness BXF, demonstrate that ESO soldiers carried out this operation. Their compelling and consistent evidence, which also reflects varying certainty about the identity of the soldiers, as well as evidence of Nizeyimana's presence, offers considerable circumstantial support for this conclusion. The Chamber has no doubt that ESO soldiers directly participated in the removal and ensuing shooting of the persons taken from both households.

705. The Chamber now turns to evidence pertaining to the date of the attack. As noted above, the Defence argues that this issue is of central importance and that the killing occurred on the evening of 21 April 1994 when Nizeyimana was at the Mata tea factory in Gikongoro prefecture.[1810]

706. Prosecution Witnesses BXF, BZC and ZBJ expressly testified that the attack took place in the early evening on 22 April 1994.[1811] At the outset, the Chamber notes that Witness ZBJ stated that the survivors discussed the particular date upon which the attack occurred and

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[1808] Witness Zachariah, T. 14 February 2011, pp. 19, 31.

[1809] *See, e.g.*, Defence Witness KEN06, T. 20 September 2011, pp. 4, 29 (joined the ESO's *nouvelle formule* as a 13 year-old in 1989); Prosecution Witness AZD, T. 31 January 2011, pp. 76-77 (testifying that ESO soldiers could be distinguished from Ngoma Camp soldiers based on age, and that oldest cadets from the first batch were ages 15 to 17); Defence Witness Nsabimana, T. 18 May 2011, p. 70 (ESO soldiers "could be recognised from the fact that they were young"). Indeed, the *nouvelle formule* model allowed cadets to enter the ESO after finishing primary school. *See, e.g.*, Prosecution Witness ZAK, T. 24 January 2011, p. 62; Prosecution Witness ZAW, T. 26 January 2011, p. 4; Prosecution Witness AZD, T. 31 January 2011, p. 69; Prosecution Witness YAA, T. 1 February 2011, p. 64; Defence Witness Basesayabo, T. 9 May 2011, p. 24; *cf.* Defence Witness OUV03, T. 30 May 2011, pp. 65-66 (distinguishing the *nouvelle formule* cadets from ordinary ESO cadets on the basis that the latter took people who had already completed three years of secondary school).

[1810] *See, e.g.*, Defence Closing Brief, para. 208.

[1811] Witness BXF, T. 22 February 2011, pp. 14-15, 42; Witness BZC, T. 22 February 2011, pp. 55, 57, 72-73, 79-80; Witness ZBJ, T. 25 February 2011, pp. 4, 7, 9, 26.

"insisted" that it was 22 April.[1812] The Chamber does not consider that this evidence reasonably reflects collusion among Witnesses BXF, BZC and ZBJ to falsely implicate Nizeyimana. However, the Chamber cannot exclude the *possibility* that one, two or all of the witnesses' evidence about the date may have been altered through their talks. The Chamber shall bear this in mind when assessing the quality of this evidence.

707. Turning to Witness ZBJ, her account about the date appears clear and compelling. She recalled that the environment in Butare changed after 19 April 1994 when that "ad interim" President gave his speech.[1813] Although questioned extensively about the date, the witness was firm that the attack occurred on 22 April.[1814] The Bench considers that her demeanour as it related to this evidence was highly convincing.

708. Similarly, even after exhaustive cross-examination on the issue, Witness BZC remained certain that the attack happened on 22 April 1994.[1815] Of particular significance, he also recalled that the attack occurred on a Friday.[1816] Notably, 22 April fell on a Friday. The witness's inability to recall precise details of what he did on 19, 20 or 21 April are reasonable given their relative insignificance when compared to the day upon which the attack occurred.[1817]

709. Turning to Witness BXF, he also, after extensive cross-examination on the issue, was firm that the date of the attack was 22 April 1994.[1818] He explained that he could recall the date because when he subsequently arrived in Gikongoro, a mass was held "in remembrance of the victims who fell on the 22nd".[1819] In the Chamber's view, such immediate recognition of the date of the attack offers compelling contextual support for the witness's evidence of when it occurred.

710. Having reviewed the testimonies of Witnesses ZBJ, BZC and BXF, the Chamber considers that each gave a distinct basis for identifying the date of the attack. These differences eliminate concerns that their evidence may have been altered through discussions with each other in the intervening 17 years or that they colluded.

711. The Chamber turns to other evidence that tends to reflect that this attack happened on the evening of 21 April 1994 (rather than 22 April). At the outset, it must be noted that none

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[1812] Witness ZBJ, T. 25 February 2011, p. 26 ("A. I am not mistaken about that date. I maintain that it was the 22nd. After we reunited with the other survivors we insisted on that date. It was, indeed, on the same date; 22nd April 1994.").
[1813] Witness ZBJ, T. 25 February 2011, p. 7.
[1814] Witness ZBJ, T. 25 February 2011, pp. 7, 9, 11-12, 15, 21-22, 26.
[1815] Witness BZC, T. 22 February 2011, pp. 72-73, 79-80, 82.
[1816] Witness BZC, T. 22 February 2011, p. 73.
[1817] *See* Witness BZC, T. 22 February 2011, pp. 71-72.
[1818] Witness BXF, T. 22 February 2011, pp. 39-40, 42. The Chamber observes that Witness BXF noted that Antoine Ntakirutinka arrived at the Matabaro household having fled the Maniraho killings the day before. T. 22 February 2011. p. 43. *See also* II.6.4. Notwithstanding, Witness BXF's evidence in relation to the Maniraho killings is indirect and vague. Indeed, while he admitted that Maniraho was killed the day before, he provided no basis for his knowledge and noted that he was not there when it occurred. T. 22 February 2011, p. 43. Accordingly, the Chamber does not consider his evidence in regards to Ntakirutinka's arrival at the Matabaro residence dispositive. The Chamber also observes that he "believe[d]" that the President held a meeting with ministers and prefecture authorities on 20 April 1994. While he initially did not describe the date he heard the President's speech, he appears to accept that the speech was made on 20 April and that the attack occurred two days later. *See* Witness BXF, T. 22 February 2011, pp. 5, 13.
[1819] Witness BXF, T. 22 February 2011, p. 42.

of these witnesses observed the attack. The evidence varies between individuals who observed the victims the following morning, heard gunshots in the evening or generally learned about the killings. The Chamber shall review this evidence in turn.

712. Prosecution Witness Zachariah testified that he saw corpses and retrieved Sub Prefect Zéphanie Nyirinkwaya's sister-in-law and son on the morning of 22 April 1994. Witness Zachariah confirmed that he had no doubt about this date,[1820] and was informed by Nyirinkwaya's sister-in-law that she and others had been attacked the preceding evening.[1821] Elsewhere, Witness Zachariah explained with specificity how he could recall the dates of particular events, and in particular Nizeyimana's presence at security meetings. At the same time, however, he conceded that it was difficult to recollect exact dates in conflict settings.[1822]

713. While the Chamber considers Witness Zachariah generally credible, it also notes that he was quickly surrounded by killings occurring in several different locations over the course of a few days. It is not as clear where the impact of this killing registered among others he experienced – including that of his colleagues. Moreover, the Chamber is of the view that the impact of this event on Witness Zachariah would not have been as significant as it was on the primary Prosecution witnesses who survived the killing and lost several persons close to them.

714. Witness CKN20 testified that he learned of the killing of Matabaro on the morning of 22 April 1994, and, similar to Witness Zachariah, he went and saw "bodies" around the CFP centre.[1823] He testified that around midday, he decided to flee with his family to his parent's home "towards Mount Huye".[1824] However, on cross-examination, he stated that he fled with his family on 9 April (rather than 22 April).[1825] In light of this shift, the witness's evidence related to the date of Matabaro killings, lacks context showing how he knew that he learned of Matabaro's killing and observed bodies on 22 April.

715. Of greater significance, the Chamber has considerable reservations about the credibility of this witness's evidence that he was in Butare town and went to see the corpses of this particular attack on 22 April 1994. Specifically, the witness acknowledged that the killings occurred a short distance from his home at the Sovu convent on 21 and 22 April. He identified retired Rwandan army Chief Warrant Officer Rekeraho as the attack's

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[1820] Witness Zachariah, T. 14 February 2011, p. 18. *See also* T. 14 February 2011, p. 9 (explaining that he was asked by the sub-prefect to pick him up on 22 April 1994 because the day before the sub prefect was to meet with newly installed prefect).
[1821] Witness Zachariah, T. 14 February 2011, p. 19.
[1822] *See, e.g.*, Witness Zachariah, T. 14 February 2011, p. 7. The Chamber places little reliance on Witness Spielmann's evidence as it relates to the date. Notably, her testimony about this event was limited to her confirming a portion of the statement signed by her and Witness Zachariah as to whether assailants identified to them were Presidential Guards and *Interahamwe*. Specifically, after introducing the statement (T. 31 January 2011, pp. 14-15) and reading the statement into the record (T. 31 January 2011, p. 15), Defence counsel only asked: "And the perpetrators that you mentioned probably were the soldiers of the Presidential Guard and the *Interahamwe*. Is that accurate, ma'am" (T. 31 January 2011, p. 16). Witness Spielmann replied: "This is accurate, yes" (T. 31 January 2011, p. 16). No question was asked about the accuracy of the date.
[1823] *See* Witness CKN20, T. 15 June 2011, pp. 9-10, 16.
[1824] *See* Witness CKN20, T. 15 June 2011, p. 21.
[1825] Witness CKN20, T. 15 June 2011, p. 29.

organiser.[1826] In direct and cross-examination, he denied having participated in these attacks, noting that he was not there.[1827]

716. The Prosecution, without objection from the Defence, confronted Witness CKN20 with the assertion that he had been charged, convicted and sentenced to life imprisonment in Rwanda for his participation in the Sovu attacks. The witness denied knowing this and pleaded his innocence.[1828] At the time of his testimony, the witness lived in exile, stating that he planned to return to Rwanda when his security was "assured".[1829]

717. Under the circumstances, the Chamber is concerned that Witness CKN20 used his testimony in this proceeding, asserting that he was in Butare town on 22 April 1994, as a means of exonerating him of any involvement in the Sovu attack.[1830] Having assessed the witness's demeanour, the Chamber considers that his evidence about having observed the corpses of those taken from the Matabaro and Nyirinkwaya homes lacks credibility.

718. The Chamber now turns to the evidence of Defence Witnesses Nyiranzabonimana, Hitayezu, KEN06 and MOL08. As discussed above, none witnessed the killings of those taken from the Matabaro and Nyirinkwaya residences. Moreover, none of these witnesses saw the bodies of the dead.

719. Witness Nyiranzabonimana was unequivocal that the Matabaro family was killed on 21 April 1994, highlighting the strong impression it had on her given how close she was with the family.[1831] Although she did not see the attack, she heard gunshots on the evening of 21 April. Her husband saw "corpses" the next morning and learned from two different sources that Matabaro and Sub Prefect Zéphanie Nyirinkwaya had been killed.[1832]

720. Her evidence reflects that she heard gunshots the evening after the Maniraho killings on the night of 20 April 1994.[1833] Furthermore, she explained that she could determine the dates because she heard President Théodore Sindikubwabo's 19 April speech broadcast on Radio Rwanda.[1834] The Chamber has elsewhere considered her testimony about the date of the Maniraho killings, when viewed among all the relevant evidence, credible.[1835] Nonetheless, her observations that the attack on the Matabaros occurred later in the evening is at odds with the testimonies of the primary Prosecution witnesses.[1836] This and the relative indirectness of her evidence raise some concerns about its reliability in this instance.

721. Defence Witness Hitayezu testified that he was posted at Nizeyimana's home starting every evening from 20 April 1994 until 23 April and that Nizeyimana was not home on the

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[1826] Witness CKN20, T. 15 June 2011, pp. 10-11, 20, 28, 30-31.
[1827] Witness CKN20, T. 15 June 2011, pp. 10, 29, 33.
[1828] Witness CKN20, T. 15 June 2011, p. 34.
[1829] Witness CKN20, T. 15 June 2011, p. 24. *See also* Exhibit D70 (Witness CKN20's Personal Information Sheet) (identifying place of residence and status as a refugee).
[1830] As noted in the text, Witness CKN20's evidence about the date he left Sovu for his parents' home fluctuated from 22 April 1994 to 9 April 1994. This happened after extensive questioning about the 21 and 22 April Sovu attacks. This shift in testimony lends further support to the assertion that he used his evidence demonstrate he was not in Sovu when the attacks occurred.
[1831] Witness Nyiranzabonimana, T. 10 June 2011, pp. 3-4, 28-30.
[1832] Witness Nyiranzabonimana, T. 10 June 2011, pp. 3-4.
[1833] Witness Nyiranzabonimana, T. 10 June 2011, pp. 3-4, 23.
[1834] Witness Nyiranzabonimana, T. 10 June 2011, pp. 2, 21-22, 27-28.
[1835] *See* II.6.4.
[1836] Witness Nyiranzabonimana, T. 10 June 2011, p. 3.

first three nights. He further testified that on the second evening, from 21 to 22 April, he heard gunshots at a neighbour's home. A fellow soldier, also guarding Nizeyimana's home, saw uniformed soldiers and civilians.

722. The Chamber views Witness Hitayezu's evidence on this point with considerable suspicion. Credible and consistent evidence in the record reflects that, although of low rank, he had a relatively close relationship with Nizeyimana around this time.[1837] As a soldier assigned to Nizeyimana's home – and the neighbourhood in which the killings took place – he is a potential accomplice to these particular attacks. Indeed, there is evidence of Witness Hitayezu's extremism before the Chamber.[1838] Based on the Chamber's evaluations of the witness's demeanour, it was left with the impression that his testimony was tailored in order to exculpate the Accused.[1839]

723. Turning to Witness KEN06, her evidence reflects that she heard gunshots coming "from the road that passed behind" Nizeyimana's home the night of 21 to 22 April 1994.[1840] She also overheard Nizeyimana's wife on the phone in an adjoining room, mentioning that her husband had "gone on mission to Gikongoro".[1841] The next day, Nizeyimana's wife told the witness that the Matabaro and Nyirinkwaya families had been killed.[1842]

724. With respect to the quality of her evidence as it relates to the timing of when she heard the gunshots, she correctly noted that President Théodore Sindikubwabo delivered a speech in Butare on 19 April 1994. She provided other details of events that occurred on specific days around that time.[1843] She explained that she could recall specific dates by

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[1837] Indeed, Prosecution evidence tends to confirm that Witness Hitayezu was close with Nizeyimana and lived at his home. *See* Witness ZAW, T. 26 January 2011, pp. 9-11, 21; Witness BDE T. 31 January 2011, p. 27; Witness ZY, T. 26 January 2011, pp. 53-54, 70-71, T. 27 January 2011, p. 16.

[1838] *See* Witness ZY, T. 26 January 2011, p. 71 ("A. I know that [Irénée Hitayezu] was often with members of Nizeyimana's bodyguards. I remember Charles Bertin Hakizimana who had called me and asked me whether I knew the song which we were singing at that time. And the song said something to the effect that everything belonged to Hutus. And Irénée reacted by saying that, 'These people are like snakes. I mean, we've been killing them for quite some time, but we have not yet managed to finish them off. It's just like serpents, you know, you can kill snakes, kill them, but they will still keep popping up because they are always being born.' Q. Do you know where Irénée was from? A. He hailed from Gisenyi or maybe Kinigi. He was either from Gisenyi or from Kinigi."). The Chamber found Hitayezu's denial of this less than credible. Witness Hitayezu, T. 9 June 2011, p. 65.

[1839] The Chamber observes that unsigned will-say statements have no probative value except to the extent that the witness confirms their content. *See Kalimanzira* Appeal Judgement, para. 180. In this regard, the Chamber observes that Witness Hitayezu denied the accuracy of the contents of much of his will-say when cross-examined by the Prosecution. *See* Witness Hitayezu, T. 9 June 2011, pp. 52, 55-59. Notwithstanding, the notice of Alibi given by the Defence for 21 to 22 April 1994, based in part on information from Witness Hitayezu, and Witness Hitayezu's later testimony that Nizeyimana did not return to his home from 20 until 23 April 1994, which covers several pleaded charges in the Indictment, raises additional concerns that he tailored his evidence in order to rebut those charges. *See Kalimanzira* Appeal Judgement, para. 25 (the manner in which alibi is presented may impact its credibility). While relevant to an assessment of Witness Hitayezu's credibility, it is only a subsidiary concern as it relates to the Chamber's overall assessment of his evidence.

[1840] Witness KEN06, T. 20 September 2011, pp. 8-10.

[1841] Witness KEN06, T. 20 September 2011, pp. 8, 38

[1842] Witness KEN06, T. 20 September 2011, p. 10.

[1843] For example, Witness KEN06 repeatedly testified that she arrived at Nizeyimana's home on 18 April 1994 (T. 20 September 2011, pp. 6, 13-14, 16), was treated by a doctor at Nizeyimana's home on 19 April (T. 20 September 2011, pp. 7, 17, 19, 31) and heard gunshots in the distance on the night of 20 to 21 April (T. 20 September 2011, pp. 7-8).

"counting from the day when the head of state came to Butare" and in light of the fact that the events were "important" and happened in immediate succession.[1844]

725. Notably, her evidence about learning about the President's speech was very general, overhearing unidentified persons talk about it.[1845] Moreover, the witness testified that she was "seriously ill".[1846] She rarely left the room in which she stayed.[1847] Such circumstances raise some questions about how she ascertained and retained dates of events.

726. Of greater significance, the Chamber has considerable doubts about the credibility of Witness KEN06. It considers with suspicion the witness's justifications for being in Butare and staying at Nizeyimana's home at that time. Specifically, she testified that she left her family and a top rate Rwandan medical facility in the middle of the war (18 April 1994) in order to be treated in Butare.[1848] Only once she arrived in Butare did travel become too dangerous, causing her instead to go to Nizeyimana's home and forego the immediate treatment that brought her there.[1849] Her evidence about her stomach illness was general, described only in widely varying degrees of seriousness.[1850] Although rejecting any friendship with Nizeyimana, her evidence reflects that she was close with his family.[1851]

727. Indeed, the Prosecution confronted the witness with the assertion that she did not stay at Nizeyimana's home around this time.[1852] Prosecution Witness Bizimenyera denied that Witness KEN06 was living at Nizeyimana's home when she arrived there in April 1994.[1853] Notably, her presence there is not reflected in the evidence of Prosecution Witness AJP or Defence Witness BEJ01, who by all accounts, spent time at Nizeyimana's residence around this period.[1854]

728. Only Defence Witness Hitayezu's testimony offers circumstantial corroboration for her presence.[1855] As described above, the Chamber views his evidence with considerable suspicion as well. Having viewed her demeanour in court, the Chamber has concerns that Witness KEN06's testimony was tailored to provide evidence favourable to the Accused. It has fundamental doubts about her evidence as it relates to the date she purportedly heard

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[1844] Witness KEN06, T. 20 September 2011, pp. 39-40.
[1845] Witness KEN06, T. 20 September 2011, p. 7.
[1846] Witness KEN06, T. 20 September 2011, pp. 13, 17, 26. Witness KEN06's later contention she was not "seriously ill" in re-examination is in complete contradiction with her repeated assertions that she was. T. 20 September 2011, p. 47.
[1847] Witness KEN06, T. 20 September 2011, p. 32.
[1848] *See* Witness KEN06, T. 20 September 2011, pp. 5-6, 16-17, 19-21.
[1849] *See* Witness KEN06, T. 20 September 2011, pp. 7, 17-18, 21-22, 26-27.
[1850] *Compare* Witness KEN06, T. 20 September 2011, pp. 5-6 ("I was really very ill. I had stomach aches. I had a stomach problem."), 13 ("I was not in good health, and therefore, I could not go out for a walk or to stroll."), 16 ("Q. You would have to accept that the medical condition wasn't life threatening, was it? A. If I had not taken treatment, I would have died. I was in pain. I was ill. ... and that means that if I had not followed the medical treatment, I could have died."), 17 ("When I had my stomach ailments, they were like a crisis. I felt very ill."), *with* Witness KEN06, T. 20 September 2011, p. 47 ("... I was ill, but not very, very seriously ill.").
[1851] *See* Witness KEN06, T. 20 September 2011, pp. 5-6, 17-18, 21, 27, 29-30, 37.
[1852] Witness KEN06, T. 20 September 2011, p. 37.
[1853] Witness Bizimenyera, T. 7 September 2011, p. 43, T. 8 September 2011, pp. 48-49.
[1854] Defence Witness BEJ01, T. 9 June 2011, pp. 12, 23; Prosecution Witness AJP, T. 15 February 2011, pp. 3-4, 64, 66-67.
[1855] Witness Hitayezu, T. 9 June 2011, p. 54 (describing a "young girl" whose name he could not recall and a domestic worker living at Nizeyimana's home).

gunshots from Nizeyimana's home killing as well as overhearing that Nizeyimana had gone to Gikongoro.

729. The Chamber turns to the evidence of Defence Witness MOL08. She fled Butare town on 21 April 1994 and learned from her husband weeks later that the Matabaros and others had been killed on 21 April.[1856] The witness's evidence is second-hand, and her husband's basis for knowledge unknown.[1857] Accordingly, this is of low probative value. The same analysis applies to the evidence of Witness AZM who could only provide a general estimate of the timing of this attack.

730. Ultimately, the Chamber considers that the evidence of Witnesses BXF, BZC and ZBJ that the attack occurred on 22 April 1994 is compelling beyond reasonable doubt.[1858] While there is Prosecution and Defence evidence indicating it happened the previous evening, the Chamber is ultimately persuaded by the first-hand testimonies of Witnesses BXF, BZC and ZBJ and the compelling nature in which they testified. For the reasons expressed above, and mindful that the conflicting evidence about the date of the attack was largely circumstantial, second-hand or lacking credibility, it fails to raise reasonable doubt when considered with the compelling accounts of Witnesses BXF, BZC and ZBJ.

731. Indeed, when faced with competing versions of events, it is the prerogative of the trier of fact to determine which is more credible.[1859] In reaching this conclusion, the Trial Chamber is reminded of its central role in assessing witness demeanour and credibility.[1860] Mindful of the unanimous impressions of the members of this Bench, the testimonies of

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[1856] Witness MOL08, T. 10 May 2011, pp. 11-12, 21-22.

[1857] Witness MOL08, T. 10 May 2011, pp. 12, 21-22.

[1858] The Chamber considers any variation between the date provided in the Indictment ("on or about 20 April 1994") and the Chamber's finding immaterial. *See, e.g.*, *Rutaganda* Appeal Judgement, para. 302; *Kunarac et al.* Appeal Judgement, para. 217. The pleading reflects an approximation and pre-trial filings give notice that this formulation could include 22 April 1994. *See* Pre-Trial Brief, Annex paras. 14 (p. 12), 17 (p. 14), 42 (p. 33). Moreover, given the prominence of two the victims of the attack – Jean Baptiste Matabaro, who was Butare's deputy prosecutor, and Zephanie Nyirinkwaya, who was a sub-prefect in Butaret – as well as the Indictment's specificity regarding the nature of the attack and the category of assailants, the information provided to Nizeyimana was sufficient to allow him to prepare his Defence as it related to this event, occurring "on" or "about" 20 April. *See Muvunyi II* Appeal Judgement, para. 29.

[1859] *See Ntabakuze* Appeal Judgement, para. 215 fn. 523 *citing See Gacumbitsi* Appeal Judgement, para. 81; *Rutaganda* Appeal Judgement, para. 29. *Cf. Munyakazi* Appeal Judgement, para. 57; *Muvunyi II* Appeal Judgement, para. 57; *Muhimana* Appeal Judgement, para. 103.

[1860] *See, e.g.*, *Simba* Appeal Judgement, para. 116 ("The Appeals Chamber will not lightly overturn findings of a trier of fact who was able to directly assess the demeanor of a witness giving live testimony."); *Nahimana et al.* Appeal Judgement, para. 14 (deference is given to the Trial Chamber "since [it] is in a better position to evaluate testimony, as well as the demeanour of witnesses"); *Ntakirutimana* Appeal Judgement, paras. 204 ("[T]he Trial Chamber is in a unique position to evaluate the demeanour of the testifying witness"), 316 ("The Trial Chamber has the advantage of observing witnesses in person and is, as such, better positioned than the Appeals Chamber to assess the reliability and credibility of the evidence"); *Bagilishema* Appeal Judgement, para. 12 ("The Appeals Chamber has . . . repeatedly explained the reasons for . . . deference to the factual findings of the Trial Chambers. As the ICTY Appeals Chamber put it in the *Kupreškić* Appeal Judgement: The Trial Chamber has the advantage of observing witnesses in person and so is better positioned than the Appeals Chamber to assess the reliability and credibility of the evidence."); *Kamuhanda* Appeal Judgement, para. 138 (emphasising the need to "defer to the Trial Chamber on issues of credibility, particularly given the importance of witness demeanour"); *Kajelijeli* Appeal Judgement, para. 50 ("The Appeals Chamber stresses that a Trial Chamber is best placed to evaluate the demeanour of witnesses giving live testimony."). *See also Seromba* Appeal Judgement, para. 11 (with respect to factual determinations by the Trial Chamber, the Appeals Chamber "must give deference to the Trial Chamber that received the evidence at trial".).

Witnesses BXF, BZC and ZBJ have eliminated any reasonable doubt as it relates to their first-hand observations of this event, Nizeyimana's presence during it and the timing of its occurrence.

732. Having determined that this attack occurred on the evening of 22 April 1994, the Chamber is also mindful of alibi evidence that Nizeyimana returned from Mata tea factory and arrived in Butare town around 5.00 and 6.00 p.m. At the outset, this evidence is not necessarily inconsistent with the testimonies of Witnesses BXF, BZC and ZBJ as it relates to the timing of the attack. Even so, the compelling Prosecution evidence eliminates any reasonable doubt that Nizeyimana was not present during this attack. Indeed, the Chamber has elsewhere considered that this alibi, when viewed in the context of the entire record, has not established the reasonable possibility of Nizeyimana's absence from Butare town from the morning of 21 through early evening of 22 April.[1861]

733. Having determined that Nizeyimana was present at the Matabaro home with ESO soldiers, the Chamber notes that there is no direct evidence of Nizeyimana ordering, instigating or authorising the subsequent killings of those taken from the Matabaro and Nyirinkwaya residences. There is no express evidence that ESO soldiers who participated in the removal actually shot and killed any of the individuals.

734. Nonetheless, this attack must be viewed in the context in which it occurred. The murders at issue here are consistent with a distinct pattern of violence that followed President Théodore Sindikubwabo's 19 April 1994 speech in Butare town. The record establishes that starting from 20 April, a number of prominent figures in Butare town – including Hutus – as well as their families, were hunted in their homes, and killed there or elsewhere in Butare town. Notably, the evidence firmly reflects that ESO soldiers led by Second Lieutenant Bizimana killed Rosalie Gicanda, the former Tutsi queen around 20 April.[1862] In a similarly targeted attack, members of the families of Jean Marie Vianney Maniraho and Jérôme Ngarambe were killed in the evening of 20 April.[1863] Similarly, around 21 April, there was an attack on the home of the Tutsi lecturer, Pierre Claver Karenzi, and killing of his wife Alphonsine Mukamusoni. Karenzi was removed from his home and killed in the vicinity of a roadblock manned by ESO soldiers, while Mukamusoni was killed inside their residence.[1864]

735. While Nizeyimana's involvement in all of these killings is not established beyond reasonable doubt, the temporal proximity and consistent pattern they share with this attack undermines any assertion that it was not intentional. The evidence reflects that the assailants' priorities were to eliminate the male heads of households first, including in particular Butare's deputy prosecutor (Jean Baptiste Matabaro) and a sub prefect (Zéphanie Nyirinkwaya), and, at a minimum, the remainder of the persons taken from the two residences.[1865] Indeed, the methodical approach, as well as the immediate proximity in time and space of the removal of the persons from the two residences with the ensuing executions, eliminates any reasonable suspicion that some other cause triggered this attack.

[1861] *See* II.13.2.
[1862] *See* II.6.2.
[1863] *See* II.6.4.
[1864] *See* II.6.5.
[1865] The Chamber considers that the evidence pertaining to the persons taken from the Nyirinkwaya residence (other than Zéphanie Nyirinkwaya) tends to reflect that soldiers might have removed them not because they were being specifically targeted, but in order to ensure that all who had gone there from the Matabaro home were removed from this residence as well.

736. In this context, the Chamber has no doubt that Nizeyimana's presence contributed significantly and substantially to the killings. His position as a high ranking officer within the ESO's hierarchy and his experience in the S2/S3 office charged with intelligence and training / operations are essential to understanding his role. These factors, along with his intimate knowledge of the neighborhood demonstrate that he held a supervisory role in this operation and was present to ensure its satisfactory completion. In this regard, his presence necessarily amounted to significant and substantial tacit approval to the removal and subsequent murder operation. Moreover, the only reasonable conclusion is that the killings occurred based on Nizeyimana's instructions and were committed with his express approval.

737. Finally, the Chamber has no doubt that the involvement of ESO soldiers directly participated in the removal and ensuing shootings of Jean Baptiste Matabaro, Sub Prefect Zéphanie Nyirinkwaya, members of their families and other persons lodged at their residences. The record firmly establishes that Jean Baptiste Matabaro, his wife and a number of their children were killed. Similarly, Zéphanie Nyirinkwaya and unidentified members of his family and persons staying at his home were killed. Théodore Hitimana and a son of his were killed. There is also general evidence that Antoine Ntakirutinka (or Ncunguyinka) and members of his family were victims of the attack. The evidence reflects that many corpses were found where the attack occurred.

738. However, the evidence concerning the ethnicity of the victims is equivocal. Jean Baptiste Matabaro, at least outwardly, was perceived to be a Hutu, as were his children.[1866] The only evidence relating to the ethnicity of Sub Prefect Zéphanie Nyirinkwaya is that he was a Hutu.[1867] The Chamber also considers the evidence about Hitimana's ethnicity ambiguous.[1868] While committed in the context of ethnically driven attacks, the ambiguity regarding the ethnicities of the victims allows for the reasonably possibility that these killings were motivated by something other than genocidal intent.

[1866] *See* Witness BXF, T. 22 February 2011, pp. 9, 28.
[1867] *See* Witness Nyiranzabonimana, T. 10 June 2011, p. 4.
[1868] *See* Witness BZC, T. 22 February 2011, pp. 76-77.

7. ROADBLOCKS, LATE APRIL TO MAY 1994

7.1 Killing of Remy Rwekaza and Attack on Witness ZAV

Introduction

739. The Indictment alleges that around 21 April 1994, Nizeyimana, who was physically present, ordered unknown FAR soldiers near a roadblock a short distance past the Gikongoro and Kigali roads junction to kill two Tutsi civilians, Remy Rwekaza and Witness ZAV. As a result thereof, Rwekaza was killed and Witness ZAV was wounded. The Prosecution relies on the testimony of Witness ZAV. The Prosecution further submits that Witness ZAV's evidence, when compared with Witness ZAK's account of the murder of Beata Uwambaye at a roadblock, corroborate one another and establish "a series of linked facts and a pattern of conduct".[1869]

740. The Defence submits that Nizeyimana was on a reconnaissance mission to Mata tea factory in Gikongoro on 21 April 1994. It further challenges the credibility of Witness ZAV's uncorroborated testimony.[1870]

Evidence

Prosecution Witness ZAV

741. In early April 1994, Witness ZAV, a Tutsi, was a student at the Butare University.[1871] When President Juvénal Habyarimana's plane was shot down, he was on vacation in Kigali.[1872] Towards the end of April, in an attempt to flee Rwanda for Burundi or the Congo, Witness ZAV and Remy Rwekaza, another Tutsi civilian, left Kigali and traveled south.[1873] They arrived in Butare prefecture on 19 April, and reached the outskirts of Butare town on 21 April around 4.00 or 5.00 p.m., by way of the Kigali-Butare road.[1874] They had gotten a ride until the bridge before the hill to town, because the driver did not want to risk bringing people in through checkpoints.[1875] From that point they walked into town, unarmed and dressed in civilian clothing, until they reached a roadblock located at the junction of the roads to Gikongoro / Cyangugu, on the one hand, and into Buye and Butare town on the other.[1876] Witness ZAV identified those manning the roadblock as students from the ESO.[1877] He was able to describe the ESO cadets, because he would see them every day.[1878] They were young and in uniform, so he knew they were students.[1879]

[1869] Indictment, para. 24; Prosecution Closing Brief, paras. 470-476, 468; T. 7 December 2011, pp. 18-19, 25, 33, 70-71 (Prosecution Closing Arguments).
[1870] Defence Closing Brief, paras. 246-258; T. 7 December 2011, pp. 10, 29, 52, 54-56 (Defence Closing Arguments).
[1871] Witness ZAV, T. 23 February 2011, pp. 24-25; Exhibit P36 (Witness ZAV's Personal Information Sheet).
[1872] Witness ZAV, T. 23 February 2011, p. 25.
[1873] Witness ZAV, T. 23 February 2011, pp. 26, 30.
[1874] Witness ZAV, T. 23 February 2011, pp. 26, 30, 32, 60.
[1875] Witness ZAV, T. 23 February 2011, pp. 26-27.
[1876] Witness ZAV, T. 23 February 2011, pp. 27, 30.
[1877] Witness ZAV, T. 23 February 2011, pp. 27, 30-31.
[1878] Witness ZAV, T. 23 February 2011, pp. 24-25.
[1879] Witness ZAV, T. 23 February 2011, p. 25.

742. He explained to them that he was a student in Butare, and claimed to be visiting Captain Twagiramungu, an instructor at the ESO.[1880] The ESO students recognised the reference to the captain and allowed the two men to pass through and continue on the road towards Butare town.[1881] As they continued on their way, a vehicle with UN markings approached them and stopped.[1882] Witness ZAV recognised Nizeyimana, who was in full combat uniform, as the driver of the car.[1883] Witness ZAV knew Nizeyimana by name and saw him around Butare from time to time.[1884] Next to him sat a woman he did not recognise, also in military attire.[1885] Nizeyimana asked them who they were and where they were going.[1886] Upon being informed of their purported visit to Captain Twagiramungu, Nizeyimana stated that Twagiramungu was an "*Inkotanyi*" and that the two men had to return to the roadblock.[1887]

743. At the roadblock, Nizeyimana ordered the ESO students to kill Witness ZAV and Rwekaza.[1888] Nizeyimana remained in the vehicle the entire time.[1889] Four soldiers brought the two men to a forested area near the road to Cyangugu.[1890] In response to Rwekaza's offer of money in return for his life, the soldiers indicated that Nizeyimana would kill them unless they complied with his order.[1891] They shot Witness ZAV in the left arm, stomach and in one of his fingers, causing him to lose consciousness.[1892] When he awoke, he called Rwekaza's name and realised he was dead.[1893] He got up and walked towards the prison, but before he got there he saw a bus, where he spent the night.[1894]

744. The following day people entered the bus and accused him of being an "RPF guy".[1895] Witness ZAV tried to convince them he was not an *Inkotanyi* and that he was a student at the Butare University.[1896] He told them he knew a person who could verify who he was, after which the people went to find him.[1897] A person by the name of Cyprien arrived and hesitated to verify who Witness ZAV was and asked what the witness wanted from him.[1898] Cyprien left and was told by his wife that she knew Witness ZAV and to take to him to the hospital.[1899] Witness ZAV made his way to the hospital and eventually left Rwanda.[1900]

[1880] Witness ZAV, T. 23 February 2011, pp. 27-28.
[1881] Witness ZAV, T. 23 February 2011, p. 28.
[1882] Witness ZAV, T. 23 February 2011, p. 28. Witness ZAV was not asked what colour the vehicle was.
[1883] Witness ZAV, T. 23 February 2011, pp. 25, 28, 32, 61.
[1884] Witness ZAV, T. 23 February 2011, p 25. Witness ZAV explained that since Butare is not a big town, everyone pretty much knew each other. They all hung out at the same places. T. 23 February 2011, p. 25.
[1885] Witness ZAV, T. 23 February 2011, pp. 28, 32, 61-62.
[1886] Witness ZAV, T. 23 February 2011, p. 32.
[1887] Witness ZAV, T. 23 February 2011, p. 28.
[1888] Witness ZAV, T. 23 February 2011, p. 28.
[1889] Witness ZAV, T. 23 February 2011, pp. 32, 62.
[1890] Witness ZAV, T. 23 February 2011, pp. 28, 30-31; Exhibit P37 (Sketch by Witness ZAV of Forested Area).
[1891] Witness ZAV, T. 23 February 2011, pp. 28, 30-31.
[1892] Witness ZAV, T. 23 February 2011, pp. 28-30.
[1893] Witness ZAV, T. 23 February 2011, pp. 28-29.
[1894] Witness ZAV, T. 23 February 2011, pp. 29, 32-33.
[1895] Witness ZAV, T. 23 February 2011, p. 33.
[1896] Witness ZAV, T. 23 February 2011, p. 33.
[1897] Witness ZAV, T. 23 February 2011, p. 33.
[1898] Witness ZAV, T. 23 February 2011, pp. 33-35.
[1899] Witness ZAV, T. 23 February 2011, pp. 33-35.
[1900] Witness ZAV, T. 23 February 2011, pp. 33, 38.

Deliberations

745. Prosecution Witness ZAV provided first-hand evidence that Nizeyimana ordered ESO soldiers to kill Rwekaza and the witness on 21 April 1994 at the Kigali and Gikongoro / Cyangugu roads junction roadblock. Rwekaza and Witness ZAV were led by soldiers down to a wooded area where they were shot. Rwekaza died as a result and Witness ZAV suffered serious bodily and mental harm.

746. The Defence disputes the presence of Nizeyimana at the roadblock on 21 April 1994. It further challenges the credibility of Witness ZAV, pointing to his refusal to provide information about his immigration status, inconsistencies within his testimony and contradictions between his testimony and witness notes taken by the Prosecution. The Chamber will assess the issues in turn.

747. The Defence questioned Witness ZAV at length on his immigration status.[1901] Specifically, it questioned the reasons for which Witness ZAV sought refugee status in the United States, the process followed in obtaining this status and whether he informed the immigration officials of the incident at the roadblock.[1902] The Chamber observes that Witness ZAV was reluctant to provide details, refusing in large part to answer any questions posed by the Defence in this regard, without his attorney present.[1903]

748. When asked to provide the name of his attorney, Witness ZAV could no longer recall, because it "ha[d] been a while".[1904] Nevertheless, the Chamber considers that Witness ZAV's ongoing fear expressed towards Nizeyimana affected his demeanour and candour during cross-examination, contributing to his refusal to turn over personal immigration information.

749. Furthermore, Witness ZAV subsequently admitted that while he informed the immigration officials of the incident involving Remy Rwekaza, including the injuries he sustained during the shooting, he did not mention Nizeyimana in his application.[1905] Indeed, the witness indicated that his refugee application had been commenced on the basis of "security purposes", because people "like Nizeyimana", the old army, ESO people and *Interahamwe* were still threatening him in Rwanda in 1997.[1906] Given the incident during which his friend was killed and the witness nearly died, the Chamber finds Witness ZAV's reluctance to implicate such a high ranking military officer during his immigration proceedings a reasonable and compelling explanation.

750. The Defence raised the fact that Witness ZAV refused to comment on interview notes compiled by the Prosecution, which, it argued, differed substantially from his testimony in court.[1907] The Chamber recalls that the documents known as "interview notes" are a compilation by the Prosecution that was never acknowledged by the witness or signed by him

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[1901] Witness ZAV, T. 23 February 2011, pp. 38-61; Defence Closing Brief, paras. 251-253.
[1902] Witness ZAV, T. 23 February 2011, pp. 41-60.
[1903] *See, e.g.,* Witness ZAV, T. 23 February 2011, pp. 42-44, 46, 48-50, 53-54, 57.
[1904] Witness ZAV, T. 23 February 2011, p. 51.
[1905] Witness ZAV, T. 23 February 2011, pp. 49, 59-60. Witness ZAV explained that he it was a different story before the Tribunal, as he was not applying for refugee status here. He was coming to testify to the murder of a friend, but insisted that he did not provide a different story to the immigration officials. T. 23 February 2011, p. 60. Similarly, it is unclear from answers given by Witness ZAV whether he applied for refugee status under his own name. T. 23 February 2011, pp. 57-59.
[1906] Witness ZAV, T. 23 February 2011, pp. 52-53.
[1907] Defence Closing Brief, paras. 255-257. *See* Witness ZAV, T. 23 February 2011, pp. 62-64.

prior to his testimony.[1908] The witness largely affirmed his testimony in examination-in-chief and refused to comment on alleged inconsistencies with the interview notes.[1909] The Chamber does not consider that his answers in regards to the "interview notes" revealed any major discrepancies with his testimony. Specifically, Witness ZAV confirmed that Nizeyimana had not exited his vehicle during the entire incident, that he did not know the woman who sat next to him in the car, and that he discussed getting to Nyanza with a Hutu driver.[1910]

751. The Defence raised Witness ZAV's contradiction in describing his relationship to Rwekaza.[1911] The Chamber finds that Witness ZAV's different characterisation of Rwekaza can be explained by his unease of disseminating information which may have identified him to the public.[1912] The Chamber does not consider this discrepancy material to the allegation at hand.

752. The Defence submits that Witness ZAV's account of his survival "does not ring true" in light of the prevailing situation in Butare at the time.[1913] Specifically, the Defence argues that the witness's encounter with people who thought he was an "RPF guy", while he was hiding in the bus, the search for the person, who turned out not to know him, to verify that he was not an *Inkotanyi*, and this person's subsequent conversation with his wife to confirm Witness ZAV's identity, does not comport with the outbreak of violence in Butare following President Sindikubwabo's speech on 19 April 1994.[1914] The Chamber agrees that the sequence described by Witness ZAV in respect to his survival following the shooting appears confusing at best. Notwithstanding, the Chamber has no reason to doubt Witness ZAV's testimony in this regard and the Defence does not point to any evidence suggesting the falsity thereof.

753. Turning to the merits of Witness ZAV's evidence, the Chamber observes that he identified Nizeyimana as having issued orders to ESO soldiers at the Gikongoro / Cyangugu and Kigali roads junction roadblock on 21 April 1994 to kill him and his companion, Remy Rwekaza. Witness ZAV's basis for identifying Nizeyimana is general. Specifically, he pointed to "hang[ing] out" at common social venues in Butare town and everyone knowing each other.[1915] Witness ZAV noted that people in Butare would often converge at the same spots, such as Hotel Ibis and Hotel Faucon, on the main road in Butare.[1916] The evidence before the Chamber reflects that Butare town was a relatively small place, and that figures holding high office, including Nizeyimana, were known by people who might not have had any personal or professional connection to him.[1917] Notably, Witness ZAV was a student

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[1908] Witness ZAV, T. 23 February 2011, p. 63.
[1909] *See, e.g.,* Witness ZAV, T. 23 February 2011, pp. 61-62, 65.
[1910] Witness ZAV, T. 23 February 2011, pp. 62, 65, 69-70.
[1911] Defence Closing Brief, para. 254.
[1912] *See* Witness ZAV, T. 23 February 2011, pp. 26, 52, 61.
[1913] Defence Closing Brief, para. 249.
[1914] Defence Closing Brief, para. 249; Witness ZAV, T. 23 February 2011, pp. 32-33.
[1915] Witness ZAV, T. 23 February 2011, p. 25.
[1916] Witness ZAV, T. 23 February 2011, p. 25.
[1917] *See, e.g.,* Witness Nsabimana, T. 18 May 2011, p. 71 ("Q. Do you know, personally, Mr. Nizeyimana, Ildéphonse? A. I knew him physically, but we did not have any personal relationship. As he was the local officer, he could be recognised by people who did not necessarily know him. They could see him in town in Butare. I used to see him during sports encounters which had his school playing against other institutions in the area, but I can't tell whether he knew me or whether he knows me, but those are the circumstances under which I got to know him. There was no physical or personal contact between him and I."); T. 19 May 2011, pp. 2-3 ("Q. Now, you also told us yesterday, going back to the events of 1994, about Nizeyimana. And you said that he

there from 1991, which provided him with considerable time to learn about Nizeyimana. The Chamber also observes that Witness ZAV identified Nizeyimana in court, although little independent value is placed on this.[1918] Despite the relatively general basis for identification, the Chamber is satisfied that Witness ZAV's presence in Butare during those years and Nizeyimana's prominent position in Butare would have allowed him to recognize the Accused in 1994.[1919]

754. Witness ZAV also recognised those manning the roadblock as students from the ESO. Knowing that the students were from the ESO, he mentioned that he was going to see Captain Twagiramungu, after which the soldiers let them pass through the barrier. As noted above, Witness ZAV was a student in Butare for a considerable period of time, in a relatively small town. He knew where the ESO was located and was able to identify the cadets based on their young age and their uniforms.[1920] While the witness did not provide further specifics in regards to the type of uniform or colour of their beret, the Chamber is satisfied that he would have been able to identify ESO soldiers in April 1994. Indeed, by Witness ZAV's own account, they were able to pass through the roadblock initially, by mentioning Captain Twagiramungu's name.[1921] This reflects that he possessed at least some knowledge of the officers working at the ESO, bolstering his identification.[1922]

755. Furthermore, the particular circumstances surrounding the event also bolster his identification of Nizeyimana and the ESO soldiers. Undeniably stressful, the incident occurred during the day, between 4.00 and 5.00 p.m. (rather than at night) and Nizeyimana spent some time in the company of Witness ZAV, between the time that he was stopped by him in the vehicle and accompanied back to the roadblock. Likewise, Witness ZAV was in the immediate proximity of Nizeyimana, having approached them by vehicle, talked to the witness and called him an "*Inkotanyi*". His view of Nizeyimana and the soldiers does not appear to have been obstructed at all.

756. Indeed, while Witness ZAV is the only witness to testify about this particular event, his evidence is compelling. At the outset, the Chamber observes that he revealed to the Chamber scars from the bullet wounds he sustained at the roadblock.[1923] His in-court

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was the local officer, he could be recognised by people who didn't necessarily know him, but they could see him around Butare. So is it correct, Mr. Witness, that whilst you didn't know him personally, you knew who he was; is that right? MR. PRESIDENT: Madam Gray, meaning the position he occupied? THE WITNESS: Yes, indeed. ... Q. So you could identify him if you saw him as being Nizeyimana, correct? A. Yes, I could. But I must add that we did not have any personal contact. MR. PRESIDENT: Yes. Mr. Witness, what is being sought of you is in – in that time – at that time, if you saw a person passing and that person happened to be Nizeyimana, you would be able to say, That is Nizeyimana. Although you never – he doesn't necessarily know you and you have never talked – THE WITNESS: Yes, indeed.").

[1918] *See* Witness ZAV, T. 23 February 2011, pp. 37-38. *see also Kalimanzira* Appeal Judgement, para. 96; *Kunarac et al.* Appeal Judgement, paras. 226-227, 320.

[1919] Witness ZAV, T. 23 February 2011, pp. 24-25.

[1920] Witness ZAV, T. 23 February 2011, pp. 24-25.

[1921] Witness ZAV, T. 23 February 2011, pp. 27-28.

[1922] Witness ZAV, T. 23 February 2011, p. 25 ("Q. Now, while you were attending the university in Butare, did you have any knowledge about any officers at the *École des sous-officiers*, the ESO? A. I knew some of them by names, and then I could see them in town time to time. Q. The ones that you knew by name, can you tell us what those names are. A. There was Gatsinzi, there was Nizeyimana, and Twagiramungu. Q. Twagiramungu, do you know his rank? A. He was a captain. Q. And do you know where he was from in Rwanda? A. He was from Cyangugu. Q. And Nizeyimana, did you know his rank? A. He was a captain too. Q. Did you know where he was from in Rwanda? A. Yeah. He was from Gisenyi.").

[1923] Witness ZAV, T. 23 February 2011, p. 29.

demeanour was compelling as it related to the description of this event. Of greater significance, his testimony about the events finds considerable circumstantial corroboration. For example, Witness ZAV provided a detailed account about the roadblock's location.[1924] It is consistent with other evidence about the roadblock's existence, and that ESO soldiers manned it.[1925]

757. Furthermore, his evidence about how he and Rwekaza, two Tutsis, were attacked – stopped, removed to a more isolated area a short distance from the roadblock and assaulted – finds considerable circumstantial support when taking a broad view of the record.[1926] Finally, there is no dispute that the ESO Camp had access to UNAMIR vehicles that were left at the camp and that Nizeyimana, in particular, used one in April and May 1994.[1927] Under the circumstances, the Chamber finds Witness ZAV's identification of Nizeyimana and ESO soldiers at the roadblock on or about 21 April 1994 compelling.

758. Indeed, the Defence does not challenge Witness ZAV on the date upon which the incident occurred, namely 21 April 1994, but instead submits that Nizeyimana was on a reconnaissance mission to Mata tea factory on this date.[1928] The Chamber observes that the Prosecution did not question Witness ZAV on the basis for his knowledge of the date upon which they found themselves at the roadblock. Indeed, the witness recalled that he left Kigali and arrived in Butare "towards the end of April".[1929] He got to Butare prefecture "around 19 April" and subsequently to Butare town "April 21st".[1930] Witness ZAV confirmed on cross-examination that his friend had died on 21 April and that he relayed the same information to the immigration authorities.[1931]

759. The Chamber observes that Witness ZAV's evidence is in direct conflict with Nizeyimana's alibi evidence as it relates to 21 April 1994. However, the Chamber, having reviewed the merits of the alibi evidence found it lacking credibility and that the Prosecution evidence has eliminated the reasonable possibility of its truthfulness.[1932] The Chamber is satisfied that Nizeyimana ordered ESO soldiers to kill Remy Rwekaza and Witness ZAV, both Tutsis, at the Gikongoro / Cyangugu and Kigali road junction roadblock, on or about 21 April. The record affirms that Rwekaza was killed as a direct result of this order. Witness

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[1924] Witness ZAV, T. 23 February 2011, p. 27 ("Q. So you have been dropped off, and you begin to walk, and you are going up the hill towards the national museum. A. Right. Q. Did you go past the national museum or not? A. Yes, I did pass the museum. Q. After walking past the national museum, what did you come to? A. Right from the bridge to the museum there was nothing. After we passed the museum, there was – at the junction to the road to Gikongoro-Cyangugu, and there the road goes to Buye. There is a deserted area, and the road goes straight to the town. There was a checkpoint. So – and then we were arrested there.").

[1925] *See* II.7.2; II.7.3.4

[1926] For example, Witness ZBH, who admitted to killing Tutsis at this barrier, described how the soldiers would hand the victim off to the civilians, after which they would take them to be killed at a location away from the roadblock. Witness ZBH, T. 8 February 2011, pp. 58-59, 64-65. Witness ZAK also described how ESO soldiers took his companion, Beata Uwambaye, from the roadblock to a wooded area below the road, where they killed her. *See* Witness ZAK, T. 24 January 2011, pp. 58-59. Furthermore, Witness Ntezimana saw *Interahamwe* beat what appeared to be a human being in a wooded area below the roadblock. Witness Ntezimana, T. 14 February 2011, pp. 66-67.

[1927] *See* Defence Closing Brief, para. 263. *See also* II.7.2

[1928] Defence Closing Brief, para. 248.

[1929] Witness ZAV, T. 23 February 2011, p. 26.

[1930] Witness ZAV, T. 23 February 2011, p. 26.

[1931] Witness ZAV, T. 23 February 2011, p. 60.

[1932] *See* II.13.2.

ZAV, who was shot, rendered unconscious and left for dead, in the Chamber's view suffered serious bodily harm. The Chamber shall discuss the implications of these conclusions in its Legal Findings (III).

7.2 Killing of Beata Uwambaye

Introduction

760. The Indictment alleges that around 5 May 1994, Nizeyimana, who was physically present, ordered soldiers at the Gikongoro road junction roadblock to kill a Tutsi woman named Beata Uwambaye. Prosecution Witness ZAK provided relevant evidence.[1933]

761. The Defence challenges the reliability of Witness ZAK's uncorroborated testimony, which is directly and circumstantially contradicted by Defence evidence. Moreover, Nizeyimana had already been assigned to the training centre at the Mata tea factory in Gikongoro by 5 May 1994, and could thus not have been present at the roadblock. Defence Witnesses Aloys Ntabakuze, Valens Hahirwa, OUV03 and RWV11 provided relevant evidence.[1934]

Evidence

Prosecution Witness ZAK

762. Witness ZAK, a Hutu soldier, was stationed in Kigali in May 1994.[1935] Around 3 to 5 May, Witness ZAK and Beata Uwambaye, a 21 year-old civilian Tutsi woman, drove from Kigali towards Cyangugu, to flee the killings in the capital.[1936] Upon arriving at the outskirts of Butare town between 10.00 and 11.00 a.m., they reached a military roadblock at the junction of the Kigali-Butare and Butare-Cyangugu roads.[1937] At the barrier, Witness ZAK recognised Nizeyimana. Nizeyimana had been the ESO's S2/S3 officer when the witness was a cadet there from late 1990 to early 1991, graduating among the 29th Promotion.[1938] Approximately six to 10 young soldiers, some wearing camouflage uniforms and black berets, who the witness believed were cadets at the ESO, were also at the roadblock.[1939]

763. While stopped at the roadblock, Nizeyimana approached the vehicle, asking Witness ZAK where he was taking this "*Inyenzi*".[1940] The witness explained where he and Uwambaye were traveling to and presented Nizeyimana with a *laissez-passer* that had been issued by his superiors.[1941] Nizeyimana ordered a corporal to confiscate the witness's weapon and, after being disarmed, Nizeyimana took the witness's keys.[1942] From a distance of about six metres, the witness heard Nizeyimana order the soldiers to "go and execute this *Inkotanyi* /

[1933] Indictment, para. 29; Prosecution Closing Brief, paras. 462-494; T. 7 December 2011, pp. 18, 25, 33 (Prosecution Closing Arguments).
[1934] Defence Closing Brief, paras. 19, 29, 151, 259-270; T. 7 December 2011, pp. 44-48, 52, 54-57, (Defence Closing Arguments).
[1935] Witness ZAK, T. 24 January 2011, pp. 55, 59; Exhibit P7 (Witness ZAK's Personal Information Sheet).
[1936] Witness ZAK, T. 24 January 2011, pp. 55-58; T. 25 January 2011, pp. 11-12, 16, 18.
[1937] Witness ZAK, T. 24 January 2011, pp. 57, 61, 63; T. 25 January 2011, pp. 16-17.
[1938] Witness ZAK, T. 24 January 2011, pp. 55, 60-61, 67, 71-72; T. 25 January 2011, pp. 8, 10, 12, 21.
[1939] Witness ZAK, T. 24 January 2011, pp. 61-62; T. 25 January 2011, p. 16. Witness ZAK noticed that the soldiers at the roadblock were young, and therefore thought they were people "who had entered into ESO as part of the group generally referred to as *Nouvelle Formule*." T. 24 January 2011, p. 62.
[1940] Witness ZAK, T. 24 January 2011, pp. 57-59; T. 25 January 2011, p. 17.
[1941] Witness ZAK, T. 24 January 2011, pp. 59; T. 25 January 2011, pp.17, 20.
[1942] Witness ZAK, T. 24 January 2011, pp. 57, 60; T. 25 January 2011, p. 18.

Inyenzi".[1943] The soldiers replied to Nizeyimana's instructions by saying, "Yes, sir, Captain."[1944] At this point, Nizeyimana left in a dark green, camouflage military jeep with his driver or escort towards Butare's city centre.[1945] Nizeyimana had been in the witness's presence between 20 and 25 minutes.[1946]

764. Several of the soldiers then violently led Uwambaye, who was unarmed and dressed in civilian clothes, to a wooded area below the road.[1947] While he could not see what happened, Witness ZAK heard three gunshots and Uwambaye yell.[1948] About 20 minutes later, the soldiers returned, as one wiped blood off of his bayonet.[1949] Thereafter, Witness ZAK was forced to board a bus back to Kigali alone, without the car keys and his rifle.[1950] Although he did not see Uwambaye's corpse, Witness ZAK never saw her again and believed that these soldiers had killed her.[1951]

Defence Witness Aloys Ntabakuze

765. Witness Ntabakuze, a Hutu, held the rank of Major and was the commander of the Para Commando Battalion from June 1988 to 1994.[1952] Six companies were under his order, of which four were maneuver companies.[1953]

766. Every three months, Witness Ntabakuze would submit to the Rwandan army's Staff Headquarters and the Ministry of Defence lists of each soldier's contribution to the social security fund. A separate list would be generated for each company within the Para Commando Battalion. The accuracy of the list, and in particular, whether it reflected each soldier within a particular company, was cross checked by the officer in charge of administration, secretaries, accountants, Witness Ntabakuze's own secretariat, as well as Witness Ntabakuze himself.[1954] Witness Ntabakuze was presented with a document, which he verified was the social security fund form for the second company of the Para Commando Battalion for the months of April, May and June 1993 and which he signed on 10 July 1993.[1955]

[1943] Witness ZAK, T. 24 January 2011, pp. 57-60.
[1944] Witness ZAK, T. 24 January 2011, p. 62.
[1945] Witness ZAK, T. 24 January 2011, pp. 60- 61; T. 25 January 2011, pp. 19, 21. The Defence objected to the evidence of the car driven by Nizeyimana arguing it received insufficient notice that this evidence would be led. Defence Motion for Exclusion of Evidence, 29 April 2011, paras. 68-70. The Chamber recalls that the Prosecution is required to state the charges and the material facts underpinning those charges in the Indictment. *See Ntagerura et al.* Appeal Judgement, para. 21; *Nahimana et al.* Appeal Judgement, para. 347; *Blaškić* Appeal Judgement, para. 219. Witness ZAK's evidence about the vehicle, while relevant to the identification of Nizeyimana, is evidence in support of allegations rather than material facts that must be set forth in the Indictment. Accordingly, the Chamber dismisses this objection.
[1946] Witness ZAK, T. 24 January 2011, p. 63; T. 25 January 2011, p. 19.
[1947] Witness ZAK, T. 24 January 2011, pp. 58-59.
[1948] Witness ZAK, T. 24 January 2011, p. 58; T. 25 January 2011, pp. 18, 23.
[1949] Witness ZAK, T. 24 January 2011, pp. 57-59; T. 25 January 2011, p. 18.
[1950] Witness ZAK, T. 25 January 2011, p. 19.
[1951] Witness ZAK, T. 24 January 2011, p. 58; T. 25 January 2011, pp. 18-19.
[1952] Witness Ntabakuze, T. 7 June 2011, p. 5; Exhibit D56 (Witness Ntabakuze's Personal Information Sheet).
[1953] Witness Ntabakuze, T. 7 June 2011, pp. 5-6.
[1954] Witness Ntabakuze, T. 7 June 2011, pp. 7-9.
[1955] Witness Ntabakuze, T. 7 June 2011, p. 7; Exhibit D57 (Social Security Sheet, Second Quarter of 1993).

Defence Witness Valens Hahirwa

767. Witness Hahirwa was a Defence investigator for Nizeyimana at the time of his testimony.[1956] Witness Hahirwa testified that he searched the marriage register for the Nyarugunga sector, which was found in the former Kanombe commune building and contained records from that administration.[1957] Guided by a precise date that had been provided by a Prosecution witness, Witness Hahirwa searched the marriage registers for 1993 and 1994.[1958] Witness Hahirwa received an attestation from an official at Nyarugunga sector that a marriage certificate bearing Witness ZAK's name for 17 October 1993 was not contained in the civil marriage registry.[1959]

Defence Witnesses OUV03 and RWV11

768. Witnesses OUV03 and RWV11, Hutus, were instructors at the ESO in April 1994.[1960] Witness OUV03 began working at the ESO in the early 1980s and Witness RWV11 became an instructor in 1990.[1961] According to Witness OUV03, the 29th Batch of the ESO was one of four that underwent accelerated training when the war commenced in 1990.[1962] He believed that the 29th Batch started in June and ended in October 1992.[1963] Witness RWV11 generally testified that the 29th intake started in 1992.[1964]

Deliberations

769. Prosecution Witness ZAK provided first-hand evidence that Nizeyimana ordered ESO soldiers to kill Beata Uwambaye, identified as an *Inyenzi*, around 3 to 5 May 1994. The incident occurred at the Kigali and Gikongoro / Cyangugu roads junction roadblock near Butare town. The witness saw soldiers lead Uwambaye into a wooded area, heard gunshots and a yell, and saw the soldiers return, wiping blood off their bayonets. On this basis, he concluded that Uwambaye had been killed.

770. The Defence disputes the Prosecution case, raising several collateral challenges to Witness ZAK's credibility. It rejects that the witness knew Nizeyimana based on his prior enrollment within the ESO, and that his evidence about his personal history, as well as military service, are unbelievable. According to the Defence, Witness ZAK fabricated the story about Uwambaye's killing in order to allow him – a Hutu who served in the former Rwandan army – to reintegrate into the Rwandan army.[1965] It further argues that Nizeyimana

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[1956] Witness Hahirwa, T. 11 May 2011, p. 58; Exhibit D28 (Witness Hahirwa's Personal Information Sheet).
[1957] Witness Hahirwa, T. 14 June 2011, pp. 24-25, 74-75. Witness Hahirwa was also directed to go to Masaka sector which also used to be in Kanombe commune; however, no records after 1992 were kept there and Hihirwa was directed to return to Nyarugunga sector. T. 14 June 2011, pp. 25-26, 74.
[1958] Witness Hahirwa, T. 14 June 2011, pp. 24-25, 74-75.
[1959] Witness Hahirwa, T. 14 June 2011, pp. 25-26; Exhibit D68 (Nyarunga Sector Attestation, 11 April 2011).
[1960] Witness OUV03, T. 30 May 2011, pp. 60, 62; T. 1 June 2011, p. 16; Exhibit D51 (Witness OUV03's Personal Information Sheet). *See also* Witness RWV11, T. 2 June 2011, p. 8; Exhibit D53 (Witness RWV11's Personal Information Sheet).
[1961] Witness OUV03, T. 30 May 2011, pp. 64, 66, T. 1 June 2011, pp. 16-17; Witness RWV11, T. 2 June 2011, p. 8.
[1962] Witness OUV03, T. 30 May 2011, p. 66.
[1963] Witness OUV03, T. 30 May 2011, p. 66.
[1964] Witness RWV11, T. 2 June 2011, pp. 8-9.
[1965] *See* Witness ZAK, T. 25 January 2011, pp. 21-22.

was no longer in Butare, but posted full time in Gikongoro prefecture at the Mata tea factory.[1966]

771. The Defence challenges Witness ZAK's evidence that he trained at the ESO in the early 1990s, thereby undermining his ability to identify Nizeyimana in 1994. In particular, Witness ZAK testified that he was an ESO cadet from late 1990 to early 1991, graduating among the 29th Promotion, and that Nizeyimana had been the ESO's S2/S3 officer at the time.[1967] However, Defence Witness OUV03, a chief warrant officer and instructor, who had been at the ESO since the early 1980s, testified that the 29th "Batch" existed from June to October 1992.[1968] Likewise, Witness RWV11, who joined the ESO in the late 1980s, testified that this intake was in 1992.[1969]

772. With respect to the timing of the 29th Promotion, the Chamber observes that Witness OUV03 was equivocal when offering the date.[1970] Notably, Witness OUV03 was not a member of that specific promotion, making the timing of it less significant than it would have been to Witness ZAK. The Chamber considers that the same analysis applies to the testimony of Witness RWV11, whose evidence on the subject was remarkably brief. Furthermore, although present when Witness ZAK stated he attended the ESO, Witnesses OUV03 and RWV11 were not questioned as to whether they knew Witness ZAK as an ESO cadet. The Chamber has elsewhere questioned the credibility of Witnesses OUV03 and RWV11.[1971] The Chamber concludes that the evidence of Witnesses OUV03 and RWV11 fails to raise doubt in Witness ZAK's otherwise clear and compelling account that he was an ESO student in the early 1990s and that he could identify Nizeyimana.

773. Indeed, aspects of Witness OUV03's testimony offer circumstantial corroboration to Witness ZAK's description of his time at the ESO. For example, Witness OUV03 corroborated Witness ZAK's evidence that the 29th Promotion (or "Batch") was part of an accelerated training program in light of ongoing hostilities.[1972] Of greater significance, Witness OUV03 testified that Nizeyimana was at the ESO by January or February 1990, further confirming Witness ZAK's evidence that Nizeyimana was at the ESO when he trained there.[1973]

[1966] *See* II.13.3.
[1967] *See* Witness ZAK, T. 24 January 2011, pp. 55, 60-61, 67; T. 25 January 2011, pp. 8, 10, 12.
[1968] *See* Witness OUV03, T. 30 May 2011, p. 66.
[1969] *See* Witness RWV11, T. 2 June 2011, pp. 8-9.
[1970] Witness OUV03, T. 30 May 2011, p. 66 ("A. The training for the 29th batch started, if my memory serves me correctly, in mid June and ended end October 1992.").
[1971] *See* II.13.2.
[1972] *See* Defence Witness OUV03, T. 30 May 2011, p. 66; Prosecution Witness ZAK, T. 24 January 2011, p. 72.
[1973] Defence Witness OUV03, T. 1 June 2011, p. 17. *See also* Defence Witness MAL01, T. 16 May 2011, pp. 62, 70-71, 79-80 (Witness MAL01, a nurse moved to Butare in 1990 and was introduced to Nizeyimana by her husband when she arrived; Nizeyimana was a captain at the ESO at that point); Prosecution Witness BDE, T. 28 January 2011, pp. 9-10 (the witness joined the ESO in November 1990 and believed that Nizeyimana was already there, acting as the S3 officer); Defence Witness Bunani, T. 10 June 2011, pp. 46-47, T. 13 June 2011, pp. 21 (joined the ESO in 1988 as a member of the 24th batch and knew Nizeyimana, who was his instructor, before he started courting Nizeyimana's sister in 1989); Witness RWV11, T. 2 June 2011, pp. 8, 71 (Nizeyimana was a second lieutenant and trained the witness when he arrived at the ESO; the witness arrived at the ESO in 1988). The Defence provided conflicting submissions as to when Nizeyimana arrived at the ESO Camp. Notably, it argues in relation to Witness ZAK's evidence that Nizeyimana was not posted at the ESO Camp when Witness ZAK trained there in the late 1990 and early 1991. Defence Closing Brief, para. 267.

774. The Defence also seeks to undermine Witness ZAK's credibility by disputing that he was in the Para Commando Battalion. Witness ZAK testified that he joined the Para Commando Battalion in 1991, after finishing his studies at the ESO.[1974] He was initially posted in the third company during a period of heightened combat.[1975] He was then transferred to the second company, where he "spent most [of his] time".[1976] He was transferred to the Cyangugu Battalion shortly before RPF soldiers were allowed to occupy the CND in Kigali in 1993.[1977]

775. Through the testimony of Witness Ntabakuze, the Commander of the Para Commando Battalion during the relevant period, the Defence challenges that Witness ZAK held a post in the Para Commando Battalion. Specifically, it presented Witness Ntabakuze with a social security fund sheet for the second company of the Para Commando Battalion for the second quarter of 1993 (or April, May and June 1993). Witness Ntabakuze testified that all second company soldiers would be listed on this sheet, which underwent an extensive verification process. Notably, Witness ZAK is not listed on this document.[1978]

776. At the outset, the Chamber observes that this document is *not* a comprehensive list of all the 700 to 800 soldiers who formed the Para Commando Battalion soldiers in the second quarter of 1993.[1979] Notably, it is not clear from Witness ZAK's evidence that he was a member of the second company during the second quarter of 1993. Moreover, the Chamber has some reservations, notwithstanding Witness Ntabakuze's testimony otherwise, that such paperwork was necessarily error free.

777. Furthermore, Witness Ntabakuze's testimony does not demonstrate that every soldier who worked in the second company during the second quarter of 1993 would necessarily be listed on this sheet. For example, it is not clear that someone who transferred into the second company in the midst of the second quarter of 1993 would be accounted for in the second company's social security fund sheet.[1980] Indeed, it appears just as likely that such an individual would be listed within the equivalent document of the company from which the soldier transferred.[1981]

Elsewhere, however, the Defence submits that Nizeyimana was appointed to the ESO in January or February 1990 and worked as an instructor for a few years. Defence Closing Brief, para. 569.

[1974] Witness ZAK, T. 24 January 2011, pp. 55, 72; T. 25 January 2011, pp. 7, 10.

[1975] Witness ZAK, T. 25 January 2011, pp. 8-11.

[1976] Witness ZAK, T. 25 January 2011, pp. 8-9.

[1977] Witness ZAK, T. 24 January 2011, pp. 72-73; T. 25 January 2011, pp. 7, 10-11. The Defence stipulated that the RPF were allowed into the CND in December 1993. T. 25 January 2011, p. 11.

[1978] *Compare* Exhibit P7 (Witness ZAK's Personal Information Sheet), *with* Exhibit D57 (Social Security Sheet, Second Quarter of 1993).

[1979] *See* Witness Ntabakuze, T. 7 June 2011, pp. 5-6 (six companies in the Para Commando Battalion), 7 (about 125 soldiers per company), 15 (between 700 to 800 Para Commandos), 15-16 (Exhibit D57 only lists members of the second company, and only for the months of April, May and June 1993).

[1980] *See* Witness Ntabakuze, T. 7 June 2011, pp. 8-9 (explaining the verification process, which ensured that no soldier in a company was left off the social security fund list for the relevant quarter).

[1981] A review of Exhibit D57 reveals that all the officers listed began service before the commencement of the second quarter of 1993. There is no indication that any transferred into the company while there are examples of individual's service terminating within the quarter. Exhibit D57, pp. 2, 4. While this could mean that no officers transferred into the second company, it could equally mean that the social security fund reporting followed the company in which a soldier commenced service and would not include persons who transferred into that company during that reporting period.

778. In this context, the incompleteness of Witness Ntabakuze's testimony and the Defence's documentary submissions substantially mitigate the probative value of this evidence as it relates to whether or not Witness ZAK was within the Para Commando Battalion. Notably, Witness ZAK provided detailed testimony regarding who his superiors in the Para Commando Battalion were, as well as his five digit matricule number.[1982] None of this evidence was challenged through Witness Ntabakuze or other documentary evidence.[1983] The Chamber finds Witness ZAK's denial, under oath, that he fabricated this testimony convincing.[1984]

779. The Defence also challenges Witness ZAK's evidence that he participated in a formal event in the Kanombe commune office on 17 October 1993 – an event critical to understanding his relationship with Uwambaye and her family.[1985] In particular, Defence Investigator Valens Hahirwa reviewed relevant registries based on this information and found no documentation of this event. Likewise, the relevant Rwandan authority provided an attestation confirming that Witness ZAK's name was not found in the registry for 17 October.[1986]

780. This search was conducted nearly 18 years after the event and after administrative functions had changed in Rwanda.[1987] Witness Hahirwa confirmed that the registry was voluminous.[1988] In the Chamber's view, the inability to retrieve written confirmation of Witness ZAK's participation in this event in October 1993 does not undermine his evidence concerning the nature of his relationship with Uwambaye. Indeed, Witness ZAK was able to provide considerable details about Uwambaye that would corroborate his testimony about his relationship with her and explain why the two were travelling through Butare around 5 May 1994.[1989]

[1982] *See* Witness ZAK, T. 24 January 2011, p. 73 and T. 25 January 2011, pp. 7-9 (First Sergeant Habimana, Second Lieutenant Maniragaba and Major Ntabakuze were his superiors within the Para Commando Battalion); Witness ZAK, T. 24 January 2011, pp. 73-74 and T. 25 January 2011, p. 15 (Second Lieutenant Nangakanzayo and Captain Hakizimana, the latter having also served as a member of the Para Commando Battalion with Witness ZAK, were his superiors within the Cyangugu Battalion); T. 25 January 2011, p. 8 (provided his five digit "matricule number"). Similarly, the Chamber considers Witness ZAK's explanation in relation to his inability to recall the names of the commanders of the Para Commando Battalion's third company due to constant turn over and the use of interim commanders reasonable and convincing. *See* Witness ZAK, T. 25 January 2011, pp. 9-10.

[1983] Witness Ntabakuze was not asked if he knew whether Witness ZAK was a member of the Para Commando Battalion. Given the breadth of Witness Ntabakuze's responsibilities at the time, as well as the number of soldiers within the Para Commando Battalion, it would be reasonable for him not to know that Witness ZAK was a soldier under his command even if he had been.

[1984] *See* Witness ZAK, T. 25 January 2011, p. 22. The Defence argues that Witness ZAK's failure to report this incident between 1995 and 2009 is further indication that he fabricated this event. *See* Defence Closing Brief, para. 269. The Chamber considers Witness ZAK's explanation of how he reported this event and why there was no Gacaca record reasonable and compelling. *See* Witness ZAK, T. 24 January 2011, pp. 64-69; T. 25 January 2011, pp. 21-22.

[1985] *See* Witness ZAK, T. 25 January 2011, pp. 13-14.

[1986] Exhibit D68(F) (Nyarunga Sector Attestation, 11 April 2011).

[1987] Witness Hahirwa, T. 14 June 2011, p. 74.

[1988] Witness Hahirwa, T. 14 June 2011, pp. 74-75.

[1989] *See* Witness ZAK, T. 25 January 2011, pp. 12-15 (providing details regarding where Uwambaye was born, where he met her, that she was an orphan but that he knew her paternal aunts and a sister who was a nun in Europe, and knew that Uwambaye had received her A2 humanities degree and a veterinary degree).

781. Ultimately, the Chamber considers that these challenges to Witness ZAK's evidence, even if sustained, are immaterial to an assessment of his credibility as it relates to the crime he testified to having observed. In the context of that particular evidence the Chamber found the witness to be forthright and his demeanour convincing. A holistic review of his evidence reflected cooperation and clarity as it related to the material aspects of his testimony. His evidence appeared unembellished, and he was forthcoming when it related to gaps in his memory or observations. The Chamber found the witness entirely credible.

782. The Chamber now turns to the merits of Witness ZAK's evidence about Uwambaye's killing, starting with the witness's identification of Nizeyimana. As discussed above, the Chamber accepts Witness ZAK's testimony that he was a student at the ESO in the early 1990s and that Nizeyimana was posted there at this time. Having trained at the ESO for about four months less than four years prior to May 1994, the Chamber considers that these circumstances provide a compelling basis upon which Witness ZAK could identify Nizeyimana.[1990]

783. Furthermore, the particular circumstances surrounding the event also bolster his identification. The incident occurred during the day, between 10.00 and 11.00 a.m. (rather than at night) and Nizeyimana was in the witness's presence for approximately 20 to 25 minutes. Likewise, Nizeyimana was in the immediate proximity of the witness, having approached his vehicle, talked with the witness, and taken his keys. Similarly, the witness stood only about six metres away from the Accused when he issued orders to kill Uwambaye.

784. In addition, the witness testified that soldiers referred to the Accused as "captain", offering further circumstantial corroboration of the witness's identification.[1991] Indeed, while the event was undoubtedly stressful for Witness ZAK, he was a fellow soldier travelling with a *laissez-passer* and was able to passively observe Nizeyimana's purported instructions to kill Uwambaye without interference. These circumstances further support his identification.[1992]

785. Indeed, while Witness ZAK is the only person to testify about this particular event, his evidence about the roadblock finds considerable circumstantial support. Witness ZAK

[1990] Notably, Witness ZAK specified that based on his training he could recall Nizeyimana's face. *See* T. 24 January 2011, p. 60.

[1991] The Chamber also observes that Witness ZAK identified Nizeyimana in court. *See* Witness ZAK, T. 24 January 2011, pp. 63-64. However, it places little independent evidentiary value in this identification.

[1992] The Defence also challenges Witness ZAK's identification, arguing that Nizeyimana was driving a white UNAMIR vehicle at the time rather than a military jeep. *See* Defence Closing Brief, para. 263. Prosecution and Defence evidence generally reflects that Nizeyimana drove a white UNAMIR jeep in April and May 1994. *See, e.g.*, Prosecution Witness BDE, T. 31 January 2011, pp. 18-19; Prosecution Witness AJP, T. 15 February 2011, pp. 71-72 (after 26 April 1994, saw Nizeyimana driving a UNAMIR vehicle). *See also* II.13.2. However, the evidence also reflects that the ESO had vehicles that fit the description of that provided by Witness ZAK and that Nizeyimana used them. *See* Prosecution Witness BXF, T. 22 February 2011, pp. 8-11 (lived in the immediate vicinity of Nizeyimana and testified that he had an olive green Mercedes-Benz jeep); Prosecution Witness YAA, T. 1 February 2011, p. 71 (an ESO soldier, testified that before 13 or 14 April 1994, he observed Nizeyimana driving a Mercedes-Benz jeep, called a *tôlée* with a military number plate); Prosecution Witness BDE, T. 31 January 2011, p. 19; Defence Witness OUV03, T. 31 May 2011, pp. 28, 41-42. In any event, the ESO had a number of vehicles at Nizeyimana's disposal. *See, e.g.*, Defence Witness RWV09, T. 8 June 2011, pp. 19-20 (observing Nizeyimana arrive in a UNAMIR jeep and leave in a Mitsubishi pickup after 25 or 26 April 1994; Mata training centre had a UNAMIR vehicle as well as a Toyota Stout pickup allocated to it); Defence Witness CKN10, T. 30 May 2011, pp. 7-8 (testified that prior to the reconnaissance mission to Mata, Nizeyimana would move around in a Mercedes-Benz jeep).

provided a detailed account about the roadblock's location.[1993] Prosecution and Defence witnesses confirmed the description of the location and the existence of a roadblock there.[1994] The Chamber has determined, in light of this evidence as well as the entire record, that ESO soldiers undoubtedly manned this roadblock.[1995]

786. Under the circumstances, the Chamber finds Witness ZAK's identification of Nizeyimana and ESO soldiers at the roadblock around 5 May 1994 compelling. Furthermore, the witness's testimony about Uwambaye, an unarmed Tutsi civilian being attacked, finds considerable circumstantial support based on a broad view of the record.[1996]

787. In so finding, the Chamber has considered Nizeyimana's alibi for this period.[1997] While the evidence reasonably establishes that Nizeyimana was deployed to Mata during this period, it fails to raise the reasonable possibility that this evidence is inconsistent with Nizeyimana, at times, being in Butare town. The alibi does not raise reasonable doubt in Witness ZAK's compelling testimony regarding this event.

788. Having found Witness ZAK's evidence credible and compelling, the Chamber must now determine whether it establishes that Beata Uwambaye was killed based on Nizeyimana's orders to execute her. Notably, Witness ZAK only observed soldiers walk Uwambaye into a wooded area, heard three gun shots and her yell, and the soldiers return, wiping blood off their bayonets.[1998] The witness did not see Uwambaye's corpse, but also indicated that he never saw her again.[1999]

789. The Chamber considers that the only reasonable conclusion, based on an entire review of the record, is that Uwambaye was killed. The Chamber is mindful that the Prosecution has presented evidence of events unfolding at this roadblock, in much the same manner, which did not result in the death of the person that Nizeyimana ordered soldiers to kill – namely Witness ZAV. He survived gunshots, suffering serious bodily and mental harm.[2000]

790. Notwithstanding, the circumstances of Uwambaye's killing are different. She was the only target at that particular moment. Likewise, the evidence demonstrates that the only reasonable conclusion is that she was shot, as well as attacked with a bayonet. Moreover, the

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[1993] *See* Witness ZAK, T. 24 January 2011, p. 57 ("A. We stopped at the crossroads of the Cyangugu-Butare road and the Kigali-Butare road, that is, at the junction of those two roads. Q. Was that junction before or after the national museum? A. If you were coming from Kigali, then you will get to the junction after passing the national museum. Q. Very briefly, in a few sentences, are you able to describe what that junction looked like at the time and what was there? A. At the junction of the two roads there was a military roadblock. Q. Other than the military roadblock at the junction, are you able to describe what the area looked like, for example, whether there were any buildings or whether it was an open area or what the geography was like? A. Next to the junction there were some buildings on one side, but on the other side towards Gikongoro there were no buildings. Instead, there was a eucalyptus tree forest.").
[1994] *See* II.7.1; II.7.3.4.
[1995] II.7.3.4.
[1996] II.7.1; II.7.3. *See also* Prosecution Witness Zachariah, T. 14 February 2011, pp. 9-10, 32 (describing soldiers at a roadblock near the prefecture auditorium reviewing a man's identity card and then beating him to death while allowing *Interahamwe* to pass the barrier unhindered); Defence Witness BEJ01, T. 9 June 2011, p. 32 (generally testifying that Tutsis were systematically being killed at roadblocks and that he saw soldiers commit murders at them).
[1997] *See* II.13.3.
[1998] Witness ZAK, T. 24 January 2011, pp. 58-59; T. 25 January 2011, pp. 18, 23.
[1999] Witness ZAK, T. 24 January 2011, p. 58; T. 25 January 2011, pp. 18-19.
[2000] *See* II.7.1.

Chamber also considers that the absence of any subsequent contact between Witness ZAK and Uwambaye supports the conclusion that she did not survive this attack. On this basis, the only reasonable inference is that, around 5 May 1994, Beata Uwambaye, a Tutsi, was killed by the ESO soldiers who led her away from the barrier. Her death was a direct result of Nizeyimana's orders for the ESO soldiers to murder her. The Chamber shall consider the implications of these conclusions in its Legal Findings (III).

7.3 Roadblocks Generally

Introduction

791. The Indictment alleges that from 7 April to mid July 1994, Nizeyimana ordered and instigated soldiers from the ESO, Ngoma Camp and Butare Gendarmerie Camp, including Second Lieutenants Bizimana and Gatsinzi, who acted in concert with Sergeant Ezechier Rwaza, militias affiliated with the MRND, MDR, PL, CDR and PSD parties, local citizens and demobilised soldiers, to construct and man roadblocks throughout Butare prefect used for the purpose of identifying and killing Tutsi civilians. In particular, they were ordered to construct and man roadblocks at locations in Butare, including Tumba, Rwabuye, Rwasave, in the Arab Quarter (aka Cyarubu), the junction leading to the *Group Scolaire*, outside Hotel Faucon in Butare town, near the entrance to the Butare University and the main roads leading to Butare town from both Kigali and Gikongoro. The Prosecution relies on the testimonies of Witnesses Laurien Ntezimana, AZD, BDE, ZY, ZBH, ZAK, Rony Zachariah, Marie Paule Spielmann, TQ, YAA, Jules Kayibanda, FAX, ZT, ZAW and ZBL.[2001]

792. The Defence does not dispute the existence and creation of roadblocks, but denies any involvement of Nizeyimana. In particular, Nizeyimana did not have the authority to issue orders in relation to the creation and manning of roadblocks in Butare and he did not do so. Roadblocks established by civilians were beyond the control of the military. Moreover, Nizeyimana was absent from Butare from 21 to 22 April 1994 and from 26 April onwards and he could therefore not have exercised control over, or have knowledge of, the alleged crimes committed at the roadblocks.[2002]

7.3.1 Preliminary Findings

793. The evidence almost uniformly indicates that while a small number of roadblocks or checkpoints may have existed prior to the President Juvénal Habyarimana's plane crash, roadblocks were established, reinforced and gradually increased after 7 April 1994 and then again after 19 April in Butare.[2003] There is only scant, although credible, anecdotal evidence that in the days prior to President Théodore Sindikubwabo's 19 April speech in Butare that

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[2001] Indictment, para. 6; Prosecution Closing Brief, paras. 63-72, 77; T. 7 December 2011, pp. 17-19 (Prosecution Closing Arguments). As discussed elsewhere, the Chamber considers Witness BUR's evidence related to his attendance at a meeting at the ESO Camp on 7 April 1994 lacking any probative value. II.2. The same determinations apply with equal force here and the Chamber disregards his evidence related to Nizeyimana's involvement in the establishment of roadblocks or evidence about roadblocks in general.

[2002] Defence Closing Brief, paras. 515-527; T. 7 December 2011, pp. 39, 45, 49, 54-55, 62, 74 (Defence Closing Arguments).

[2003] *See* Prosecution Witness Zachariah, T. 14 February 2011, pp. 5, 27-28; Prosecution Witness Spielmann, T. 31 January 2011, p. 7; Prosecution Witness Ntezimana, T. 14 February 2011, p. 63; Prosecution Witness FAX, T. 17 February 2011, pp. 21-22; Prosecution Witness Gahizi, T. 7 February 2011, p. 34; Prosecution Witness XAG, T. 25 January 2011, pp. 28-29, 35-38; Prosecution Witness AZD, T. 31 January 2011, pp. 72, 74; Prosecution Witness ZAW, T. 26 January 2011, pp. 6-7; Prosecution Witness ZY, T. 26 January 2011, p. 50; Prosecution Witness ZBH, T. 8 February 2011, p. 65; Prosecution Witness AJP, T. 14 February 2011, p. 68; Defence Witness BUV02, T. 10 May 2011, pp. 55, 70-71, 81-82 (testifying that roadblocks were initially established by prefecture authorities and not set up to kill Tutsis); Defence Witness MAL01, T. 16 May 2011, p. 62; Defence Witness Mukashimana, T. 23 May 2011, p. 55. The Chamber notes that Defence Witness Jean Ghiste is the sole witness to deny having seen any roadblock in the city of Butare when he drove through on 17 and 18 April 1994. Defence Witness Ghiste, T. 10 May 2011, p. 39. In the face of overwhelming evidence to the contrary, the Chamber considers Witness Ghiste's evidence lacking any credibility.

roadblocks were used to attack Tutsis.[2004] For the most part, prior to 19 April, the evidence tends to reflect that roadblocks were established to ensure everyone's security.[2005] However, in the following days, Prosecution and Defence evidence almost uniformly reflects that roadblocks became locations used to target Tutsis, persons with Tutsi physical features as well as Hutus who appeared sympathetic to Tutsis.[2006]

794. The Chamber observes that there is evidence tending to reflect that civilian authorities played a role in establishing roadblocks.[2007] However, consistent and credible evidence shows that the commanders of the ESO and Ngoma camps were invested with the authority, and in fact exercised this authority, to control passage through barriers in and around Butare town. Specifically, for persons other than soldiers to travel around the city, one had to carry a *laissez-passer*. Without a *laissez-passer*, it was difficult to traverse the city or obtain fuel, particularly after 16 April 1994.[2008] The record reflects that Colonel Tharcisse Muvunyi or Lieutenant Ildéphonse Hategekimana were the soldiers issuing them.[2009]

795. For example, Prosecution Witnesses Zachariah and Spielmann, who remained in Butare until 24 April 1994, obtained their *laissez-passers* from Colonel Muvunyi to travel around Butare town.[2010] Witness Ntezimana obtained two from Lieutenant Hategekimana, which were valid for a day. He also testified that Muvunyi could issue *laissez-passers* that

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[2004] Witness Zachariah, T. 14 February 2011, p. 9 (On 17 April 1994, a soldier pulled a driver out of his vehicle at the *Groupe Scolaire* roadblock and beat him with the butt of a rifle until he fell lifelessly to the ground); Witness Ntezimana, T. 14 February 2011, pp. 65, 73 (sometime before 19 April, the witness passed the *Chez* Bihira roadblock, where he saw two soldiers using their rifle butts to beat a group of young people in civilian attire in the back of a pickup truck).

[2005] Witness BUV02, T. 10 May 2011, pp. 55, 70-71, 81-82 (testifying that roadblocks were initially established by prefecture authorities; the roadblock he manned was initially set up by the Tutsi prefect, was manned by Hutus and Tutsis and its purpose was to ensure everyone's security; this changed after President Théodore Sindikubwabo's speech).

[2006] *See* II.6.5; II.7.1; II.7.2; II.7.3.4-II.7.3.6. *See also* Defence Witness Basesayabo, T. 9 May 2011, p. 29 (although he did not see violence at roadblocks, he heard from patients at the Butare University Hospital that they had witnessed persons getting separated at barriers and some getting killed); Defence Witness BEJ01, T. 9 June 2011, p. 32 (stated that he did not pass roadblocks as Tutsis were systematically targeted at them; he saw soldiers committing murders at unidentified barriers); Defence Witness BUV02, T. 10 May 2011, pp. 70-71 (testifying that when more roadblocks were established later, their purpose was to kill Tutsis, although he never saw Nizeyimana at such roadblocks); Prosecution Witness Ntezimana, T. 14 February 2011, p. 63 (generally testifying that although the official purpose for roadblocks was to "stop the enemy", all those carrying Tutsi identity cards, persons with Tutsi physical features and Hutus perceived to be "conniving with Tutsis" were stopped without distinction and killed).

[2007] *Cf.* Prosecution Witness AZM, T. 24 January 2011, p. 14 (noted that the prefecture security committee established roadblocks to prevent infiltration); Prosecution Witness Ntezimana, T. 14 February 2011, p. 73 (confirming that, based on a logical deduction, he had previously testified in the *Hategekimana* case that barriers had been set up on the orders of the prefectoral security committee); Defence Witness BUV02, T. 10 May 2011, p. 70 (stated that the roadblocks were established upon orders of the prefect authorities with the purpose of providing security to the public, because the country was at war); Defence Witness CKN20, T. 15 June 2011, p. 13 (Prefect Jean Baptiste Habyalimana had various roadblocks erected in Butare to provide security to the people of the city).

[2008] Prosecution Witness Zachariah, T. 14 February 2011, pp. 8-9, 27-28; Prosecution Witness FAX, T. 17 February 2011, p. 22; Prosecution Witness AJP, T. 15 February 2011, p. 68; Defence Witness MAL01, T. 16 May 2011, p. 62.

[2009] Witness Zachariah, T. 14 February 2011, pp. 5-6, 27; Witness Spielmann, T. 31 January 2011, pp. 8-9; Witness Ntezimana, T. 14 February 2011, p. 72; Witness AZM, T. 24 January 2011, p. 15.

[2010] Witness Zachariah, T. 14 February 2011, p. 6; Witness Spielmann, T. 31 January 2011, p. 9.

lasted a month, although he did not obtain one.[2011] Consistent with Witnesses Zachariah, Spielmann and Ntezimana, Witness AZM, a member of the prefecture security committee, testified that Colonel Muvunyi was in charge of issuing the *laissez-passers*.[2012] Moreover, in the context of discussing roadblocks during a meeting on 14 April, Muvunyi directed persons seeking assistance to go to Ngoma Camp Commander Ildéphonse Hategekimana if Muvunyi was not available.[2013]

796. Unless a person was known to those manning the roadblocks, considerable evidence reflects that such an individual would be forced to show his or her identity card.[2014] For example, Prosecution Witnesses Ntezimana and ZAW, as well as Defence Witnesses CKN20 and CKN10 were generally able to pass through without difficulties, because the people manning the roadblocks knew them.[2015]

797. That the power of movement through roadblocks was vested in military authorities, and in particular officials at the ESO, is further demonstrated by the overwhelming evidence that ESO soldiers, as discussed below, were in fact positioned throughout the city at various roadblocks. In this context the Chamber shall now set forth the relevant evidence and its analysis as it relates to the roadblocks that Nizeyimana is alleged to have ordered and instigated soldiers from the ESO, Ngoma and Butare Gendarmerie camps, militias, local citizens and demobilised soldiers, to construct for the purposes of killing Tutsis. It shall consider the purpose of these roadblocks and, in particular, whether they were used for identifying and killing Tutsi civilians.

7.3.2 Rwabuye Roadblock

798. The Prosecution and Defence evidence demonstrates that a roadblock at a location known as Rwabuye existed in April 1994.[2016] Prosecution Witnesses AZD and YAA both

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[2011] Witness Ntezimana, T. 14 February 2011, pp. 64, 72.
[2012] Witness AZM, T. 24 January 2011, p. 15.
[2013] Witness AZM, T. 20 January 2011, pp. 73-74.
[2014] Prosecution Witness Zachariah, T. 14 February 2011, p. 9; Prosecution Witness Ntezimana, T. 14 February 2011, p. 72; Prosecution Witness ZAW, T. 26 January 2011, pp. 8-9; Prosecution Witness Gahizi, T. 7 February 2011, p. 45 (noted that Nizeyimana would not have been stopped at roadblocks); Defence Witness CKN20, T. 15 June 2011, p. 4; Defence Witness CKN10, T. 30 May 2011, pp. 8-9. *But see, e.g.,* Prosecution Witness FAX, T. 17 February 2011, pp. 21, 23 (the soldiers would ask people for their identity cards, so that they could identify their victims).
[2015] Prosecution Witness Ntezimana, T. 14 February 2011, pp. 72-73 (normally not stopped in Butare town or Gisagara where he was well known; was detained in Save for nearly a day, however, because those manning the roadblock did not know him); Prosecution Witness ZAW, T. 26 January 2011, pp. 8-9; Defence Witness CKN20, T. 15 June 2011, p. 4; Defence Witness CKN10, T. 30 May 2011, pp. 8-9. The Chamber shall conduct a more detailed analysis of the individual roadblocks and the identity of those manning it in specific sections hereafter.
[2016] Prosecution Witness AZD, T. 31 January 2011, p. 75 (saw a roadblock after Rwabuye bridge); Prosecution Witness YAA, T. 1 February 2011, p. 64 (crossed a roadblock on main road leading to Kigali in Rwabuye valley); Prosecution Witness ZBH, T. 8 February 2011, p. 55 (helped soldiers man the Rwabuye roadblock); Prosecution Witness Zachariah, T. 14 February 2011, p. 27 (noted the presence of a roadlock at the entrance to Butare on the road coming from Kigali, just after the bridge); Defence Witness Ntamagezo, T. 8 June 2011, p. 61 (when carrying out patrols in Butare town as part of the Military Police platoon between 21 and 23 April, he saw a roadblock next to the wetlands in Rwabuye). *But see* Prosecution Witness ZAV, T. 23 February 2011, pp. 26-27 (on 21 April, did not see any roadblocks in between the bridge before town and the national museum). Given the geographical landmarks, combined with the general description by Witness YAA, the Chamber is satisfied that the witnesses refer to the same roadblock in Rwabuye, which was located right after the bridge on

identified ESO soldiers at the Rwabuye roadblock.[2017] By contrast, Defence Witness Ntamagezo saw civilians manning this barrier.[2018] The Chamber notes that the record reflects that civilians and soldiers worked in concert at roadblocks around Butare town. Indeed, this cooperation finds corroboration by Prosecution Witness ZBH, a civilian, who manned this roadblock together with soldiers.[2019] In light of the frequent collaboration between soldiers and civilians at roadblocks, the Chamber does not consider Witness Ntamagezo's evidence inconsistent with the finding that ESO soldiers were present and administering the Rwabuye roadblock after 7 April.

799. The Prosecution presented no specific evidence of the use of the Rwabuye roadblock for purposes of identifying and targeting Tutsis, nor is there any evidence of Nizeyimana having been present at this roadblock during the relevant time period.[2020] This allegation is not proved.

7.3.3 Rwasave Roadblock

800. The evidence uniformly demonstrates that a roadblock was established in Rwasave in April 1994.[2021] Notwithstanding, Prosecution and Defence evidence diverges with regard to who manned and administered the roadblock. Prosecution Witness BDE heard from her colleagues that ESO soldiers had been deployed to this barrier following an assembly on 7

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the road coming from Kigali. Indeed, the evidence by three Prosecution witnesses, corroborated by a Defence witness, suggests that a roadblock existed in Rwabuye during the genocide. The Chamber therefore does not consider that Witness ZAV's evidence that he did not see this roadblock to be dispositive, particularly if nothing happened and when considering the considerable amount of time that has since elapsed.

[2017] Witness YAA, T. 1 February 2011, pp. 64, 66 (noted that this roadblock was manned by a section of 12 ESO soldiers); Witness AZD, T. 31 January 2011, pp. 75-76 (recognised ESO soldiers manning the barrier). The Chamber has no doubt, and the Defence does not dispute, that Witnesses YAA and AZD, as ESO soldiers, would have been in a position to identify ESO soldiers. *See* Witness YAA, T. 1 February 2011, p. 62; Exhibit P16 (Witness YAA's Personal Information Sheet); Witness AZD, T. 31 January 2011, p. 64; Exhibit P15 (Witness AZD's Personal Information Sheet).

[2018] Witness Ntamagezo, T. 8 June 2011, p. 61.

[2019] Witness ZBH, T. 8 February 2011, pp. 55-56.

[2020] Witness ZBH generally stated when talking about three roadblocks, including the Rwabuye roadblock, that he assisted soldiers in searching vehicles for weapons and checking identity cards. Witness ZBH, T. 8 February 2011, pp. 55-56. When the Prosecution directed the witness to focus on the roadblock at the Hotel Faucon, Witness ZBH elaborated on the general procedures for killing Tutsis at roadblocks. T. 8 February 2011, p. 56. Witness ZBH did not, however, specifically identify what occurred at the Rwabuye roadblock. His evidence is therefore of limited probative value.

[2021] Prosecution Witness XAG, T. 25 January 2011, pp. 28-29 (saw a roadblock at "Majerwa" on the road leading to Save in April 1994); Prosecution Witness BDE, T. 28 January 2011, p. 19 (knew that ESO soldiers were deployed to a roadblock following an assembly at the ESO on 7 April, called "Magerwa", which was near a fuel depot); Defence Witness Ntamagezo, T. 8 June 2011, p. 58 (encountered gendarmes manning a roadblock in Rwasave known as "Majerwa" on the road to Kigali from Butare on 7 April 1994 and then again on 20 April); Defence Witness Hitayezu, T. 9 June 2011, pp. 57-59, 65-66 (on 20 April, the witness traveled from Gitarama to the ESO Camp and crossed a roadblock in Rwasave near the Butare museum). The Chamber observes the difference in spelling of the roadblock identified by Witnesses XAG, BDE and Ntamagezo, namely "Majerwa" and "Magerwa". A review of the French transcripts reveals the location to have consistently been transcribed therein as "Magerwa". *See* Witness XAG, T. 25 January 2011, pp. 30-31 (French); Witness BDE, T. 28 January 2011, p. 21, T. 31 January 2011, pp. 38, 59 (French); Witness Hitayezu, T. 8 July 2011, pp. 59, 61 (French). The Chamber is satisfied that the locations described in the English transcript as "Magerwa" and "Majerwa" are in fact one and the same. Given the first-hand account by Witnesses XAG and Witness Ntamagezo, corroborated by Witnesses BDE and Hitayezu's circumstantial evidence, the Chamber is satisfied that a roadblock by the name of "Magerwa" existed in Rwasave.

April.[2022] Witness XAG was not able to identify the soldiers manning this roadblock.[2023] By contrast, Defence Witness Ntamagezo provided first-hand evidence of civilians manning this roadblock around 20 April.[2024] Notably, Witness BDE's second-hand and circumstantial evidence relates to the identity of those manning the barrier on or around 7 April, as opposed to the more relevant time-period starting from 19 April.

801. While the record reflects that civilians and soldiers worked in concert at roadblocks around Butare town, Witness BDE's evidence alone is insufficient to prove beyond a reasonable doubt that ESO soldiers manned the roadblock at Rwasave during the relevant time-period. Witness XAG's testimony that unidentified soldiers manned this roadblock does not sufficiently advance Witness BDE's evidence to establish it beyond reasonable doubt. Finally, the Prosecution presented no evidence of any crimes occurring at this roadblock. This allegation is not proved.

7.3.4 Gikongoro / Cyangugu and Kigali Roads Junction Roadblock

802. Prosecution Witnesses Ntezimana, ZBH, AZD, AZM, ZAV, ZAK, ZAW and YAA, as well as Defence Witnesses Ntamagezo, CKN10 and CKN20 all saw a roadblock in the vicinity of the junction where the main road from Butare town leads to Kigali and is intersected by the main road to Gikongoro.[2025] Similarly, Witness Ruzindana also saw a barrier in this area, although he appears to place it further away from the junction.[2026]

[2022] Witness BDE, T. 28 January 2011, p. 19. *See also* II.3.1. Prosecution Witness XAG only identified "soldiers" as having been present without specifying what camp they came from. Witness XAG, T. 25 January 2011, p. 29.

[2023] Witness XAG, T. 25 January 2011, p. 29.

[2024] Witness Ntamagezo, T. 8 June 2011, p. 61. Notably, when Witness Ntamagezo passed this roadblock on 7 April 1994, he saw gendarmes manning the roadblock. T. 8 June 2011, p. 58.

[2025] *See* Prosecution Witness Ntezimana, T. 14 February 2011, pp. 62, 66-68 (described the "Karubanda roadblock" as situated at "at the entrance to town" near the junction with the main tarmac road to Gikongoro and, in 1994, with a wooded area below it and near the national museum); Prosecution Witness ZBH, T. 8 February 2011, pp. 55-57, 59, 64-65 (describing a roadblock at the "Butare and Gikongoro roads junction" and testifying that ESO soldiers were responsible for it, gave rotation schedules to civilians assisting; those identified at the barrier as Tutsis or suspected of being Tutsi were handed over to the civilian population and killed); Prosecution Witness AZD, T. 31 January 2011, pp. 75-76 (described a roadblock on the road to Kigali "at the junction of the road leading to Gikongoro" manned by soldiers and civilians; distinguished between soldiers at this barrier from the Ngoma Camp soldiers who manned the Ngoma Camp roadblock because, he could recognise ESO soldiers as well as, as well as civilians); Prosecution Witness AZM, T. 24 January 2011, pp. 14-15 (after 19 April 1994, witness passed a roadblock before reaching the junction that led towards Gikongoro or into Butare; it was manned by soldiers); Prosecution Witness ZAV T. 23 February 2011, p. 27 (described a checkpoint past the "museum" on the way into Butare town "at the junction to the road to Gikongoro Cyangugu" and the road to into town towards Buye); Prosecution Witness ZAK, T. 24 January 2011, p. 57 (describing a military roadblock at the junction of the roads to Cyangugu and Kigali, which was just past the national museum if a person were coming from Kigali); Prosecution Witness ZAW, T. 26 January 2011, p. 7-8 (during the genocide passed a roadblock in Rwabuye at the "cross-roads of the Kigali-Butare and Kigali-Gikongoro road" manned by ESO soldiers); Prosecution Witness YAA, T. 1 February 2011, pp. 64-65 (described a roadblock outside at "the road leading to Gikongoro prefecture" that was to the "left with respect to the main road" but that vehicles going either to Gikongoro or Kigali had to pass through it; it was manned by *Interahamwe* wearing military shirts with civilian trousers and armed with clubs, spears and machetes); Defence Witness Ntamagezo, T. 8 June 2011, p. 61 (describing a roadblock manned by civilians on "the road leading to Gikongoro"); Defence Witness CKN20, T. 15 June 2011, p. 4 (on 10 April 1994, the witness passed a roadblock at the cross-roads of the Cyangugu-Gikongoro road and the road leading to Gitarama; it was manned by civilians and gendarmes wearing red berets); Defence Witness CKN10, T. 30 May 2011, pp. 9-10 (the

803. Notably, Prosecution Witness Kayibanda, who travelled on the road from Kigali to Butare on 20 April 1994, did not testify about this roadblock, but instead first noticed a roadblock in Butare town at Hotel Faucon.[2027] Likewise, Prosecution Witness Gahizi testified to only remembering passing the roadblock at Hotel Faucon when he returned to Butare from Kanombe in late April.[2028] Given the overwhelming evidence of this barrier's existence, as well as the considerable passage of time, these omissions are far from dispositive. Indeed, Witness Gahizi conceded that he might have passed other barriers before arriving at the Hotel Faucon, clarifying that it was a difficult situation and that it was "not easy to notice everything".[2029]

804. The Chamber turns to the purpose of this roadblock. Of particular significance, Witness Ntezimana passed this roadblock sometime after 19 April 1994.[2030] While there, he saw two or three *Interahamwe* hitting something on the ground in a wooded area below the roadblock.[2031] When he asked one of the two soldiers at the roadblock what those people were hitting, the soldier replied "Oh, those guys are in the process of killing a snake, a serpent.[2032] When the witness was allowed to pass through the roadblock, he looked and saw that it was a human being they were hitting, though he was not sure whether it was a man or a woman.[2033] In Witness Ntezimana's view, the reference to a "serpent" was clearly understood to mean a Tutsi.[2034]

805. Witness Ntezimana was stopped again at this roadblock between 19 and 30 April 1994, while in the process of relocating Tutsis gathered at the Matyazo health centre. Approximately four or five Ngoma Camp soldiers provided by Lieutenant Hategekimana accompanied his group. One soldier was a sergeant, who Witness Ntezimana believed had formerly been an instructor at the ESO, but who was affiliated with the Ngoma Camp in April.[2035] Those administering the roadblock included soldiers the witness believed were from the ESO Camp.[2036] Witness Ntezimana stated that they were almost "massacred" by the crowd there, but for the fact that the sergeant stepped in to talk to the people manning the

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witness passed through a roadblock at the Kigali-Gikongoro junction and generally testified that roadblocks were only manned by *Interahamwe* rather than soldiers or gendarmes). *Cf.* Prosecution Witness BDE, T. 28 January 2011, pp. 19-20, T. 31 January 2011, pp. 38-39 (the witness initially heard from ESO soldiers that they were deployed to man a roadblock near Butare city's entrance at the roundabout near the crossroads leading to Gikongoro and the Taba neighbourhood; after 25 April 1994, she went to various roadblocks in Butare to re-supply soldiers manning them).

[2026] Witness Ruzindana, T. 1 June 2011, pp. 44-45 (describing a roadblock closer to the Butare national museum).

[2027] Witness Kayibanda, T. 2 February 2011, p. 42.

[2028] Witness Gahizi, T. 7 February 2011, pp. 35-36.

[2029] Witness Gahizi, T. 7 February 2011, pp. 35-36.

[2030] Witness Ntezimana, T. 14 February 2011, p. 67.

[2031] Witness Ntezimana, T. 14 February 2011, pp. 66-67.

[2032] Witness Ntezimana, T. 14 February 2011, p. 66.

[2033] Witness Ntezimana, T. 14 February 2011, p. 66.

[2034] Witness Ntezimana, T. 14 February 2011, p. 66 ("THE WITNESS: ... That is why I said I understood that when at the roadblock I was told that those people were killing a serpent, actually, what they were doing was that they were killing someone. ... In that genocide ideology Tutsis were considered to be snakes or serpents. So when someone tells you that he is killing or they are killing a serpent, then you know what they mean.").

[2035] Witness Ntezimana, T. 14 February 2011, pp. 67-68, 74.

[2036] Witness Ntezimana, T. 14 February 2011, pp. 68-69. Witness Ntezimana did not further explain his basis for thinking that the soldiers manning the roadblock were from the ESO.

roadblock.[2037] The soldiers recognised the sergeant as having been a former instructor and reluctantly let them go.[2038]

806. As set forth in detail elsewhere, on 21 April 1994, Witness ZAV, a Tutsi student at the Butare University, and Remy Rwekaza were stopped by soldiers at this roadblock between 4.00 or 5.00 p.m.[2039] The witness identified the soldiers as ESO soldiers, based on their young age and their uniforms. Notably, they initially let him pass based on his assertion that he was going to see ESO instructor Captain Twagiramungu. The witness and Rwekaza were subsequently stopped by Nizeyimana and returned to the roadblock. There, Nizeyimana ordered the ESO soldiers to kill Rwekaza and the witness. The soldiers led the two a short distance away and shot them both, as a result of which Rwekaza died. Remarkably, Witness ZAV survived, and showed the Chamber the scars from the bullet wounds.[2040]

807. Notably, Witness ZAK described a very similar incident at a roadblock in the same location, occurring around 5 May 1994. A soldier, he was travelling with a Tutsi woman, Beata Uwambaye. He observed about six to 10 young soldiers, some wearing camouflage uniforms and black berets, who the witness believed were *nouvelle formule* cadets from the ESO, at the roadblock. Furthermore, Nizeyimana ordered the soldiers to kill Uwambaye, who he referred to as an "*Inkotanyi / Inyenzi*". Uwambaye was led to a wooded area below the barrier. The witness heard three gunshots and saw the soldiers return later with one wiping blood off of his bayonet. He never saw Uwambaye again and believed she was dead.[2041]

808. Notably, Witness ZBH, a Hutu *Interahamwe* who had been a "helper" at the ESO in 1991,[2042] testified that the roadblock at the "Butare-Gikongoro" junction was manned by ESO soldiers as well as civilians.[2043] On an unspecified date, Nizeyimana spoke to the soldiers and civilians at this roadblock, including Witness ZBH, and convinced them that the Tutsis were the country's enemy and that no Tutsi should survive.[2044] He told them that anyone with Tutsi features should be killed.[2045] Witness ZBH assisted in the killing of Tutsis at this roadblock.[2046]

809. At the outset, the Chamber has no doubt that Witnesses Ntezimana and ZAV encountered this roadblock in late April 1994 and Witness ZAK passed it in early May. The Chamber notes that the Defence does not generally challenge Witness Ntezimana's credibility.[2047] The Chamber, having considered his evidence in its entirety, which appeared

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[2037] Witness Ntezimana, T. 14 February 2011, pp. 68, 74.
[2038] Witness Ntezimana, T. 14 February 2011, p. 68.
[2039] II.7.1.
[2040] II.7.1.
[2041] II.7.2.
[2042] Witness ZBH, T. 8 February 2011, pp. 35-36; Exhibit P21 (Witness ZBH's Personal Information Sheet).
[2043] Witness ZBH, T. 8 February 2011, pp. 56, 65. Witness ZBH confirmed that after 20 April 1994, soldiers and civilians manned this roadblock, although he generally testified that there were more soldiers. T. 8 February 2011, p. 65.
[2044] Witness ZBH, T. 8 February 2011, pp. 57-59.
[2045] Witness ZBH, T. 8 February 2011, p. 58.
[2046] Witness ZBH, T. 8 February 2011, p. 64.
[2047] Rather, the Defence's cross-examination emphasised the assistance soldiers provided him going through this roadblock (Witness Ntezimana, T. 14 February 2011, p. 74) and his general identification of soldiers at roadblocks was based on his perception of what zones of area were under a particular military camp's command (Witness Ntezimana, T. 14 February 2011, p. 75). The Chamber assesses Witness Ntezimana's identification evidence below.

direct and unembellished, as well as his demeanour, finds Witness Ntezimana highly credible.

810. Likewise, the Chamber has elsewhere considered the general credibility challenges to Witnesses ZAV and ZAK, as well as their evidence on these specific events.[2048] Again, having viewed their evidence in its entirety as well as the demeanour of the witnesses, the Chamber has no doubt that they were present at this roadblock and that Witness ZAV was a victim of an attack there, while Witness ZAK observed ESO soldiers take Beata Uwambaye away and overheard them kill her.

811. While the Chamber has elsewhere expressed its need to view Witness ZBH's evidence with appropriate caution,[2049] it has no doubt that he manned this roadblock during the genocide. Indeed, he confessed to genocide related crimes in Rwanda that stemmed from his involvement in roadblocks.[2050] Furthermore, when questioned about this particular roadblock, the witness discussed how Tutsis were targeted and that they were led a short distance away to kill them "in the woods around the roadblocks".[2051]

812. Such a description is consistent with the compelling testimonies of Witnesses Ntezimana, ZAV and ZAK, who witnessed, or, in one case, experienced attacks that were carried out in a very similar manner. Of particular significance, Witness ZBH's evidence tracks Witness Ntezimana's testimony that, at least at times, soldiers worked in conjunction with *Interahamwe* to target Tutsis at this barrier.[2052] These factors provide strong circumstantial support and render his account highly credible.

813. Furthermore, the Chamber considers the separate identification of ESO soldiers at this roadblock individually and collectively compelling. Witness Ntezimana identified the soldiers at this roadblock as coming from the ESO Camp when he came upon it during his later trip while accompanied with displaced Tutsis and five soldiers from the Ngoma Camp.[2053] As noted above, those at the roadblock were resistant to letting the group pass – alleging that "enemies were hiding among them" – until a particular Ngoma Camp sergeant spoke with the soldiers. The soldiers recognised him as their former instructor, and reluctantly let them through.[2054]

814. The Chamber considers that Witnesses ZAK and ZAV might have identified the soldiers they saw at the roadblock as ESO soldiers, in part, based on the fact that Nizeyimana was issuing instructions to them. However, they also provided separate and compelling bases for the identification of these soldiers as ESO soldiers, which relied, in part, on their

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[2048] *See* II.7.1; II.7.2.
[2049] *See* II.3.4.
[2050] Witness ZBH, T. 8 February 2011, pp. 35-36, 56-57; T. 9 February 2011, p. 32; Exhibit P21 (Witness ZBH's Personal Information Sheet); Exhibit D15B (Witness ZBH's Prior Confession), pp. 14-15, 32-33 (indicating that three roadblocks were set up on the Cyangugu road – one at Gahenerezo, one at "CONFIGI" and one at "Gako"; people were killed at these roadblocks on the orders of Hategekimana, Rekeraho and Nizeyimana).
[2051] Witness ZBH, T. 8 February 2011, pp. 56-57.
[2052] *Cf.* Witness ZT, T. 10 February 2011, p. 80 (without specifying a basis for knowledge, testifying that armed *Interahamwe* manned roadblocks with ESO soldiers).
[2053] Witness Ntezimana, T. 14 February 2011, p. 69.
[2054] Witness Ntezimana, T. 14 February 2011, pp. 68-69.

youth.[2055] Similarly, the Chamber has elsewhere considered that Witness ZBH's ability to identify soldiers was relatively strong.[2056] His position as a civilian worker at the ESO in 1991 adds further support to the proposition that he could generally distinguish ESO soldiers from other military personnel.

815. Furthermore, a review of the record reflects general support for the proposition that ESO soldiers were assigned to and manned this particular roadblock. Specifically, Witness ZAW, an ESO cadet since 1991, testified that while travelling from Butare town on his way to Gitarama in late May 1994, he saw ESO soldiers manning this roadblock.[2057] Likewise, Witness AZD, a non-commissioned officer at the ESO in 1994,[2058] testified that he saw this roadblock, which was manned by soldiers and civilians.[2059] His evidence reflects that the soldiers there were from the ESO Camp.[2060] Furthermore, Witness BDE, an ESO cadet in 1994,[2061] also learned from an unidentified fellow soldier that ESO soldiers had been deployed to the roundabout "at the road leading to Gikongoro" and the road leading into Butare town.[2062] Witness AZM, a member of the Butare prefecture security council,[2063] passed this roadblock daily and only saw unidentified soldiers manning it after 19 April.[2064]

816. In this context, the Chamber observes that other evidence reflects that soldiers were not present at this roadblock. Of particular significance, Defence Witness Ntamagezo, an ESO cadet in 1994,[2065] testified that he passed this roadblock on 21 April and that he saw civilians manning it.[2066] Prosecution Witness YAA, an officer at the ESO in April,[2067] passed

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[2055] *See* Witness ZAK, T. 24 January 2011, p. 62 (describing the soldiers as "young", and believing they were part of the *nouvelle formule*, which consisted of soldiers that finished their primary studies, given their youth); Witness ZAV, T. 23 February 2011, pp. 24-25 (generally noting that ESO students were young and could generally identify them based on Butare's limited size) 27-28 (identifying the soldiers at the roadblock "students from ESO", noting in particular that they said that ESO Captain Twagiramungu was "a good teach").

[2056] *See* II.11. The Chamber observes that it determined that Witness ZBH's identification of ESO soldiers during the attack on Benebikira convent was insufficient to establish their presence beyond reasonable doubt. It considers that the circumstances of Witness ZBH's identification of ESO soldiers at this particular roadblock are materially different. Notably, during the attack at the Benebikira convent, ZBH's evidence reflects that he arrived in the midst of it, and that there were many soldiers moving about. This was an event of high intensity and limited duration. To the contrary, Witness ZBH's evidence about being positioned at the roadblock and that civilians followed rotations there, tends to suggest that his duties there included periods of static placement among soldiers, which would have allowed for repeated and close range observations.

[2057] Witness ZAW, T. 26 January 2011, pp. 3, 7-8, 33.

[2058] Witness AZD, T. 31 January 2011, p. 64; Exhibit P15 (Witness AZD's Personal Information Sheet).

[2059] Witness AZD, T. 31 January 2011, pp. 74-76.

[2060] Witness AZD, T. 31 January 2011, p. 76 ("Q. So, are you able to help us understand how you're able to tell the difference between the [Ngoma Camp] soldiers who were manning the Ngoma camp roadblock and, for example, the soldiers who manned the Kigali road Gikongoro junction roadblock? A. To distinguish between them was not a difficult thing to do, because the soldiers from the ESO, in addition to distinctive signs and symbols, they had other insignia depending on their badges. So other soldiers who were not cadets of the ESO had their normal grades ranks, so there were no other distinctive signs. Now, I could recognise the students from the ESO because I had seen them at the camp, at Camp ESO, but I could also recognise them based on those insignia which distinguished the two categories of soldiers.").

[2061] Witness BDE, T. 28 January 2011, pp. 8-9; Exhibit P13 (Witness BDE's Personal Information Sheet).

[2062] Witness BDE, T. 28 January 2011, pp. 19-20, T. 31 January 2011, pp. 38-39. Witness BDE generally testified that she passed roadblocks after leaving the ESO Camp around or after 25 April 1994. It is not clear that she passed the barrier at the junction of the roads leading to Kigali and Gikongoro.

[2063] Witness AZM, T. 20 January 2011, p. 62.

[2064] Witness AZM, T. 24 January 2011, pp. 14-15.

[2065] Witness Ntamagezo, T. 8 June 2011, p. 55; Exhibit D59 (Witness Ntamagezo's Personal Information Sheet).

[2066] Witness Ntamagezo, T. 8 June 2011, p. 61.

this roadblock on 12 or 13 April and testified that it was manned by *Interahamwe*.[2068] Similarly, Witness CKN10 testified about passing this roadblock on 10 April and that it was manned by gendarmes wearing red berets and persons in civilian clothing.[2069]

817. Having thoroughly considered all the relevant evidence, the testimonies of Witnesses Ntamagezo, YAA and CKN10 fail to raise reasonable doubts in the otherwise consistent and compelling first-hand accounts of Witnesses Ntezimana, ZAV, ZAK, ZBH, ZAW and AZD that ESO soldiers manned this roadblock. Notably, Witness Ntamagezo also testified that the only roadblock manned by ESO soldiers was the one located in the Arab quarter.[2070] His evidence is contrary to a wealth of consistent and compelling testimonies that ESO soldiers also manned the Hotel Faucon and *Chez* Bihira barriers.[2071] The Chamber has elsewhere questioned the credibility of his evidence.[2072] Having considered his demeanour in court, the Chamber views his evidence with considerable suspicion.

818. Furthermore, the Chamber notes that the observations of Witnesses CKN10 and YAA, made between 10 and 13 April 1994, are temporally distant from those made by Witnesses Ntezimana, ZAV and ZAK. The latter three witnesses recounted incidents that occurred in the last third of April or early May. The testimonies of Witnesses CKN10 and YAA, even if credited, are far from dispositive as it relates to the later conduct of ESO soldiers at this roadblock, including those working in conjunction with civilian militia.

819. The Chamber now turns to evidence directly implicating Nizeyimana in the activities at this roadblock. It has previously considered the testimonies of Witnesses ZAV and ZAK as it relates to the killings of Remy Rwekaza and Beata Uwambaye. The Chamber has concluded that in both instances, Nizeyimana ordered ESO soldiers to kill Rwekaza and Witness ZAV, as well as Beata Uwambaye.

820. The Chamber now evaluates the testimony of Witness ZBH. The Chamber has elsewhere determined that his evidence must be viewed with appropriate caution.[2073] As noted in relation to the killings at the Benebikira convent, Witness ZBH generally deflected any responsibility on his part for crimes committed and instead insisted he was "forced" or tricked by soldiers to participate in killings.[2074] Notably, Witness ZBH's evidence reflects that he was following the instructions of ESO soldiers at this roadblock and, in particular, Nizeyimana's instructions to target Tutsis.

821. The Chamber has some concerns that Witness ZBH's evidence in this proceeding may have been used as an opportunity to deflect responsibility for his crimes. It might also have been motivated by a desire to obtain lenient treatment from Rwandan judicial authorities, as the witness remained incarcerated at the time of his testimony.[2075] Consequently, his

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[2067] Witness YAA, T. 1 February 2011, p. 60; Exhibit P16 (Witness YAA's Personal Information Sheet).
[2068] Witness YAA, T. 1 February 2011, p. 65.
[2069] Witness CKN20, T. 15 June 2011, p. 4.
[2070] Witness Ntamagezo, T. 8 June 2011, p. 61.
[2071] *See* II.7.3.5-II.7.3.6.
[2072] *See* II.6.4.
[2073] *See* II.3.4.
[2074] *See* II.11.
[2075] *See* II.11.

testimony shall be viewed with the appropriate caution, particularly as it relates to implicating Nizeyimana.[2076]

822. Witness ZBH's evidence about observing Nizeyimana at this roadblock was brief and non-descript. Specifically, the witness did not identify the exact date and time of day when he saw Nizeyimana issuing orders. Nevertheless, Witness ZBH's testimony is largely consistent with his 2003 confession to the extent that he implicates Nizeyimana in the establishment and supervision of roadblocks, set up on the road to Cyangugu, for the purpose of targeting Tutsi civilians.[2077]

823. The Chamber observes that prior consistent statements do not bolster a witness's credibility.[2078] However, these circumstances reflect that the witness has maintained Nizeyimana's involvement in the criminal administration of roadblocks for an extended period of time. Such circumstances are appropriate to consider when evaluating a witness's testimony.[2079] Whatever ulterior motives Witness ZBH has to provide testimony inculpating Nizeyimana, this Chamber has no reasonable concerns it has been tainted by his incarceration.[2080]

824. Moreover, the Chamber considers that in subsequent *pro justitia* statements to Rwandan authorities, Witness ZBH referred to roadblocks, but provided no reference of Nizeyimana ordering those manning them to kill Tutsis.[2081] However, these statements related primarily to the conduct of Cyriaque Habyarabatuma, the Tumba gendarmerie commander in 1994. While they referenced the same roadblocks mentioned in Witness ZBH's 2003 confession, the fact that they contain no reference to Nizeyimana is insignificant. Given the compelling circumstantial support offered by the other direct evidence of Nizeyimana's involvement in crimes perpetrated at this roadblock, the Chamber considers that Witness ZBH's evidence of Nizeyimana giving orders at this roadblock convincing beyond reasonable doubt.

[2076] *See* II.11.
[2077] Exhibit D15B (Witness ZBH's Prior Confession), pp. 14-15, 32-33 (indicating that three roadblocks were set up on the Cyangugu road – one at Gahenerezo, one at "CONFIGI" and one at "Gako"; people were killed at these roadblocks on the orders of Hategekimana, Rekeraho and Nizeyimana).
[2078] *Ntakirutimana* Appeal Judgement, para. 147.
[2079] *Cf. Bagosora and Nsengiyumva* Appeal Judgement, paras. 245, 264-265 (the Trial Chamber did not err when considering consistencies between an accomplice witness's testimony before the Trial Chamber and the testimony to a Rwandan court).
[2080] In so finding, the Chamber has considered Defence arguments that Witness ZBH, who kept a copy of his confession, had modified the one that he gave to the Prosecution in 2010, adding Nizeyimana's name in several places after the fact. Defence Closing Brief, paras. 170-179. However, the Defence does not make these submissions with respect to this particular aspect of Witness ZBH's confession. A review of the original confession reveals that the circumstances which, in the Defence's view, show *ex post facto* alterations, are not present. Namely, the reference to Nizeyimana's involvement appears squarely within the original narrative rather than having been added in areas outside the narration section or added into open spaces among the original text. *See* Exhibit D15A(K) (Original Copy of Witness ZBH's Confession), p. 8 *and* Exhibit D15B (Translation of Witness ZBH's Confession), pp. 14-15, 32-33. The Chamber does not consider that other incidents of purported modifications reasonably undermines Witness ZBH's credibility so that none of his evidence can be relied upon.
[2081] *See* Exhibit D16(E) (*Pro Justitia* Statement, 25 June 2005), p. 1 (describing having manned an unidentified roadblock with several persons, including ex-Rwandan army officers and a "Corporal Gatwaza"); Exhibit D17 (*Pro Justitia* Statement, 17 June 2009), p. 8 (describing four barriers).

825. Given the totality of the evidence, the Chamber is satisfied that, as early as 21 April 1994, the roadblock at the junction of the roads leading to Gikongoro / Cyangugu and Kigali was being used for the purpose of identifying and killing Tutsi civilians. Furthermore, the Chamber is satisfied that ESO soldiers positioned at this roadblock substantially and significantly contributed to killings committed at it. To the extent such soldiers were not the assailants directly participating in the killing of those identified as Tutsis at this roadblock, the Chamber has no doubt that they shared the assailants' intent. Furthermore, the Chamber has no doubt that Nizeyimana's instructions at this roadblock, namely to kill Tutsis, directly, significantly and substantially contributed to the killings that he was present for as well as for others that occurred outside his presence.

Notice

826. The Chamber observes that the Indictment does not give particularised notice as it relates to the killings described by Witness Ntezimana at this barrier nor Nizeyimana's instructions to kill Tutsis as described by Witness ZBH. Notwithstanding, the Prosecution Pre-Trial Brief, and, in particular, the annexed witness summaries for Witnesses Ntezimana and ZBH indicate that they would be testifying in support of Indictment paragraph 6. Moreover, the witness summaries provide information generally consistent with the evidence given at trial.[2082]

827. The Defence did not raise any objections as it relates to the evidence of Witness Ntezimana or ZBH about this roadblock. Moreover, under some circumstances, the information provided in the Pre-Trial Brief's witness summaries could cure defects in the operative Indictment paragraph.[2083] However, the Prosecution has taken the position that similar evidence related to killing at roadblocks, whose notice is provided only through the Pre-Trial Brief or annexed witness summaries, is not being used as a basis for conviction.[2084] Under the circumstances, the Chamber considers that this evidence cannot be used for that purpose either.

828. Notwithstanding, it remains highly relevant and probative of other allegations pleaded in the indictment.[2085] Given the notice provided in the Pre-Trial Brief, the Chamber considers that Nizeyimana was provided sufficient information to prepare his defence in relation to this evidence. The Chamber is convinced that no prejudice was suffered. Consequently the Chamber shall consider this evidence in relation to allegations pleaded in the Indictment.

[2082] *See* Pre-Trial Brief, Annex, paras. 3 ("After 19 April 1994, the witness passed through a roadblock where the Kigali road intersects the Cyangugu/Gikongoro road ... [h]e witnessed two men beating something on the ground ... [h]e asked the soldiers what it was and was told 'a snake'. When he drove by he could see ... that they were beating a human ..."), 41 ("He will testify that people were killed at the roadblocks that were erected under the orders of Nizeyimana ...").

[2083] *See Bagosora et al.* Trial Judgement para. 116, *citing Muhimana* Appeal Judgement para. 82, *Gacumbitsi* Appeal Judgement paras. 57-58, *Ntakirutimana* Appeal Judgement para. 48, *Naletilić and Martinović* Appeal Judgement para. 45.

[2084] *See* Prosecutor's Response to Defence Motion for Exclusion of Evidence, 13 May 2011, paras. 63-66 *and* Pre-Trial Brief, Annex, para. 28 (pp. 21-22).

[2085] *See Renzaho* Appeal Judgement, para. 71.

7.3.5 Hotel Faucon Roadblock

829. The Prosecution and Defence evidence uniformly demonstrates that a roadblock was established in April 1994, outside Hotel Faucon in Butare town.[2086] Based on the first-hand accounts of Prosecution Witnesses ZBH, Vincent Ntezimana, AZM, AZD, YAA, ZAW and Justin Gahizi, the Chamber finds that the evidence reflects that ESO soldiers were manning the Hotel Faucon roadblock in April.[2087]

830. Specifically, the Defence does not dispute, and the Chamber has no doubt that Witnesses YAA, AZD, ZAW and Gahizi, who were all soldiers at the ESO, would have been in a position to identify and distinguish ESO soldiers from other camps. Moreover, the Chamber has considered elsewhere that Witness ZBH's history with ESO as a worker as well as collaboration with soldiers at roadblocks and elsewhere would have allowed him to identify the soldiers operating around Butare.[2088] Lastly, the Chamber has considered elsewhere that Witness AZM's prominent role in law enforcement in Butare at the time, and his involvement with military people through his membership with the prefecture security committee, contributed to his ability to distinguish ESO soldiers from others.[2089] Notably, Defence Witnesses Thomas Ruzindana, CKN10, Jean Népomuscène Bunani and Irénée Hitayezu all testified about passing this roadblock. None, however, were questioned as to who manned this barrier.[2090]

[2086] Prosecution Witness ZBH, T. 8 February 2011, p. 56; Prosecution Witness Ntezimana, T. 14 February 2011, pp. 62, 64-65; Prosecution Witness YAA, T. 1 February 2011, p. 64; Prosecution Witness AZM, T. 20 January 2011, p. 73; Prosecution Witness AZD, T. 31 January 2011, p. 75; Prosecution Witness BDE, T. 28 January 2011, pp. 19-20; Prosecution Witness Gahizi, T. 7 February 2011, pp. 34-36; Prosecution Witness Kayibanda, T. 2 February 2011, p. 42; Defence Witness Ruzindana, T. 1 June 2011, p. 43; Defence Witness CKN10, T. 30 May 2011, pp. 8-9; Defence Witness Bunani, 13 June 2011, p. 14; Defence Witness Hitayezu, T. 9 June 2011, p. 66; Defence Witness Ntamagezo, T. 8 June 2011, p. 61.

[2087] Witness ZBH, T. 8 February 2011, p. 56; Witness Ntezimana, T. 14 February 2011, pp. 64-65, 75 (recounted how, on one occasion, a soldier manning the Hotel Faucon roadblock refused to let him pass, despite having a *laissez-passer* issued by the Ngoma Camp commander Lieutenant Ildéphonse Hategekimana; the soldier indicated to the witness that he did not have to abide by Hategekimana's orders even when a soldier sent by the Ngoma Camp Commander arrived at the roadblock and instructed the soldier to let Witness Ntezimana pass; the soldier manning the roadblock ultimately allowed the witness to pass when a warrant officer, who the witness believed was from the ESO, arrived and asked the soldier to let the witness through; Witness Ntezimana inferred from the response of the soldier at the roadblock that he was from the ESO rather than the Ngoma Camp); Witness AZM, T. 20 January 2011, pp. 74, 76 (believed the soldiers were from the ESO Camp as he was told by Tharcisse Muvunyi at a meeting at the Huye stadium on 14 April 1994 that the soldiers in charge of this roadblock were from the ESO. He further noted that the soldier who was manning this roadblock was "clearly" a soldier from the ESO, "[b]ased on the information that [he] had, and taking into account his [young] age"); Witness AZD, T. 31 January 2011, pp. 75-76, 78 (Witness AZD recognised a first sergeant at this roadblock when he passed through around 21 April 1994); Witness YAA, T. 1 February 2011, p. 65 (roadblock was manned by approximately 12 ESO cadets, who were wearing military fatigues and carrying rifles); Witness ZAW, T. 26 January 2011, pp. 5, 7-9, 33, 41 (Witness ZAW, an ESO soldier, spoke to some of his ESO colleagues when he passed by this roadblock in late May 1994 while travelling through Butare town towards Gitarama); Witness Gahizi, T. 7 February 2011, pp. 34-36 (noticed the Hotel Faucon roadblock when he first returned to Butare in late April; it was manned by *nouvelle formule* cadets; he learned from Nizeyimana's bodyguard, Ndayizeye, that two persons were arrested and killed at that roadblock).

[2088] *See* II.7.3.4; II.11.

[2089] *See* II.6.5.

[2090] *See, e.g.*, Witness Ruzindana, T. 1 June 2011, p. 43 (on 21 April 1994, they stopped for five minutes at the Hotel Faucon roadblock on their way to Mata); Witness CKN10, T. 30 May 2011, pp. 8-9 (did not stop at the Hotel Faucon roadblock on his way to Mata on 21 April); Witness Bunani, 13 June 2011, p. 14 (stayed for some time at Hotel Faucon roadblock on his way to Mata on 21 April); Witness Hitayezu, T. 9 June 2011, pp. 52, 66

831. While Defence Witness Ntamagezo saw civilians at this barrier, the Chamber has noted elsewhere that the presence of civilians does not raise doubts that it was, at times, manned and controlled by ESO soldiers.[2091] Indeed, Witness ZBH, a civilian, testified that he manned this roadblock and generally discussed that soldiers frequently used civilians to murder Tutsis or check the identification of people passing through it.[2092] Other evidence in the record also reflects that soldiers cooperated with the *Interahamwe* at roadblocks in and around Butare town.[2093]

832. Likewise, evidence in the record reflects soldiers and civilians acting together in targeted killings after 19 April 1994.[2094] The Chamber therefore does not consider Witness Ntamagezo's account of civilians manning this roadblock to be inconsistent with the overall conclusion that ESO soldiers were manning and administering the Hotel Faucon roadblock.

833. Turning to the purpose for which the roadblock was used, the Chamber has elsewhere found that Professor Pierre Claver Karenzi, a Tutsi, was killed in the vicinity of this barrier on 21 April 1994.[2095] Witness ZBH further identified this as one of the roadblocks at which he killed Tutsis.[2096] Although second-hand, Prosecution Witness Gahizi was told by Ndayizeye, one of Nizeyimana's bodyguards, that he had killed people at the Hotel Faucon roadblock. Witness Gahizi inferred from the fact that it was "an open secret" that Tutsis were being targeted, that the people Ndayizeye was referring to were Tutsis.[2097] Furthermore, Prosecution Witnesses ZBH, YAA, AZM, and ZAW all recounted how persons were stopped at this roadblock before being allowed through.[2098]

834. Given the totality of the evidence, the Chamber is satisfied that, at least by 21 April 1994, the roadblock outside Hotel Faucon was used for the purpose of identifying and killing Tutsi civilians.[2099] Furthermore, the Chamber is satisfied that ESO soldiers positioned at this

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(when returning to Butare on 20 April, Witness Hitayezu passed a roadblock in front of Hotel Faucon on his way to the ESO).

[2091] Witness Ntamagezo, T. 8 June 2011, pp. 59-61 (during patrols he came across roadblocks, including one in front of Hotel Faucon, which was manned by civilians).

[2092] Witness ZBH, T. 8 February 2011, pp. 55-57, 59.

[2093] Witness Ntezimana, T. 14 February 2011, pp. 66-67 (after 19 April 1994, the witness spoke to soldiers manning the roadblock at the Kigali-Gikongoro junction who said a serpent was being killed in the wooded area below it and then observed what he thought to be *Interahamwe* killing an individual there); Witness ZT, T. 10 February 2011, p. 80 (without specifying a basis for knowledge, testifying that armed *Interahamwe* manned roadblocks with ESO soldiers). *Cf.* Witness Zachariah, T. 14 February 2011, p. 10 (observed soldiers allow *Interahamwe* armed with machetes to pass a roadblock unmolested moments after two soldiers beat a man in civilian clothes with the butts of their rifles).

[2094] *See* II.5.1; II.8.1.

[2095] *See* II.6.5.

[2096] Witness ZBH, T. 8 February 2011, pp. 55-56, 64.

[2097] Witness Gahizi, T. 7 February 2011, pp. 34-35.

[2098] Witness ZBH, T. 8 February 2011, p. 55 (Witness ZBH checked identity cards at roadblocks, including the one in front of Hotel Faucon); Witness YAA, T. 1 February 2011, p. 65 (when people went through this roadblock they were checked, with particular attention paid to their ethnicity); Witness AZM, T. 20 January 2011, pp. 74, 76 (Witness AZM was checked by a soldier when he went through the Hotel Faucon roadblock and noticed that Professor Karenzi was checked as well); Witness ZAW, T. 26 January 2011, p. 9 (everyone who went through this roadblock had to show their identity card).

[2099] *See* Prosecution Witness AZD, T. 31 January 2011, pp. 77-78 (sometime after 19 April 1994, Witness AZD saw Professor Karenzi's body as he was passing through this roadblock); Prosecution Witness Ntezimana, T. 14 February 2011, pp. 69-70 (sometime before 19 April 1994, Witness Ntezimana heard that Professor Karenzi, a Tutsi, was killed at this roadblock); Prosecution Witness ZBH, T. 8 February 2011, pp. 55-56, 64 (Witness ZBH recounted how Tutsis were killed once identified as such, or when a person was considered to have Tutsi

roadblock substantially and significantly contributed to killings committed at it. To the extent such soldiers were not the assailants directly participating in the killing of those identified as Tutsis at this roadblock, the Chamber has no doubt that they shared the assailants' intent.

835. Indeed, the Chamber has no doubt that the Hotel Faucon roadblock was among a network of other roadblocks manned by ESO soldiers – including those at the Gikongoro / Cyangugu and Kigali roads junction and at *Chez* Bihira – that were turned towards the task of identifying and eliminating Tutsis, at least by the last third of April 1994. Of particular significance is the immediate proximity of this roadblock to the barrier at the Gikongoro / Cyangugu and Kigali roads junction. The Chamber is satisfied that instructions issued at one were necessarily transmitted and consistent with those issued to the other.

836. Witness ZBH is the only witness to provide evidence of Nizeyimana's presence at this roadblock, implicating him directly in the criminal administration of it.[2100] The Chamber has elsewhere determined that his evidence must be viewed with appropriate caution.[2101] As noted in relation to the killings at the Benebikira convent, Witness ZBH generally deflected any responsibility on his part for crimes committed and instead insisted he was "forced" or tricked by soldiers to participate in killings.[2102] Notably, Witness ZBH's evidence reflects that he was following the instructions of ESO soldiers at this roadblock, and, in particular, Nizeyimana's instructions to target Tutsis.

837. The Chamber has some concerns that Witness ZBH's evidence in this proceeding may have been used as an opportunity to deflect responsibility for crimes. It might also have been motivated by a desire to obtain lenient treatment from Rwandan judicial authorities, as the

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features; he took Tutsis away at this roadblock and killed them); Prosecution Witness YAA, T. 1 February 2011, p. 65 (while Witness YAA suggested that the soldiers were checking vehicles for ammunition and suspected RPF infiltrates, he noted that particular attention was paid to the ethnicity of people as they passed through); Prosecution Witness AZM, T. 20 January 2011, pp. 74, 76 (on an unspecified date, Witness AZM saw the body of Professor Karenzi, a Tutsi, at this roadblock and the soldier checking him told the witness he had just shot and killed Karenzi with two bullets); Prosecution Witness ZAW, T. 26 January 2011, pp. 8-9 (identified this as one of several roadblocks he passed in late May 1994 and stated that everyone stopped at roadblocks manned by ESO soldiers "had to show identity cards"). Witness BDE, who heard that the soldiers were deployed around the city to ensure security, corroborates the dual purpose identified by Witness YAA of this roadblock. Prosecution Witness BDE, T. 28 January 2011, pp. 14-15, 19-20. Indeed, the Chamber is satisfied based on the finding that Professor Karenzi, a Tutsi, was killed after having been brought to the Hotel Faucon roadblock, combined with Witness ZBH's first-hand testimony of killings perpetrated by him at this roadblock, and the circumstantial and second-hand evidence by Witnesses YAA and Gahizi, that Tutsi civilians were identified and killed at this roadblock. The Chamber observes that Defence Witness Bunani was the only witness who expressly stated that he did not see any signs of violence or dead bodies at roadblocks in Butare town. Defence Witness Bunani, 13 June 2011, p. 42 ("Q. Did you see any dead bodies at any of the roadblocks? A. I did not see any. Q. Did you see any dead bodies within Butare town? A. No. I did not see any. MR. PRESIDENT: Did you see any dead bodies anywhere during the genocide, the period running from April the 6th to July? THE WITNESS: No, I never saw any."). However, as Nizeyimana's brother-in-law, the Chamber considers that Bunani has incentive to deflect any form of responsibility away from the Accused. The Chamber therefore has concerns about the partiality of this witness. Moreover, the Chamber considers this evidence, generally denying any form of violence at roadblocks in Butare, lacking any probative value in light of the otherwise direct evidence to the contrary.

[2100] Nizeyimana spoke to the soldiers and civilians at this roadblock on an unspecified date, and convinced them that the Tutsis were the country's enemy and that no Tutsi should survive. Witness ZBH, T. 8 February 2011, pp. 58-59.

[2101] *See* II.3.4.

[2102] *See* II.11.

witness remained incarcerated at the time of his testimony.[2103] Consequently, his testimony shall be viewed with the appropriate caution, particularly as it relates to implicating Nizeyimana.[2104]

838. Witness ZBH's evidence about observing Nizeyimana at this roadblock was brief and non-descript. Specifically, the witness did not identify the exact date and time of day when he saw Nizeyimana issuing orders at the Hotel Faucon roadblock or provide any further details. Moreover, his testimony regarding Nizeyimana's presence at the Hotel Faucon roadblock is at odds with his 2003 confession, the latter of which does not contain any reference to Nizeyimana issuing orders to kill Tutsis at *this specific* roadblock.[2105] The absence of sufficient details raises questions about the quality of this evidence. The ambiguities within his testimony, when viewed in light of prior omissions, render his evidence directly implicating Nizeyimana as far from dispositive.

839. Notwithstanding, given that ESO soldiers manned this roadblock, along with evidence of killings occurring there as well as Witness ZBH's admission that he participated in killings at it, doubts about Nizeyimana's physical presence at the roadblock and issuing instructions are not dispositive. Indeed, Witness ZBH's evidence compellingly demonstrates the fluid and interrelated operations of this roadblock and, for example, the one situated just down the road at the Gikongoro / Cyangugu and Kigali roads junction roadblock. As concluded above, his evidence of participating in killings at both is a direct reflection that instructions issued at one barrier were necessarily consistent and transmitted to other. This conclusion is further bolstered when considered in light of the fact that ESO soldiers manned both roadblocks, the fact ESO soldiers targeted and killed Tutsis at both, and that such conduct was occurring at the same time.

Notice

840. With the exception of the killing of Pierre Claver Karenzi, the Indictment does not give express notice of the killings described by Witnesses Gahizi or ZBH. Notwithstanding, the Prosecution Pre-Trial Brief, and, in particular, the annexed witness summaries for Witnesses Gahizi and ZBH indicate that they would be testifying in support of Indictment paragraph 6. The witness summary of Witness ZBH provides some information that is generally consistent with his evidence at trial, although Witness Gahizi's is silent as it relates to this roadblock.[2106]

841. Although the Defence did not raise any objections as it relates to the evidence of Witnesses Gahizi or ZBH about this roadblock, the Chamber is doubtful whether sufficient notice was given. It shall only consider it as background to charges clearly pleaded in the Indictment.

[2103] *See* II.11.
[2104] *See* II.3.4; II.11.
[2105] Exhibit D15B (Witness ZBH's Prior Confession), pp. 14-15, 32-33 (indicating that three roadblocks were set up on the Cyangugu road – one at Gahenerezo, one at "CONFIGI" and one at "Gako"; people were killed at these roadblocks on the orders of Hategekimana, Rekeraho and Nizeyimana).
[2106] *See* Pre-Trial Brief, Annex, paras. 6 (providing the anticipated testimony of Witness Gahizi, formerly "Witness KAL"), 41 ("He will testify that people were killed at the roadblocks that were erected under the orders of Nizeyimana ...").

7.3.6 Roadblock at the Junction Leading to the *Groupe Scolaire* (*Chez* Bihira)

842. The Prosecution and Defence evidence uniformly demonstrates that a roadblock was established in April 1994, near the junction of the main road and the road to the *Groupe Scolaire,* also referred to as the *Chez* Bihira roadblock.[2107] Similarly, the evidence reflects that soldiers from the ESO and Ngoma camps manned this barrier.

843. Specifically Prosecution Witness ZAW, an ESO soldier testified that this was one of several roadblocks that he passed in May 1994 and that it was manned by ESO soldiers.[2108] Prosecution Witness AZM heard Muvunyi announce during a meeting on 14 April that soldiers from the Ngoma Camp manned this barrier.[2109] Notably, Defence Witness Ngezahayo saw a roadblock on the Bihira road that was manned by soldiers from the ESO and Ngoma camps. Given his position as a launderer at the ESO,[2110] the Chamber has no concerns about his ability to identify ESO soldiers.[2111] Furthermore, Prosecution Witness BDE heard from her colleagues that ESO soldiers were deployed to this location following an assembly on 7 April.[2112]

844. Notably, this particular roadblock was only a short distance from the ESO, providing circumstantial support that it would have been manned by soldiers from this camp. Furthermore, it was also geographically proximate to the Hotel Faucon and the Gikongoro / Cyangugu and Kigali roads junction barriers, which were also manned by ESO soldiers. These factors lend strong circumstantial support to the direct evidence that ESO soldiers were positioned at this barrier. Based on the foregoing, the Chamber has no doubt that, at times, ESO soldiers manned this particular roadblock.

[2107] Prosecution Witness AZM, T. 20 January 2011, p. 73 (saw a roadblock on the road towards *Groupe Scolaire*); Prosecution Witness ZAW, T. 26 January 2011, p. 8 (saw a roadblock at the junction of the main road and the road leading to *Groupe Scolaire*); Prosecution Witness TQ, T. 27 January 2011, p. 24 (*Chez* Bihira roadblock was located about 30 metres from the cross-section of the *Groupe Scolaire* road and the tarmac road); Prosecution Witness Zachariah, T. 14 January, p. 9 (observed a roadblock on the junction between the road to Kigali and the road to *Groupe Scolaire*); Prosecution Witness Ntezimana, T. 14 January 2011, p. 62 (roadblock between the tarmac road and the road leading to *Groupe Scolaire*); Prosecution Witness BDE, T. 28 January 2011, p. 20 (heard of a roadblock that was established at "Kwabihira"); Defence Witness Ngezahayo, T. 24 May 2011, p. 47 (saw a roadblock on the Bihira road). *See also* Exhibit D18 (Witness Zachariah's Sketch). The Chamber notes that Witness BDE refers to a roadblock with a phonetically similar name and an identical meaning in Kinyarwanda when they told her that ESO soldiers were being deployed to positions. The Chamber is satisfied that the locations described as *Chez* Bihira and "Kwabihira" are in fact one in the same. The Chamber observes that the record reflects the existence of more than one roadblock in the vicinity of the *Groupe Scolaire.* Specifically, Witnesses TQ identified two roadblocks on the road, one at the entrance of the *Groupe Scolaire* and the other near the junction of the main road from *Groupe Scolaire*. Prosecution Witness TQ, T. 27 January 2011, pp. 23-24. Similarly, Witness ZBK observed a roadblock at the entrance to the *Groupe Scolaire*. Prosecution Witness ZBK, T. 19 January 2011, pp. 25-26, 35. The Chamber observes that the Prosecution has not put forth any evidence identifying those manning the barrier immediately at the *Groupe Scolaire* entrance or any evidence suggesting that this roadblock was used for purposes of identifying and killing Tutsis or who manned this roadblock. Accordingly, the Chamber declines to address this roadblock.

[2108] Witness ZAW, T. 26 January 2011, pp. 7-9.

[2109] Witness AZM, T. 20 January 2011, p. 73.

[2110] Witness Ngezahayo, T. 24 May 2011, p. 45; Exhibit D44 (Witness Ngezahayo's Personal Information Sheet).

[2111] Witness Ngezahayo, T. 24 May 2011, p. 47.

[2112] Witness BDE, T. 19 January 2011, pp. 19-20.

845. Prosecution Witness TQ is the sole witness to provide evidence of Nizeyimana's presence at this roadblock around 20 April 1994.[2113] Specifically, Witness TQ, who was stopped at this barrier, stated that he saw Nizeyimana standing next to Innocent Rwagashayija's corpse and heard Nizeyimana admit that he killed Rwagashayija.[2114]

846. Witness TQ lived in Butare as a secondary school student in 1981, but lived in Kacyiru from 1992 to 1994.[2115] He returned to Butare on 12 April 1994 to seek refuge with orphans at the *Groupe Scolaire*, but it is unclear whether he resided in Butare town immediately prior to 1992, when Nizeyimana was present as well.[2116] The uncertainty regarding Witness TQ's residency before 1992 raises questions about his ability to identify Nizeyimana when he saw him a week after the witness's arrival in Butare in April 1994. Indeed, the Chamber has elsewhere questioned Witness TQ's ability to identify Nizeyimana in 1994.[2117] In light of the uncorroborated nature of his evidence the Chamber considers Witness TQ's identification of Nizeyimana at the *Chez* Bihira roadblock lacking sufficient reliability to establish facts beyond reasonable doubt.[2118]

847. Various Prosecution witnesses provided evidence of civilians being identified and assaulted at the *Groupe Scolaire* roadblock in April 1994. Witness Zachariah saw a man being beaten until he fell lifelessly to the ground around 17 April.[2119] Of particular significance, Witness Zachariah also observed these same soldiers allow *Interahamwe* armed with machetes to pass unmolested moments later.[2120] Similarly, sometime before 19 April, Witness Ntezimana saw two soldiers use their rifle butts to beat a group of young people in civilian attire whom others stated were Tutsis.[2121]

848. Witness TQ saw several corpses at the *Chez* Bihira roadblock, including that of Innocent Rwagashayija, whom the witness knew to be a Tutsi.[2122] Witness ZAW confirmed that no one could pass through barriers manned by ESO soldiers, including this one, without

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[2113] Around 20 April 1994, Witness TQ went to town in a Red Cross vehicle and came upon a roadblock near a kiosk at the *Chez* Bihira junction. Witness TQ, T. 27 January 2011, pp. 24, 45. Nizeyimana stopped the witness there and asked him what he was doing in a threatening tone. T. 27 January 2011, pp. 24-25. Nizeyimana then returned to the road where he told Faustin Twagirayezu and other unidentified persons that he killed Innocent Rwagashayija, a Tutsi teacher at *Groupe Scolaire*, with a sword. T. 27 January 2011, pp. 25, 27-28, 46.
[2114] Witness TQ, T. 27 January 2011, pp. 24-28, 45-46.
[2115] Witness TQ, T. 27 January 2011, p. 43.
[2116] Witness TQ, T. 27 January 2011, pp. 24-25. While Witness TQ asserted that he knew that Nizeyimana was an ex-FAR soldier, and knew his name and rank, his basis for identifying Nizeyimana was premised on the fact that he saw Nizeyimana "moving around town". T. 27 January 2011, pp. 24-25. The witness admitted that his encounter at the roadblock was the first time he met Nizeyimana "face-to-face". T. 27 January 2011, p. 45. *See also* II.10.
[2117] *See* II.10.
[2118] *See* II.10.
[2119] Witness Zachariah, T. 14 February 2011, pp. 9-10 (on 17 April 1994, Witness Zachariah saw a 4x4 vehicle stopped at the roadblock. The driver, who wore a white shirt and civilian clothing, provided the soldier manning the barrier with what Zachariah presumed to be an identity card; the soldier pulled the driver out of the vehicle and beat him with the butt of a rifle until he fell lifelessly to the ground).
[2120] Witness Zachariah, T. 14 February 2011, p. 10.
[2121] Witness Ntezimana, T. 14 February 2011, p. 65.
[2122] Witness TQ, T. 27 January 2011, pp. 27, 45-46. Witness TQ knew Rwagashayija in his capacity as a teacher at the *Groupe Scolaire*, where the witness attended secondary school several years prior. T. 27 January 2011, pp. 22, 27.

showing their identity card.[2123] Given the evidence by Witnesses ZAW and Zachariah regarding the verification of identification cards, the instances of violence observed by Witnesses Zachariah and Ntezimana and the dead observed by Witness TQ, the Chamber is satisfied that the *Chez* Bihira roadblock was used for the purpose of identifying and killing Tutsi civilians during the genocide.

849. Furthermore, based on the evidence generally placing ESO soldiers at this barrier, as well as other evidence implicating them in crimes at the Gikongoro / Cyangugu and Kigali roads junction roadblock, as well as the barrier in front of the Hotel Faucon, the Chamber has no doubt that ESO soldiers significantly and substantially contributed to killings at this location. To the extent such soldiers were not the assailants physically participating in the killing of those identified as Tutsis at this roadblock, the Chamber has no doubt that they shared the assailants' intent.

850. Indeed, the Chamber has no doubt that the *Chez* Bihira roadblock was among a network of other roadblocks manned, at least on one occasion, by ESO soldiers – including those at the Gikongoro / Cyangugu and Kigali roads junction and at the Hotel Faucon – that was eventually turned towards the task of identifying and eliminating Tutsis.

Notice

851. The Defence objected to Witness TQ's evidence, arguing that it did not receive notice that the witness would testify in relation to the *Chez* Bihira roadblock and Nizeyimana's involvement in the murder of Innocent Rwagashayija.[2124] The Prosecution concedes that Nizeyimana is not charged with the individual murder of Rwagashayija, but instead relies on Witness TQ's evidence for purposes of demonstrating Nizeyimana's involvement in establishing the roadblocks, used to identify and kill Tutsi civilians.[2125] Evidence in support of material facts not pleaded in an indictment may not form the basis for a conviction, but may be admitted to the extent that it is relevant to the proof of other allegations pleaded in the Indictment.[2126] The Chamber considers Witness TQ's evidence of the nature of his observations at this particular roadblock highly relevant and probative, and shall consider it in relation to the charges pleaded in the Indictment.

852. The Chamber observes that the Indictment does not give particularised notice as it relates to the killings at this roadblock described by Witnesses Zachariah and Ntezimana. Notwithstanding, the Prosecution Pre-Trial Brief, and, in particular, the annexed witness summaries for Witnesses Zachariah and Ntezimana indicate that they would be testifying in support of Indictment paragraph 6. Moreover, the witness summaries provide information generally consistent with the evidence given at trial.[2127]

[2123] Witness ZAW, T. 26 January 2011, p. 9 ("Q. And as you stopped at these various roadblocks, did you have an opportunity to observe what was happening at them? A. Every time I arrived at a roadblock, I will talk to the soldiers who were manning the roadblock. They were my colleagues, but everyone who had to go through those roadblocks had to show identity cards.").
[2124] *See* Defence Motion for Exclusion of Evidence, 29 April 2011, paras. 62-64.
[2125] *See* Prosecutor's Response to Defence Motion for Exclusion of Evidence, 13 May 2011, paras. 63-66.
[2126] *See Renzaho* Appeal Judgement, para. 71.
[2127] *See* Pre-Trial Brief, Annex, paras. 3 (p. 3) ("Prior to 19 April 1994 at the Chez Bihira roadblock ... the witness saw three soldiers beating up to four youths with rifle butts. Two of the youths had already been seriously beaten and appeared to already be unconscious; they had bloodied heads and were not moving. The four youths were then carried off in a vehicle in the direction of the ESO"), 4 (p.5) ("On or about 17 April 1994

853. The Defence did not raise any objections as it relates to the evidence of Witnesses Zachariah or Ntezimana about this roadblock. Moreover, under some circumstances, the further information provided in the Pre-Trial Brief's witness summaries could cure defects in the operative Indictment paragraph.[2128] However, the Prosecution has taken the position that similar evidence related to killing at roadblocks, whose notice is provided only through the Pre-Trial Brief or annexed witness summaries, is not being used as a basis for conviction.[2129] The Chamber considers that this evidence cannot be used for that purpose either.

854. Evidence in support of material facts not pleaded in an indictment may not form the basis for a conviction, but may be admitted to the extent that it is relevant to the proof of other allegations pleaded in the Indictment.[2130] The Chamber considers the evidence of Witnesses Zachariah and Ntezimana about their observations at this particular roadblock highly relevant and probative. Given the notice provided in the Pre-Trial Brief, the Chamber considers that Nizeyimana was provided sufficient information to prepare his defence in relation to this evidence. The Chamber is convinced that no prejudice was suffered. Consequently the Chamber shall consider this evidence in relation to allegations pleaded in the Indictment.

7.3.7 *Arab Quartier* Roadblock (Cyarubu)

855. Prosecution and Defence evidence unequivocally demonstrates that a roadblock was constructed in the Arab Quarter, not far from the ESO entrance, which was manned by ESO soldiers.[2131] Moreover, Witness YAA noted that this roadblock was established following

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... Zachariah was near the Hotel Faucon ... where he was in view of a roadblock manned by armed soldiers ... witnessed the driver being ... beaten to death by soldiers. He was informed the driver was a Tutsi ...").

[2128] *See Bagosora et al.* Trial Judgement para. 116, *citing Muhimana* Appeal Judgement para. 82, *Gacumbitsi* Appeal Judgement paras. 57-58, *Ntakirutimana* Appeal Judgement para. 48, *Naletilić and Martinović* Appeal Judgement para. 45.

[2129] *See* Prosecutor's Response to Defence Motion for Exclusion of Evidence, 13 May 2011, paras. 63-66 *and* Pre-Trial Brief, Annex, para. 28 (pp. 21-22).

[2130] *See Renzaho* Appeal Judgement, para. 71.

[2131] Prosecution Witness YAA, T. 1 February 2011, p. 64 (knew of a roadblock at the secondary entrance of the ESO, not far from a shop known as Ardef, manned by ESO cadets between the ages of 14 and 18, who had just left primary school and were part of the *nouvelle formule*; the soldiers were wearing military fatigues, had weapons on them and searched all vehicles that drove in and out of the ESO Camp; they checked identity cards of persons entering); Prosecution Witness ZBH, T. 8 February 2011, p. 56 (Witness ZBH did not specify whether he personally saw this roadblock); Prosecution Witness ZAW, T. 26 January 2011, p. 8 (passed through this roadblock); Prosecution Witness AZD, T. 31 January 2011, pp. 74-75 (saw this roadblock on 7 April 1994); Prosecution Witness BDE, T. 31 January 2011, p. 39 (heard about the roadblock following an assembly held at the ESO on 7 April 1994); Prosecution Witness Gahizi, T. 7 February 2011, p. 34 (knew of a roadblock located in the Arab neighbourhood, leading up to the ESO); Defence Witness Basesayabo, T. 9 May 2011, p. 19 (knew that this roadblock existed); Defence Witness MAL01, T. 16 May 2011, pp. 67-68 (knew of a roadblock, manned by ESO soldiers, on the road in front of the ESO, leading to the hospital, right at the entrance of the ESO); Defence Witness Nsabimana, T. 18 May 2011, p. 70 (knew of a roadblock in front of the ESO that was established after 6 April 1994); Defence Witness CKN10, T. 30 May 2011, p. 51 (saw a roadblock in the Arab quarter, manned by ESO soldiers, that consisted of a metal bar that was blocking the way); Defence Witness RWV11, T. 2 June 2011, p. 17 (Witness RWV11, an ESO cadet, was manning the roadblock in the Arab quarter on 17 April 1994); Defence Witness Ntamagezo, T. 8 June 2011, p. 61 (saw a roadblock at the entrance of the ESO Camp that was manned by ESO soldiers); Defence Witness Ufitimana, T. 26 May 2011, p. 10 (saw a roadblock at the ESO, manned by soldiers); Defence Witness Ngezahayo, T. 24 May 2011, pp. 46-47 (knew of a roadblock that was established around 7 April 1994, close to the entrance of the ESO, not far from the Karuganda garage, which was manned by ESO soldiers).

orders by unidentified ESO authorities.[2132] No evidence was presented of Nizeyimana's presence at this roadblock at any time during the relevant time-frame or that this barrier was used for purposes of identifying and killing Tutsis.[2133] This allegation is not proved.

7.3.8 Butare University Roadblock

856. Prosecution Witnesses AZD, FAX, Kayibanda, ZBH, ZT, ZAW and AZM as well as Defence Witnesses Ntamagezo and Basesayabo appear to have seen a roadblock near the Butare University. However, the evidence diverges as to who manned it. For example, Witnesses FAX, ZBH and ZAW identified ESO soldiers as manning the roadblock. Specifically, Witness FAX, a Tutsi, worked at the Butare University Hospital and went there daily from 6 April until 20 April 1994.[2134] Walking from the Tumba sector to work, she would pass several roadblocks, including one that was located "at the entrance of the university" on the main road. It was manned by young soldiers, who the witness believed came from the ESO.[2135] Specifically, she would come across them in the mornings or the evenings as they were walking from the ESO to relieve the soldiers at the roadblock.[2136]

857. Likewise, Witness ZBH provided evidence of a subsequent attack at the Butare University on 22 April 1994.[2137] He testified that before this assault, Nizeyimana had ordered ESO soldiers manning a barrier at the university's entrance to allow civilians into the campus.[2138] Furthermore, Prosecution Witness ZAW, an ESO cadet since 1991,[2139] testified to having seen this barrier in May 1994. Specifically, he observed a barrier "in front of Abufar, at the entrance to the university" manned by ESO soldiers while traveling through Butare town en route to Gitarama at the end of May. He generally testified that when stopped at a roadblock manned by his colleagues, everyone passing through it had to show identity cards.[2140]

858. The Chamber considers this evidence of mixed reliability. The Chamber has elsewhere addressed general credibility concerns that members of ABASA, including Witness FAX, colluded with each other.[2141] Nothing in the record supports this contention. The Chamber has no general credibility concerns as they relate to her. Nonetheless, her identification of ESO soldiers is general.

859. Turning to Witness ZBH, the Chamber has found that his evidence relating to the attack at the Butare University Hospital on 22 April 1994 lacking sufficient reliability to establish facts beyond reasonable doubt. The Chamber has elsewhere discussed the need to view his evidence with appropriate caution.[2142]

[2132] Witness YAA, T. 2 February 2011, p. 33.
[2133] Indeed, the only evidence provided by Prosecution Witness YAA in regards to the potential purpose of the roadblock suggests that the roadblock was established to monitor the movement of people and vehicles entering and exiting the ESO Camp. Witness YAA, T. 1 February 2011, p. 64.
[2134] Witness FAX, T. 17 February 2011, pp. 19-20; Exhibit P29 (Witness FAX's Personal Information Sheet).
[2135] Witness FAX, T. 17 February 2011, pp. 20-21.
[2136] Witness FAX, T. 17 February 2011, p. 21. Witness FAX described one soldier as being on crutches. T. 17 February 2011, p. 21.
[2137] II.5.3.
[2138] Witness ZBH, T. 8 February 2011, pp. 49-50, 56.
[2139] Witness ZAW, T. 26 January 2011, pp. 3, 34; Exhibit P10 (Witness ZAW's Personal Information Sheet).
[2140] Prosecution Witness ZAW, T. 26 January 2011, pp. 7-9.
[2141] *See* II.9.2.
[2142] *See* II.3.4; II.11.

860. With respect to Witness ZAW, the Defence does not dispute, nor does the Chamber doubt that he, as an ESO cadet, could identify ESO soldiers in 1994. The Chamber has no general credibility concerns as it relates to his testimony. His evidence about ESO soldiers at this roadblock – stemming from observations in late May – are temporally remote from those of Witness FAX and ZBH, which occurred within between 6 and 22 April.

861. Other evidence that tends to implicate ESO soldiers in the administration of this roadblock is that concerning Innocent Sibomana, a student at the Butare University and a soldier. In particular, Prosecution Witness AZD generally testified that at an unspecified time after 7 April 1994, he saw a roadblock "along the road leading to" or "a little before" the Butare University".[2143] It was manned by "Sergeant Major" Sibomana, a student at the university and a soldier.[2144] The Chamber has discussed general credibility challenges with respect to Witness AZD elsewhere, but has no concerns.[2145]

862. Similarly, Prosecution Witness Kayibanda testified about the use of barriers near the Butare University after the 21 April 1994 attack on it.[2146] Specifically, soldiers established one "at the main entrance" to intercept persons attempting to flee campus.[2147] After two to three days, a new batch of soldiers, described as "very young boys", started to man this and other roadblocks around the university. He generally stated that the soldiers took orders from a university student named Sibomana, who was also referred to as "Sergeant", and they "killed and looted".[2148]

863. The Chamber views Kayibanda's evidence with the appropriate caution given his prior incarceration, and his status as a possible accomplice.[2149] The Chamber has elsewhere considered in detail his account that Mylène Dimitri, counsel for Désiré Munyaneza who faces genocide related charges in Canada, approached him and indicated that she worked for the Tribunal's Office of the Prosecutor. This assertion has been effectively refuted by Witness Dimitri and through emails Witness Kayibanda exchanged with her.[2150]

864. Prosecution Witness ZT testified that in May 1994, she saw Innocent Sibomana and *Interahamwe* armed with machetes and planks forcing Tutsis into a Daihatsu vehicle at a

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[2143] Witness AZD, T. 31 January 2011, pp. 74-75.
[2144] Witness AZD, T. 31 January 2011, pp. 75-76. As noted in the transcripts, Sibomana's name was initially spelled phonetically as "Nsambomana". T. 31 January 2011, p. 75. The correction is reflected later in the transcripts. *See* T. 31 January 2011, p. 76 (referring to "Sergeant Major Sibomana").
[2145] *See* II.4.1.
[2146] The Chamber has elsewhere assessed evidence related to violence at the Butare University. II.5.1. Specifically, Witness Kayibanda, who assisted soldiers during the attack, also stated persons identified as Tutsis were brought with their identity cards to a "sorting centre". Once the soldier determined that the particular person had to pass by the roadblock to get to the other side, the victim would not return. Witness Kayibanda, T. 2 February 2011, p. 52.
[2147] Witness Kayibanda, T. 2 February 2011, p. 54. Witness Kayibanda also referred to barriers that were established and manned by the same soldiers, which were "below the buildings of the faculty of applied sciences" in the "area that led to Tumba" as well as near the stadium on the road leading to the arboretum". T. 2 February 2011, pp. 54-55.
[2148] Witness Kayibanda, T. 2 February 2011, pp. 50, 54-55.
[2149] Witness Kayibanda was detained in Rwanda for eight years for genocide related crimes. He was released in 2003 as part of a Presidential pardon. Witness Kayibanda admitted to have been incarcerated for having been part of a "criminal association", for the possession of illegal weapons and for looting. Witness Kayibanda, T. 2 February 2011, p. 63; T. 3 February 2011, pp. 20, 36.
[2150] *See* II.5.1.

roadblock on the tarmac road "very close to the entrance of the university".[2151] Unidentified persons said that the Tutsis would be taken to the "IRST roadblock".[2152] She believed that Sibomana was "about to kill" these Tutsis.[2153]

865. Witness ZT generally stated that Nizeyimana "had deployed" Sibomana, a university student, and that the latter started killing Tutsis with the onset of the war.[2154] In cross-examination, she also generally stated that Nizeyimana had set up roadblocks throughout Butare town and posted ESO soldiers at them.[2155] Nonetheless, Witness ZT's general testimony that Nizeyimana had deployed Sibomana lacks contextual information to demonstrate that she observed this occur or that her information came from a reliable source. It alone cannot support findings beyond reasonable doubt.

866. Defence evidence tends to rebut Prosecution evidence that ESO soldiers were positioned at this roadblock. Notably, Defence Witness Ntamagezo testified to this effect in the context of conducting patrols around 21 April 1994. He said that there were many roadblocks, including one "at the entrance of the national university", which were manned by civilians.[2156]

867. Likewise, Defence Witness Basesayabo passed a roadblock "near the university" or "in front of the campus", which was established after the violence at the university by students to control movement into and out of it.[2157] This account is supported by that of Defence Witness Mukeshimana, who testified that a roadblock was established after President Théodore Sindikubwabo's speech on 19 April 1994 at the Butare University entrance leading to the main road going to Burundi.[2158] Although he was never positioned there, it was manned by Hutu and Tutsi students, who checked student identity cards of those who sought to enter.[2159] This was done to ensure that people with bad intentions would not enter the campus.[2160]

868. Read in its entirety, the Chamber is satisfied that the anecdotal accounts of ESO soldiers manning this roadblock is sufficient to demonstrate that they were, at times, posted there and exercised control over it. Furthermore, given the undisputed attack on the Butare University around 21 April 1994, the Chamber has no doubt that this barrier, like many others, was established to target Tutsi civilians for elimination. Nonetheless, there is no direct evidence of killings at this roadblock. While it can be inferred from Witness ZT's account of Sibomana and armed *Interahamwe* loading Tutsis into a vehicle to be transported to another roadblock, the record is ultimately ambiguous. This allegation is not proved.

[2151] Witness ZT, T. 7 February 2011, pp. 14-15. *Cf.* Witness ZT, T. 10 February 2011, p. 80 ("A. ... Even at roadblocks there was an ESO soldier who was together with *Interahamwes* who were armed with traditional weapons.").
[2152] Witness ZT, T. 7 February 2011, p. 14.
[2153] Witness ZT, T. 7 February 2011, p. 14.
[2154] Witness ZT, T. 7 February 2011, p. 14.
[2155] Witness ZT, T. 10 February 2011, p. 80.
[2156] Witness Ntamagezo, T. 8 June 2011, p. 61.
[2157] Witness Basesayabo, T. 9 May 2011, pp. 19-20.
[2158] Witness Mukeshimana, T. 23 May 2011, p. 33.
[2159] Witness Mukeshimana, T. 23 May 2011, pp. 35, 42-43.
[2160] Witness Mukeshimana, T. 23 May 2011, pp. 35, 42-43.

7.3.9 Tumba Roadblock

869. Prosecution and Defence evidence demonstrates that in April 1994, a roadblock was established on the main road leading to Tumba sector in the direction of Burundi from Butare town. Specifically, Prosecution Witnesses FAX and Ntezimana described a roadblock they called "Mukoni", which was located at the intersection of the main Bujumbura highway and the road going to Tumba sector.[2161] Similarly, Defence Witness Ngezayaho also referred to "Mukoni" roadblock.[2162] Likewise, Witness BUV02, who did not mention "Mukoni", spoke of a roadblock that he manned in Tumba sector, at the intersection of the road to Burundi, near the Mukura river.[2163]

870. Notwithstanding, Prosecution and Defence evidence diverges significantly with regard to who manned and administered the roadblock, as well as its purpose. For example, Prosecution Witness FAX went through this roadblock on 19 April 1994.[2164] She identified the persons manning the roadblock as ESO soldiers. In particular, as an employee of the Butare University Hospital, she noted that some of the soldiers "used to pass along the road passing in front of the faculty of medicine and [she] noticed that those soldiers were from ESO".[2165]

871. The soldiers were checking identity cards to find "*Inyenzis*".[2166] Although initially allowed through, *Bourgmestre* Kanyabashi made Witness FAX return. He asked the people manning the roadblock why they let her through without searching her, stating that all Tutsis were hiding or carrying bullets.[2167] She was allowed through again, although they told her to come back later so they could properly check her identification card, since the hospital was employing *Inyenzis*.[2168] The witness observed "Tutsis" crammed into a trench, nicknamed the "bus" or "autobus".[2169] She did not know what happened to these people.[2170] She generally testified that while Tutsis were beaten at roadblocks at this time, the killings started later.[2171]

[2161] Witness FAX, T. 17 February 2011, pp. 20-21; Witness Ntezimana, T. 14 February 2011, p. 62.
[2162] Defence Witness Ngezahayo, T. 24 May 2011, p. 46. Witness Ngezahayo did not provide any crossroads that would position the Mukoni roadblock at the intersection of Bujumbura highway and the road leading to Tumba. Instead, he placed the Mukoni roadblock at the entrance to the Butare University. T. 24 May 2011, p. 46. Given the university's close proximity to the relevant intersection, the Chamber does not find Witness Ngezahayo's description of the Mukoni roadblock location inconsistent with Prosecution Witnesses FAX and Ntezimana's depiction of the barrier. Consistent with Ngezahayo's account, Prosecution Witness Kayibanda and Defence Witness Mukeshimana, who were both students at the University, suggested that a roadblock was erected near campus on the road leading towards Tumba or Tumba Hill in the latter part of April. *See* Prosecution Witness Kayibanda, T. 2 February 2011, p. 54 ("[T]he soldiers also set up a ... roadblock below the buildings of the faculty of applied sciences. And this was the area that led out towards Tumba."); Defence Witness Mukeshima, T. 23 May 2011, p. 33 ("Q. Around or after what date, were there any roadblocks at the university? A. Yes. After the President's speech two roadblocks were set up at the two main entrances to the campus. First, the entrance leading to the main road going to Burundi – that's the main entrance. The second entrance was behind on the road – behind the campus on the road leave – leading to – towards Tumba Hill.").
[2163] Witness BUV02, T. 10 May 2011, pp. 56, 81.
[2164] Witness FAX, T. 17 February 2011, p. 22
[2165] Witness FAX, T. 17 February 2011, p. 21.
[2166] Witness FAX, T. 17 February 2011, p. 22.
[2167] Witness FAX, T. 17 February 2011, pp. 22-23, 39. While Witness FAX initially appears to attribute the "*Ibizungerezi* (or "beautiful girl") had to be carrying bullets" remarks to the soldiers at the roadblock, an entire reading of her evidence clearly reflects that this was a statement made by Kanyabashi.
[2168] Witness FAX, T. 17 February 2011, pp. 22-23. *Bourgmestre* Kanyabashi said that all Tutsis were hiding or carrying bullets on them. T. 17 February 2011, p. 23.
[2169] Witness FAX, T. 17 February 2011, pp. 22-23.

872. Furthermore, Prosecution Witness Kayibanda, a Hutu student at the Butare University,[2172] testified that, around 21 April 1994, this roadblock was established and manned by ESO soldiers, who he described as "young". They were under the command of a student named Sibomana, who told the witness he was from the ESO.[2173] The Chamber views Witness Kayibanda's evidence with the appropriate caution given his prior incarceration, and status as a possible accomplice.[2174]

873. Nonetheless, there is no dispute that Witness Kayibanda was a student at the Butare University and would have been well placed to observe roadblocks in the vicinity of it. Furthermore, the record gives considerable circumstantial support to the proposition that ESO soldiers could be distinguished among those from other camps based on their relative youth.[2175] Moreover, Witness Kayibanda's evidence regarding Sibomana's identity and presence at roadblocks in the vicinity of the Butare University finds broad circumstantial corroboration through other Prosecution evidence.[2176] Of particular significance, Defence evidence confirms that soldiers from other camps studying at the Butare University reported to the ESO command.[2177]

874. Defence Witnesses Mukeshimana and BUV02, however, testified that this roadblock was manned exclusively by civilians. Specifically, Witness Mukeshimana testified that this was one of two roadblocks established after President Théodore Sindikuwabo's 19 April 1994 speech. It was manned by Hutu and Tutsi students in order to prevent persons with "bad intentions" from entering the campus.[2178] Only students were allowed in and student identity

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[2170] Witness FAX, T. 17 February 2011, p. 23.
[2171] Witness FAX, T. 17 February 2011, pp. 22-23. Witness FAX also generally testified that persons stopped were made to "board buses". T. 17 February 2011, p. 22. It is not clear that she observed this at the Mukoni roadblock.
[2172] Witness Kayibanda, T. 2 February 2011, p. 39; Exhibit P17 (Witness Kayibanda's Personal Information Sheet).
[2173] Witness Kayibanda, T. 2 February 2011, pp. 47-52, 54-55.
[2174] Witness Kayibanda was detained in Rwanda for eight years for genocide related crimes. He was released in 2003 as part of a Presidential pardon. Witness Kayibanda admitted to have been incarcerated for having been part of a "criminal association", for the possession of illegal weapons and for looting. T. 2 February 2011, p. 63; T. 3 February 2011, pp. 20, 36; *see also* II.5.1.
[2175] *See, e.g.*, Defence Witness KEN06, T. 20 September 2011, pp. 4, 29 (joined ESO's *nouvelle formule* as a 13-year-old in 1989); Prosecution Witness AZD, T. 31 January 2011, pp. 76-77 (testifying that ESO soldiers could be distinguished from Ngoma Camp soldiers based on age, and that the oldest cadets from the first batch were ages 15 to 17); Defence Witness Nsabimana, T. 18 May 2011, p. 70 (ESO soldiers could be "recognised from the fact that they were young"). Indeed, the *nouvelle formule* model allowed cadets to enter ESO after finishing primary school. *See, e.g.*, Prosecution Witness ZAK, T. 24 January 2011, p. 62; Prosecution Witness ZAW, T. 26 January 2011, p. 4; Prosecution Witness AZD, T. 31 January 2011, p. 69; Prosecution Witness YAA, T. 1 February 2011, p. 64; Defence Witness Basesayabo, T. 9 May 2011, p. 24; *cf.* Defence Witness OUV03, T. 30 May 2011, pp. 65-66 (distinguishing the *nouvelle formule* cadets from ordinary ESO cadets on the basis that the latter took people who had already completed three years of secondary school).
[2176] *See* Witness AZD, T. 31 January 2011, pp. 75-76 (referred to a Sergeant Major Sibomana, who was manning a roadblock in the vicinity of the Butare University); Witness ZT, T. 7 February 2011, p. 14 (saw Sibomana at a roadblock in the vicinity of the Butare University); Witness BDE, T. 28 January 2011, pp. 25, 30, T. 31 January 2011, p. 58 (Sergeant Innocent Sibomana was a cadet at the ESO and a student at the Butare University); Witness ZML07, T. 18 May 2011, pp. 47-49 (recalled a sergeant by the name of Sibomana).
[2177] *See, e.g.*, Witness RWV09, T. 8 June 2011, p. 8 (having previously undertaken military training at the ESM, the witness remained a soldier and testified that "every student who had been sent to [Butare University] was directly under the ESO's command.").
[2178] Witness Mukeshimana, T. 23 May 2011, pp. 33-35. *See also* II.5.1.

cards were checked at it.[2179] Witness Mukeshimana never manned a roadblock himself.[2180] The Chamber considers Defence Witness Ngezahayo's observations of gendarmes manning this barrier of minimal probative value as it relates to the Prosecution evidence, since he made such observations between 7 and 10 April (rather than later in the month).[2181]

875. Witness BUV02, who manned this particular roadblock from 21 April to 1 July 1994, testified that it was initially set up around 7 April by orders of the Tutsi prefect. Its initial purpose was to ensure the safety of all persons and it was manned by Hutus and Tutsis. However, after President Théodore Sindikubwabo's speech, the purpose changed. Tutsis did not return to the roadblock as they were being killed. By 21 April, the witness started to man the roadblock and identity cards were being checked in order to target Tutsis. However, no Tutsis ever passed this location.[2182]

876. In the Chamber's view, Witness BUV02's evidence tends to undermine that of Witness Mukeshimana as to who manned the roadblock and its purpose. Indeed, it borders on the inconceivable that Tutsis would man roadblocks after 19 April 1994 given other evidence in the record that Tutsis were being singled out and targeted, particularly at the Butare University.[2183] The record is unequivocal that in the days following the President's speech in Butare, ethnic violence towards Tutsis and political moderates ensued.

877. Turning to Witness BUV02's evidence that only civilians manned this roadblock, the Chamber observes that he confessed and was convicted for genocide related crimes.[2184] After his release, the Prosecution put to the witness that he was convicted *in absentia* for additional genocide related crimes.[2185] The documents that formed the basis of this cross-examination, however, were not admitted due to lack of sufficient reliability.[2186]

878. The Chamber also observes that Witness BUV02 was formerly employed by a soldier who lived next to Nizeyimana.[2187] His evidence tends to demonstrate that he had good social relations with ranking officers at the ESO and discussed their criminal conduct with them during the genocide.[2188] The witness lived in exile at the time of his testimony based on fears he held towards living in Rwanda.[2189]

[2179] Witness Mukeshimana, T. 23 May 2011, pp. 35, 42-43.
[2180] Witness Mukeshimana, T. 23 May 2011, p. 44.
[2181] Witness Ngezahayo, T. 24 May 2011, p. 46.
[2182] Witness BUV02, T. 10 May 2011, pp. 55-56, 70-71, 82-83.
[2183] *See, e.g.*, Defence Witness BUV02, T. 10 May 2011, pp. 70-71 (testifying that when more roadblocks were established later, their purpose was to kill Tutsis, although he never saw Nizeyimana at such roadblocks); Prosecution Witness Ntezimana, T. 14 February 2011, p. 63 (generally testifying that although the official purpose for roadblocks was to "stop the enemy", all those carrying Tutsi identity cards, persons with Tutsi physical features and Hutus perceived to be "conniving with Tutsis" were stopped without distinction and killed).
[2184] Witness BUV02, T. 10 May 2011, pp. 53-54; T. 11 May 2011, pp. 2-5.
[2185] *See* Witness BUV02, T. 11 May 2011, pp. 7-9, 12-15 (referring to a purported 29 July 2009 Gacaca judgement convicting the witness of rape and sentencing him to life imprisonment); T. 10 May 2011, p. 55, T. 11 May 2011, pp. 15-16, 19-21 (concerning a separate Gacaca conviction for undescribed acts committed at "the university" but denying that he had gone into the university during the genocide).
[2186] Witness BUV02, T. 11 May 2011, pp. 26-27.
[2187] Witness BUV02, T. 11 May 2011, p. 22.
[2188] *See* Witness BUV02, T. 11 May 2011, pp. 74-77 (discussing the killing of Queen Rosalie Gicanda with Second Lieutenant Bizimana and Sergeant Mazimpaka).
[2189] Witness BUV02, T. 11 May 2011, pp. 22-23.

879. The Chamber considers that Witness BUV02's evidence fails to raise doubt in the otherwise clear and consistent evidence that ESO soldiers, at least at times, were involved in the administration of it. As discussed above, there is other compelling evidence in the record that soldiers and civilians worked in coordination at roadblocks. The Chamber further considers that Witness FAX's first-hand account of Tutsis being separated at this barrier around 19 April 1994 and Witness BUV02's evidence that the roadblock's purposed shifted from protecting the population generally to targeting Tutsis around 21 April compelling. This is consistent with the broader trend of what was occurring at roadblocks elsewhere in Butare town around this time.

880. While the Chamber views with considerable suspicion Witness BUV02's self-serving evidence that no Tutsis ever passed this roadblock once its purpose shifted to targeting them, there is no evidence of crimes, and, in particular, killings occurring at this barrier. Indeed, Witness FAX's testimony does not reflect that she saw that killings occurred after she observed persons being separated at this barrier.[2190] This allegation is not proved.

7.3.10 Unpleaded Roadblocks

881. The Chamber observes that evidence was elicited about roadblocks not expressly pleaded in the indictment, including barriers in front of the houses of Bwanacyeye and President Théodore Sindikubwabo.[2191] Similarly, evidence was provided of a roadblock by the stadium on a road leading to the arboretum woods.[2192]

882. None of the evidence establishes that crimes were perpetrated by persons enumerated in the Indictment at these roadblocks. The Chamber considers that it is unnecessary to make particularised findings as it relates to this evidence.

883. Prosecution Witness ZBL testified about killings at the roadblock in front of Pauline Nyiramasuhuko's home. This particular roadblock is not specified in the Indictment. Nonetheless, Indictment paragraph 6 provides a non-exhaustive list of roadblocks in Butare prefecture. This event is described in Witness ZBL's annexed witness summary, and is clearly linked with paragraph 6 of the Indictment.[2193]

884. Prosecution Witness ZBL recounted how her brother, his child and the driver were forcibly removed from the car and killed by soldiers at the roadblock in front of Pauline Nyiramasuhuko's house approximately one week after 7 April 1994.[2194]

885. Notwithstanding, the witness does not provide any basis for the identification of the perpetrators, other than the fact that "one could have thought" that they were ESO soldiers, based on the proximity of the roadblock to the ESO.[2195] Her evidence, when viewed among the record implicating ESO soldiers in killings at roadblocks bolsters its credibility. However, the Chamber is not satisfied that this more remote evidence about ESO soldiers committing

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[2190] Witness FAX, T. 17 February 2011, pp. 22-23 (noting that identity cards were being checked on 19 April 1994 for the purpose of identifying *Inyenzi*, and that she, a Tutsi, was ultimately allowed to pass; while they had started beating Tutsis at this point, it was only until "later [that] they started killing Tutsis").
[2191] *See* Prosecution Witness XAG, T. 25 January 2011, pp. 28-29, 35-36, 38; Prosecution Witness AZD, T. 31 January 2011, p. 75; Defence Witness Basesayabo, T. 9 May 2011, p. 20.
[2192] Witness Kayibanda, T. 2 February 2011, p. 52.
[2193] Pre-Trial Brief, Annex para. 44 (p. 34).
[2194] Witness ZBL, T. 10 February 2011, pp. 34-35, 51.
[2195] Witness ZBL, T. 10 February 2011, p. 35.

crimes at other roadblocks is sufficient to establish hers beyond reasonable doubt. This allegation is not proved.

886. Prosecution Witness FAX talked about being raped and a young girl being killed at the Butare University Laboratory roadblock.[2196] This particular roadblock is not specified in the Indictment, although the Chamber observes that Indictment paragraph 6 provides a non-exhaustive list of roadblocks in Butare prefecture. The Prosecution gave notice of the rape of Witness FAX and the killing of the young woman in its Pre-Trial Brief and the annexed witness summary.[2197] The Chamber has previously determined that paragraphs in the body of the Pre-Trial Brief referring to Witness FAX's evidence brought further clarity with respect to paragraph 6 of the Indictment and fell within it.[2198]

887. Nonetheless, the Pre-Trial Brief indicates that this happened at the roadblock "near Butare University", which would lead a reasonable reader to assume that this meant the roadblock pleaded in the Indictment – namely, "near the entrance to Butare University". However, the annexed witness summary refers to the "University Laboratory roadblock", which does not correspond to the Indictment. There is some ambiguity as to the notice given.

888. Moreover, the Prosecution has taken the position that similar evidence related to killing at roadblocks, whose notice is provided only through the Pre-Trial Brief or annexed witness summaries, is not being used as a basis for conviction.[2199] The Chamber considers that this evidence cannot be used for that purpose either. It shall only be considered for context.

[2196] Witness FAX, T. 17 February 2011, pp. 22-26.
[2197] *See* Pre-Trial Brief, para. 83, Annex para. 20 (p. 16).
[2198] *See* Decision on Defence Motion to Strike or Have Declared Irrelevant Any Parts of the Pre-Trial Brief (TC), 13 December 2010, para. 21.
[2199] *See* Prosecutor's Response to Defence Motion for Exclusion of Evidence, 13 May 2011, paras. 63-66 *and* Pre-Trial Brief, Annex, para. 28 (pp. 21-22).

8. BUTARE UNIVERSITY HOSPITAL – KILLINGS, LATE APRIL TO JUNE 1994

8.1 Killing of Patients and *Médecins Sans Frontiéres* Staff

Introduction

889. The Indictment alleges that around the evening of 22 April 1994, soldiers from the FAR, ESO, Ngoma and Butare Gendarmerie camps, *Interahamwe* and armed civilians who were members of the joint criminal enterprise removed and killed 40 bed-ridden patients identified as Tutsis behind the hospital wards. Furthermore, around 23 April, the same security personnel, with the use of a list, selected medical workers and bed-ridden patients and killed them, including three *Médicin Sans Frontieres* nurses, Nadine Iradukuze, Rose and Sabine. Finally, around 24 April, two additional *Médecins Sans Frontiéres* hospital workers, named Alexis Nkundwanimana and Jean Marie Vianney, were killed. During this period, Nizeyimana performed as the military liaison officer and was informed of the violence. Prosecution Witnesses Rony Zachariah and Marie-Paule Spielmann provided relevant evidence.[2200]

890. The Defence acknowledges that killings took place at the Butare University Hospital, but argues that Presidential Guards and their security detail committed them. There is no evidence regarding Nizeyimana's involvement or that of ESO soldiers. Defence Witnesses Déogratias Basesayabo, Vincent Nsabimana and MAL01 provided relevant evidence.[2201]

Evidence

Prosecution Witness Rony Zachariah

891. Witness Zachariah, a Luxembourg national, was a doctor for *Médecins Sans Frontiéres* working in Butare around 24 February until 24 April 1994 and lived in the Buye area.[2202] On 20 April, Butare University Hospital Director, Doctor Jotham, informed Witness Zachariah that the hospital had been designated as a military aid site.[2203] That evening, a Chinook helicopter, carrying between 30 to 40 Presidential Guard soldiers arrived.[2204] Soldiers continued to arrive in the following days, reaching approximately 140 by 23 April.[2205]

[2200] Indictment para. 15(iii)-(vi); Prosecution Closing Brief, paras. 158-163, 175-189. T. 7 December 2011, pp. 3-4, 24, 32-33, 70 (Prosecution Closing Arguments). The Prosecution also points to the evidence of Witness ZBH. The Chamber, as discussed at the conclusion of this section, has found insufficient notice with respect to this evidence and has decided not to consider it.

[2201] Defence Closing Brief, paras. 11, 14, 379, 389, 420; T. 7 December 2011, p. 50 (Defence Closing Arguments).

[2202] Witness Zachariah, T. 14 February 2011, pp. 3-4, 17; Exhibit P25 (Witness Zachariah's Personal Information Sheet).

[2203] Witness Zachariah, T. 14 February 2011, p. 11.

[2204] Witness Zachariah, T. 14 February 2011, p. 11.

[2205] Witness Zachariah, T. 14 February 2011, pp. 12-13. On 21 April 1994, Witness Zachariah learned that 40 children from the pediatric ward had been removed to the prefecture office. The hospital director informed him that the hospital crisis committee decided that patients with minor wounds had to leave for reasons of hygiene. Witness Zachariah went to the prefecture office that day and only observed six or seven children, wearing bandages used by *Médecins Sans Frontiéres*, there. Unidentified persons and hospital staff informed him that

892. Around 8.00 a.m. on 23 April 1994, Witness Zachariah arrived at the hospital and observed prisoners in pink uniforms, loading corpses onto two or three trucks.[2206] He immediately called a meeting and the night staff informed him that about 40 Tutsi patients were taken behind the hospital and beaten or hacked to death by soldiers and *Interahamwe*.[2207]

893. Witness Zachariah rushed to discuss the issue with Doctor Jotham. He told Witness Zachariah that the only responsible authority was a Presidential Guard captain and stated that he would arrange a meeting with him.[2208] About an hour and a half later, Witness Zachariah met with the Presidential Guard captain. Witness Zachariah emphasised the serious ethical and human rights implications of these activities and stated that his organisation could only remain if it could treat everyone – soldiers, Hutus and Tutsis. Without saying much, the captain responded, "[W]ell, we will do what we can".[2209]

894. Witness Zachariah then went to the hospital's triage area. That day, Witness Zachariah saw soldiers accompanied by persons in civilian dress carrying machetes remove three nurses from Butare University Hospital.[2210] Specifically, two Tutsi nurses, Nadine and Rose, were removed over Witness Zachariah's objections.[2211] Furthermore, a Hutu nurse called Sabine was also identified for removal. When Witness Zachariah informed the assailants that she was a Hutu, a soldier produced a list. He replied that her husband was Tutsi, and that Sabine, who was seven months pregnant, would have a Tutsi child.[2212]

895. At this point, Witness Zachariah had staff arrange a meeting with Nizeyimana, who Colonel Tharcisse Muvunyi had previously appointed as the military liaison officer for security and aid related meetings.[2213] They met at the town auditorium and Nizeyimana appeared surprised when Witness Zachariah informed him what had happened.[2214] Nizeyimana responded that he would conduct an investigation and promised to do what he could to improve security.[2215] He told Witness Zachariah to meet him at 8.00 a.m. the next day.[2216]

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the children had been taken away and killed. T. 14 February 2011, pp. 12, 29; Exhibit D18 (Witness Zachariah's Sketch). On 22 April, Witness Zachariah learned that 150 adult Tutsi patients were similarly removed the previous evening and taken to the prefecture office. He returned to the prefecture office and found no patients there. T. 14 February 2011, p. 12. In both instances, Witness Zachariah testified that the Butare University Hospital had the facilities to receive incoming soldiers and retain these patients. T. 14 February 2011, p. 12.

[2206] Witness Zachariah, T. 14 February 2011, p. 12. Witness Zachariah did not specify if he arrived at the Butare University Hospital 8.00 a.m. or p.m. However, a review of his narration of the events that day clearly indicates that he arrived there in the morning. *See* T. 14 February 2011, pp. 15-16 (discussing returning to the hospital between 4.00 and 4.30), 16 (discussing the decision not to leave Rwanda that day as the Rwanda and Burundi border closed between 6.00 and 6.30).

[2207] Witness Zachariah, T. 14 February 2011, pp. 12-13, 17.

[2208] Witness Zachariah, T. 14 February 2011, pp. 13, 17.

[2209] Witness Zachariah, T. 14 February 2011, pp. 13-14.

[2210] Witness Zachariah, T. 14 February 2011, pp. 14-15, 17.

[2211] Witness Zachariah, T. 14 February 2011, p. 14. Witness Zachariah also testified that while standing near a tent where a patient was being sutured, two or three soldiers along with militia carrying machetes took the patient away. T. 14 February 2011, p. 14.

[2212] Witness Zachariah, T. 14 February 2011, pp. 14-15.

[2213] Witness Zachariah, T. 14 February 2011, pp. 7, 15.

[2214] Witness Zachariah, T. 14 February 2011, pp. 15, 29; Exhibit D18 (Witness Zachariah's Sketch).

[2215] Witness Zachariah, T. 14 February 2011, p. 15.

[2216] Witness Zachariah, T. 14 February 2011, p. 15.

896. Witness Zachariah returned to the hospital between 4.00 and 4.30 p.m.[2217] He learned that Alexis and Jean-Marie were taken away.[2218] He also heard that Nadine and Rose had been beaten to death behind the hospital and that Sabine was killed.[2219] He heard screams in the hospital as patients continued to be removed in ones and twos.[2220] Given the untenable working conditions, Witness Zachariah and the *Médecins Sans Frontiéres* staff decided to leave the hospital.[2221]

897. The following morning, on 24 April 1994, Witness Zachariah returned to the auditorium, met Nizeyimana and informed him that his medical team was being evacuated.[2222] Nizeyimana's investigation confirmed that patients and *Médecins Sans Frontiéres* staff had been killed.[2223] Nizeyimana further stated that the situation was out of control and that he could not guarantee the security of hospital staff or patients.[2224] Witness Zachariah returned to meet his staff, and they crossed the border into Burundi.[2225]

Prosecution Witness Marie-Paule Spielmann

898. Witness Spielmann, a Luxembourg national, lived in Buye cellule, Butare town and was working for *Médecins Sans Frontiéres* in April 1994.[2226] About one week after 6 April, as more wounded started to arrive, Witness Spielmann and other *Médecins Sans Frontiéres* staff started concentrating their efforts at Butare University Hospital, visiting between four and five times a day.[2227]

899. On 20 April 1994, a helicopter landed with about 40 wounded soldiers, who the hospital director stated were members of the Presidential Guard.[2228] They wore uniforms distinct from those worn by ESO soldiers.[2229] Presidential Guards continued to arrive daily until there were about 140 being cared for at the hospital by 24 April.[2230] By this time, Witness Spielmann had seen soldiers with the same uniform all over Butare.[2231]

900. Local *Médecins Sans Frontiéres* staff informed Witness Spielmann on the morning of 23 April 1994 that around 40 patients had been taken behind the Butare University Hospital and killed.[2232] That day, Witness Zachariah told Witness Spielmann that Tutsi *Médecins Sans Frontiéres* staff named Rose and Nadine had been removed.[2233] A Hutu *Médecins Sans*

[2217] Witness Zachariah, T. 14 February 2011, pp. 15-16.
[2218] Witness Zachariah, T. 14 February 2011, p. 15.
[2219] Witness Zachariah, T. 14 February 2011, p. 15.
[2220] Witness Zachariah, T. 14 February 2011, p. 16.
[2221] Witness Zachariah, T. 14 February 2011, p. 16.
[2222] Witness Zachariah, T. 14 February 2011, pp. 7, 16, 29; Exhibit D18 (Witness Zachariah's Sketch).
[2223] Witness Zachariah, T. 14 February 2011, pp. 16-17.
[2224] Witness Zachariah, T. 14 February 2011, p. 17.
[2225] Witness Zachariah, T. 14 February 2011, p. 17.
[2226] Witness Spielmann, T. 31 January 2011, pp. 4-6; Exhibit P14 (Witness Spielmann's Personal Information Sheet). Witness Spielmann was married to Witness Zachariah in 1995. T. 31 January 2011, p. 6.
[2227] Witness Spielmann, T. 31 January 2011, pp. 7-8.
[2228] Witness Spielmann, T. 31 January 2011, pp. 8, 13.
[2229] Witness Spielmann, T. 31 January 2011, p. 8.
[2230] Witness Spielmann, T. 31 January 2011, p. 8.
[2231] Witness Spielmann, T. 31 January 2011, p. 13.
[2232] Witness Spielmann, T. 31 January 2011, pp. 12-13.
[2233] Witness Spielmann, T. 31 January 2011, pp. 13-14. Witness Spielmann learned from local *Médecins Sans Frontiéres* staff that around 170 Tutsi patients had been killed at or removed from the Butare University Hospital. T. 31 January 2011, p. 11.

Frontiéres nurse called Sabine, who was married to a Tutsi and was seven months pregnant, had also been taken away.[2234]

901. Witness Spielmann rushed to a tent where a French nurse stated that soldiers had presented a list and violently removed the women.[2235] Witness Spielmann testified that soldiers, previously identified to her as Presidential Guards, were responsible but noted that civilians carrying guns and machetes "were at those times on the hospital premises".[2236] At that time, Witness Spielmann did not know what happened to the women.[2237] She later learned that other *Médecins Sans Frontiéres* workers, Alexis and Jean-Marie, were taken.[2238]

902. Later that day, Witnesses Spielmann and Zachariah as well as a *Médecins Sans Frontiéres* employee from Holland arranged for an emergency meeting with the prefect and Nizeyimana, who had previously been designated as a military liaison officer in charge of security for international organisations.[2239] Nizeyimana was informed about the removal of patients and staff from the hospital.[2240] He responded that he would look into the situation.[2241]

903. That evening, the *Médecins Sans Frontiéres* staff decided to leave given the lack of security.[2242] The next morning, on 24 April 1994, they formed a convoy.[2243] On the way out, the convoy stopped at the prefecture so that Witness Zachariah and the Dutch *Médecins Sans Frontiéres* employee could tell the prefect and Nizeyimana that they were leaving.[2244] When Zachariah returned, he informed Witness Spielmann that the situation was out of control and that he had received confirmation that *Médecins Sans Frontiéres* staff had been killed.[2245] She could not recall with whom Zachariah had spoken.[2246] Witness Spielmann and the others left Butare that day.[2247]

Prosecution Witness ZBL

904. Witness ZBL, a Tutsi, lived in Huye commune, Butare prefecture in 1994.[2248] She left her home and went to Butare University Hospital on an unspecified date in April.[2249] She remained there into July and until the *Inkotanyi* captured Butare, tending to her wounded daughter.[2250]

[2234] Witness Spielmann, T. 31 January 2011, pp. 13-14.
[2235] Witness Spielmann, T. 31 January 2011, p. 13.
[2236] Witness Spielmann, T. 31 January 2011, p. 13. The Chamber observes that Witness Spielmann initially testified "we saw soldiers with lists that were taking also taking away our local staff …". T. 31 January 2011, p. 13. However, after further questioning, it appears that her knowledge about the removal of Rose, Nadine and Sabine was second-hand, rather than first-hand. T. 31 January 2011, p. 13.
[2237] Witness Spielmann, T. 31 January 2011, p. 12.
[2238] Witness Spielmann, T. 31 January 2011, p. 14.
[2239] Witness Spielmann, T. 31 January 2011, pp. 10-14.
[2240] Witness Spielmann, T. 31 January 2011, p. 11.
[2241] Witness Spielmann, T. 31 January 2011, pp. 11, 13-14.
[2242] Witness Spielmann, T. 31 January 2011, p. 12.
[2243] Witness Spielmann, T. 31 January 2011, p. 12.
[2244] Witness Spielmann, T. 31 January 2011, p. 12.
[2245] Witness Spielmann, T. 31 January 2011, p. 12.
[2246] Witness Spielmann, T. 31 January 2011, p. 12.
[2247] Witness Spielmann, T. 31 January 2011, p. 6.
[2248] Witness ZBL, T. 10 February 2011, pp. 30-31; Exhibit P23 (Witness ZBL's Personal Information Sheet).
[2249] Witness ZBL, T. 10 February 2011, pp. 34-37.
[2250] Witness ZBL, T. 10 February 2011, pp. 37-38.

905. Witness ZBL's daughter was initially kept in one of four or five tents, near the maternity ward, between the surgical ward and "another building for other hospital services" for about a week.[2251] Many people were kept in these tents. With the exception of about four or five persons, all who stayed there were killed.[2252]

Prosecution Witness ZT

906. Prosecution Witness ZT, a Tutsi, was a student at the ESO in 1994.[2253] About two weeks after President Juvénal Habyarimana's death on 6 April, the witness was assigned by Lieutenant Bizimana to bring food to Presidential Guard soldiers at the Butare University Hospital.[2254] Although the Presidential Guards refused to accept food from her because she was an *Inyenzi*, she continued to bring food to other patients until a date she could not recall in May.[2255] During this period, the witness observed prisoners dressed in pink uniforms, who had been brought in to bury the Tutsis who had been killed behind the hospital by ESO soldier Fulgence Niyibizi.[2256]

Prosecution Witness ZW

907. On 6 April 1994, Witness ZW, a Tutsi, was a patient in the maternity ward of the Butare University Hospital, who had received a Hutu identity card from an ESO soldier named Félicien Kanimba.[2257] Her room was above ground level and her window looked out behind the hospital.[2258] She remained in the building continuously until early July.[2259] Witness ZW testified that ESO soldiers came first, but wounded soldiers also arrived and carried out executions there. Unlike the ESO soldiers, the witness was unaware of the wounded soldiers carrying firearms.[2260]

Prosecution Witness YAP

908. Witness YAP, a Tutsi, worked at Butare University Hospital in 1994 and lived not far from it.[2261] Due to fear that he would be killed, the witness stopped going to the hospital around 19 April.[2262] Around this time, soldiers, who had been wounded at Mount Jali in Kigali were brought to the hospital and many were present there.[2263]

[2251] Witness ZBL, T. 10 February 2011, p. 38.
[2252] Witness ZBL, T. 10 February 2011, p. 38.
[2253] Witness ZT, T. 7 February 2011, p. 7; Exhibit P19 (Witness ZT's Personal Information Sheet).
[2254] Witness ZT, T. 7 February 2011, pp. 8-11.
[2255] Witness ZT, T. 7 February 2011, pp. 9-11.
[2256] Witness ZT, T. 7 February 2011, pp. 12-13. The Chamber observes that Niyibizi is identified as Ndayizeye at T. 7 February 2011, p. 13. Given Witness ZT's extensive accounts of Fulgence Niyibizi committing killings at the Butare University Hospital (T. 7 February 2011, pp. 11-12), the reference to Ndayizeye (instead of Niyibizi) appears to be an error.
[2257] Witness ZW, T. 9 February 2011, pp. 67, 77; T. 10 February 2011, pp. 14-15; Exhibit P22 (Witness ZW's Personal Information Sheet).
[2258] Witness ZW, T. 9 February 2011, p. 70.
[2259] Witness ZW, T. 9 February 2011, pp. 73, 77.
[2260] Witness ZW, T. 9 February 2011, p. 68; T. 10 February 2011, pp. 24-25.
[2261] Witness YAP, T. 21 February 2011, p. 38; Exhibit P32 (Witness YAP's Personal Information Sheet).
[2262] Witness YAP, T. 21 February 2011, p. 38. *See also* II.8.3.
[2263] Witness YAP, T. 21 February 2011, pp. 61-62.

Defence Witness Déogratias Basesayabo

909. Witness Basesayabo, a Hutu, was a medical intern at Butare University Hospital in April 1994.[2264] Around 15 April, the hospital received an influx of patients, primarily Tutsi civilians, suffering from various trauma injuries.[2265] Shortly thereafter, soldiers from the front, many who had been shot, started to arrive.[2266] Generally unaware of what camp the soldiers came from, Witness Basesayebo believed that most were Presidential Guards as the hospital had been requisitioned for them.[2267] While the first of the wounded soldiers did not carry their weapons in the hospital, some soldiers in the later groups that arrived did.[2268] Doctors from *Médecins Sans Frontiéres* treated many of the patients that came.[2269]

910. One morning, around 16 April 1994, Witness Basesayabo learned that a Tutsi nurse, who worked in the intensive care unit and had stayed overnight, had observed hospitalised soldiers remove about 10 Tutsi patients from the hospital and attack them.[2270] The patients were subsequently found to have been shot and killed.[2271] This prompted Doctor Gatera, head of surgery, to speak to the "head of the soldiers", whose name the witness did not know.[2272] The doctor told the soldier that steps would be taken to prevent the admission of soldiers if such violence continued.[2273]

911. In the next few days, but before 20 April 1994, Witness Basesayabo learned that the nurse, who had observed the first attack by soldiers, was killed.[2274] Patients who witnessed the event stated that bandaged soldiers, who had been admitted into the hospital, attacked the nurse around 2.00 a.m.[2275] Witness Basesayabo observed the nurse's corpse in the mortuary.[2276] He generally testified that "hospital authorities" confronted the soldiers and that unidentified "soldiers swore" that the perpetrators would be punished.[2277] A curfew was put in place preventing soldiers from entering the hospital after 10.00 p.m.[2278]

912. Around 20 April 1994, the witness learned from an unidentified source that unidentified persons in the hospital saw militiamen kidnap a number of patients. Soldiers, who appeared to be working in coordination with the militia, remained outside the

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[2264] Witness Basesayabo, T. 9 May 2011, pp. 9, 17; Exhibit D23 (Witness Basesayabo's Personal Information Sheet). Witness Basesayabo lived in Cyarwa Sumo sector, Ngoma commune, about 600 metres from the Butare University Hospital. He sometimes worked at the hospital from about 8.00 a.m. to 10.00 or 11.00 p.m. T. 9 May 2011, pp. 9, 14, 21. However, he often worked late into the night and would stay at a nearby hostel, only returning home about one night a week. T. 9 May 2011, pp. 14, 21-22, 48-49. He left Butare around the beginning of July 1994. T. 9 May 2011, p. 28.
[2265] Witness Basesayabo, T. 9 May 2011, pp. 10-11.
[2266] Witness Basesayabo, T. 9 May 2011, pp. 10-11, 14.
[2267] Witness Basesayabo, T. 9 May 2011, pp. 14, 19. Witness Basesayabo was not aware of wounded ESO soldiers being brought to the Butare University Hospital, noting he was unsure that such soldiers were sent to the "front". T. 9 May 2011, p. 43.
[2268] Witness Basesayabo, T. 9 May 2011, pp. 18-19.
[2269] Witness Basesayabo, T. 9 May 2011, p. 10.
[2270] Witness Basesayabo, T. 9 May 2011, pp. 12, 31.
[2271] Witness Basesayabo, T. 9 May 2011, pp. 12, 30.
[2272] Witness Basesayabo, T. 9 May 2011, pp. 12-13, 42.
[2273] Witness Basesayabo, T. 9 May 2011, pp. 12-13.
[2274] Witness Basesayabo, T. 9 May 2011, pp. 13, 30-32.
[2275] Witness Basesayabo, T. 9 May 2011, p. 13.
[2276] Witness Basesayabo, T. 9 May 2011, pp. 13, 30-31.
[2277] Witness Basesayabo, T. 9 May 2011, p. 13.
[2278] Witness Basesayabo, T. 9 May 2011, pp. 13-14.

hospital.[2279] Some of the patients were found dead, outside the hospital's fence and in the neighborhood of the hospital.[2280]

913. The witness also learned that a *Médecins Sans Frontiéres* nurse was killed.[2281] Unaware of the specifics of her murder, he did not think she was killed at the Butare University Hospital.[2282] The generally deteriorating security situation, and, in particular, the murder of Sabine angered the *Médecins Sans Frontiéres* doctors and prompted them to leave for Bujumbura, Burundi.[2283]

914. Aside from what Witness Basesayabo described above, he did not see killings at the Butare University Hospital or Tutsi corpses.[2284] While he heard that unidentified persons were killed behind the hospital, it was difficult to distinguish between patients who voluntarily left and those who were abducted and killed.[2285] Likewise, he was unaware of soldiers checking patient identity cards inside the hospital, stating that Tutsi patients had been evacuated by *Médecins Sans Frontiéres*.[2286] He was not present when prisoners were brought to the hospital to remove Tutsis who had been killed there.[2287] There were a number of Tutsi doctors and nurses that remained at the hospital until shells started falling around it in July 1994.[2288]

Defence Witness Vincent Nsabimana

915. Witness Nsabimana, a Hutu, was a medical intern at the Butare University Hospital in April until late May or June 1994.[2289] He generally worked during the days, Monday through Friday, and, although assigned to internal medicine, assisted in the surgery ward as well.[2290] Doctors from *Médecins Sans Frontiéres* arrived at the hospital prior to 6 April 1994 in order to initially treat Burundian refugees.[2291]

916. Massacres started in the second half of April 1994, and shortly after 20 April, primarily Tutsi victims of attacks started to arrive at the hospital.[2292] Around the same time, wounded soldiers and their "armed carers" were also being admitted at the Butare University Hospital.[2293]

917. Shortly after President Théodore Sindikubwabo's speech in April 1994, Witness Nsabimana heard that a number of patients were killed by unidentified perpetrators outside

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[2279] Witness Basesayabo, T. 9 May 2011, pp. 13-15, 30.
[2280] Witness Basesayabo, T. 9 May 2011, pp. 14, 31.
[2281] Witness Basesayabo, T. 9 May 2011, p. 33.
[2282] Witness Basesayabo, T. 9 May 2011, p. 33.
[2283] Witness Basesayabo, T. 9 May 2011, pp. 15, 33.
[2284] Witness Basesayabo, T. 9 May 2011, pp. 31-32, 34.
[2285] Witness Basesayabo, T. 9 May 2011, pp. 31-32, 34.
[2286] Witness Basesayabo, T. 9 May 2011, pp. 33-34.
[2287] Witness Basesayabo, T. 9 May 2011, pp. 33-34.
[2288] Witness Basesayabo, T. 9 May 2011, pp. 15-16, 28.
[2289] Witness Nsabimana, T. 18 May 2011, pp. 64, 68; Exhibit D38 (Witness Nsabimana's Personal Information Sheet). Witness Nsabimana lived at a hostel at the National University of Rwanda. It was situated on Mamba hill, about 150 metres from the Butare University Hospital's fence. T. 18 May 2011, p. 64; T. 19 May 2011, p. 10.
[2290] Witness Nsabimana, T. 18 May 2011, pp. 65-66; T. 19 May 2011, pp. 8-9.
[2291] Witness Nsabimana, T. 18 May 2011, p. 70.
[2292] Witness Nsabimana, T. 18 May 2011, pp. 65, 71.
[2293] Witness Nsabimana, T. 18 May 2011, p. 65.

the hospital but not on its premises.[2294] Furthermore, in the second half of April, when the witness would return to the hospital in the morning, he observed that large numbers of patients – predominantly Tutsis – were missing. Hospital staff also informed him of "disappearances", but he was unaware of the circumstances in which they occurred.[2295]

918. The witness was told that the head of his department was aware of the situation and reported it to the authorities.[2296] Nonetheless, *Médecins Sans Frontiéres* staff left about one week after the "onset of massacres" that had started in the second half of April 1994.[2297] The witness and other interns guessed that they left due to insecurity caused by the presence of soldiers in the hospital. They also thought that the *Médecins Sans Frontiéres* staff could have left because they were unable to treat wounded soldiers.[2298]

919. The disappearances diminished towards the end of April or early May 1994.[2299] In May, Tutsi patients remained in the hospital and Tutsi employees continued to work there.[2300] At no point did Witness Nsabimana see abductions at the hospital or anyone checking identity cards of patients or refugees there.[2301] Likewise, he did not see any violence against Tutsis at the hospital or corpses of murdered Tutsis.[2302] He did learn of a mass grave in the vicinity of the university laboratory, although he believed it was closer to the National Museum.[2303]

Defence Witness MAL01

920. Witness MAL01, a Hutu, was a nurse who worked during the day at the Butare University Hospital in April and May 1994.[2304] After 6 April, wounded civilians and soldiers began to arrive at the hospital.[2305] The injured soldiers, who had come from the "battle front", were accompanied by "carers".[2306] *Médecins Sans Frontiéres* staff also brought refugees to the hospital and established tents.[2307]

921. On dates she could not recall, the witness learned from unidentified sources that the wounded soldiers' "carers" had abducted Tutsi patients during the night.[2308] They ranged

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[2294] Witness Nsabimana, T. 19 May 2011, pp. 4-5.
[2295] Witness Nsabimana, T. 18 May 2011, pp. 66-68; T. 19 May 2011, pp. 3-4, 9-10. Two Tutsi classmates of Witness Nsabimana – Marthe and Anne – disappeared but, by the time of his testimony, the witness had heard that they were alive. T. 18 May 2011, pp. 66-67.
[2296] Witness Nsabimana, T. 19 May 2011, p. 9.
[2297] Witness Nsabimana, T. 18 May 2011, pp. 70-71; T. 19 May 2011, p. 6.
[2298] Witness Nsabimana, T. 19 May 2011, pp. 6-7.
[2299] Witness Nsabimana, T. 18 May 2011, p. 68.
[2300] Witness Nsabimana, T. 18 May 2011, p. 68.
[2301] Witness Nsabimana, T. 19 May 2011, pp. 3-4.
[2302] Witness Nsabimana, T. 19 May 2011, pp. 3-4.
[2303] Witness Nsabimana, T. 19 May 2011, p. 7.
[2304] Witness MAL01, T. 16 May 2011, pp. 61-62, 66-67, 69, 73-74, 76-77; Exhibit D33 (Witness MAL01's Personal Information Sheet). Witness MAL01 originally testified that she stopped working a Butare University Hospital and left the prefecture in the first week of May 1994. T. 16 May 2011, pp. 66, 69, 73. However, she later conceded that she was not sure when in May she left. T. 16 May 2011, pp. 76-77.
[2305] Witness MAL01, T. 16 May 2011, pp. 63, 74. Witness MAL01 confirmed that she saw wounded patients accompanied by people "from about mid-April 1994". T. 16 May 2011, p. 74.
[2306] Witness MAL01, T. 16 May 2011, p. 63.
[2307] Witness MAL01, T. 16 May 2011, pp. 63-64, 74.
[2308] Witness MAL01, T. 16 May 2011, pp. 63, 74. Witness MAL01 expressly stated that she never observed an abduction or soldiers leave with patients. T. 16 May 2011, pp. 63, 68, 74.

from the disappearance of a single woman to larger groups of persons.[2309] She was unaware of any reaction by the hospital's administration to these events but stated that the abductions stopped after "very few days".[2310] Witness MAL01 was unaware of the killing of 40 patients behind the hospital on the night of 22 April 1994.[2311]

922. Tutsis remained at the Butare University Hospital after these events, including hospital employees Josepha, from ophthalmology, and Geneviève, of the paediatric unit.[2312] Witness MAL01 did not know when *Médecins Sans Frontiéres* left.[2313]

Deliberations

923. The Indictment alleges particular killings occurring at Butare University Hospital on 22, 23 and 24 April 1994. While the Prosecution points to considerable evidence of violence at the hospital, Witnesses Zachariah and Spielmann provided the only evidence directly relevant to these attacks.

(i) Killing of 40 Bed-Ridden Patients, 22 April 1994

924. The Prosecution evidence as it relates to this allegation is supported by the second-hand accounts of Witnesses Zachariah and Spielmann. The incidents alleged in the Indictment appear to have happened overnight and was not witnessed by either.

925. At the outset, there is no dispute that *Médecins Sans Frontiéres* established itself at the Butare University Hospital. The Defence does not dispute the presence of Prosecution Witnesses Zachariah and Spielmann and the evidence convincingly establishes that they were at the Butare University Hospital up until 24 April 1994.

926. Nonetheless, the testimonies of Witnesses Zachariah and Spielmann as it relates to these killings tend to implicate Presidential Guards, rather than ESO soldiers. Notably, there is no dispute that Presidential Guards were in fact at the hospital by this time.[2314] When Witness Zachariah found out about the killings by soldiers and *Interahamwe* on the morning of 22 April 1994, he was immediately directed to speak with the Presidential Guard captain, who was identified as the only responsible authority. Likewise, while Witness Spielmann did not observe the killings, her evidence tends to reflect that Presidential Guards were being

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[2309] Witness MAL01, T. 16 May 2011, p. 63.
[2310] Witness MAL01, T. 16 May 2011, pp. 65-66.
[2311] Witness MAL01, T. 16 May 2011, p. 75.
[2312] Witness MAL01, T. 16 May 2011, pp. 66-67.
[2313] Witness MAL01, T. 16 May 2011, pp. 63-64.
[2314] *See also* Prosecution Witness DCO, T. 10 February 2011, p. 72 (confirming that Presidential Guards arrived); Prosecution Witness ZT, T. 7 February 2011, pp. 8-11 (was assigned to bring food to wounded Presidential Guards at Butare University Hospital, who called her *Inyenzi*); Defence Witness Basesayabo, T. 9 May 2011, p. 14 (most of the hospitalised soldiers were Presidential Guards). Several witnesses appear to identify the Presidential Guards based on the fact that wounded soldiers arrived at Butare University Hospital. *See* Prosecution Witness ZW, T. 10 February 2011, pp. 24-25 (ESO soldiers came first, but wounded soldiers also arrived and carried out executions there; unlike the ESO soldiers, the witness was unaware of the wounded soldiers carrying firearms); Prosecution Witness FAX, T. 17 February 2011, pp. 37-39 (the witness saw a large number of wounded soldiers at the hospital at the end of April 1994); Defence Witness MAL01, T. 16 May 2011, pp. 63, 75 (after President Habyarimana was assassinated the hospital admitted wounded soldiers from the front, who were accompanied by escorts); Defence Witness Nsabimana, T. 18 May 2011, p. 65 (wounded soldiers, accompanied by armed escorts, arrived and remained at the hospital starting from around 20 April 1994).

identified as the culprits. The Prosecution disingenuously attempts to undermine the ability of either witness to distinguish ESO soldiers from Presidential Guards.[2315] The Chamber, which discusses at length other evidence of crimes purportedly committed by ESO soldiers, considers that it fails to demonstrate that the killings Witnesses Zachariah and Spielmann learned about were committed by ESO soldiers.

927. Of particular significance, there is no direct evidence of Nizeyimana's involvement in this crime. The evidence fails to demonstrate that he made a significant or substantial contribution to it. The Prosecution's reliance on general evidence of ESO soldiers participating in violence at the hospital is insufficient to exclude the reasonable possibility that Presidential Guard soldiers (or possibly other soldiers) had committed the killings that are alleged in the Indictment.

928. In so finding, the Chamber considers the evidence of Witnesses Zachariah and Spielmann concerning their 23 April 1994 meeting with Nizeyimana.[2316] Their evidence reflects that Nizeyimana was informed about the violence that had occurred. Notwithstanding, their evidence fails to expressly demonstrate that they informed Nizeyimana that *ESO soldiers* were involved in these crimes. Indeed, as their testimonies tend to implicate Presidential Guards as involved in abducting and killing patients, the reasonable possibility remains that he was not alerted to the purported involvement of ESO soldiers in killings or violence at Butare University Hospital.

929. Indeed, the record fails to reflect that Nizeyimana, even as the designated liaison officer and contact point for the *Médecins Sans Frontiéres* staff, exercised effective control over the perpetrators of these killings.[2317] Rather, their evidence reflects that he was appointed to deal with security issues raised by international organisations. It does not demonstrate responsibility for the hospital or effective control over every soldier or civilians within it. Indeed, by Witness Zachariah's own account, he had resolved to speak to Nizeyimana or "even meet Colonel Muvunyi if required", tending to reflect his belief that the ultimate responsibility for the hospital lay not with the Accused, but ultimately with Colonel Muvunyi.[2318] This allegation is dismissed.

(ii) Killing of Médecins sans Frontiéres Staff, 23 to 24 April 1994

930. Through Witness Zachariah, the Prosecution presented first-hand evidence of soldiers and civilians removing two Tutsi nurses – Nadine and Rose – and one Hutu nurse – Sabine – who was seven months pregnant with a child whose father was a Tutsi. Likewise, Witness

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[2315] The Chamber considers the Prosecution submissions concerning the inability of Witnesses Zachariah and Spielmann to "identify the specific FAR military unit" disingenuous and bordering on misleading. *See* Prosecution Closing Brief, para. 163. Witness Spielmann's testimony demonstrates that she was capable of distinguishing the uniforms of Presidential Guards from ESO soldiers. Witness Spielmann, T. 31 January 2011, p. 8. Possibly aware that their case was not unfolding as anticipated, the Prosecution at no point asked Witness Zachariah, who testified after Witness Spielmann, if he could distinguish between Presidential Guards and, for example, ESO soldiers. Notably, Witness Zachariah, when talking about an event unrelated to killings at Butare University Hospital, remarked that different soldiers wore different berets. Witness Zachariah, T. 14 February 2011, p. 31. No follow-up was conducted.
[2316] The Defence accepts that this occurred. *See* Defence Closing Brief, para. 14.
[2317] Witness OUV03 generally testified to Nizeyimana's role as a liaison officer with NGOs. Witness OUV03, T. 31 May 2011, pp. 12-13; T. 1 June 2011, p. 9.
[2318] *See* Witness Zachariah, T. 14 February 2011, p. 14.

Spielmann learned from Witness Zachariah on 23 April 1994 that these three women had been removed from the hospital. Witness Spielmann then spoke with a French nurse who said that soldiers had presented a list and violently removed these women. According to Witness Spielmann, these soldiers had been previously identified as Presidential Guards.

931. Witness Zachariah later learned that Nadine and Rose were beaten to death behind the hospital and that Sabine was killed. Witness Spielmann testified that on 24 April 1994, Witness Zachariah had confirmed that *Médecins Sans Frontiéres* staff had been killed.

932. Once again, the Chamber has no doubts that Witnesses Spielmann and Zachariah were present at the Butare University Hospital on 23 April 1994. Furthermore, Witness Zachariah's observations of soldiers and armed civilians moving through the hospital, and removing persons identified as Tutsis – or in the case of Sabine, a Hutu pregnant with a Tutsi child – finds broad circumstantial corroboration.

933. The Chamber observes that neither witness testified to having observed the ultimate killing of the *Médecins Sans Frontiéres* nurses who were removed. Notwithstanding, Witness Zachariah's evidence reflects that he learned of their deaths later that day once back at the hospital. Given the immediacy in which the information was conveyed to him and the fact that at least two of the nurses were killed nearby and behind the hospital, the Chamber considers this second-hand evidence compelling. Indeed, it fits within a larger pattern of killings and violence perpetrated against Tutsis behind the Butare University Hospital. Finally, Defence Witness Basesayabo learned of the killing of a *Médecins Sans Frontiéres* nurse, although he was unaware of the details of her death and believed that it happened away from the hospital.

934. However, the evidence clearly does not implicate ESO soldiers in this attack. Once again, although Witness Zachariah testified to having observed soldiers removing Rose, Nadine and Sabine, the Prosecution at no point sought clarification from this witness about the identity of the soldiers. Notably, Witness Spielmann, who had testified before Witness Zachariah, implicated Presidential Guards as the culprits. The Prosecution's failure to rebut this reasonable identification through the direct evidence of Witness Zachariah is fatal to its case.

935. Similar to the preceding allegation, there is no evidence directly implicating Nizeyimana in these killings. The evidence fails to demonstrate that he made a significant or substantial contribution to them. The Prosecution's reliance on general evidence of ESO soldiers participating in violence at the hospital is insufficient to exclude the reasonable possibility that Presidential Guard soldiers were the perpetrators.

936. In so finding, the Chamber considers the evidence of Witnesses Zachariah and Spielmann concerning their 23 April 1994 meeting with Nizeyimana. Their evidence reflects that Nizeyimana was informed about the violence that had occurred. Notwithstanding, their evidence fails to expressly demonstrate that they informed Nizeyimana that *ESO soldiers* were involved in these crimes. Indeed, Witness Spielmann's evidence clearly implicates Presidential Guards in the abduction and killing of *Médecins Sans Frontiéres* nurses, the reasonable possibility remains that he was not alerted to the purported involvement of ESO soldiers in killings or violence at Butare University Hospital.

937. Indeed, the record fails to reflect that Nizeyimana, even as the designated liaison officer and contact point for the *Médecins Sans Frontiéres* staff, exercised effective control over the perpetrators of these killings. Notably, Witness Zachariah's evidence reflects that a Presidential Guard captain was present at Butare University Hospital. The Prosecution has led no evidence demonstrating Nizeyimana's *de jure* or *de facto* authority over him or the

troops for which he was responsible. Indeed, to the extent that civilians were acting in concert with Presidential Guards, the evidence reasonably reflects that the Presidential Guard exercised effective control over the civilian assailants and that Nizeyimana did not. Moreover, by Witness Zachariah's own account, he had resolved to speak to Nizeyimana or "even meet Colonel Muvunyi if required", tending to reflect his belief that the ultimate responsibility for the hospital lay not with the Accused, but with Colonel Muvunyi.[2319] This allegation is dismissed.

[2319] *See* Witness Zachariah, T. 14 February 2011, p. 14.

8.2 Killing of an Elderly Man

Introduction

938. The Indictment alleges that from around 20 April 1994, Nizeyimana authorised, ordered or instigated soldiers from the FAR, ESO, Ngoma Camp and Butare Gendarmerie Camp, and *Interahamwe* to kill many civilians identified as Tutsi. In particular, Corporal Fulgence Niyibizi and a soldier called Mandela killed an elderly male civilian with sticks near a location called "post hospital". The Prosecution relies on the evidence of Witness BDE.[2320]

939. The Defence argues that Witness BDE's evidence lacks detail and is uncorroborated. Furthermore, her evidence that all Tutsis at Butare University Hospital were killed is contradicted by other evidence.[2321]

Evidence

Prosecution Witness BDE

940. Witness BDE was a *nouvelle formule* cadet at the ESO Camp in April 1994, working in the supply unit from 7 April.[2322] She left in late June when the fall of Butare was imminent.[2323] While visiting the Butare University Hospital around or after 25 April, Witness BDE saw ESO cadet Fulgence Niyibizi at its entrance, leading a man away.[2324] Witness BDE saluted Niyibizi and asked what he was doing. [2325] Niyibizi responded that he flushed out an *Inyenzi*, who the witness understood to be this man.[2326] Witness BDE responded that the man was not an *Inyenzi*, to which Niyibizi brandished a knife and threatened to kill the witness.[2327]

941. The two parted, with the witness moving "further down".[2328] She then told Niyibizi that he should release the man, prompting Niyibizi to respond that he had already killed many people and was going to kill this individual.[2329] Niyibizi then cut a branch from a tree and struck the man in the head, beating him to death.[2330] This was done in the presence of two other soldiers, including one called "Mandela".[2331] Niyibizi returned to the hospital.[2332]

[2320] Indictment, paras. 15, 15(ii); Prosecution Closing Brief para. 166(b); T. 7 December 2011, pp. 3-4, 10-11, 18 (Prosecution Closing Arguments).
[2321] Defence Closing Brief, paras. 97, 416; T. 7 December 2011, pp. 41, 43, 53 (Defence Closing Arguments).
[2322] Witness BDE, T. 28 January 2011, pp. 8-9; T. 31 January 2011, p. 51; Exhibit P13 (Witness BDE's Personal Information Sheet).
[2323] Witness BDE, T. 28 January 2011, p. 9.
[2324] Witness BDE, T. 28 January 2011, pp. 30-31; T. 31 January 2011, pp. 39, 42. Witness BDE did not specify the date of this incident. However, she did not leave the ESO Camp until "towards the 25th of April", when she took "some food to the sick people who were in the hospital". T. 31 January 2011, p. 39. When testifying about the event with Fulgence Niyibizi, she stated her purpose for being at the hospital was to "visit some patients". T. 28 January 2011, p. 31. Thus, it is not clear if she saw him on the occasion when she first left camp or later.
[2325] Witness BDE, T. 28 January 2011, p. 31.
[2326] Witness BDE, T. 28 January 2011, p. 31.
[2327] Witness BDE, T. 28 January 2011, p. 31.
[2328] Witness BDE, T. 28 January 2011, p. 31.
[2329] Witness BDE, T. 28 January 2011, p. 31.
[2330] Witness BDE, T. 28 January 2011, p. 31.
[2331] Witness BDE, T. 28 January 2011, p. 31.

942. Niyibizi did not frequently come to the ESO Camp.[2333] He was a notorious killer, particularly at the university and the hospital.[2334] He publicly boasted about his killings and announced that he would kill up to 100 Tutsis.[2335] He informed the witness that he was working in coordination with Corporal Sekimonyo and that Sibomana led the *Interahamwe*.[2336] Indeed, Niyibizi was among a group of soldiers that were notorious killers who would immediately implement the orders Nizeyimana gave to them.[2337]

Deliberations

943. As discussed elsewhere, the Prosecution has led other evidence about ESO Corporal Fulgence Niyibizi participating in violence at Butare University Hospital. However, with respect to Indictment paragraph 15(ii), Witness BDE appears to be the sole witness providing evidence in support of this allegation.

944. As a challenge to Witness BDE's general credibility, the Defence argues that she met "frequently" with others to discuss testifying against Nizeyimana. Notably, Witness BDE confirmed that she met with Prosecution Witness Gahizi, who had informed her that he would testify about Nizeyimana and that she confirmed that she would as well; however, she denied that she discussed her testimony with him.[2338] Similarly, Witness BDE confirmed that she met with Pascasie Uwimana, but denied that she discussed the substance of her testimony with Uwimana.[2339] There is nothing in the record disputing Witness BDE's assertions. The Chamber considers the Defence arguments unfounded.

945. Turning to Witness BDE's evidence, the Chamber has no doubt that she, as an ESO soldier, would have been in a position to identify ESO Corporal Fulgence Niyibizi in 1994. Moreover, as discussed previously, there is credible evidence that Fulgence Niyibizi was involved in violence at the Butare University Hospital. The Chamber considers that this circumstantial evidence bolsters Witness BDE's otherwise uncorroborated account.

946. In addition, Witness BDE's evidence as to why she was at Butare University Hospital also finds considerable circumstantial support. The testimonies of Prosecution Witnesses ZT and ZY, as well as Defence Witness Basesayabo reflect that female ESO soldiers were assigned to deliver food to soldiers there after the shooting down of the President's plane.[2340] The Chamber considers the Defence evidence generally denying that violence occurred at the Butare University Hospital equivocal and lacking probative value as it relates to this particular incident.

947. Based on the foregoing, the Chamber is satisfied beyond reasonable doubt that around or after 25 April 1994, Witness BDE observed ESO Corporal Niyibizi remove an elderly man, whom Niyibizi identified as an *Inyenzi*, and kill him. Notwithstanding, the Chamber considers Witness BDE's general evidence that Niyibizi was one of several soldiers who

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[2332] Witness BDE, T. 28 January 2011, p. 31.
[2333] Witness BDE, T. 28 January 2011, p. 31; T. 31 January 2011, p. 42.
[2334] Witness BDE, T. 31 January 2011, pp. 42, 55.
[2335] Witness BDE, T. 28 January 2011, pp. 30-31; T. 31 January 2011, p. 55.
[2336] Witness BDE, T. 28 January 2011, p. 31.
[2337] Witness BDE, T. 28 January 2011, pp. 28-29.
[2338] Witness BDE, T. 31 January 2011, p. 31.
[2339] Witness BDE, T. 31 January 2011, pp. 30-31.
[2340] Prosecution Witness ZY, T. 26 January 2011, p. 50; Prosecution Witness ZT, T. 7 February 2011, pp. 10-11, T. 10 February 2011, pp. 81-82; Defence Witness Basesayabo, T. 9 May 2011, p. 37.

would implement Nizeyimana's orders fails to establish that Nizeyimana ordered or instigated this killing. Witness BDE's assertion is remarkably devoid of context.[2341] She conceded that she was not present when Nizeyimana ordered or instigated Niyibizi to kill.[2342] It fails to provide the necessary details establishing the circumstances in which this can be inferred.

948. Likewise, Witness ZT's general testimony that Nizeyimana had deployed Corporal Fulgence Niyibizi to the hospital to kill Tutsis lacks the same contextual information to demonstrate that she observed this or that her information came from a reliable source.[2343] Similarly, Witness ZAL testified that she learned from unidentified colleagues that Nizeyimana generally ordered killings. Nonetheless, she conceded that this was word of mouth and she could not identify the specific source of this information.[2344]

949. Of greater significance, Witness BDE's observations and conversation with Niyibizi tend to reflect that he was operating on his own. When Witness BDE confronted Niyibizi, he did not point to the authority of Nizeyimana or anyone else suggesting that his activities at Butare University Hospital were sanctioned by those in command at the ESO.[2345] To the contrary, Witness BDE suggested that Niyibizi spent little time at the ESO Camp. Under the circumstances, the Chamber considers that the evidence also fails to demonstrate that Nizeyimana knew or should have known about this isolated incident. This allegation is dismissed.

950. Indeed, Nizeyimana has presented alibi evidence that raises the reasonable possibility that he was reassigned to lead a military training camp at the Mata tea factory in Gikongoro prefecture around 26 April 1994.[2346] Ambiguity as to whether this event occurred on or after 25 April raises the reasonable possibility that Nizeyimana was not based in Butare when this crime occurred. While the Chamber is not persuaded that this evidence creates the reasonable possibility that Nizeyimana only returned to Butare town once after this date, it does raise doubts that he significantly or substantially contributed to this crime. Furthermore, it raises doubts that he would have or should have known about isolated killings such as this one. This allegation is dismissed.

[2341] *See* Witness BDE, T. 28 January 2011, pp. 28-29.
[2342] Witness BDE, T. 28 January 2011, p. 29.
[2343] Witness ZT, T. 7 February 2011, pp. 11-12.
[2344] Witness ZAL, T. 14 February 2011, pp. 41-42.
[2345] Indeed, Witness BDE testified that Niyibizi said he was going to stop killing "only after he had killed a hundred people", tending to show that he had created his own parameters regarding killings rather than acting under orders or instigation of others. Witness BDE, T. 31 January 2011, p. 42.
[2346] *See* II.13.3.

8.3 General Killings by Fulgence Niyibizi and Others

Introduction

951. The Indictment alleges that from around 20 April 1994, Nizeyimana authorised, ordered or instigated soldiers from the FAR, ESO, Ngoma Camp and Butare Gendarmerie Camp, and *Interahamwe* to kill many civilians identified as Tutsi. In particular, following instructions from Nizeyimana, Corporal Fulgence Niyibizi and other ESO and FAR soldiers, including Theobard Hagenimana, Placide Mbarushimana, "Jean de Dieu", "Mutimura", "Edison", "Said", "Mandela" and "Bola Mungu" targeted civilian Tutsis or those without identity cards in order to kill them. The Prosecution appears to rely on the evidence of Witnesses ZAL, ZW, ZT, ZBL, MKA, DCO, YAP and Anaclet Dufitumukiza.[2347]

952. While the Defence concedes that there were abductions from and violence at the Butare University Hospital, it argues that this was done by soldiers not from the ESO and that it generally subsided. The Prosecution lacks evidence and much of it is not covered in the Indictment.[2348]

Evidence

Prosecution Witness ZAL

953. Witness ZAL, a Tutsi, lived in Butare in April 1994 and worked at the Butare University Hospital.[2349] After the killing of President Juvénal Habyarimana, the witness first returned to the hospital on 22 April.[2350] From that point until 4 June, the witness worked during the weekday morning hours and then hid, usually in the maternity ward, from around noon until the following morning.[2351] On the evening of 4 June, all Tutsis working at the hospital were killed. The following day, a female colleague of the witness hid her in a room, where she remained.[2352]

954. Witness ZAL, who had been working at the hospital for years, was able to identify certain ESO soldiers given that she would pass the military camp when returning from work.[2353] A group of nine soldiers, including Corporal Fulgence Niyibizi, "Kimonyo", "Mzungu" and "Rapide", regularly reviewed the identity cards of persons within the hospital. Those identified as Tutsis were removed and killed.[2354] The witness observed some abductions that occurred during the day.[2355] However, once *Médecins Sans Frontières*

[2347] Indictment, paras. 15, 15(ii); Prosecution Closing Brief paras. 165(b),(d),(e),(f),(g),(h),(i),(m); T. 7 December 2011, pp. 3-4, 11, 70 (Prosecution Closing Arguments).
[2348] Defence Closing Brief, paras. 407, 414. 426; T. 7 December 2011, pp. 41-42, 50, 53 (Defence Closing Arguments).
[2349] Witness ZAL, T. 14 February 2011, pp. 34, 46; Exhibit P26 (Witness ZAL's Personal Information Sheet).
[2350] Witness ZAL, T. 14 February 2011, pp. 34, 47-48.
[2351] Witness ZAL, T. 14 February 2011, pp. 46, 48-50, 55-57. Witness ZAL remained in hiding during the weekends. T. 14 February 2011, p. 49.
[2352] Witness ZAL, T. 14 February 2011, pp. 46, 50-51.
[2353] Witness ZAL, T. 14 February 2011, pp. 36, 46.
[2354] Witness ZAL, T. 14 February 2011, pp. 36-38, 40-41, 51, 54. Typically, persons were identified as Tutsis based on their identity card, the fact that they did not have an identity card or because they were wounded. T. 14 February 2011, p. 51.
[2355] Witness ZAL, T. 14 February 2011, p. 55.

announced over the radio that killings were occurring, the soldiers started reviewing identity cards during the day and abducting and killing those identified as Tutsis at night.[2356] Witness ZAL learned about the night time killings from other workers.[2357] Tutsis were killed on a daily basis until 4 June 1994.[2358] Witness ZAL learned from unidentified colleagues that Nizeyimana had ordered ESO soldiers to remove those taken from the hospital.[2359]

955. On an unidentified evening, she saw Corporal Niyibizi remove a female university student named Éphiphanie. She was returned – severely wounded – to the hospital's intensive care unit by a soldier who found her. However, she was no longer there the next day and the witness later learned she had died.[2360] Others killed by soldiers included hospital workers "Venantie", "Claire" and "De Gaulle".[2361] A man from Gikongoro named Gasana was killed by soldiers as was another Gikongoro native and patient named Édouard.[2362] Other patients called Kabilia and Bosco were also abducted and killed by soldiers. The witness heard that a woman named "Triphine" was killed in June 1994.[2363]

Prosecution Witness ZW

956. On 6 April 1994, Witness ZW, a Tutsi, was a patient in the maternity ward of Butare University Hospital, who had received a Hutu identity card from an ESO soldier named Félicien Kanimba.[2364] Her room was above ground level and her window looked out behind the hospital.[2365] She remained in the building continuously until early July 1994.[2366]

957. Soldiers, wearing military uniforms and black berets, started to arrive at the hospital as early as 7 April 1994.[2367] ESO soldiers started killing patients at the Butare University Hospital around 13 or 14 April.[2368] Eventually, a pattern emerged where the soldiers entered rooms during the day and asked patients and care-takers for identification. Those identified as Tutsis (or without identification) were taken at night to the bushes behind maternity ward and killed.[2369] Witness ZW was able to identify the soldiers as ESO officers through discussions with a non-ESO officer called Hagenimana, who said that the killers came from that camp and through conversations with ESO soldiers Edison, Placide Mbarushyimana.[2370] Ill and

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[2356] Witness ZAL, T. 14 February 2011, pp. 35-36, 50-51, 54.
[2357] Witness ZAL, T. 14 February 2011, pp. 42, 55.
[2358] Witness ZAL, T. 14 February 2011, p. 40.
[2359] Witness ZAL, T. 14 February 2011, pp. 41-42.
[2360] Witness ZAL, T. 14 February 2011, pp. 36-37, 39. The Chamber observes that Witness ZAL initially testified that Éphaphanie never returned to the hospital after first being removed by Niyibizi. T. 14 February 2011, p. 36.
[2361] Witness ZAL, T. 14 February 2011, p. 40. Witness ZAL specified that Venantie had been admitted into the maternity ward because she was ill. T. 14 February 2011, p. 40.
[2362] Witness ZAL, T. 14 February 2011, p. 40.
[2363] Witness ZAL, T. 14 February 2011, p. 40.
[2364] Witness ZW, T. 9 February 2011, p. 67; T. 10 February 2011, pp. 14-15; Exhibit P22 (Witness ZW's Personal Information Sheet).
[2365] Witness ZW, T. 9 February 2011, p. 70.
[2366] Witness ZW, T. 9 February 2011, pp. 73, 77.
[2367] Witness ZW, T. 9 February 2011, p. 68.
[2368] Witness ZW, T. 9 February 2011, pp. 67-68; T. 10 February 2011, p. 25.
[2369] Witness ZW, T. 9 February 2011, pp. 68-69; T. 10 February 2011, p. 18. Initially soldiers killed patients during the day; however, after a radio announcement identifying this conduct, soldiers started examining identity cards during the day and abducted persons at night. T. 9 February 2011, pp. 68-69.
[2370] Witness ZW, T. 9 February 2011, pp. 69-70.

wounded soldiers eventually arrived, and, although they generally did not come with weapons, they also committed killings.[2371]

958. Witness ZW knew some persons who were killed during the night.[2372] On an evening in June 1994, she heard a scream.[2373] She got up and looked out the window, where she saw a hospital worker who stayed near the witness and had a Tutsi identity card, Vénéranda Mukanama, being led out of the hospital by two uniformed soldiers.[2374] One was holding a piece of firewood.[2375] They took her to the bushes. The witness heard a "knock" and determined that Mukanama had been hit by the wood.[2376] A few minutes later, the soldiers returned to the hospital.[2377] The next day, unidentified hospital attendants as well as an unidentified person who had been cared for by Mukanama informed her that Mukanama had been abducted by Fulgence Niyibizi.[2378]

959. One hospital attendant, named Venancie, pretended to be a patient without identification papers and sought refuge in the "ward".[2379] She did not carry an identity card and was abducted one evening on a date she could not recall.[2380] Later, the witness saw Hagenimana, a soldier, who did not come from the ESO, wearing Venancie's sandals and necklace.[2381] He informed the witness that he, in collaboration with Fulgence Niyibizi, had killed Venancie.[2382]

960. Fulgence Niyibizi was identified to Witness ZW by an ESO officer named Edison.[2383] Specifically, Niyibizi had threatened to kill Witness ZW after she had released two Butare University students who had been locked inside a hospital room in May 1994.[2384] At that point, Edison told her that this soldier was Niyibizi, a cadet at the ESO.[2385] Witness ZW explained that Niybizi had become a famous killer at Butare University Hospital, remaining there and asking people to show identification cards.[2386]

Prosecution Witness ZT

961. Witness ZT, a Tutsi, was a student at the ESO in April 1994.[2387] About two weeks after President Juvénal Habyarimana's death on 6 April, the witness was assigned by Lieutenant Bizimana, nicknamed Rwatsi, to bring food to Presidential Guard soldiers at the

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[2371] Witness ZW, T. 9 February 2011, p. 68; T. 10 February 2011, pp. 24-25.
[2372] Witness ZW, T. 9 February 2011, p. 69.
[2373] Witness ZW, T. 9 February 2011, pp. 70, 73.
[2374] Witness ZW, T. 9 February 2011, pp. 70-71. Witness ZW testified that Vénéranda Mukanama had an identity card indicating that she was Tutsi. T. 9 February 2011, p. 70.
[2375] Witness ZW, T. 9 February 2011, pp. 70-71.
[2376] Witness ZW, T. 9 February 2011, pp. 70-71.
[2377] Witness ZW, T. 9 February 2011, p. 70.
[2378] Witness ZW, T. 9 February 2011, p. 71.
[2379] Witness ZW, T. 9 February 2011, p. 72.
[2380] Witness ZW, T. 9 February 2011, pp. 70-73.
[2381] Witness ZW, T. 9 February 2011, pp. 69-70, 72-73, 76-77.
[2382] Witness ZW, T. 9 February 2011, p. 72.
[2383] Witness ZW, T. 9 February 2011, pp. 69, 75.
[2384] Witness ZW, T. 9 February 2011, pp. 74-75.
[2385] Witness ZW, T. 9 February 2011, p. 75.
[2386] Witness ZW, T. 9 February 2011, pp. 74-75.
[2387] Witness ZT, T. 7 February 2011, p. 7; Exhibit P19 (Witness ZT's Personal Information Sheet).

Butare University Hospital.[2388] Although the Presidential Guards refused to accept food from her – calling her an "*Inyenzi*" – she continued to bring food to other patients until a date she could not recall in May.[2389]

962. Corporal Fulgence Niyibizi, whose "bosses" were Nizeyimana and "Rwatsi", was assigned to the hospital to kill Tutsis.[2390] In the month of May 1994, a Sergeant Lazare, whose "bosses" also included Nizeyimana and "Rwatsi", was similarly at the hospital and appeared to act as reinforcement for Niyibizi in killing Tutsis.[2391] On unidentified occasions, the witness observed Niyibizi take patients on stretchers to a transformer behind the hospital and kill them.[2392] Each morning, she observed about 50 Tutsi corpses.[2393] Prisoners, wearing pink uniforms, came to the hospital to bury the dead.[2394] "According to reports", Nizeyimana had organised the prisoners to be brought to the hospital for this purpose.[2395]

963. On unidentified occasions, Nizeyimana would come to the hospital in his jeep with a soldier called Ndayizeye.[2396] He would ask the soldiers how they were and how they were doing.[2397]

Prosecution Witness ZBL

964. Witness ZBL, a Tutsi, lived in Huye commune, Butare prefecture in 1994.[2398] She left her home and went to Butare University Hospital on an unspecified date in April 1994.[2399] Witness ZBL generally testified that soldiers and *Interahamwe* selected Tutsis from the Butare University Hospital.[2400] The assailants would ask people to present identity cards.[2401] The witness suspected that the persons selected were killed because they did not return to the hospital.[2402] The soldiers carried guns but the witness testified that "they" used clubs and small axes and that "they said that they did not want to waste their bullets".[2403] Witness ZBL believed that the soldiers were from the ESO because it was a military camp not far from the hospital.[2404]

965. Venantie, a Tutsi, was Witness ZBL's sister-in-law.[2405] Witness ZBL's sister-in-law stayed in the hospital maternity ward and worked at the hospital.[2406] She had informed the

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[2388] Witness ZT, T. 7 February 2011, pp. 8-11.
[2389] Witness ZT, T. 7 February 2011, pp. 9-11; T. 10 February 2011, pp. 81-82.
[2390] Witness ZT, T. 7 February 2011, pp. 11-12.
[2391] Witness ZT, T. 7 February 2011, pp. 11-12.
[2392] Witness ZT, T. 7 February 2011, p. 12.
[2393] Witness ZT, T. 7 February 2011, p. 12.
[2394] Witness ZT, T. 7 February 2011, pp. 12-13.
[2395] Witness ZT, T. 7 February 2011, p. 13.
[2396] Witness ZT, T. 7 February 2011, pp. 12-13.
[2397] Witness ZT, T. 7 February 2011, p. 12.
[2398] Witness ZBL, T. 10 February 2011, pp. 30-31; Exhibit P23 (Witness ZBL's Personal Information Sheet).
[2399] Witness ZBL, T. 10 February 2011, p. 37.
[2400] Witness ZBL, T. 10 February 2011, p. 37. People from her village would come and identify the victims at the hospital, after which the killers would take them away. T. 10 February 2011, p. 37.
[2401] Witness ZBL, T. 10 February 2011, pp. 37, 39.
[2402] Witness ZBL, T. 10 February 2011, p. 39.
[2403] Witness ZBL, T. 10 February 2011, p. 39.
[2404] Witness ZBL, T. 10 February 2011, pp. 39, 51.
[2405] Witness ZBL, T. 10 February 2011, pp. 32, 41, 43-44; Exhibit P23 (Witness ZBL's Personal Information Sheet), p. 1 (name listed under item).
[2406] Witness ZBL, T. 10 February 2011, pp. 40-41.

witness that she had been raped on four occasions.[2407] Sometime in May or June 1994, Witness ZBL saw her sister-in-law for the last time.[2408] She had been paying soldiers off and stated she had ran out of money.[2409] In a pitiful state, the witness's sister-in-law could not put her legs together.[2410] That day at an unidentified time, Witness ZBL saw three uniformed soldiers remove her sister-in-law.[2411] The witness generally testified that she was killed.[2412]

Prosecution Witness MKA

966. Witness MKA, a Tutsi, arrived at the Butare University Hospital around 18 April 1994, when she was nine months pregnant.[2413] There, she observed many displaced Tutsis, who were not allowed inside the hospital, gathered in the compound's courtyard opposite the "paediatrics department".[2414] There were many soldiers at the hospital, some who had surrounded the hospital and some inside.[2415] Witness MKA identified them as ESO soldiers given that the ESO was close to the hospital could see that they came from the ESO Camp.[2416]

967. About three days after Witness MKA arrived – approximately 21 or 22 April 1994 – a military vehicle or vehicles arrived.[2417] Soldiers told the refugees in front of the paediatrics department to gather together so that they could be taken to a safe place. The witness also heard a comment that if you want to "weed out the weed, you need to put the grass together".[2418] The witness believed that the vehicle took several tours.[2419] One day before 20, 21 or 22 April, the refugees outside the paediatrics department were removed.[2420] Witness MKA's two junior sisters were taken away on the second day.[2421] At this point, the witness moved to the hospital's maternity ward.[2422] She was unaware of the arrival of wounded soldiers at Butare University Hospital around 20 or 21 April.[2423]

Prosecution Witness DCO

968. Witness DCO, a Tutsi, stayed in the paediatric ward with her sick child at the Butare University Hospital from 29 February until some point in July 1994.[2424] She generally

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[2407] Witness ZBL, T. 10 February 2011, p. 41.
[2408] Witness ZBL, T. 10 February 2011, pp. 40-41, 53.
[2409] Witness ZBL, T. 10 February 2011, pp. 40-41.
[2410] Witness ZBL, T. 10 February 2011, pp. 40-41. Witness ZBL considered that those who had raped her sister-in-law had possibly used knives and wood during the assault. T. 10 February 2011, p. 41.
[2411] Witness ZBL, T. 10 February 2011, p. 41.
[2412] Witness ZBL, T. 10 February 2011, p. 40.
[2413] Witness MKA, T. 21 February 2011, pp. 3, 26-28; Exhibit P31 (Witness MKA's Personal Information Sheet).
[2414] Witness MKA, T. 21 February 2011, pp. 3, 27-28. Tents had been set up at the hospital, but were occupied by Burundian refugees, who refused to allow Tutsis to enter. T. 21 February 2011, p. 32.
[2415] Witness MKA, T. 21 February 2011, pp. 3, 6.
[2416] Witness MKA, T. 21 February 2011, p. 4.
[2417] Witness MKA, T. 21 February 2011, p. 4-5, 28.
[2418] Witness MKA, T. 21 February 2011, pp. 4-5, 28.
[2419] Witness MKA, T. 21 February 2011, p. 4.
[2420] Witness MKA, T. 21 February 2011, p. 28.
[2421] Witness MKA, T. 21 February 2011, pp. 4-5, 28.
[2422] Witness MKA, T. 21 February 2011, pp. 27-28.
[2423] Witness MKA, T. 21 February 2011, p. 31.
[2424] Witness DCO, T. 10 February 2011, pp. 55-56; Exhibit P24 (Witness DCO's Personal Information Sheet).

testified that soldiers settled close to the hospital.[2425] They seised identity cards bearing Tutsi identification on it.[2426] Persons were abducted and taken to the lower side of the maternity wing.[2427] Others were taken to the ESO.[2428]

969. In April 1994, the week following the crash of President Juvénal Habyarimana's plane, two vehicles containing corpses of university students arrived around 11.00 a.m.[2429] There were about 10 soldiers in the vehicle and they invited persons to identify their relatives.[2430] Around 3.00 p.m. the witness observed soldiers and *Interahamwe* kill those people with bladed weapons.[2431]

970. On an unspecified date around 2.00 p.m., soldiers came and asked a pastor and other people for their identity cards, which they took away.[2432] The pastor and his family, who were Tutsis and included his wife and two children, were from Nyakizu commune. They remained at the paediatrics ward with Witness DCO.[2433] Three soldiers returned that evening and asked for identity cards. When they could not produce them, the pastor and his family were removed by the soldiers.[2434] Later, some unidentified victims returned and said that these persons had been killed.[2435]

971. The first soldiers who committed killings at the Butare University Hospital were from the ESO. She knew they came from the ESO, because that camp was next to the hospital.[2436] One soldier she saw frequently had a fair complexion and possibly suffered from eczema. Another was "darker" and one was of "medium height".[2437] She did not know them individually, because this was her first time at this hospital, since as she had previously gone to Matyazo for treatment.[2438] Wounded soldiers arrived later and confirmed that they were from the Ngoma Camp and Presidential Guards.[2439]

Prosecution Witness YAP

972. Witness YAP, a Tutsi, worked at the Butare University Hospital in 1994 and lived not far from it.[2440] Between President Juvénal Habyarimana's death and succeeding President Théodore Sindikubwabo's speech on 19 April 1994, the witness went to the hospital on a

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[2425] Witness DCO, T. 10 February 2011, p. 56.
[2426] Witness DCO, T. 10 February 2011, p. 56.
[2427] Witness DCO, T. 10 February 2011, p. 58.
[2428] Witness DCO, T. 10 February 2011, pp. 58, 60.
[2429] Witness DCO, T. 10 February 2011, pp. 55, 59-60.
[2430] Witness DCO, T. 10 February 2011, p. 59.
[2431] Witness DCO, T. 10 February 2011, p. 60.
[2432] Witness DCO, T. 10 February 2011, p. 58.
[2433] Witness DCO, T. 10 February 2011, p. 57.
[2434] Witness DCO, T. 10 February 2011, pp. 58-59.
[2435] Witness DCO, T. 10 February 2011, pp. 58-59.
[2436] Witness DCO, T. 10 February 2011, p. 59. Witness DCO further testified that she could identify the soldiers as coming from the ESO, because "At times we could meet them and even if we asked for food those soldiers would tell us that the food was not for Tutsis". T. 10 February 2011, p. 59.
[2437] Witness DCO, T. 10 February 2011, p. 59.
[2438] Witness DCO, T. 10 February 2011, p. 59.
[2439] Witness DCO, T. 10 February 2011, pp. 59, 72.
[2440] Witness YAP, T. 21 February 2011, p. 36; Exhibit P32 (Witness YAP's Personal Information Sheet).

daily basis.[2441] However, after Sindikubwabo's speech, he went there on four occasions, the last being around 22 June, fearing that he might be killed.[2442]

973. Specifically, soldiers, *Interahamwe*, members of the CDR party and PSD power party invaded and occupied the hospital for the purpose of killing Tutsis. Among the soldiers were Second Lieutenant Rwanyonga (who was also a student at the faculty of medicine), ESO Second Lieutenant Bizimana, ESO *nouvelle formule* cadets Mberabagabo and Niyonzima and ESO soldier Sekimonyo.[2443] The ESO soldiers lived at that camp, wore black berets and the witness testified that he could recognise them easily.[2444] Attackers would remove persons and take them towards the transformer to be killed. The transformer was located on the hospital grounds but behind and downhill from it beyond a brook.[2445] Witness YAP never saw Nizeyimana at the hospital after the killings started.[2446]

Prosecution Witness Anaclet Dufitumukiza

974. In April 1994, Witness Dufitumukiza, a Tutsi, was a gendarme corporal at the Tumba Gendarmerie Camp in Butare town.[2447] In the months of May and June, Second Lieutenant Gakwerere of the ESO Camp was entrusted with flushing out Tutsis so that they could be killed.[2448] He searched for Tutsis in various parts of Butare, and the witness saw him in the town's city centre, at the Butare University Hospital and the gendarmerie brigade.[2449] Every Tutsi Gakwerere arrested was taken to the gendarme brigade and subsequently killed.[2450]

975. Witness Dufitumukiza went to the Butare University Hospital on three or four unspecified occasions to assist Catherine Mukarubahiza.[2451] On one or more the occasions, he saw Second Lieutenant Gakwerere at the hospital, accompanied by between five to 11 soldiers.[2452] The witness believed that Gakwerere was there to identify Tutsis in order for them to be killed.[2453]

Deliberations

(i) ESO Soldiers Generally Perpetrating Crimes at Butare University Hospital

976. The Prosecution has led a considerable amount of general evidence of soldiers committing crimes at the Butare University Hospital. It has not, however, coherently linked this evidence into a cohesive narrative and has done less to show how the evidence fits within the particularised allegations in Indictment paragraphs 15(i)-(ii). Nonetheless, the Chamber

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[2441] Witness YAP, T. 21 February 2011, pp. 37, 53.
[2442] Witness YAP, T. 21 February 2011, pp. 37-38, 53-57.
[2443] Witness YAP, T. 21 February 2011, pp. 38-39.
[2444] Witness YAP, T. 21 February 2011, pp. 39, 62.
[2445] Witness YAP, T. 21 February 2011, p. 40.
[2446] Witness YAP, T. 21 February 2011, p. 69.
[2447] Witness Dufitumukiza, T. 19 January 2011, p. 13; Exhibit P5 (Witness Dufitumukiza's Personal Information Sheet).
[2448] Witness Dufitumukiza, T. 20 January 2011, pp. 12-15, 17.
[2449] Witness Dufitumukiza, T. 20 January 2011, pp. 13-15.
[2450] Witness Dufitumukiza, T. 20 January 2011, pp. 13-15. Witness Dufitumukiza did not specify how he knew this.
[2451] Witness Dufitumukiza, T. 20 January 2011, pp. 17-18.
[2452] Witness Dufitumukiza, T. 20 January 2011, pp. 13-14, 17.
[2453] Witness Dufitumukiza, T. 20 January 2011, pp. 14-15.

considers it instructive to review this evidence, as it remains highly relevant to particularised events that are expressly pleaded in the Indictment.

977. As a general matter, the evidence clearly reflects that Tutsi patients at the Butare University Hospital were targeted and killed. The evidence also reflects that Tutsi women were frequently subjected to sexual violence.[2454]

978. Nonetheless, the general evidence about the participation of soldiers, and ESO soldiers in particular, is just that – general. In many instances, the Prosecution led evidence that implicated particular ESO soldiers in crimes, but failed to elicit details necessary to sustain its exacting burden of proof.

979. For example, Witnesses ZAL, YAP, Dufitumukiza and ZBL expressly identified ESO soldiers who they believed were generally involved in killing Tutsis at the Butare University Hospital. For example, Witness ZAL listed a number of ESO soldiers, including Corporal Fulgence Niyibizi, "Kimonyo", "Mzungu", "Saïdi" and "Rapide", who regularly reviewed the identity cards of persons within the hospital. Those identified as Tutsis were removed and killed. The witness generally testified that she witnessed some abductions, and noted that they initially occurred during the day but later occurred at night. There is general corroboration for this. However, with the exception of particular instances (which are discussed below), her evidence about their actions is quite vague. Patterns are reported, but the extent and the nature of the abductions and killings are unclear. Her general assertions (which are only in a few instances qualified by detailed explanations) cannot support findings beyond a reasonable doubt.

980. Witness YAP testified that Second Lieutenant Rwanyonga (who was also a student at the faculty of medicine), ESO Second Lieutenant Bizimana, ESO *nouvelle formule* cadets Mberabagabo and Niyonzima and ESO soldier Sekimonyo were among those who occupied the hospital for the purpose of killing Tutsis. However, Witness YAP's evidence is particularly vague. Having visited the hospital on only four occasions after 19 April 1994, there are serious questions about how he knew this. He did not provide a specific time frame for the violence. The fact that he lived in the vicinity of Butare University Hospital and spoke to a soldier (evidence that only came out in re-examination) fails sufficiently support his assertions about the victims. It also fails to establish how he knew that these soldiers participated in crimes. It too fails to establish facts at the exacting burden carried by the Prosecution.

981. Next, Witness Dufitimumkiza testified that particularly in the months of May and June 1994, Second Lieutenant Gakwerere of the ESO Camp was entrusted with flushing out Tutsis so that they could be killed. However, this evidence is also ambiguous. While he testified to having seen Gakwerere in various locations, his evidence does not clearly demonstrate that he saw the second lieutenant detaining Tutsis, or having observed the soldier kill them. Indeed, his testimony about Gakwerere's activities at the Butare University Hospital is not only vague, it reflects the witness's own uncertainty as to whether he was there to search for and kill Tutsis.[2455] While Witness Dufitumukiza's impressions of

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[2454] *See* II.9.

[2455] Witness Dufitumukiza, T. 20 January 2011, pp. 14 ("A. Yes. I saw him at the hospital. And every time that Gakwerere left the military camp his mission was not to protect the Tutsis. It was, rather, to hunt down Tutsis and kill them. I believe he was also going to the hospital with the same same objective and with the same mission."), 15 ("Q. What exactly did you see [Gakwerere] do at the hospital? A. Everywhere where I saw

Gakwerere's activities are relevant and probative, they do not establish facts beyond reasonable doubt.[2456]

982. The same holds true for Witness ZBL's general evidence of ESO soldiers removing and killing Tutsis. Of particular significance, the Defence has raised considerable doubts about Witness ZBL's identification of ESO soldiers based on her prior testimony in the *Rwamakuba* trial before the Tribunal.[2457] This evidence also fails to establish findings beyond reasonable doubt.

983. In other instances, the Prosecution led evidence about rather particular crimes, but the identification of the soldiers as ESO soldiers remains highly questionable. For example, Witness MKA generally testified that around 21 or 22 April 1994, soldiers removed Tutsis that were outside the hospital opposite the paediatrics ward. Notably, the removal of a large numbers of patients around this time is generally corroborated by the second-hand evidence of Prosecution Witness Zachariah.[2458]

984. Notwithstanding, while Witness MKA generally identified ESO soldiers as present at the hospital, her evidence fails to expressly identify them as involved in this incident. Moreover, her identification was based on the fact that the ESO was close to the hospital and that she could see soldiers coming from it. However, her evidence fails to reflect that her vantage point, at any time, would have allowed her to see ESO soldiers coming from that particular camp. The Chamber has elsewhere considered that notwithstanding the relative close proximity between the ESO and the Butare University Hospital, the latter occupies expansive grounds that tend to move away from the ESO. The camp cannot be seen from all parts of the hospital. This allegation is dismissed.

985. Witness DCO described several events and generally implicated ESO soldiers as those who were the first to kill persons at the hospital. At the outset, Witness DCO's description of soldiers bringing lorries in April 1994 and asking for civilians to identify relatives and then slaughtering these people, is uncorroborated. This is somewhat surprising given the seemingly significant scale of the operation and the fact that it happened in the

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Gakwerere, he was looking for Tutsis, but I cannot say with exactitude what he was doing. Whenever I saw him going around I had the impression that I was implementing his mission or executing his mission [to hunt down Tutsis and have them killed].").

[2456] The Defence objected to Witness Dufitumukiza's evidence in regards to Gakwerere's involvement in the killing of Tutsis at the Butare University Hospital on the basis that they did not receive notice. Defence Motion for Exclusion of Evidence, paras. 45-47. Given the Chambers findings in regards to his evidence, it need not address this challenge.

[2457] *See* II.9.2.

[2458] On 21 April 1994, Witness Zachariah learned that 40 children from the pediatric ward had been removed to the prefecture office. The hospital director informed him that the hospital crisis committee decided that patients with minor wounds had to leave for reasons of hygiene. Witness Zachariah went to the prefecture office that day and only observed six or seven children, wearing bandages used by *Médecins Sans Frontiéres*, there. Unidentified persons and hospital staff informed him that the children had been taken away and killed. Witness Zachariah, T. 14 February 2011, pp. 12, 29; Exhibit D18 (Witness Zachariah's Sketch). On 22 April, Witness Zachariah learned that 150 adult Tutsi patients were similarly removed the previous evening and taken to the prefecture office. He returned to the prefecture office and found no patients there. Witness Zachariah, T. 14 February 2011, p. 12. In both instances, Witness Zachariah testified that the Butare University Hospital had the facilities to receive incoming soldiers and retain these patients. Witness Zachariah, T. 14 February 2011, p. 12. *Cf.* Witness Spielmann, T. 31 January 2011, p. 11 (Witness Spielmann learned from local *Médecins Sans Frontiéres* staff that around 170 Tutsi patients had been killed at the Butare University Hospital or removed).

middle of the day. The absence of more direct corroboration by any of the several witnesses at Butare University Hospital undermines this allegation.

986. Furthermore, Witness DCO's evidence that ESO soldiers were the initial perpetrators of killings or that persons were taken to the ESO is general and insufficiently descript to support findings beyond reasonable doubt. At the outset, the Chamber has considerable reservations that Witness DCO could observe persons being brought to the ESO from a position in the paediatrics ward or from below the maternity wing.[2459] Moreover, Witness DCO conceded that she did not know the soldiers – noting that she normally went to Matyazo for treatment – and that Presidential Guards and Ngoma Camp soldiers were around.[2460] Her ability to identify ESO soldiers in particular is less than clear.[2461] Her insistence that the ESO Camp was situated on the side of the hospital below the maternity ward raises further questions as to the soldiers' source.[2462] In this regard, the remainder of her specific allegations about soldiers killing persons at the Butare University Hospital fails to sufficiently implicate ESO soldiers.

987. The Chamber observes that Indictment paragraph 15(i) is particularly broad and not necessarily limited to killings committed by ESO soldiers alone. Notwithstanding, the evidence assessed above fails to demonstrate that Nizeyimana significantly or substantially contributed to any proven criminal conduct. Likewise, ambiguity as to the identities of the perpetrators raises doubts that Nizeyimana exercised effective control over them. These allegations are dismissed.

(ii) Killings by ESO Corporal Fulgence Niyibizi

988. Through Witnesses ZAL, ZW and ZT, the Prosecution led evidence related to the participation of ESO Corporal Fulgence Niyibizi in the killing of Tutsis at the ESO. With the exception of one killing, the evidence of Witnesses ZAL, ZW and ZT do not expressly reflect that they observed or learned of Niyibizi's criminal participation in the same killing or event. The Chamber shall address the evidence in turn.

(iii) Killing of Venancie or Venantie by Corporal Fulgence Niyibizi

989. Witness ZW, a patient in the maternity ward, testified that on an unidentified date, she learned from a soldier called Hagenimana that he and Niyibizi had killed a hospital attendant

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[2459] *See* II.9.3.
[2460] Witness DCO, T. 10 February 2011, pp. 59, 72.
[2461] Witness DCO, T. 10 February 2011, p. 72 ("Q. Do you remember when these soldiers came, that last group? A. I no longer recall the date. But when they arrived some of them took us to one of the wards for a prayer session and those who came from ESO beat us and told us that they ought to let them fight themselves and others asked us to say our last prayers. But in some the soldiers from ESO did not leave us alone in peace.").
[2462] *Compare* Prosecution Witness DCO, T. 10 February 2011, pp. 72 ("Q. … I would like to put something to you. When you were in the maternity when you would go behind the maternity, sorry, and then downhill from the kitchen, then you were just right by ESO and that's why you could see people going in or people being taken there. Is that what you said earlier? … A. That location was on the ESO side."), 74 ("A. I'm telling you that when we were standing in front of the tuberculosis ward, you would pass in front of the maternity wing and pass, as I said, by the TB ward. And when you reach below the kitchen, you could see ESO. There was a path passing there"), *with* Defence Witness Hahirwa, T. 14 June 2011, pp. 12-15 *and* Exhibit D67A (Aerial Photograph of the Butare University Hospital). Witness Hahirwa authenticated a photograph taken by Canadian security forces, and through identifying the buildings in it, showed that the maternity ward and the canteen area are in the opposite direction of the ESO, with a significant distance and buildings between the two.

named Venancie. Notably Witness ZW stated that Venancie had sought refuge in the "ward" by pretending to be a patient. She did not have an identity card.

990. Witness ZAL, a hospital employee, also testified generally that a woman named "Venantie" was killed. She too specified that Venantie was a hospital attendant but that she was admitted into the maternity ward because she was ill. Witness ZBL also testified that she saw her Tutsi sister-in-law, called Venantie, who worked at the hospital and who had been admitted to its maternity ward being led away by three soldiers in May 1994. She did not see her again.

991. The Chamber has no doubt that these three witnesses were present at the Butare University Hospital. In particular, Witness ZAL confirmed Witness ZW's presence in the maternity ward.[2463] Moreover, given the parallel descriptions of the victim, notwithstanding the slightly different spellings of her name, the Chamber is also satisfied that all three are referring to the same woman.[2464]

992. With respect to the participation of Niyibizi and Hagenimana, the Chamber considers other direct evidence of Niyibizi's participation in killings at the Butare University Hospital offers compelling circumstantial support to Witness ZW's hearsay identification of his involvement in Venancie's death. Furthermore, the inculpatory admission of Hagenimana, who befriended the witness in the hospital, makes this hearsay evidence particularly compelling.[2465] Again, Witness ZBL's identification of three uniformed soldiers removing Venantie offers some circumstantial support.

993. Notwithstanding, there is no direct evidence of Nizeyimana's contribution, significant or substantial to this killing. The Chamber observes that Witness ZAL testified that she learned from unidentified colleagues that Nizeyimana generally ordered killings. Nonetheless, she conceded that this was word of mouth and she could not identify the specific source of this information.[2466] This evidence is too tenuous to support findings beyond reasonable doubt.

994. Likewise, while the evidence firmly establishes that Niyibizi, an ESO corporal, was of a lower rank than the Accused and below him within the ESO's general command structure, it fails to reflect that Nizeyimana knew or should have known about this particular killing. In so finding, the Chamber has considered the fact that the Prosecution evidence convincingly reflects that Nizeyimana was informed about killings at the Butare University Hospital by soldiers around 23 April 1994.[2467] Notwithstanding, it is not clear that he was informed that *ESO soldiers* were the perpetrators. Indeed, Nizeyimana was informed about killings at the Butare University Hospital after a considerable influx of Presidential Guards there. Moreover, the evidence of Prosecution witnesses who spoke to Nizeyimana about these

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[2463] Witness ZAL, T. 14 February 2011, pp. 42, 53-54.
[2464] The Chamber notes that Witness ZAL testified that she and Witness ZW discussed that Fulgence Niyibizi was dangerous. Witness ZAL, T. 14 February 2011, p. 54.
[2465] Given Witness ZAL's continued presence at the Butare University Hospital, the Chamber considers that her observation that Venantie was killed compelling. However, given her own evidence that she hid in the maternity ward for nearly 18 hours each day, only working in the morning, it has reservations about the extent of the violence or abductions she saw. *See* Witness ZAL, T. 14 February 2011, pp. 46, 48-50, 55-56.
[2466] Witness ZAL, T. 14 February 2011, pp. 41-42.
[2467] *See* II.8.1.

crimes – Witnesses Zachariah and Spielmann – tends to reflect that they believed the soldiers killing patients and medical staff to be Presidential Guards.[2468]

995. Furthermore, only Witness ZBL provided a date for this event – sometime in May or June 1994 – raising further doubt about whether Nizeyimana would have or should have known about this killing. Notably, he has presented alibi evidence that raises the reasonable possibility that he was reassigned to lead a military training camp at the Mata tea factory in Gikongoro prefecture towards the end of April and that he left for the front in Nyanza towards the end of May.[2469] While the Chamber is not persuaded that this evidence creates the reasonable possibility that Nizeyimana only returned to Butare town once after that date, it does raise doubts that he would have or should have known about isolated killings such as this or Niyibizi's repeated perpetration of crimes at the Butare University Hospital during this period. The absence of any date as it relates to this event allows for the reasonable possibility that it occurred then. This allegation is dismissed.[2470]

(iv) Killing of Épiphanie Corporal Fulgence Niyibizi

996. Witness ZAL, a hospital employee, testified that on an unidentified evening, she saw Niyibizi remove a female university student named Épiphanie, who returned severely wounded. The witness learned the next day that she had died.

997. At the outset, the Chamber has no doubt about Witness ZAL's ability to identify ESO soldiers given that she had worked at the nearby Butare University Hospital for years and frequently passed the ESO Camp. Furthermore, she correctly identified Niyibizi as a corporal from the ESO.[2471] Nonetheless, given the brevity of her account as well as her evidence that she was in hiding in the night, the Chamber is not satisfied that her evidence demonstrates that she *saw* Niyibizi remove Épiphanie. This allegation is dismissed.

(v) Killing of Vénéranda Mukanama Corporal Fulgence Niyibizi

998. Witness ZW, a Tutsi patient at the hospital, testified generally that she knew some victims that had been killed during the night. Specifically, she recalled observing hospital attendant, Vénéranda Mukanama, being led out of the hospital by two uniformed soldiers in June 1994. She heard a knock and a scream. The next day she learned from a patient and hospital attendants that Fulgence Niyibizi had abducted Mukanama.

999. At the outset, the Chamber has no doubt that Witness ZW, from her position in the maternity ward, would have been able to view someone being led out of the hospital. Defence evidence confirms that the room in which she was kept had a window that looked out behind the maternity ward.[2472]

[2468] *See* II.8.1.
[2469] *See* II.13.3.
[2470] In light of this finding, the Chamber need not consider Defence Challenges to Witness ZAL's evidence about "Venantie". Defence Closing Brief, para. 426.
[2471] Witness ZAL, T. 14 February 2011, p. 36.
[2472] *See* Defence Witness Hahirwa, T. 14 June 2011, pp. 18-19; Exhibit D67B (Photograph of Maternity Ward and Room); Exhibit D67A (Aerial Photograph of Butare University Hospital). *See also* Prosecution Witness ZAL, T. 14 February 2011, p. 53 (identifying the room in which Witness ZW was in the maternity ward).

1000. The Chamber observes that Witness ZW did not testify to seeing the corpse of Mukanama. Nonetheless, having observed two uniformed soldiers take Mukanama away, one carrying a piece of firewood, and hearing the knock and the scream, the evidence firmly establishes that this woman, who had a Tutsi identity card, was singled out to be killed. Indeed, Witness ZW's evidence fits within a broader pattern of soldiers and civilian militia killing Tutsis behind the hospital.

1001. Her identification of Niyibizi appears to rely primarily on information she later learned from a patient and hospital attendants,[2473] and having learned Niyibizi's identity through an unrelated incident from an ESO soldier named Edison.[2474] It does not appear to rely on a visual identification of the two soldiers. Notwithstanding, other compelling evidence of Niyibizi's participations in killings, the identification of him in this instance is tenuous. It is not clear that the individuals who informed Witness ZW that Niyibizi killed Mukanama actually saw his involvement in this assault. Likewise, the fact that the witness identified the soldiers as wearing uniforms is insufficient to establish that they were ESO soldiers.

1002. There is no direct evidence of Nizeyimana's involvement, having significantly or substantially contributed to this killing. Likewise, ambiguity as to the identity of the soldiers raises questions about whether these were subordinates over whom Nizeyimana exercised effective control. Indeed, this killing happened in June 1994. Notably, Nizeyimana has presented alibi evidence that raises the reasonable possibility that he was reassigned to lead a military training camp at the Mata tea factory in Gikongoro towards the end of April 1994. Moreover, the Chamber has determined that the evidence reasonably reflects that Nizeyimana was transferred to the front towards the end of May.[2475] Nizeyimana's transfer raises considerable doubt that he would have or should have known about these crimes, which were committed in June. This allegation is dismissed.

(vi) Killings Corporal Fulgence Niyibizi Observed by Witness ZT

1003. Witness ZT was an ESO cadet assigned to bring food to soldiers at the hospital from 6 April until sometime in May 1994. She testified that, on unidentified occasions, she observed Niyibizi take patients on stretchers to a transformer behind the hospital and kill them. Each morning, she observed about 50 Tutsi corpses.

1004. At the outset, the Chamber has no doubt that Witness ZT, an ESO soldier, could have easily identified Corporal Fulgence Niyibizi in 1994. Furthermore, her evidence that she

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[2473] Witness ZW, T. 9 February 2011, pp. 70-71 ("Q. And you have said that they were soldiers, do you know who they actually were? A. At the time of the abduction I noticed that they were soldiers. The next day the patients who had been with the victims also identified the perpetrators of the abduction. So during the night it was not possible for me to identify the soldiers who were in uniform because I was not very close to them. Q. Who did you hear say that it was who that had abducted her? A. A soldier came into the ward and his name is Fulgence Niyibizi, and then he went to link up with his colleague who was outside the ward and then they took the victim to the bushes. ... Q. So who was it that told you that it was Fulgence Niyibizi who was responsible for killing that woman? A. It is those who were attending to other patients in that ward who told me. The person who was attending to or, rather, the person who was being attended to by Vénéranda also told me.").
[2474] Witness ZW, T. 9 February 2011, pp. 73-75.
[2475] *See* II.13.3.

brought food to soldiers starting in April finds circumstantial support from other witnesses who testified that female ESO soldiers were assigned to this task.[2476]

1005. While Witness ZT's evidence implicating Niyibizi in killings finds circumstantial corroboration through other evidence regarding his participation in crimes at Butare University Hospital, the Prosecution utterly failed to elicit any particular details about the particular crimes Witness ZT testified to have witnessed. The absence of dates, particular circumstances of observation, as well as identification of victims, leaves the Chamber to decipher possibly, but not necessarily linked parts of Witness ZT's testimony to come to any conclusion in this regard. In a criminal trial, where the burden of proof is beyond reasonable doubt, this practice does not meet the required threshold. This allegation is dismissed.

Notice

1006. In support of the allegation that Nizeyimana is responsible for killings at Butare University Hospital, the Prosecution points to the evidence of Witness ZBH. He testified that, on a Sunday around 24 April 1994, Nizeyimana issued orders in the hospital's parking lot to the witness and other *Interahamwe* to kill Tutsi patients at the hospital that day.[2477] Although this evidence fits broadly within the general contours of paragraph 15 of the Indictment, the Chamber is not satisfied that the Defence had timely, clear, and consistent notice that the Prosecution would rely on this part of Witness ZBH's evidence in support of this allegation.

1007. Specifically, the Pre-Trial Brief's submissions as they relate to violence at Butare University Hospital fail to indicate the Prosecution's intent to lead evidence through Witness ZBH in support of the relevant charges.[2478] Likewise, the annexed summary of Witness ZBH's anticipated testimony does not indicate that he would provide evidence in support of paragraph 15.[2479] Rather, the "Primary Paragraphs in the Indictment" that Witness ZBH was intended to support were 6, 7, 9, 10, 14, 17, 18, 23, 26, 27.

1008. Notably, the annexed summary reads that "Witness ZBH attended a meeting presided over by Muvunyi, Nizeyimana, Doctor Gatsinzi and Doctor Munyemana. Muvunyi ordered Witness ZBH and others to chase Tutsi who had sought refuge at the Butare University Hospital, but not to kill them within the boundary of the hospital. They killed the Tutsis in the forest below". This description is fundamentally different from Witness ZBH's testimony that Nizeyimana issued such orders. Furthermore, in light of the Indictment and the paragraphs the witness summary identifies Witness ZBH as supporting, this summary appears to be relevant to Indictment paragraph 10(iv) and not paragraph 15.[2480]

1009. The Prosecution is expected to know its case before proceeding to trial and cannot mould it against the accused in the course of proceedings depending on how the evidence unfolds.[2481] While arguments can be made that Witness ZBH's evidence could fall within the broad language of paragraph 15, his evidence amounts to material facts that should have been

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[2476] *See* II.8.2.
[2477] Prosecution Closing Brief, para. 164(c). 165(k)-(l), 185-186.
[2478] Pre-Trial Brief, paras. 100-124.
[2479] Pre-Trial Brief, Annex, para. 41 (p. 32).
[2480] *Cf. Muhimana* Appeal Judgement, 221.
[2481] *Bagosora et al.* Trial Judgement para. 110, *citing Muvunyi I* Appeal Judgement para. 18, *Ntagerura et al.* Appeal Judgement para. 27, *Kvočka et al.* Appeal Judgement para. 30, *Niyitegeka* Appeal Judgement para. 194, *Kupreškić et al.* Appeal Judgement para. 92.

more clearly pleaded in the Indictment. Given the Prosecution's Pre-Trial submissions, it is clear that they had no intention to rely on Witness ZBH in support of this allegation. The Chamber considers that doing so now is unfair and prejudicial to the Accused.

9. BUTARE UNIVERSITY HOSPITAL – SEXUAL VIOLENCE, LATE APRIL TO JULY 1994

9.1 Rapes of Witness MKA and Others

Introduction

1010. The Indictment alleges that, from 6 April to 17 July 1994, FAR, ESO, Ngoma Camp soldiers and others, acting on the orders or at the instigation of Nizeyimana, raped Tutsi women at the Butare University Hospital and elsewhere. In particular, from late April to mid-May, Witness MKA and others were raped by five FAR soldiers in the hospital's maternity ward. About three days later, a FAR soldier raped her and sometime in mid-May, after the witness had given birth, an unknown male raped her in the presence of four other women who were also being raped.[2482]

1011. The Defence challenges Witness MKA's credibility, citing discrepancies and incoherence within her testimony and argues that it fails to establish Nizeyimana's involvement. The Defence also warns that she may have colluded with other Prosecution witnesses. Witnesses Déogratias Basesayabo, MAL01 and Vincent Nsabimana provided relevant evidence.[2483]

Evidence

Prosecution Witness MKA

1012. Witness MKA, a Tutsi, arrived at the Butare University Hospital around 18 April 1994.[2484] About two or three days later, the witness, who was nine months pregnant, moved into the hospital's maternity ward, where she was one of about five Tutsi women.[2485] Sometime in late April or early May, prior to giving birth, soldiers in camouflage uniforms and long rain coats arrived in the maternity ward at night.[2486] Using torches, they turned off the lights and moved around the room asking the women for their identification.[2487] They did not have any.[2488] The women were removed one after the other to separate rooms of the hospital.[2489] A soldier, who was not carrying a weapon, removed Witness MKA to another

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[2482] Indictment, paras. 31, 31(iii). Prosecution Closing Brief, paras. 216, 218-221; T. 7 December 2011, pp. 3, 12, 14, 70 (Prosecution Closing Arguments).
[2483] Defence Closing Brief, paras. 394-395, 448-450; T. 7 December 2011, pp. 39, 50-51 (Defence Closing Arguments).
[2484] Witness MKA, T. 21 February 2011, pp. 3, 26-27; Exhibit P31 (Witness MKA's Personal Information Sheet).
[2485] Witness MKA, T. 21 February 2011, pp. 3, 5-6, 28-29.
[2486] Witness MKA, T. 21 February 2011, pp. 6-7, 9, 33.
[2487] Witness MKA, T. 21 February 2011, pp. 6, 9.
[2488] Witness MKA, T. 21 February 2011, p. 6.
[2489] Witness MKA, T. 21 February 2011, p. 6.

room and raped her in private.[2490] At an unidentified period later, each of the women discussed having been raped by the soldiers.[2491]

1013. One evening, about a day after Witness MKA was first raped, she went to the surgical ward to visit a Tutsi woman and that woman's Tutsi daughter.[2492] Along the way, she met a young soldier – around 26 or 27 years old – in a non-camouflage, green military uniform and a raincoat, carrying a "long sword".[2493] He asked for her identification, and she responded that she did not have any.[2494] He dragged her to "a little room" and raped her.[2495]

1014. On a following night – a few days after the witness had her baby in late April or early May 1994 – soldiers returned to the maternity ward where the five Tutsi women had remained.[2496] The soldiers returned in a group of five, switched off the lights, covered each of the women in blankets and raped them.[2497] Witness MKA was raped by the soldier who had raped her on the first occasion.[2498] The witness remained at the Butare University Hospital until July.[2499]

Defence Witnesses Déogratias Basesayabo, MAL01 and Vincent Nsabimana

1015. Witness Basesayabo, a Hutu, was a medical intern at the Butare University Hospital in April 1994 and fled Butare around the beginning of July.[2500] Witness MAL01, a Hutu, was a nurse who worked during the day at the hospital in April and May.[2501] Witness Nsabimana, a Hutu, was a medical intern at the Butare University Hospital in April until late May or June.[2502]

1016. Witness Basesayabo had not heard that Tutsis at the hospital were raped during or after his time there.[2503] Witnesses Basesayabo, MAL01 and Nsabimana denied that one could

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[2490] Witness MKA, T. 21 February 2011, pp. 6-7, 9.
[2491] Witness MKA, T. 21 February 2011, p. 7. Witness MKA learned from one woman, that when the soldier removed her and raped her, another individual, who was not a soldier or in uniform, took her baby son and killed him. T. 21 February 2011, pp. 6-8.
[2492] Witness MKA, T. 21 February 2011, pp. 8-9.
[2493] Witness MKA, T. 21 February 2011, p. 8. Witness MKA clarified that this was not the soldier who raped her on the first occasion. T. 21 February 2011, p. 11.
[2494] Witness MKA, T. 21 February 2011, p. 8.
[2495] Witness MKA, T. 21 February 2011, pp. 8, 28.
[2496] Witness MKA, T. 21 February 2011, pp. 6, 9-10, 32-33.
[2497] Witness MKA, T. 21 February 2011, pp. 9-11, 32-33.
[2498] Witness MKA, T. 21 February 2011, p. 11.
[2499] Witness MKA, T. 21 February 2011, pp. 8, 28.
[2500] Witness Basesayabo, T. 9 May 2011, pp. 9, 17, 28, 55; Exhibit D23 (Witness Basesayabo's Personal Information Sheet). Witness Basesayabo lived in Cyarwa Sumo sector, Ngoma commune, about 600 metres from the Butare University Hospital. He usually worked at the hospital from about 8.00 a.m. to 10.00 or 11.00 p.m. T. 9 May 2011, pp. 9, 14, 21. However, he often worked late into the night and would stay at a nearby hostel, only returning home about one night a week. T. 9 May 2011, pp. 14, 21-22, 48-49.
[2501] Witness MAL01, T. 16 May 2011, pp. 61-62, 66-67, 69, 73-74, 76-77; Exhibit D33 (Witness MAL01's Personal Information Sheet). Witness MAL01 originally testified that she stopped working a the Butare University Hospital and left the prefecture in the first week of May 1994. T. 16 May 2011, pp. 66, 69, 73. However, she later conceded that she was not sure when in May she left. T. 16 May 2011, pp. 76-77.
[2502] Witness Nsabimana, T. 18 May 2011, pp. 64, 68; Exhibit D38 (Witness Nsabimana's Personal Information Sheet). Witness Nsabimana lived at a hostel at the National University of Rwanda. It was situated on Mamba hill, about 150 metres from the Butare University Hospital's fence. T. 18 May 2011, pp. 64, 70; T. 19 May 2011, p. 10.
[2503] Witness Basesayabo, T. 9 May 2011, pp. 16, 35-37.

see the ESO Camp from the maternity ward. Witnesses Basesayabo and Nsabimana further testified that it could not be seen from the hospital's kitchen area.[2504]

Deliberations

1017. The Prosecution relies on the testimony of Witness MKA to establish the rapes as alleged in Indictment paragraph 31(iii). The Defence raises several challenges to her credibility as well as argues that her evidence fails to implicate Nizeyimana. The Chamber shall address these issues in turn.

1018. The Defence suggests that Witness MKA's evidence cannot be trusted, because she travelled to the Tribunal with other Prosecution witnesses in this case who also testified about rape. The witness conceded that she knew Witness FAX and had travelled to Arusha with her and Witness BUQ.[2505] Nonetheless, she expressly denied that they discussed their testimonies with each other or that their lodging circumstances would have allowed it.[2506] Notably, nothing in the testimonies of Witnesses BUQ and FAX suggest otherwise.[2507] These Defence allegations are unfounded.

1019. The Defence disputes the quality of Witness MKA's evidence. For example, it argues that it is inconceivable that she could recall certain dates, but did not know, for example, the day her baby was born.[2508] The Chamber observes that Witness MKA's evidence appeared to shift with regard to when she first arrived at the hospital.[2509] She could not recall specific dates of rapes. Rather, the descriptions of their timing were oriented around events that occurred to her while at the hospital.[2510] Furthermore, while she testified that she gave birth to her baby around the end of April, she later conceded that it could have been later when presented with her August 2010 statement to Tribunal investigators, wherein she stated that it occurred "around 10 May 1994".[2511]

[2504] Witness Basesayabo, T. 9 May 2011, p. 17; Witness MAL01, T. 16 May 2011, p. 68; Witness Nsabimana, T. 18 May 2011, pp. 69-70.

[2505] Witness MKA, T. 21 February 2011, pp. 16, 18, 20-22; Exhibit D20 (Witness BUQ's Name as Written by Witness MKA).

[2506] *See* Witness MKA, T. 21 February 2011, pp. 21 ("Q. So that way you could find ... out a little bit about how things worked here, how court was, correct? A. We didn't have that form of conversation. When we travelled we all knew that we were going to appear before this Tribunal, but we each had had our own information to provide but we did not discuss it. Q. But at night after the others were in court they said they told you a bit how it happened, did they not? A. Everyone (sic) someone appeared before the Chamber, the person no longer came and lived with us. That person was taken somewhere else, such that we were not in touch with anybody who was testifying or who had completed their testimony.").

[2507] The Chamber observes that Witness MKA was not a member of ABASA. Witness MKA, T. 21 February 2011, p. 15.

[2508] Defence Closing Brief, para. 449.

[2509] *Compare* Witness MKA, T. 21 February 2011, p. 3 (testifying that she left her house on 14 April 1994, went to a hill and "the next day" went to the Butare University Hospital), *with* Witness MKA, T. 21 February 2011, pp. 26-27 (testifying that she believed that she arrived at the Butare University Hospital "around" or "on" 18 April 1994).

[2510] *See, e.g.*, Witness MKA, T. 21 February 2011, pp. 6 (explaining that she could "no longer remember the dates", but clarifying that her first rape happened before she gave birth), 8 (noting that a day separated the occasion of her second and first rape at the hospital), 9 (was raped three days after she had had her baby).

[2511] *See* Witness MKA, T. 21 February 2011, pp. 6 (estimating that she delivered her baby around "late April", but could not be sure), 33 (confirming that she had earlier testified that she recalled giving birth at the "end of

1020. The Chamber considers ambiguities in her evidence as it relates to timing both reasonable and immaterial. Witness MKA survived traumatic circumstances in a relatively foreign location. The fact that she could not recall the date her baby was born while hiding in the hospital and already having been raped twice in no way impacts the believability of her accounts. Indeed, this baby died once it was about a week old, depriving the mother of parental events that would require that she know (or try to discover) the date of birth.[2512]

1021. Furthermore, the Chamber finds Witness MKA's evidence of soldiers raping her in late April and early May 1994 compelling when viewed among other evidence of such conduct occurring at the Butare University Hospital during the genocide. The pattern of soldiers scouring the hospital, asking for identification and raping women who were or were perceived to be Tutsis is supported by other accounts.[2513] The Chamber is satisfied beyond reasonable doubt that Witness MKA was repeatedly raped and suffered severe mental and bodily harm as a result.[2514]

1022. Turning to Witness MKA's identification of the perpetrators, the Chamber observes that she did not directly implicate Nizeyimana as being involved in the attacks. Indeed, while she implicated ESO soldiers in the removal of Tutsi refugees from the Butare University Hospital on 21 and 22 April 1994,[2515] she expressed reservations about her ability to distinguish among different soldiers, including those that raped her and others.[2516] Her descriptions of what the soldiers who raped her were wearing do not necessarily demonstrate that they came from the ESO Camp.[2517]

1023. Likewise, while she referred to the soldier as young, she estimated his age to be around 26 or 27. The Chamber considers the relative youth of ESO soldiers a credible basis for distinguishing them from military personnel originating from other camps. However, "youth" in the context of this trial record means shortly after the completion primary education.[2518] A soldier in his late 20s is not necessarily consistent with this description.

April"), 33 (once confronted with her statement that she had given birth around 10 May 1994, she explained that she had estimated the date of the birth and could only really recall that it occurred during a morning).

[2512] Witness MKA, T. 21 February 2011, pp. 9-10.

[2513] *See* II.9.2-II.9.3.

[2514] In so finding, the Chamber is mindful that Witness ZW, a Tutsi who also stayed in the Butare University Hospital's maternity ward, did not discuss being raped. Notably, she appears to have stayed in a separate room from Witness MKA, as the former's room only contained two beds. *See* Witness ZW, T. 9 February 2011, p. 67.

[2515] Prosecution Witness MKA, T. 21 February 2011, pp. 3-4. Notably, Witnesses Basesayabo and Nsabimana testified that one could not see the ESO from the maternity ward. *See* Defence Witness Basesayabo, T. 9 May 2011, p. 17; Defence Witness Nsabimana, T. 18 May 2011, pp. 69-70.

[2516] In the context of being questioned about the soldiers who raped her on the first occasion: Witness MKA, T. 21 February 2011, p. 7 ("I was unable to distinguish the various military uniforms. As far as ... I was concerned, all soldiers wore the same type of uniform."). Regarding the second rape: Witness MKA, T. 21 February 2011, pp. 8 (identifying the soldier by approximate age, military uniform and accoutrements), 9 (stating that she had never seen this soldier before).

[2517] For a review of uniforms worn by soldiers in Butare in 1994, *see* II.1.

[2518] *See, e.g.*, Defence Witness KEN06, T. 20 September 2011, pp. 4, 29 (joined ESO's *nouvelle formule* as a 13-year-old in 1989); Prosecution Witness AZD, T. 31 January 2011, pp. 76-77 (testifying that ESO soldiers could be distinguished from Ngoma Camp soldiers based on age, and that oldest cadets from the first batch were ages 15 to 17); Defence Witness Nsabimana, T. 18 May 2011, p. 70 (ESO soldiers could be "recognised from the fact that they were young"). Indeed, the *nouvelle formule* model allowed cadets to enter the ESO after finishing primary school. *See, e.g.*, Prosecution Witness ZAK, T. 24 January 2011, p. 62; Prosecution Witness ZAW, T. 26 January 2011, p. 4; Prosecution Witness AZD, T. 31 January 2011, p. 69; Prosecution Witness YAA, T. 1 February 2011, p. 64; Defence Witness Basesayabo, T. 9 May 2011, p. 24; *cf.* Defence Witness

1024. Indeed, as it relates to the third occasion, Witness MKA testified that the soldier who raped her was the same soldier who had raped her on the first occasion.[2519] However, in her August 2010 statement to Tribunal investigators, she stated her belief that the persons who raped her and the other women on the third occasion were the "same soldiers" but that she could not "see them to confirm that they were soldiers".[2520] The witness suggested that this had been a misstatement and that she was sure she observed the leader, who was a soldier, and that he was in the company of his colleagues, who were also soldiers.[2521]

1025. The Chamber considers that Witness MKA's evidence reflects ambiguity regarding the identity of the perpetrators of the rapes about which she testified. She did not have a military background and was not from the area, raising further questions about her ability to identify ESO soldiers. Furthermore, the circumstances in which the sexual violence occurred – lights being turned off (in two instances) and the women being covered by blankets (in another) – understandably has resulted in difficulties in obtaining reliable identifications.

1026. The Chamber is mindful of evidence that ESO soldiers, for instance, learned that other soldiers were involved in rapes in Butare town.[2522] Notably, this evidence is second-hand and fails to implicate ESO soldiers in rapes at the Butare University Hospital. The Chamber has also considered that violence against Tutsis was perpetrated by ESO soldiers at the Butare University Hospital.[2523] However, the evidence also reflects that Presidential Guards, who arrived around the last third of April 1994 had an equal hand in targeting Tutsis at the hospital.[2524]

1027. Without reliable identification evidence, more than one reasonable conclusion can be reached with respect to the identity of the perpetrators who raped Witness MKA. Under the circumstances, the Chamber is in no position to determine whether Nizeyimana made any significant or substantial contributions to the crimes. Ambiguity as to the identity of the soldiers creates doubt as to whether Nizeyimana exercised effective control over them.[2525] It creates doubt that he knew or should have known about these crimes as well. These allegations are dismissed.

OUV03, T. 30 May 2011, pp. 65-66 (distinguishing the *nouvelle formule* cadets from ordinary ESO cadets on the basis that the latter took people who had already completed three years of secondary school).

[2519] Witness MKA, T. 21 February 2011, p. 11.

[2520] Witness MKA, T. 21 February 2011, pp. 32-33.

[2521] Witness MKA, T. 21 February 2011, p. 33.

[2522] *See* Witness BDE, T. 31 January 2011, pp. 21-22 (learned from an unidentified ESO cadet that women were kept at the Hotel Ibis and Hotel Faucon and that he had had sex with a woman at the latter hotel; anyone who wanted to have sex with these women could and that anyone who went to the hotels knew what was happening there); Witness AZD, T. 1 February 2011, pp. 2-3 (heard young military students returning from genocide related operations and "singing" that they had raped "beautiful Tutsi women", referred to as *Ibizungerezi*; the witness was unaware of anyone being punished for these acts).

[2523] *See* II.8.2.

[2524] *See* II.8.1.

[2525] *Cf. Bizimungu et al.* Trial Judgement, para. 1881 (holding that unidentified crimes committed by unidentified perpetrators cannot be the basis for superior responsibility as such generality fails to allow for an examination of whether a superior subordinate relationship existed); *Brđanin* Trial Judgement, para. 371 ("Due to lack of specific evidence, it is not possible to examine whether a superior-subordinate relationship existed between the Accused and Bosnian Serb armed civilians or unidentified individuals.").

9.2 Rapes of Witness ZBL

Introduction

1028. The Indictment alleges that, from 6 April to 17 July 1994, FAR, ESO, Ngoma Camp soldiers and others, acting on the orders or at the instigation of Nizeyimana raped Tutsi women at the Butare University Hospital and elsewhere. Specifically, towards the end of May, Witness ZBL was raped by two soldiers in a room in the hospital, where she was kept for three days, and subsequently raped behind it by *Interahamwe*. The *Interahamwe* did this in the presence of another woman, who was also raped and killed. Witness ZBL provided relevant evidence.[2526] The Defence challenges the credibility of Witness ZBL, citing the possibility of collusion and prior inconsistent testimony before the Tribunal.[2527]

Evidence

Prosecution Witness ZBL

1029. Witness ZBL, a Tutsi, lived in Huye commune, Butare prefecture in 1994.[2528] She left her home and went to the Butare University Hospital on an unspecified date in April.[2529] She remained there into July, when the *Inkotanyi* captured Butare, tending to her wounded daughter.[2530]

1030. One evening in May or June 1994, two ESO soldiers removed Witness ZBL from the surgical ward.[2531] One soldier referred to the other as "pilot".[2532] The witness, clearly identifiable as a Tutsi, was taken to a structure used as a shelter for guards and a stable for livestock on the "lower side of the [hospital's] clinic".[2533] Upon arrival, one soldier left while the other raped the witness.[2534] She remained there through the night and the following day the other soldier returned and raped her that evening.[2535] The next day, in a state of "hanging between death and life", the soldiers told the witness that they knew where to find her and returned her to her daughter the surgical ward.[2536]

Deliberations

1031. The Prosecution relies on the testimony of Witness ZBL in support of Indictment paragraph 31(iv). The Defence raises several challenges to her evidence, which will be discussed in turn.

[2526] Indictment, paras. 31, 31(iv); Prosecution Closing Brief, paras. 222-224; T. 7 December 2011, pp. 14, 70 (Prosecution Closing Arguments).
[2527] Defence Closing Brief, paras. 397, 451-454; T. 7 December 2011, pp. 39, 50-51 (Defence Closing Arguments).
[2528] Witness ZBL, T. 10 February 2011, pp. 30-31; Exhibit P23 (Witness ZBL's Personal Information Sheet).
[2529] Witness ZBL, T. 10 February 2011, pp. 34-37.
[2530] Witness ZBL, T. 10 February 2011, pp. 37-38.
[2531] Witness ZBL, T. 10 February 2011, pp. 41-42, 53.
[2532] Witness ZBL, T. 10 February 2011, p. 42.
[2533] Witness ZBL, T. 10 February 2011, pp. 42, 44.
[2534] Witness ZBL, T. 10 February 2011, pp. 42-43.
[2535] Witness ZBL, T. 10 February 2011, pp. 42-43.
[2536] Witness ZBL, T. 10 February 2011, p. 43.

1032. The Defence submits, without offering any evidence of witness coaching, that Witness ZBL, a former member of the ABASA, may have colluded with other Prosecution witnesses who were also members.[2537] Witness ZBL was a member of ABASA but was subsequently expelled.[2538] She testified that she knew Witness DCO had been a member, but was also expelled.[2539] She also identified Witnesses ZW and FAX as members of the association.[2540]

1033. Evidence before the Chamber reflects that ABASA members share their experiences with each other, which was confirmed by Witness ZBL.[2541] The Chamber observes that Witness DCO, who also testified about rapes at the Butare University Hospital, was also a member.[2542] However, a review of their evidence does not reflect overlaps that reasonably indicate collusion between them or reflect fabrications in order to implicate Nizeyimana. Neither offered any specific evidence that directly (and, more importantly, on questionable grounds) supported the testimony of the other. Rather, their accounts of Tutsis being identified by soldiers and being raped finds broad circumstantial support from witnesses, including Witness MKA, who was not a member of ABASA.[2543] The Chamber does not consider that Witness ZBL's prior membership in ABASA renders her evidence tainted or her accounts unreliable or partial.

1034. Indeed, the Chamber finds Witness ZBL's testimony of soldiers removing her and raping her in May or June 1994, compelling when viewed among other evidence of such conduct occurring at the Butare University Hospital at that time.[2544] It has no doubt that soldiers selected the witness based on her Tutsi ethnicity and raped her over the course of two to three days. Witness ZBL's testimony demonstrates that she suffered severe mental and bodily harm as a result of these rapes. In this regard, the Chamber finds the witness's inability to recall the precise date does not raise concerns that soldiers raped her during the genocide.

1035. Turning to the identity of the assailants Witness ZBL identified her assailants as ESO soldiers and noted that one of the two was referred to as "Pilot".[2545] She determined that they had come from the ESO solely because that camp was "not located far away from the hospital".[2546] Notably, the Defence confronted the witness with the assertion that, while testifying in the *Rwamakuba* case before the Tribunal, she had stated that Minister Pauline Nyiramasuhuko would send Presidential Guards to remove patients from the hospital.[2547] The witness conceded that she might have testified to that effect because in her assessment "all

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[2537] Defence Closing Brief, para. 454.
[2538] Witness ZBL, T. 10 February 2011, pp. 46-47.
[2539] Witness ZBL, T. 10 February 2011, p. 47.
[2540] Witness ZBL, T. 10 February 2011, p. 47.
[2541] Witness ZBL, T. 10 February 2011, p. 49. *See also* Witness BUQ, T. 17 February 2011, p. 67; Witness FAX, T. 17 February 2011, p. 32; Witness DCO, T. 10 February 2011, p. 70.
[2542] *See* II.9.3.
[2543] *See* II.9.1.
[2544] *See* II.9.1; II.9.3.
[2545] Witness ZBL, T. 10 February 2011, pp. 41 (responding that the soldiers who removed the witness "were soldiers from ESO"), 42 (one of the two soldiers was referred to as "pilot").
[2546] Witness ZBL, T. 10 February 2011, p. 51. *See also* T. 10 February 2011, p. 39 (generally testifying that soldiers who came to the hospital, identified Tutsis, and killed and raped them were from the ESO because the military camp "was not far away from the hospital").
[2547] Witness ZBL, T. 10 February 2011, p. 52.

the soldiers came from the same camp" and that "Nyiramasuhuko and ESO soldiers were part of the same plan".[2548]

1036. The Chamber has reservations about the witness's identification of the assailants who raped her as ESO soldiers. Nothing in her testimony provides any distinctive characteristics that signify they came from the ESO and the alleged inconsistencies with her prior testimony in *Rwamakuba* also raise concerns.[2549] Indeed, the Chamber observes that Witness ZBL was from Huye commune (rather than Butare town). The fact that she was not from the area, coupled with the absence of affirmative evidence explaining why she could distinguish ESO soldiers, on the one hand, from Presidential Guards, Ngoma Camp soldiers or even gendarmes, on the other, raises further questions about identification of the assailants.

1037. The Chamber has previously considered that evidence from ESO soldiers that their colleagues had committed rapes elsewhere in Butare town was insufficient to establish that soldiers who committed rapes at the Butare University Hospital were from the ESO.[2550] While the first-hand evidence of rapes by soldiers at the Butare University Hospital and the second-hand evidence of ESO soldiers committing rapes generally in Butare town raises the reasonable possibility that ESO soldiers raped Tutsis at the Butare University Hospital, it is not the only reasonable conclusion. Indeed, there is reasonably reliable evidence that Presidential Guards played a similar role in violence directed towards Tutsis at the Butare University Hospital starting in April 1994.[2551] Under the circumstances, the record simply is not clear as to which soldiers raped Witness ZBL.

1038. Furthermore, while the witness's inability to recall precisely when she was raped does not raise doubts that she was in fact raped, it creates further questions about Nizeyimana's involvement. There is no direct evidence demonstrating that Nizeyimana ordered or instigated these rapes. Notably, he has presented alibi evidence that raises the reasonable possibility that he was reassigned to lead a military training camp at the Mata tea factory in Gikongoro prefecture towards the end of April 1994.[2552] While the Chamber is not persuaded that this evidence creates the reasonable possibility that Nizeyimana only returned to Butare town on one occasion after this date, there is no evidence that he significantly or substantially contributed to these crimes. Ambiguity as to the identity of the soldiers creates doubt as to whether Nizeyimana exercised effective control over them.[2553] It creates doubt that he knew or should have known about these crimes as well. Based on the foregoing, Nizeyimana cannot be held liable for them.

[2548] Witness ZBL, T. 10 February 2011, p. 52.
[2549] The transcripts of Witness ZBL's testimony from the *Rwamakuba* trial were not admitted, but the Prosecution raised no objection to the Defence's characterisation of them.
[2550] *See* II.9.1.
[2551] *See* II.8.1.
[2552] *See* II.13.3.
[2553] *Cf. Bizimungu et al.* Trial Judgement, para. 1881 (holding that unidentified crimes committed by unidentified perpetrators cannot be the basis for superior responsibility as such generality fails to allow for an examination of whether a superior subordinate relationship existed); *Brđanin* Trial Judgement, para. 371 ("Due to lack of specific evidence, it is not possible to examine whether a superior-subordinate relationship existed between the Accused and Bosnian Serb armed civilians or unidentified individuals.").

9.3 Rapes of Witness DCO

Introduction

1039. The Indictment alleges that, between May and July 1994, soldiers from the FAR, ESO and Ngoma Camp, who were under the operational region, command and influence of Nizeyimana, raped Witness DCO and other Tutsi women at the Butare University Hospital. In particular, a soldier raped Witness DCO near the hospital close to a mass grave in May. She and three women were also raped by four soldiers behind the maternity unit in June. Finally, Witness DCO was raped by a FAR soldier in July. Witness DCO provided relevant evidence.[2554]

1040. The Defence challenges Witness DCO's credibility, pointing to internal inconsistencies and contradictions with other evidence. It further questions her ability to identify ESO soldiers and warns that she may have colluded with other Prosecution witnesses.[2555]

Evidence

Prosecution Witness DCO

1041. Witness DCO, a Tutsi, stayed in the paediatric ward with her sick child at the Butare University Hospital from 29 February until some point in July 1994.[2556] She testified that sometime in May, after many Tutsis had already been taken from the hospital, three soldiers came to the paediatric ward and ordered her to show her identity card.[2557] The witness did not produce one and was removed by them.[2558] Called an *Inyenzi* and struck with their rifle butts, the soldiers took Witness DCO behind the hospital to an area containing shrubs and bushes between the hospital's kitchen and the ESO.[2559] She was raped there.[2560]

1042. Witness DCO was raped on a second occasion around 20 June 1994.[2561] Specifically, she went to a small house in a wooded area downhill from the maternity ward.[2562] There, she found a woman from Nyaruguru who had been stabbed.[2563] While she was washing her clothes, soldiers arrived.[2564] One soldier, carrying a rifle, "took" the witness, while the other woman was led to the ESO.[2565] The witness has not seen the woman since.[2566]

[2554] Indictment, paras. 35, 35(ii), (iii) and (iv). Prosecution Closing Brief, paras. 198, 215, 225; T. 7 December 2011, pp. 14, 70 (Prosecution Closing Arguments).
[2555] Defence Closing Brief, paras. 444-447; T. 7 December 2011, pp. 50-51 (Defence Closing Arguments).
[2556] Witness DCO, T. 10 February 2011, pp. 55-56; Exhibit P24 (Witness DCO's Personal Information Sheet).
[2557] Witness DCO, T. 10 February 2011, pp. 57, 61-62.
[2558] Witness DCO, T. 10 February 2011, pp. 57, 61.
[2559] Witness DCO, T. 10 February 2011, p. 61. Witness DCO later described this location as "downhill from the kitchen". T. 10 February 2011, p. 71.
[2560] Witness DCO, T. 10 February 2011, p. 61.
[2561] Witness DCO, T. 10 February 2011, p. 62.
[2562] Witness DCO, T. 10 February 2011, p. 63.
[2563] Witness DCO, T. 10 February 2011, p. 63.
[2564] Witness DCO, T. 10 February 2011, p. 63.
[2565] Witness DCO, T. 10 February 2011, p. 63.
[2566] Witness DCO, T. 10 February 2011, p. 63.

1043. In July 1994, "after the country was taken by the *Inkotanyi*", the witness and others fled the hospital.[2567] However, *Interahamwe*, "obeying the orders" and acting "under the supervision" of soldiers, raped the witness and others.[2568] The *Interahamwe* had been undergoing training from soldiers since May 1994 in a field downhill from the hospital's kitchen.[2569]

Deliberations

1044. The Prosecution relies on the evidence of Witness DCO to support Indictment paragraphs 35, 35(ii), 35(iii) and 35(iv). The Defence challenges Witness DCO's credibility based on her association with ABASA, a support group for surviving rape victims. It notes that other Prosecution witnesses belong to this organisation, raising concerns about evidence fabrication.[2570]

1045. Evidence before the Chamber reflects that ABASA members share their experiences with each other and counselling experts.[2571] Witness DCO also belonged to the group and identified Witnesses ZW, BUQ and FAX as members.[2572]

1046. However, nothing in Witness DCO's evidence suggests that her testimony was fabricated or that she received any coaching from any ABASA member. There is no other evidence raising reasonable concern that Witness DCO engaged in this behaviour. Indeed, while Witness ZBL was also a member of ABASA, testified about rapes at the Butare University Hospital, and stated that she knew Witness DCO, there is nothing to indicate that they colluded or fabricated evidence. In the Chamber's view, Witness DCO's prior ABASA membership alone does not reasonably render her testimony unreliable or partial against the Accused.[2573]

1047. Turning to the merits of Witness DCO's evidence, there is considerable circumstantial evidence supporting Witness DCO's testimony that soldiers reviewed identity cards within the Butare University Hospital and that Tutsi women were removed from it and raped.[2574] There is also evidence of certain ESO soldiers perpetrating violence against Tutsis at the Butare University Hospital.[2575]

1048. However, Witness DCO's descriptions of the allegations pleaded in the Indictment are brief and relatively non-descript. Her evidence does not reflect Nizeyimana's direct involvement in the attacks. Her description of soldiers having raped her fails to establish with the necessary certainty that the perpetrators were ESO soldiers, particularly in light of her own evidence regarding the presence of Ngoma Camp soldiers and Presidential Guards in

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[2567] Witness DCO, T. 10 February 2011, p. 63.
[2568] Witness DCO, T. 10 February 2011, pp. 63-64.
[2569] Witness DCO, T. 10 February 2011, pp. 64, 72-74.
[2570] Defence Closing Brief para. 447.
[2571] Witness BUQ, T. 17 February 2011, p. 67; Witness FAX, T. 17 February 2011, p. 32; Witness DCO, T. 10 February 2011, pp. 69-70.
[2572] Witness DCO, T. 10 February 2011, p. 69. As noted elsewhere, Witnesses BUQ and FAX confirmed that they were members of the group and knew each other. II.1.
[2573] *See also* II.1 (reaching a similar conclusion with respect to Witness BUQ).
[2574] *See* II.9.1; II.9.2.
[2575] *See* II.8.2.

Butare.[2576] Furthermore, Witness DCO testified that during the second occasion, when she and a woman were accosted downhill from the maternity ward, the other woman was taken to the ESO. However, contrary to her evidence, it is not clear that one could see the ESO Camp from this location.[2577]

1049. Furthermore, while she generally testified that *Interahamwe* who raped her were "obeying the orders" and acting "under the supervision" of soldiers, her evidence fails to demonstrate that she witnessed soldiers issue orders to rape her or that soldiers were necessarily present during the event.[2578] She did not testify as to whether the soldiers were from the ESO, although this may be inferred based on her description that the training occurred next to the military school.

1050. The Chamber considers that the ambiguities in Witness DCO's account do not necessarily reflect poorly on her credibility. These events were traumatic and happened many years in the past. Notwithstanding, her evidence fails to demonstrate beyond reasonable doubt that Nizeyimana was in any way involved in these crimes.

1051. As discussed above, Nizeyimana presented alibi evidence that raises the reasonable possibility that he was reassigned to lead a military training camp at the Mata tea factory in Gikongoro prefecture towards the end of April 1994.[2579] While the Chamber is not persuaded that this evidence creates the reasonable possibility that Nizeyimana only returned to Butare town on one occasion, there has not been any testimony of his involvement in the acts detailed by Witness DCO. It raises doubts that he contributed substantially or significantly to these crimes. Ambiguity as to the identity of the soldiers (or militia) creates doubt as to whether Nizeyimana exercised effective control over them.[2580] It creates doubt that or that he knew or should have known about these crimes as well. Based on the foregoing, Nizeyimana cannot be held liable for them.

[2576] Witness DCO, T. 10 February 2011, p. 72. The Chamber observes that Witness DCO elsewhere described that the initial the perpetrators of killings were ESO soldiers. T. 10 February 2011, p. 59.
[2577] Witnesses Basesayabo and Nsabimana testified that one could not see the ESO from the maternity ward or from the kitchen. *See* Witness Basesayabo, T. 9 May 2011, p. 17; Witness Nsabimana, T. 18 May 2011, pp. 69-70. *See also* Witness Hahirwa, T. 14 June 2011, pp. 12-15 *and* Exhibit D67A (Aerial Photograph of the Butare University Hospital). Witness Hahirwa authenticated a photograph taken by Canadian security forces, and through identifying the buildings in it, showed that the maternity ward and canteen area are in the opposite direction of the ESO, with a significant distance and buildings between the two). Given that the wooded area below the maternity ward is even further from the military camp, Witness DCO's evidence that she could see the woman being taken to the ESO lacks reliability.
[2578] Witness DCO, T. 10 February 2011, pp. 63-64.
[2579] *See* II.13.3.
[2580] *Cf. Bizimungu et al.* Trial Judgement, para. 1881 (holding that unidentified crimes committed by unidentified perpetrators cannot be the basis for superior responsibility as such generality fails to allow for an examination of whether a superior subordinate relationship existed); *Brđanin* Trial Judgement, para. 371 ("Due to lack of specific evidence, it is not possible to examine whether a superior-subordinate relationship existed between the Accused and Bosnian Serb armed civilians or unidentified individuals.").

10. KILLINGS AT *GROUPE SCOLAIRE*, LATE APRIL 1994

Introduction

1052. The Indictment alleges that around 21 April 1994, Nizeyimana authorised, ordered or instigated soldiers from the FAR, ESO, Ngoma and the Butare Gendarmerie camps and *Interahamwe,* to identify and kill Tutsi civilians who sought refuge at the *Groupe Scolaire*. As a result, soldiers and *Interahamwe* forcibly removed approximately 14 civilians identified as Tutsi to kill them. However, after extorting money in exchange for the lives of the 14 victims, all were returned alive but one, a child known as Jean Luc. The Prosecution relies on Witnesses TQ, ZBH, AJP, BDE and BUR.[2581]

1053. The Indictment further alleges that on or about 29 April 1994, Nizeyimana, authorised, ordered or instigated soldiers from the FAR, ESO, Ngoma and the Butare Gendarmerie camps, and *Interahamwe* to kill Tutsi civilians who had sought refuge at the *Groupe Scolaire*. As a result, soldiers, *Interahamwe* and armed civilians, forcibly extracted from the *Groupe Scolaire* premises approximately 100 or more civilians identified as Tutsi and killed them at the nearby Rwasave valley. The Prosecution relies on Witnesses TQ, ZBH, BUR and AJP.[2582]

1054. The Defence submits that the Prosecution did not provide any evidence that links Nizeyimana to the first attack that took place on 21 April 1994 and that Nizeyimana had already been transferred to Mata during the second attack, which took place on 29 April. The Defence relies on the evidence of Witnesses BNN07 and OUV03.[2583]

Evidence

Prosecution Witness TQ

1055. Witness TQ, a Hutu, was a Red Cross volunteer at the Kacyiru orphanage in April 1994.[2584] He fled Kigali and sought refuge at the *Groupe Scolaire* on 12 April together with a group of about 400 to 300 people, including 25 orphans and staff members of the Red Cross.[2585] He remained at the *Groupe Scolaire* from 12 April until 5 or 6 June when the Red Cross evacuated the last remaining refugees at the *Groupe Scolaire* to Burundi.[2586] On his arrival at the *Groupe Scolaire*, the witness found about 1500 people who had also sought refuge there.[2587]

1056. In addition to the refugees, there were also wounded soldiers staying at the *Groupe Scolaire*.[2588] They started arriving shortly before President Sindikubwabo's speech and stayed

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[2581] Indictment, para, 16; Prosecution Closing Brief, paras. 237-240; T. 7 December 2011, pp. 24-25 (Prosecution Closing Arguments).
[2582] Indictment, para, 17; Prosecution Closing Brief, paras. 232-236, 241-253; T. 7 December 2011, p. 24 (Prosecution Closing Arguments).
[2583] Defence Closing Brief, paras. 17, 34, 151, 163-164, 181, 362-378, 564; T. 7 December 2011, pp. 38, 46, 61 (Defence Closing Arguments).
[2584] Witness TQ, T. 27 January 2011, pp. 22-24; Exhibit P12 (Witness TQ's Personal Information Sheet).
[2585] Witness TQ, T. 27 January 2011, pp. 22-23.
[2586] Witness TQ, T. 27 January 2011, p. 22.
[2587] Witness TQ, T. 27 January 2011, p. 23.
[2588] Witness TQ, T. 27 January 2011, p. 43.

in a building that was separate from the one which was attacked.[2589] The first convoy of seriously injured soldiers arrived on 16 April 1994, accompanied by a team of healthcare workers who were living with them.[2590] They were accommodated with the refugees, forcing the refugees to move to another building.[2591] After May, another group of wounded soldiers, who were in somewhat better condition, arrived at the *Groupe Scolaire*.[2592]

1057. There were two attacks on the *Groupe Scolaire*, one on 21 April and one on 29 April 1994.[2593] On 21 April, around 8.00 a.m., about six armed soldiers in uniform, including Lieutenant Mazimpaka, in collaboration with armed civilians or militias arrived at the *Groupe Scolaire*.[2594] Following their arrival, the soldiers and armed civilians assembled all the refugees and tried to separate out the Tutsis based on their physical appearance and people who denounced them.[2595] Indeed, the people who were targeted that morning were Tutsis.[2596]

1058. The soldiers then asked those identified as Tutsi to give them money in exchange for their lives, which some refugees complied with if they had the money.[2597] There was an intermediary with the soldiers and the militia, who was called Jean Marie Vianney Ngabonziza.[2598] Despite receiving money, the soldiers attempted to leave the *Groupe Scolaire* with approximately 13 or 14 orphans who were in the care of the Red Cross in addition to another 50 refugees.[2599] Witness TQ followed the soldiers and tried to negotiate and plead with them not kill the orphans.[2600] He gave them some of the money that he had received from Reverend Brother Célestin Ngendahimana, after which the soldiers released all the Red Cross children to him.[2601] When he returned in the evening, the children told Witness TQ that one of the orphans named Jean Luc was missing.[2602] He later heard that Jean Luc was killed by soldiers in a forest near the university along with other abducted persons on 21 April 1994.[2603] Jean-Luc's body was never recovered.[2604]

1059. The second attack on the *Groupe Scolaire*, which occurred on 29 April 1994 and started around 6.30 a.m., was the most significant due to the means, organisation, and the extensive period of the attack.[2605] A group of over 50 soldiers led by military officers in collaboration with a number of militiamen as well as some members of the Red Cross who

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[2589] Witness TQ, T. 27 January 2011, pp. 43-44. Witness TQ specified that there was a road that separated the buildings which housed the refugees and the building which housed the wounded soldiers. T. 27 January 2011, p. 44.
[2590] Witness TQ, T. 27 January 2011, p. 44.
[2591] Witness TQ, T. 27 January 2011, p. 44.
[2592] Witness TQ, T. 27 January 2011, p. 44.
[2593] Witness TQ, T. 27 January 2011, pp. 29, 44.
[2594] Witness TQ, T. 27 January 2011, pp. 29, 31, 43, 46-47, 59. Witness TQ did not know the names of the other soldiers who participated in the attack or where they were from. T. 27 January 2011, p. 31.
[2595] Witness TQ, T. 27 January 2011, p. 29.
[2596] Witness TQ, T. 27 January 2011, p. 29.
[2597] Witness TQ, T. 27 January 2011, p. 30.
[2598] Witness TQ, T. 27 January 2011, pp. 30, 50-51.
[2599] Witness TQ, T. 27 January 2011, pp. 30, 46-47, 51.
[2600] Witness TQ, T. 27 January 2011, pp. 30, 47.
[2601] Witness TQ, T. 27 January 2011, pp. 30, 46-47, 50-51, 60.
[2602] Witness TQ, T. 27 January 2011, pp. 30, 47, 60.
[2603] Witness TQ, T. 27 January 2011, p. 47.
[2604] Witness TQ, T. 27 January 2011, p. 47.
[2605] Witness TQ, T. 27 January 2011, pp. 31, 53.

had been sensitised to join in the killings, participated in the attack.[2606] Witness TQ identified some of the militiamen, including Twagirayezu, Faustin Nonzima, a certain Innocent and André Bandura.[2607] Members of the Red Cross who took part in this attack were Kanyarukiga and Kanyamafente.[2608]

1060. Witness TQ was having breakfast, when a child called out and said that a large number of soldiers had entered their house.[2609] Witness TQ exited the dormitory and saw a significant number of soldiers and heard gunfire.[2610] The soldiers had already begun to assemble the people on the playground, which was large.[2611]

1061. Witness TQ saw a number of soldiers gathered around Captain Nizeyimana and Second Lieutenant Modeste Gatsinzi at an elevated area near a container opposite the office of Brother Bernard, the director.[2612] Nizeyimana was about 20 to 30 metres from Witness TQ.[2613] Nizeyimana made a gesture to the soldiers, which the witness construed to be a signal for the soldiers to start attacking and killing the Tutsi civilians at the *Groupe Scolaire*.[2614] Following Nizeyimana's gesture, Second Lieutenant Gatsinzi and other soldiers began to actively assemble the refugees on the playground.[2615] Nizeyimana remained at the same position where he earlier held the "mini-meeting" with two or three other soldiers.[2616]

1062. The soldiers surrounded the playground and started to check for Tutsis, based on "their particulars, their physical looks" and threatened people with butts and started hitting people.[2617] At this point, Witness TQ urged Father Célestin to call the commander of the ESO to inform him of the attack.[2618] Similarly, Witness TQ asked the soldiers for assistance, since it was a military attack, but he was forced to sit down like everyone else.[2619] Father Célestin told him that Muvunyi had declined to intervene at the *Groupe Scolaire,* because he did not know who the assailants were.[2620] Witness TQ saw military officers, who were supervising closely, opposite the playground.[2621]

1063. The selected Tutsi refugees were taken by soldiers to the veranda in front of a classroom, located near the entrance of the *Groupe Scolaire* and forced them to lie on their faces before being beaten to death.[2622] The first lorry then carried Tutsi individuals to Rwasave where they were killed.[2623] A large number of people were killed on that day.[2624] He

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[2606] Witness TQ, T. 27 January 2011, pp. 32-33, 43, 53.
[2607] Witness TQ, T. 27 January 2011, p. 33.
[2608] Witness TQ, T. 27 January 2011, p. 33.
[2609] Witness TQ, T. 27 January 2011, p. 32.
[2610] Witness TQ, T. 27 January 2011, p. 32.
[2611] Witness TQ, T. 27 January 2011, p. 32.
[2612] Witness TQ, T. 27 January 2011, pp. 33-34, 53-54.
[2613] Witness TQ, T. 27 January 2011, pp. 33, 53-54.
[2614] Witness TQ, T. 27 January 2011, pp. 34-35.
[2615] Witness TQ, T. 27 January 2011, pp. 33-34.
[2616] Witness TQ, T. 27 January 2011, p. 33.
[2617] Witness TQ, T. 27 January 2011, pp. 32, 34.
[2618] Witness TQ, T. 27 January 2011, pp. 32, 56.
[2619] Witness TQ, T. 27 January 2011, p. 32.
[2620] Witness TQ, T. 27 January 2011, pp. 56-57.
[2621] Witness TQ, T. 27 January 2011, p. 32.
[2622] Witness TQ, T. 27 January 2011, p. 32.
[2623] Witness TQ, T. 27 January 2011, pp. 32, 53.
[2624] Witness TQ, T. 27 January 2011, p. 32.

estimated that about 140 people, including 20 children who were in the care of the Red Cross as well as 10 teachers, went missing after the attack by the soldiers.[2625]

1064. They later searched for the bodies of the refugees but could not locate them.[2626] They only found a boy who hailed from Bychunga and was still alive when they found him, but was severely injured.[2627] They took him to the hospital, but he later died.[2628]

Prosecution Witness ZBH

1065. In April 1994, Witness ZBH, a Hutu, was a civilian who had previously worked as a "helper" at the ESO in 1991, who, among other things, washed clothing and polished shoes.[2629] Around 29 April, in the evening, Witness ZBH, some soldiers, and a group of inhabitants of the Kabutare and Save areas, surrounded the location and spent the night.[2630] The next day, around 6.00 a.m., Nizeyimana arrived at the *Groupe Scolaire* in the company of the commander of Ngoma Camp, Lieutenant Ildéphonse Hategekimana, and other soldiers.[2631]

1066. The group who had spent the night went to the *Groupe Scolaire*, where there were some 18 orphans and Red Cross staff.[2632] Modeste Gatsinzi "obviously" had a search warrant, which allowed him to search the *Groupe Scolaire*.[2633] Father Célestin was in charge of the *Groupe Scolaire*.[2634] Other brothers there included Nsabimana, Théogène, Twagirayezu, Faustin Niyonzima and Sylver Bariyanga.[2635] Despite being in the presence of Nizeyimana and Lieutenant Hategekimana, the clergy at the *Groupe Scolaire*, did not allow them to conduct a search.[2636] It required the arrival of Colonel Muvunyi, after which Father Célestin was forced to open all the doors.[2637] Nizeyimana and Hategekimana were present and leading Witness ZBH and his group during the search.[2638]

1067. Witness ZBH and his group brought out all the refugees, including adults and orphans from Kigali, and killed them inside the compound of the *Groupe Scolaire*.[2639] Those who were not killed on the spot were transported to Rwasave and killed there.[2640]

[2625] Witness TQ, T. 27 January 2011, p. 35. Witness TQ specified that this estimated figure was based on headcount of refugees conducted during meals. T. 27 January 2011, p. 35.
[2626] Witness TQ, T. 27 January 2011, p. 35.
[2627] Witness TQ, T. 27 January 2011, p. 32.
[2628] Witness TQ, T. 27 January 2011, p. 32.
[2629] Witness ZBH, T. 8 February 2011, pp. 35-36; Exhibit P21 (Witness ZBH's Personal Information Sheet). At the time of his testimony, Witness ZBH was incarcerated for genocide related crimes. T. 9 February 2011, pp. 36-38.
[2630] Witness ZBH, T. 8 February 2011, p. 51; T. 9 February 2011, p. 2. Witness ZBH later stated that they spent the night of 28 to 29 April 1994 guarding the *Groupe Scolaire,* rather than the night of 29 to 30 April. T. 9 February 2011, p. 2.
[2631] Witness ZBH, T. 8 February 2011, pp. 51-52.
[2632] Witness ZBH, T. 8 February 2011, p. 51; T. 9 February 2011, p. 2.
[2633] Witness ZBH, T. 8 February 2011, pp. 51, 63; T. 9 February 2011, p. 2.
[2634] Witness ZBH, T. 8 February 2011, pp. 51-52. Witness ZBH first noted that Father Célestin had fled, but subsequently stated that he was against their entrance into the compound.
[2635] Witness ZBH, T. 8 February 2011, p. 51.
[2636] Witness ZBH, T. 8 February 2011, pp. 51, 63.
[2637] Witness ZBH, T. 8 February 2011, pp. 51-52, 63.
[2638] Witness ZBH, T. 8 February 2011, p. 52.
[2639] Witness ZBH, T. 8 February 2011, p. 51.
[2640] Witness ZBH, T. 8 February 2011, p. 51.

Prosecution Witness AJP

1068. Witness AJP, a Hutu, lived in Butare town in 1994.[2641] He was a former ESO cadet with close ties to Nizeyimana.[2642] On an unspecified date, Nizeyimana informed him that he had sent Second Lieutenants Bizimana, Gatsinzi and Ndayambaje to kill civilians at the *Groupe Scolaire*.[2643]

Prosecution Witness BDE

1069. Witness BDE, a Hutu, was a *nouvelle formule* cadet at the ESO in April 1994.[2644] On an unspecified date, Witness BDE heard from two cadets, Kamujigi and Jérôme, that soldiers based at the ESO had carried out a search at the *Groupe Scolaire*.[2645] Jérôme told her that the soldiers had found *Inyenzis* and secret documents at the *Groupe Scolaire*.[2646] The "people" who had carried out the search had killed the *Inyenzis*.[2647] He had a dictionary and mathematics book, which he got when he went to the *Groupe Scolaire*.[2648]

Prosecution Witness BUR

1070. In April 1994, Witness BUR, a Hutu, testified that he was a sergeant at the ESO in Butare.[2649] Sometime around 25 or 26 April, while in the Taba area on patrol, Witness BUR heard sustained gunfire coming from the direction of the *Groupe Scolaire*.[2650] He entered the premises of the *Groupe Scolaire* "out of curiosity" and saw corpses next to "the classes" and others on the playground of the school.[2651] He saw Nizeyimana there, who was acting as the operations commander of the approximately 30 soldiers present, and Hategekimana.[2652] There were soldiers from the ESO and Ngoma camps, as well as a number of *Interahamwe*.[2653] Also present were Sergeant Major Iyamuremye, Chief Warrant Officers Kayinamura and Ntamuhanga, Hategekimana's bodyguard, Kazungu, and many other soldiers whose names he could not recall.[2654]

[2641] Witness AJP, T. 14 February 2011, p. 81; T. 15 February 2011, pp. 3-4, 7, 34, 64, 67-69; Exhibit P28 (Witness AJP's Personal Information Sheet).
[2642] Witness AJP, T. 14 February 2011, pp. 78-81; T. 15 February 2011, pp. 3-4, 7, 34, 64, 67-69.
[2643] Witness AJP, T. 15 February 2011, pp. 22-23.
[2644] Witness BDE, T. 28 January 2011, pp. 8-9; Exhibit P13 (Witness BDE's Personal Information Sheet).
[2645] Witness BDE, T. 28 January 2011, p. 30.
[2646] Witness BDE, T. 28 January 2011, p. 30.
[2647] Witness BDE, T. 28 January 2011, p. 30.
[2648] Witness BDE, T. 28 January 2011, p. 30. It is not clear from Witness BDE's evidence whether Jérôme participated in the search at the *Groupe Scolaire*.
[2649] Witness BUR, T. 2 February 2011, p. 74; Exhibit P18 (Witness BUR's Personal Information Sheet).
[2650] Witness BUR, T. 3 February 2011, p. 64.
[2651] Witness BUR, T. 3 February 2011, p. 64.
[2652] Witness BUR, T. 3 February 2011, p. 64.
[2653] Witness BUR, T. 3 February 2011, pp. 64, 66.
[2654] Witness BUR, T. 3 February 2011, pp. 65-66.

Defence Witness BNN07

1071. Witness BNN07, a Hutu, was a military student at the university in April 1994.[2655] Witness BNN07 went to the ESO on the evening of 28 April to see if Second Lieutenant Modeste Gatsinzi could assist him to get a vehicle to transport his fiancée and her two close acquaintances, who were at the University of Butare, to a safer place.[2656] They agreed to meet the following day.[2657]

1072. On 29 April 1994 in the morning, the witness returned to the ESO to follow up on Gatsinzi's promise to find him a vehicle.[2658] He met with Gatsinzi, who informed him that he had been instructed by Lieutenant Colonel Tharcisse Muvunyi to go to the *Groupe Scolaire*.[2659] Witness BNN07 saw Gatsinzi holding a search warrant, issued by Muvunyi, authorizing him to carry out a search operation at the *Groupe Scolaire*.[2660] Neither Nizeyimana nor Hategekimana took part in the events at the *Groupe Scolaire* on 29 April.[2661]

1073. Gatsinzi was instructed to go to the *Groupe Scolaire* to assess whether there were enemies who had infiltrated the city and get a sense of the prevailing situation there.[2662] The witness accompanied Gatsinzi and his platoon of about 30 armed soldiers to the *Groupe Scolaire*, where they arrived between 9.00 and 9.30 a.m.[2663] Once there, they found a large number of *Interahamwe,* peasants and other persons in military uniforms screaming that there were *Inkotanyi* and Tutsis in their midst.[2664] They were screaming that they should help them get rid of those *Inyenzi*.[2665] Gatsinzi cautioned those people not to scream and went to the Bursar to tell him what the purpose of his mission was.[2666]

1074. After having spoken to the Bursar, Gatsinzi went to the classrooms to see who had taken refuge there and ordered them out so he could identify them.[2667] Witness BNN07 estimated there to have been close to a thousand "or even more" people who had to be identified.[2668] Gatsinzi called on his soldiers to line the people up in the yard and asked them to produce their identity cards.[2669] Anyone who did not have an identity card had to go to "a certain place" and were kept on the verandas of the classrooms.[2670] Those who had an identity card, whether they were Hutu or Tutsi, went back to the place where they had come from.[2671]

[2655] Witness BNN07, T. 6 September 2011, pp. 4-5; Exhibit D75 (Witness BNN07's Personal Information Sheet).
[2656] Witness BNN07 testified that his fiancée's acquaintances were afraid, because they were of mixed Hutu and Tutsi parentage and had Tutsi physical features. Witness BNN07, T. 6 September 2011, pp. 7-10.
[2657] Witness BNN07, T. 6 September 2011, p. 10.
[2658] Witness BNN07, T. 6 September 2011, p. 10.
[2659] Witness BNN07, T. 6 September 2011, pp. 10-11. Witness BNN07 stated that Modeste Gatsinzi was a Tutsi. T. 6 September 2011, p. 12.
[2660] Witness BNN07, T. 6 September 2011, pp. 11, 27.
[2661] Witness BNN07, T. 6 September 2011, pp. 24-25, 43.
[2662] Witness BNN07, T. 6 September 2011, pp. 11-12. Witness BNN07 did not specify how he knew this information.
[2663] Witness BNN07, T. 6 September 2011, pp. 11, 26, 32.
[2664] Witness BNN07, T. 6 September 2011, pp. 11-12.
[2665] Witness BNN07, T. 6 September 2011, pp. 11-12.
[2666] Witness BNN07, T. 6 September 2011, pp. 12, 28.
[2667] Witness BNN07, T. 6 September 2011, pp. 12, 27-28, 30.
[2668] Witness BNN07, T. 6 September 2011, pp. 12, 15.
[2669] Witness BNN07, T. 6 September 2011, pp. 12-13, 15.
[2670] Witness BNN07, T. 6 September 2011, p. 13.
[2671] Witness BNN07, T. 6 September 2011, pp. 13, 15-16, 30.

While the soldiers did not prevent people from leaving the *Groupe Scolaire* premises, no one dared to leave.[2672]

1075. The soldiers asked the refugees questions about where they hailed from and tested their knowledge of Rwanda, since it was believed that some of the people at the *Groupe Scolaire* were *Inkotanyi*.[2673] The responses to these questions would determine whether one was an *Inkotanyi* or not.[2674] Witness BNN07 did not think that the soldiers posed these questions to ascertain their ethnicity.[2675] He did not see the soldiers beat or assaulting the civilians.[2676] He did not participate in the identification process, but was an "ordinary observer" waiting for his problem to be resolved and to get the vehicle Gatsinzi had promised him.[2677]

1076. Members of the *Interahamwe,* who were present at the *Groupe Scolaire,* wanted to get involved in the identification process, threatened some of the soldiers and accused them of being accomplices.[2678] At the suggestion of Gatsinzi, some of the people who were at the scene gave the militia money in order to calm them down.[2679] Gatsinzi's purpose was to "save those people".[2680]

1077. The identification process lasted from the morning until about 5.00 p.m.[2681] A large number of people were sent back to where they had been before at the school, but approximately 40 to 50 people, who did not have identification cards, remained behind.[2682] They included unarmed men and women, but no children.[2683] They were asked to wait on the verandas of the classroom.[2684] The majority of these refugees were Tutsi, but a few of them were Hutu.[2685] These refugees were not separated from other refugees based on suspicions that they were *Inkotanyi*.[2686]

1078. After the "noise died down", Gatsinzi approached the clergy to tell them that they had to do something about the people who had remained outside, because the *Interahamwe* "were fully aware that those people were still at the *Groupe Scolaire*".[2687] He spoke to the clergy, because he could not ensure the safety of these people.[2688] Gatsinzi asked the 40 to 50 people

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[2672] Witness BNN07, T. 6 September 2011, p. 28.
[2673] Witness BNN07, T. 6 September 2011, p. 15.
[2674] Witness BNN07, T. 6 September 2011, p. 15.
[2675] Witness BNN07, T. 6 September 2011, p. 28.
[2676] Witness BNN07, T. 6 September 2011, pp. 37-38.
[2677] Witness BNN07, T. 6 September 2011, pp. 16, 32-35.
[2678] Witness BNN07, T. 6 September 2011, p. 13.
[2679] Witness BNN07, T. 6 September 2011, p. 13. Gatsinzi went to see the Bursar and received between 80,000 to 100,000 Rwandan francs, which he gave to the *Interahamwe* in order to placate them. T. 6 September 2011, p. 13.
[2680] Witness BNN07, T. 6 September 2011, p. 13.
[2681] Witness BNN07, T. 6 September 2011, pp. 13, 34.
[2682] Witness BNN07, T. 6 September 2011, pp. 13-15.
[2683] Witness BNN07, T. 6 September 2011, p. 30.
[2684] Witness BNN07, T. 6 September 2011, pp. 13, 30.
[2685] Witness BNN07, T. 6 September 2011, pp. 30-31.
[2686] Witness BNN07, T. 6 September 2011, p. 33.
[2687] Witness BNN07, T. 6 September 2011, pp. 13-14.
[2688] Witness BNN07, T. 6 September 2011, pp. 13-14.

without an identity card what he could do for them, to which they responded that they wanted to be taken to a place where they would be safe.[2689]

1079. Thereafter, Gatsinzi and members of the clergy decided to transport those refugees to Butare where they were locked in the rooms of the members of the clergy.[2690] They were transported by civilian drivers using two pickup trucks that belonged to the Belgian Red Cross, which had earlier been used to transport orphans from an orphanage in Kacyiru to the *Groupe Scolaire*.[2691] Witness BNN07 did not know whether the soldiers accompanied those refugees when they were transported out of the *Groupe Scolaire*.[2692] The pickup trucks left after Witness BNN07 had left.[2693] None of the civilians were either killed or assaulted by the soldiers at the *Groupe Scolaire* on 29 April 1994.[2694]

1080. That evening, Witness BNN07 went to the officers' mess at the ESO for a drink.[2695] While there, he heard people say that the 40 or 50 people who had been taken from the *Groupe Scolaire* were intercepted by members of the *Interahamwe* and were taken to a valley in Rwasave where they were killed.[2696]

Defence Witness OUV03

1081. In April 1994, Witness OUV03, a Hutu, was an officer at the ESO.[2697] Nizeyimana would notify Witness OUV03 if he went anywhere outside of the ESO, including to the *Groupe Scolaire*.[2698] He could not recall the date upon which Nizeyimana went there.[2699]

Deliberations

1082. As a preliminary matter, the Chamber notes that apart from mere reference to the evidence of Prosecution Witness BDE and Defence Witness OUV03 in its closing brief, the Prosecution did not explain whether it relies on their evidence in relation to one or both of the attacks at the *Groupe Scolaire*.[2700] Nevertheless, the Chamber has considered their evidence and finds that there is very little in their testimonies that lend support to the allegation that Nizeyimana ordered, authorised or instigated his subordinates to kill Tutsi civilians at the *Groupe Scolaire* on either 21 or 29 of April 1994.

1083. Specifically, Prosecution Witness BDE heard from students in her class, Kamugi and Jérôme, that ESO soldiers had carried out a search at the *Groupe Scolaire* and killed *Inyenzi* there.[2701] However, the witness did not specify the date upon which this incident occurred, who specifically was involved or how many people were killed.[2702] Moreover, it is not

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[2689] Witness BNN07, T. 6 September 2011, pp. 13-14.
[2690] Witness BNN07, T. 6 September 2011, pp. 13, 16.
[2691] Witness BNN07, T. 6 September 2011, pp. 16, 31, 33.
[2692] Witness BNN07, T. 6 September 2011, p. 17.
[2693] Witness BNN07, T. 6 September 2011, pp. 16, 31, 33.
[2694] Witness BNN07, T. 6 September 2011, pp. 28, 37, 44-45.
[2695] Witness BNN07, T. 6 September 2011, pp. 17, 28.
[2696] Witness BNN07, T. 6 September 2011, p. 17.
[2697] Witness OUV03, T. 30 May 2011, p. 62; Exhibit D51 (Witness OUV03's Personal Information Sheet).
[2698] Witness OUV03, T. 31 May, 2011, pp. 48-49, 52-53.
[2699] Witness OUV03, T. 31 May, 2011, p. 51.
[2700] Prosecution Closing Brief, para. 234.
[2701] Witness BDE, T. 28 January 2011, p. 30.
[2702] Witness BDE, T. 28 January 2011, p. 30.

apparent from her evidence that her sources, Kamugi and Jérôme, were present during the search or what the basis for their knowledge was. Given the vague and general nature of her hearsay evidence, the Chamber finds her testimony of limited probative value in this regard.

1084. Similarly, Defence Witness OUV03 testified that Nizeyimana would notify him when he left the ESO, including to the *Groupe Scolaire*.[2703] However, the witness did not know when Nizeyimana went there and specified that he had only used this as an example to demonstrate that Nizeyimana would keep him abreast of his whereabouts during the day.[2704] It is not apparent from his testimony what the purpose of Nizeyimana's visit was, when he went there or if it in any way related to the attacks on the school on 21 and 29 April 1994. Accordingly, the Chamber does not find his evidence dispositive.

(i) 21 April 1994 Attack

1085. At the outset, the Chamber notes that the only criminal allegation contained within paragraph 16 of the Indictment involves the killing of a Red Cross orphan by the name of Jean Luc. Prosecution Witness TQ is the sole witness who provided testimony in regards to his murder. Specifically, Witness TQ noted that a group of six armed soldiers, including Lieutenant Mazimpaka, attacked the *Groupe Scolaire* on 21 April 1994 and tried to abduct 13 or 14 Red Cross orphans. The witness was able to secure the release of the children after having paid the soldiers money in exchange for their lives. It was not until later that evening that he was informed that one orphan, Jean Luc, had in fact been killed by the soldiers in a forest along with other refugees.[2705] Jean Luc's body was never recovered.[2706]

1086. Notably, the witness testified that the 13 to 14 orphaned children had been returned to him that day, but he did not notice Jean Luc missing. It was only later in the evening that "the children" informed him of the absence of the child. Witness TQ did not provide any information on the efforts, if at all, to find the missing boy. Similarly, it is not clear from his evidence who later told him that Jean Luc had been murdered and what that person's source of information was. Indeed, Jean Luc's body was never recovered, and it is therefore uncertain whether he was even killed, and if so, by whom and where. Given the general and ambiguous nature of Witness TQ's uncorroborated hearsay evidence, the Chamber cannot conclude that the only reasonable inference to be drawn from the circumstances is that Jean Luc was abducted from the *Groupe Scolaire* and killed by ESO soldiers in a forest on 21 April 1994. Accordingly, this allegation is dismissed.

(ii) 29 April 1994 Attack

1087. The Prosecution relies on Witnesses TQ, ZBH, AJP and BUR to establish that ESO soldiers, including Second Lieutenant Gatsinzi, and *Interahamwe*, led by Nizeyimana and Lieutenant Hategekimana, separated, abducted approximately 100 Tutsis at the *Groupe Scolaire* on 29 April 1994 and killed them in the Rwasave valley.[2707]

[2703] Witness OUV03, T. 31 May 2011, pp. 49, 51.
[2704] Witness OUV03, T. 31 May 2011, pp. 49, 51.
[2705] Witness TQ, T. 27 January 2011, pp. 29-31.
[2706] Witness TQ, T. 27 January 2011, p. 47.
[2707] The Chamber has elsewhere considered in detail the general context in which Witness BUR testified and determined that his evidence lacks basic credibility. Specifically, Rwandan Gacaca documents raise doubt that

1088. At the outset, Prosecution Witnesses TQ and ZBH and Defence Witness BNN07 all provided first-hand evidence of soldiers and *Interahamwe* entering the *Groupe Scolaire* premises in the morning of 29 April 1994.[2708] Moreover, Prosecution Witnesses TQ and ZBH, as well as Defence Witness BNN07 identified Second Lieutenant Modest Gatsinzi from the ESO, accompanied by other armed soldiers, at the premises.[2709]

1089. Specifically, Witness TQ saw Gatsinzi assemble refugees at the *Groupe Scolaire* together with "other soldiers". The Chamber observes that Witness TQ admitted that he had never seen Gatsinzi before the incident at the *Groupe Scolaire*. It was not until they met at a "grouped trial" in 2000-2003 that the witness recognised him and realised Gatsinzi had been at the *Groupe Scolaire* during the attack.[2710] Moreover, the Defence confronted the witness with excerpts of his testimony during the *Muvunyi* trial, during which he testified that he did not know the identity of the soldiers who participated in that attack against Tutsi civilians at the *Groupe Scolaire* on 29 April 1994.[2711] The Chamber has serious concerns about the quality of his identification.

1090. Notwithstanding, his evidence is corroborated by Witness ZBH, who admitted to, and was convicted for, his participation in the attack on the *Groupe Scolaire* that day.[2712] The Chamber has elsewhere determined that Witness ZBH, given his frequent collaboration with soldiers during the genocide, would have been able to identify ESO soldiers, particularly higher ranking soldiers.[2713] Similarly, Defence Witness BNN07 admitted to having joined Gatsinzi "and his platoon of about 30 armed soldiers" on a mission Gatsinzi was to undertake at the *Groupe Scolaire*.[2714] The Chamber further observes that there is evidence in the record that Second Lieutenant Modeste Gatsinzi was convicted for his involvement in the attack against the refugees at the *Groupe Scolaire* on 29 April 1994.[2715]

1091. The evidence diverges on the purpose for which the soldiers were present at the *Groupe Scolaire*.[2716] Prosecution Witnesses TQ and ZBH both provided evidence about soldiers and *Interahamwe* separating and abducting refugees, after which a number of them were killed in Rwasave. Witness TQ provided detailed evidence about the process followed by the soldiers once they had assembled the refugees on the playground of the school.

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the witness was in Butare during April 1994. *See* II.2. Consequently, the Chamber has the same concerns about his evidence as it relates to this allegation, and disregards his testimony.

[2708] Prosecution Witness TQ, 27 January 2011, p. 31 (soldiers and *Interahamwe* entered the *Groupe Scolaire* on 29 April 1994, around 6.30 a.m.); Prosecution Witness ZBH, T. 8 February 2011, p. 51, T. 9 February 2011, p. 2 (Witness ZBH, who initially estimated the attack to have occurred on 30 April 1994, later corrected himself and stated that it was 29 April when he joined soldiers in an attack on the *Groupe Scolaire*, which commenced at 6.00 a.m.); Defence Witness BNN07, T. 6 September 2011, pp. 10-11 (Witness BNN07 joined an ESO mission to the *Groupe Scolaire* on 29 April in the morning, around 9.00 and 9.30 a.m.).

[2709] Prosecution Witness TQ, T. 27 January 2011, pp. 33-34; Prosecution Witness ZBH, T. 8 February 2011, pp. 51, 63; Defence Witness BNN07, T. 6 September 2011, pp. 10-12. Indeed, the Defence does not dispute the presence of Second Lieutenant Gatsinzi at the *Groupe Scolaire* on 29 April 1994. Defence Closing Brief, paras. 374-375.

[2710] Witness TQ, T. 27 January 2011, p. 33.

[2711] Witness TQ, T. 27 January 2011, pp. 54-56.

[2712] Witness ZBH, T. 8 February 2011, pp. 39, 50-51; Exhibit D15B (Translation of Witness ZBH's Confession), pp. 23-24, 33-34.

[2713] *See* II.11.

[2714] Witness BNN07, T. 6 September 2011, pp. 11, 26, 32.

[2715] Witness BNN07, T. 6 September 2011, p. 38.

[2716] Prosecution Witness TQ, T. 27 January 2011, pp. 32, 34-35; Prosecution Witness ZBH, T. 8 February 2011, pp. 52-54; Defence Witness BNN07, T. 6 September 2011, pp. 12-13, 15.

Specifically, the soldiers identified and separated Tutsi civilians based on "their particulars [and] their physical looks".[2717] The Tutsi refugees were made to lie face down in front of the veranda, before being beaten to death.

1092. Witness TQ then described how the remaining victims were taken by lorry to the Rwasave valley and killed. Witness TQ did not specify his basis for knowledge of the killings in Rwasave. He estimated that a large number of people went "missing" that day, namely about 140 people in total.[2718] It is not apparent from his evidence how he arrived at this number of missing people.

1093. Notably, Witness ZBH was not posed any questions in regards to the manner in which the refugees were identified, whether they were selected on the basis of their ethnicity and how many people were in fact killed.[2719] Indeed, Witness ZBH simply stated that they took the orphans and adults out of the school and killed them at Rwasave.[2720] Nevertheless, his evidence broadly corroborates Witness TQ's account of soldiers and *Interahamwe* entering the school's premises in the morning and abducting refugees from the compound, after which they were killed at Rwasave. Moreover, Witness ZBH noted the presence of people who had sought refuge, "including people who had come from Kigali", offering further corroboration for the presence of Witness TQ and the Red Cross orphans.[2721]

1094. The Defence submits that Witnesses TQ and ZBH's accounts are fundamentally different.[2722] Specifically, Witness ZBH testified that he and other civilians from the Kabutare and Save areas, together with some soldiers, surrounded the *Groupe Scolaire* the night before the attack.[2723] Moreover, he testified that Colonel Muvunyi had to come to the premises on the morning of the attack, because the clergy refused to let them enter the *Groupe Scolaire*.[2724] The Chamber considers it reasonable that Witness TQ would not have known what transpired outside the premises of the *Groupe Scolaire*. Indeed, it is apparent from his evidence that he was only alerted to the presence of soldiers and *Interahamwe* on the morning of the attack, when a child let him know.[2725] The Chamber does not consider the different narratives contradictory.

1095. Contrary to Prosecution Witnesses TQ and ZBH, Defence Witness BNN07, stated that Gatsinzi had been sent to the *Groupe Scolaire* to ascertain whether "the enemy" had infiltrated the school and to get a sense of the prevailing situation.[2726] Witness BNN07 stated that the refugees present were checked for identification, but that this was done on the basis

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[2717] Witness TQ, T. 27 January 2011, pp. 32, 34.
[2718] Witness TQ, T. 27 January 2011, p. 35.
[2719] Witness ZBH, T. 8 February 2011, pp. 51-52.
[2720] Witness ZBH, T. 8 February 2011, p. 51 ("A. ... we brought out all persons who had sought refuge in that school, including people who had come from Kigali. So we took the orphans and the adults who had sought refuge at that location and we killed them there. Those who were not killed on the spot were taken in vehicles to Rwasave and killed there."). Witness ZBH's testimony is generally consistent with his prior statement, in which he details his involvement in the *Groupe Scolaire* attack on 29 April 1994. Exhibit D15B (Translation of Witness ZBH's Confession), pp. 23-24, 33-34. Witness ZBH's prior statement states that they searched for *Inyenzi* during an operation which lasted six hours and assembled them on the playground. Exhibit D15B, p. 34.
[2721] Witness ZBH, T. 8 February 2011, p. 51.
[2722] Defence Closing Brief, para. 376.
[2723] Witness ZBH, T. 8 February 2011, p. 51; T. 9 February 2011, p. 2.
[2724] Witness ZBH, T. 8 February 2011, pp. 51-52, 63.
[2725] Witness TQ, T. 27 January 2011, p. 32.
[2726] Witness BNN07, T. 6 September 2011, p. 11.

of identification cards only, rather than ethnicity.[2727] Indeed, those who had an identity card, whether Hutu or Tutsi, were allowed to go back to where they had been before. The witness stated that Gatsinzi in fact tried to save the remaining 40 or 50 people by transporting them to the premises of the clergy. He later heard that *Interahamwe* had intercepted the vehicles and killed the refugees at a valley in Rwasave.[2728]

1096. Witness BNN07 joined Gatsinzi on his mission to the *Groupe Scolaire*, because he wanted to lend a vehicle from Gatsinzi to transport his fiancée from the university to safety. Once at the *Groupe Scolaire*, Witness BNN07 simply stayed there as an observer, waiting for Gatsinzi to assist him in obtaining a car.[2729] The Chamber finds the explanation for Witness BNN07's presence incredulous. Indeed, the Chamber does not accept that Witness BNN07 sat around the *Groupe Scolaire* for over six hours, waiting to get a car to drive to the university. This raises serious questions about the reliability of his evidence.

1097. Moreover, the Chamber does not accept Witness BNN07's testimony that Gatsinzi simply came to identify people and subsequently tried to save those who did not carry their identity card, contrary to the prevailing situation at the time and the practice of soldiers and militia throughout Butare. Indeed, the violence in Butare had already been underway for at least a week by that time, during which Tutsis were systematically identified, separated and killed. Witness BNN07's evidence that the soldiers were not specifically targeting Tutsis and that he did not witness anyone being beaten or killed does not ring true.[2730] The Chamber therefore considers his evidence to lack credibility in this regard.

1098. Prosecution and Defence evidence reflects that the refugees abducted from the *Groupe Scolaire* were killed at the Rwasave valley on 29 April 1994.[2731] Specifically, Witness TQ estimated there to have been 140 people missing from the *Groupe Scolaire* following the attack, whereas Witness BNN07 estimated that between 40 and 50 people were driven away from the school. Witness TQ spoke of a lorry, which came to pick the selected people up from the *Groupe Scolaire* to kill them in Rwasave and noted that they never found the bodies of these refugees.[2732] Witness BNN07 corroborates this account, noting that two pickup trucks transported 40 to 50 people away from the school. He later heard that the vehicle was intercepted and the persons were killed by *Interahamwe* in the Rwasave valley.[2733] Based on Witnesses TQ and BNN07's evidence, the Chamber finds that between 50 and 140 Tutsi civilians were transported away from the *Groupe Scolaire* on 29 April.

1099. Witnesses TQ and BNN07 were not present when the refugees were killed in Rwasave valley. Notwithstanding, Witness ZBH corroborated their accounts, testifying that the victims who were not killed on the spot were taken in vehicles to Rwasave and killed

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[2727] Witness BNN07, T. 6 September 2011, pp. 13, 15-16, 28, 30.
[2728] Witness BNN07, T. 6 September 2011, p. 17.
[2729] Witness BNN07, T. 6 September 2011, pp. 16, 32-35.
[2730] Witness BNN07, T. 6 September 2011, pp. 28, 37-38, 44-46.
[2731] The Chamber observes that Witnesses TQ and ZBH provided evidence of refugees killed at the *Groupe Scolaire* itself. Witness TQ, T. 27 January 2011, pp. 31-32; Witness ZBH, T. 8 February 2011, p. 51. However, Indictment paragraph 17 only makes reference in regards to killings that occurred at the Rwasave valley. Accordingly, the Chamber will not consider the evidence related to the killing of Tutsi refugees at the *Groupe Scolaire*, other than in the context of the refugees killed at the Rwasave valley.
[2732] Witness TQ, T. 27 January 2011, pp. 32, 35, 53.
[2733] Witness BNN07, T. 6 September 2011, pp. 16-17, 31, 33.

there.[2734] It is not clear if he was present when the refugees were killed at Rwasave and he did not testify to the number of persons murdered there.

1100. The Chamber notes that the record reflects that a large number of Tutsi refugees were housed at the *Groupe Scolaire* at the time of the attack.[2735] Moreover, the size and complexity of the operation, which took six hours to complete, further suggests that numerous persons were at the school and being separated on the basis of their ethnicity.[2736] Additionally, Witness TQ recounted how Tutsi refugees were asked to lie face-down after having been identified and separated, and Witnesses TQ and ZBH testified that the victims were subsequently killed at the school.[2737] The Chamber considers that the murder of the refugees at the *Groupe Scolaire* offers strong circumstantial support for the inference that the Tutsi civilians who were abducted from the premises were subsequently killed at the Rwasave valley.

1101. The Chamber notes the general context in which Tutsis were systematically targeted and killed throughout Butare by the time of the attack at the *Groupe Scolaire* and accepts the evidence that Tutsi refugees were being killed on the school's grounds. Furthermore, in light of the testimonies of Prosecution Witnesses TQ and ZBH and Defence Witness BNN07 that the remaining refugees transported away from the school were subsequently murdered, the only reasonable conclusion, contrary to Witness BNN07's evidence, is that Second Lieutenant Gatsinzi and his platoon, consisting of 30 ESO soldiers, abducted 50 to 140 refugees and subsequently killed them together with *Interahamwe* at the Rwasave valley on 29 April 1994.[2738]

1102. The crucial question for the Chamber to determine is the role that Nizeyimana played, if any, in the killing of the *Groupe Scolaire* refugees. Prosecution Witnesses TQ, ZBH and AJP provided evidence in regards to Nizeyimana's presence and involvement in the attack on the *Groupe Scolaire*. Specifically, Witness TQ identified Nizeyimana as having been present at the *Groupe Scolaire* during the attack, directing other soldiers, including Second Lieutenant Gatsinzi.[2739] Similarly, Witness ZBH noted that Nizeyimana arrived in the morning and led the attack against the school, together with Lieutenant Hategekimana.[2740] Witness AJP testified that Nizeyimana told him that he had sent Second Lieutenants Bizimana and Gatsinzi and Ndayambaje to kill people at the *Groupe Scolaire*.[2741] Before turning to the merits of their evidence, the Chamber shall first conduct an analysis of their credibility as it relates to this allegation.

1103. The Defence submits that Witness TQ's testimony that he saw Nizeyimana at the *Groupe Scolaire* during the attack is contradicted by the evidence he provided during the *Muvunyi* trial. Specifically, during the *Muvunyi* trial, Witness TQ testified that he did not

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[2734] Witness ZBH, T. 8 February 2011, p. 51.
[2735] Witness TQ estimated there to have been approximately 1500 refugees. Witness TQ, T. 27 January 2011, p. 23.
[2736] Prosecution Witness TQ, T. 27 January 2011, pp. 31, 53; Exhibit D15B (Translation of Witness ZBH's Confession), p. 34; Defence Witness BNN07, T. 6 September 2011, pp. 13, 34.
[2737] *See, e.g.*, Witness TQ, T. 27 January 2011, p. 32; Witness ZBH, T. 8 February 2011, p. 51. *See also* Exhibit D15B (Translation of Witness ZBH's Confession), p. 33 ("We had been instructed to tell [the refugees] to lie on the ground and then sort them out.").
[2738] *Cf. Rukundo* Appeal Judgement, paras. 187-191.
[2739] Witness TQ, T. 27 January 2011, pp. 33-34, 53-52.
[2740] Witness ZBH, T. 8 February 2011, pp. 50-51.
[2741] Witness AJP, T. 15 February 2011, pp. 22-23.

know the identity of the soldiers at the school and only learned of it when he stood trial for the *Groupe Scolaire* attack together with Second Lieutenant Gatsinzi.[2742]

1104. Witness TQ suggested that he was testifying during the trial against Gatsinzi and that he "avoided" telling the Rwandan court about Nizeyimana, because that would have caused him problems "given [his] situation at that time in Rwanda".[2743] Specifically, after his testimony in 2005, he found out while he was living in Uganda that people knew that he had testified against military figures at the Tribunal.[2744] He knew that Nizeyimana was alive and that he was in the region "moving about", and that some witnesses had received threats following their testimonies.[2745] Witness TQ had in fact received a phone call from someone "talking about the *Muvunyi* trial".[2746] His concerns were therefore related to his safety.[2747]

1105. The Chamber observes, and Witness TQ concedes, that the threats described by the witness only commenced *after* his testimony in the *Muvunyi* trial.[2748] Moreover, the witness did not provide any details in regards to the type of threats he received, other than being aware that the families of accused persons knew about his testimony before this Tribunal. The Chamber is far from persuaded by Witness TQ's explanation in regards to his failure to have mentioned that Nizeyimana was present at the *Groupe Scolaire* on 29 April 1994. Indeed, his evidence during the *Muvunyi* trial in 2005 that he did not know the soldiers present at the school is materially inconsistent with his testimony before this Chamber, ascribing a crucial role to Nizeyimana during the *Groupe Scolaire* attack. This raises serious questions about the quality of his evidence and his ability to identify Nizeyimana.

1106. While Witness TQ lived in Butare at the time, he admitted that he only first saw Nizeyimana "face-to-face" during an encounter at the *Chez* Bihira roadblock around 20 April 1994.[2749] Moreover, he admitted that he had never spoken to Nizeyimana before that time and therefore only knew him by virtue of having seen him "moving around in town".[2750] In light of his lack of detail in describing his basis for identifying Nizeyimana, combined with the contradictory nature of his evidence before this Chamber and during the *Muvunyi* trial, the Chamber considers his evidence of limited probative value in this regard.

1107. Turning to Witness ZBH, the Chamber has elsewhere considered in detail the context in which he testified and determined that it would approach his evidence with caution.[2751] The same analysis applies here. The Chamber observes that Witness ZBH's testimony is largely consistent with his 2003 confession to the extent that he provides evidence on the

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[2742] Defence Closing Brief, paras. 371-372; Witness TQ, T. 27 January 2011, pp. 54-55.
[2743] Witness TQ, T. 27 January 2011, p. 55. Witness TQ was incarcerated until 2003, though it is not clear from his evidence what he was imprisoned for. T. 27 January 2011, pp. 40-41.
[2744] Witness TQ, T. 27 January 2011, p. 56.
[2745] Witness TQ, T. 27 January 2011, p. 56.
[2746] Witness TQ, T. 27 January 2011, p. 56.
[2747] Witness TQ, T. 27 January 2011, p. 56.
[2748] Witness TQ, T. 27 January 2011, p. 56.
[2749] Witness TQ, T. 27 January 2011, p. 45. *See also* II.7.3.6.
[2750] Witness TQ, T. 27 January 2011, p. 25 ("Q. At the time that he stopped you had you ever seen him before? A. Yes, I would see him moving around in town, but we did not speak to each other – we had not spoken to each other. Q. So how did you know his name when he stopped you at the intersection – or, sorry, near the kiosk? A. I had seen him several times before; I knew him, I knew his name. Q. And aside from knowing his name, did you know anything else about him prior to that day when he stopped you? A. Besides the fact that he was a soldier, I had no other information.").
[2751] *See* II.3.4.

involvement of Nizeyimana and Lieutenant Hategekimana during the 29 April 1994 attack at *Groupe Scolaire*.[2752] Witness ZBH's confession before the Gacaca court about Nizeyimana and Lieutenant Hategekimana's involvement in the crime was made in 2003, while the witness was incarcerated.[2753]

1108. The Chamber observes that prior consistent statements do not bolster a witness's credibility.[2754] However, these circumstances reflect that the witness has maintained Nizeyimana's involvement in the crime for a long period. Whatever ulterior motives Witness ZBH has to provide testimony inculpating Nizeyimana, the Chamber has no reasonable concerns that it has been tainted by his incarceration. Moreover, the Chamber has elsewhere determined that Witness ZBH, given his frequent former position within the ESO as well as his collaboration with soldiers at the time, would have been able to identify Nizeyimana.[2755]

1109. Nevertheless, his evidence in regards to Nizeyimana and his involvement is very brief and general in nature. Indeed, Witness ZBH only noted that Nizeyimana and Lieutenant Hategekimana arrived at the *Groupe Scolaire* during the morning of the attack.[2756] He did not provide any testimony in regards to Nizeyimana's precise involvement or other details regarding the attack. Notably, Witness ZBH stated that they were not able to enter the *Groupe Scolaire* premises, despite being in the company of Nizeyimana and Lieutenant Hategekimana. It took the arrival of Colonel Muvunyi to be allowed onto the premises.[2757] Nizeyimana's inability to get them into the school contradicts the seminal role he was supposed to have in this operation. In light of the Chamber's fundamental reservations regarding Witness TQ's identification of Nizeyimana, as well as the Chamber's need to approach Witness ZBH's evidence with caution, it is not satisfied that their evidence establishes Nizeyimana's direct involvement beyond reasonable doubt.

1110. Turning to Witness AJP, the Chamber has elsewhere discussed in detail the context in which the witness testified and determined that it would view his evidence with the appropriate caution.[2758] The same concerns apply in this here. Witness AJP's prior conviction as an accomplice in the genocide warrants caution and his apparent status as a fugitive raises further concerns. Specifically, the Chamber considers that his testimony before the Tribunal may be motivated by a desire to positively impact his ongoing criminal proceedings and

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[2752] *See* Exhibit D15B (Translation of Witness ZBH's Confession), pp. 33-34. Witness ZBH describes how he and a group of youths were led by Commander Hategekimana, Lieutenants Gatsinzi and Gakwerere, Nizeyimana and Diogène Dusabimana, in an attack on the *Groupe Scolaire* on 29 April 1994. In so finding, the Chamber has considered Defence arguments that Witness ZBH, who kept a copy of his confession, had modified the one that he gave to the Prosecution in 2010, adding Nizeyimana's name in several places after the fact. Defence Closing Brief, paras. 170-179. However, the Defence does not make these submissions with respect to this particular aspect of Witness ZBH's confession. A review of the original confession reveals that the circumstances which, in the Defence's view, show *ex post facto* alterations, are not present. Namely, the reference to Nizeyimana's involvement appears squarely within the original narrative rather than having been added in areas outside the narration section or added into open spaces among the original text. *See* Exhibit D15A(K) (Original Copy of Witness ZBH's Prior Confession), p. 10 *and* Exhibit D15B (Translation of Witness ZBH's Confession), pp. 33-34. The Chamber does not consider that other incidents of purported modifications reasonably undermines Witness ZBH's credibility so that none of his evidence can be relied upon.
[2753] Exhibit D15B (Translation of Witness ZBH's Confession).
[2754] *Ntakirutimana* Appeal Judgement, para. 147.
[2755] *See* II.11.
[2756] Witness ZBH, T. 8 February 2011, p. 51.
[2757] Witness ZBH, T. 8 February 2011, p. 51.
[2758] *See* II.6.1.

increase his ability to reintegrate into Rwanda. Finally, the deterioration of his relationship with Nizeyimana while the two were in exile further suggests that his evidence implicating the Accused should be treated with caution.[2759]

1111. Witness AJP testified that Nizeyimana told him that he had sent Second Lieutenants Bizimana, Gatsinzi and Ndayambaje to kill civilians at the *Groupe Scolaire*. While the Chamber has elsewhere determined that Witness AJP could identify Nizeyimana, his evidence is remarkably devoid of details.[2760] Moreover, the witness did not provide a date upon which this conversation took place, nor when Nizeyimana purportedly issued this order. Given the very general and vague nature of his evidence, as well as the absence of sufficiently credible evidence directly implicating Nizeyimana in this attack, the Chamber finds his testimony of limited probative value.[2761]

1112. Notably, the Defence has presented alibi evidence that raises the reasonable possibility that Nizeyimana was reassigned to lead a military training camp at the Mata tea factory in Gikongoro prefecture towards the end of April 1994.[2762] While the Chamber is not persuaded that this evidence creates the reasonable possibility that Nizeyimana only returned to Butare town at one time after that date, it does raise doubts about his direct participation in this attack. Moreover, questions persist as to whether he significantly or substantially contributed to this attack.[2763]

1113. Based on the totality of the evidence before it, the Chamber finds that ESO soldiers, led by Second Lieutenant Modeste Gatsinzi, and *Interahamwe*, entered the *Groupe Scolaire* premises on the morning of 29 April 1994. During the course of the day, they separated, abducted and subsequently killed between 50 to 140 Tutsis refugees in the Rwasave valley. Notwithstanding the size of this attack, the evidence in this particular instance fails to demonstrate that Nizeyimana knew or had reason to know about this particular crime.

[2759] *See* II.6.1.
[2760] *See* II.6.1.
[2761] The Defence objected to Witness AJP's testimony on the basis of lack of notice insofar as it relates to Nizeyimana having ordered Second Lieutenants Bizimana, Gatsinzi and Ndayambaje to kill civilians at the *Groupe Scolaire*. Defence Motion for Exclusion of Evidence, 29 April 2011, paras. 76-77. Given its findings in regards to Witness AJP's evidence, the Chamber need not consider whether sufficient notice was provided in this context.
[2762] *See* II.13.3.
[2763] Indeed, the record reflects that a large number of Rwandan recruits arrived in Mata on or around 30 April 1994, in addition to a large contingent of Burundian refugees, who had arrived days before. *See* II.13.3. The Chamber considers that it is reasonably possible that Nizeyimana, as the commander of the Mata training centre, would have been at the training site to manage the logistics of such a large intake of recruits around that date.

11. ATTACK ON THE BENEBIKIRA CONVENT, LATE APRIL 1994

Introduction

1114. The Indictment alleges that around 30 April 1994, soldiers from the FAR, ESO and Ngoma camps, including Lieutenant Hategekimana, Second Lieutenants Ndayambaje and Ngendahimana, as well as armed civilians, acting upon Nizeyimana's orders, forcibly removed and killed 25 children identified as Tutsis at the *Maison Generalice* of the Benebikira Sisters ("Benebikira convent"), including members of the Karenzi family. The children were brought to an area below the Ineza Hotel, along with civilians who had been detained at a roadblock near the front of the Ngoma Camp. All were killed there in Nizeyimana's presence. The Prosecution relies on the testimonies of Witnesses ZBH, QCQ and ZBA.[2764]

1115. The Defence does not dispute that the Karenzi children were killed, but argues that they were not killed at the hands of ESO soldiers and that Nizeyimana was not involved in the murders. Furthermore, it challenges the credibility of Witness ZBH's purported first-hand account and notes that while Witness QCQ confirmed Witness ZBA's presence during the attack, the latter witness's evidence is entirely hearsay.[2765]

Evidence

Prosecution Witness ZBH

1116. In April 1994, Witness ZBH, a Hutu, was a civilian who had previously worked as a "helper" at ESO in 1991, who among other things, washed clothing and polished shoes.[2766] He was recruited into killing Tutsis during the genocide by soldiers from the ESO and Ngoma camps, who would round civilians up in town or at roadblocks and tell them they had "work" for them to do.[2767]

1117. On 30 April 1994 at around 2.00 p.m., Witness ZBH and a number of other young men were picked up at an unspecified roadblock by Lieutenant Ildéphonse Hategekimana from the Ngoma Camp, who was in a blue vehicle with "World Bank" markings.[2768] Hategekimana compelled the witness to join him, stating that they had "work" to do.[2769] They boarded the vehicle, which included soldiers by the name of Ngendahimana and Ndayambaje,

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[2764] Indictment, para. 27; Prosecution Closing Brief, paras. 325-326, 329-330, 342, 344-350; T. 7 December 2011, p. 25 (Prosecution Closing Arguments).
[2765] Defence Closing Brief, paras. 288-292; T. 7 December 2011, pp. 39, 59-60 (Defence Closing Arguments). *See also* Defence Closing Brief, paras. 169-188 (challenging Witness ZBH's general credibility as well as his evidence related to particular events). The Defence did not present any witnesses in relation to this allegation.
[2766] Witness ZBH, T. 8 February 2011, pp. 35-36; Exhibit P21 (Witness ZBH's Personal Information Sheet). *See also* II.3.4.
[2767] Witness ZBH, T. 8 February 2011, pp. 37, 40 ("A. I would like to tell the Chamber that the commanders of camp Ngoma and ESO, including Tharcisse Muvunyi, who was a colonel; and Captain Ildéphonse Nizeyimana; Colonel Alphonse Nteziryayo; Ildéphonse Hategekimana, who was the commander of the Ngoma camp; Lieutenant Alphonse Nteziryayo; Second Lieutenant Modeste Gatsinzi and many others compelled us and sensitised us to understand Tutsis as being our enemies and that we had to do everything in our power to get rid of them.").
[2768] Witness ZBH, T. 8 February 2011, p. 52.
[2769] Witness ZBH, T. 8 February 2011, pp. 53-54; T. 9 February 2011, p. 53.

who were members of Hategekimana's escort, and travelled to a bus station near the Benebikira convent.[2770] Witness ZBH saw many soldiers at the site, but did not know exactly which camp they came from.[2771] He knew some soldiers were from the Ngoma Camp, but speculated that a number may have also originated from the ESO Camp.[2772]

1118. When they arrived at the convent, young people were being led out into its garden by Lieutenant Fabien Niyonteze, other soldiers and civilians.[2773] Second Warrant Officer Ntamuhanga was also searching the convent.[2774] Witness ZBH's group was split into two, one group to assist the soldiers in searching the convent and one that took the victims to be killed.[2775] As a member of the latter group, Witness ZBH and soldiers took victims by vehicle to a wooded area on the lower side of the prison at Hotel Ineza and killed them there with bayonets.[2776]

1119. They made several trips back to the convent to pick people up and drive them to a location where they were killed.[2777] While there, the witness noticed the presence of other victims, who, he testified, had been stopped at a roadblock near the Ngoma Camp.[2778] They were brought aboard a lorry driven by a man called Said Nassor.[2779] Two soldiers the witness identified as coming from Ngoma Camp were also in the vehicle.[2780] The detainees in the vehicle were killed at the same location as the Benebikira convent victims.[2781] Witness ZBH explained that Hategekimana compelled him to participate in the killing of children taken from the convent.[2782]

Prosecution Witness QCQ

1120. Witness QCQ, a teenage Tutsi student, lived at the Benebikira convent in April 1994.[2783] After President Habyarimana's plane was shot down, Tutsi refugees began arriving at the convent.[2784] Among them were the three Karenzi children and their neighbours, who she got to know after they arrived at the convent.[2785] On 30 April 1994, soldiers and *Interahamwe*, accompanied by dogs, arrived at the convent in a military pickup truck and on

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[2770] Witness ZBH, T. 8 February 2011, pp. 52, 61, 66-67; Exhibit D15B (Translation of Witness ZBH's Confession), p. 21.
[2771] Witness ZBH, T. 8 February 2011, p. 53.
[2772] Witness ZBH, T. 8 February 2011, pp. 53, 67; T. 9 February 2011, p. 47.
[2773] Witness ZBH, T. 8 February 2011, pp. 52, 61, 67.
[2774] Witness ZBH, T. 8 February 2011, p. 66.
[2775] Witness ZBH, T. 8 February 2011, p. 53.
[2776] Witness ZBH, T. 8 February 2011, pp. 52-53, 61-63, 66-76. Witness ZBH later clarified that they simply surrounded the victims as they got off the vehicle, while the soldiers actually conducted the killing. *See also* Exhibit D15B (Translation of Witness ZBH's Confession).
[2777] Witness ZBH, T. 8 February 2011, pp. 52, 54.
[2778] Witness ZBH, T. 8 February 2011, pp. 54-55. Witness ZBH was not questioned on the amount of people he saw in the lorry.
[2779] Witness ZBH, T. 8 February 2011, p. 55; T. 9 February 2011, pp. 41, 53.
[2780] Witness ZBH, T. 8 February 2011, p. 55; T. 9 February 2011, pp. 41, 53.
[2781] Witness ZBH, T. 8 February 2011, p. 55; T. 9 February 2011, p. 41.
[2782] Witness ZBH, T. 8 February 2011, pp. 53-54; T. 9 February 2011, p. 53.
[2783] Witness QCQ, T. 23 February 2011, pp. 6-7; Exhibit P35 (Witness QCQ's Personal Information Sheet).
[2784] Witness QCQ, T. 23 February 2011, pp. 11-12.
[2785] Witness QCQ, T. 23 February 2011, p. 13. Witness QCQ did not specify the date upon which the Karenzi children arrived.

foot.[2786] The uniformed soldiers and the *Interahamwe* were armed with rifles, machetes and clubs.[2787] Witness QCQ did not know from which camp the soldiers came, but among them was an unidentified Lieutenant issuing orders.[2788] Those who had sought refuge at the convent were assembled in its garden at gunpoint and forced to sit according to their region.[2789] When the refugees resisted, their identity cards were taken from them and they were made to chant "the RPF is responsible for our misfortunes".[2790] The attackers told them that "[i]t is *Inyenzis* who are the cause of all our misfortunes".[2791]

1121. Two of the Karenzi children were not assembled in the garden with her and one of their neighbours was hiding in a bathroom during the attack.[2792] Witness QCQ was spared by the attackers, because the Mother Superior confirmed she was an orphan.[2793] The Karenzi children had been able to avoid the initial detention, but were caught and brought back to the convent.[2794] Among them was Solange Karenzi, who was bleeding.[2795] When bringing them back, the assailants noted that "now they had achieved [their] goal".[2796] Witness QCQ thought this indicated that they wanted to kill all the people they had targeted.[2797]

1122. The soldiers separated out more than 30 individuals – primarily children – of Tutsi ethnicity, including the three Karenzi children, and loaded them onto a military pickup, where they were beaten and sat on by the *Interahamwe*.[2798] Witness QCQ knew the victims were killed, because she either never saw them again or had to bury their bodies, which were found around Kabutare and the monastery after assailants had informed family members of the corpses' whereabouts.[2799] She could not tell how the victims had been killed.[2800]

Prosecution Witness ZBA

1123. Witness ZBA, a Tutsi, fled from the home of Pierre Claver Karenzi to the Benebikira convent on 22 April 1994, after Karenzi had been abducted from the house and his wife, Alphonsine Mukamusoni, was killed in it.[2801] Witness ZBA and the Karenzi children, who were also fleeing, were stopped near the Benebikira convent by soldiers, including one named Marius and another called Claude, who were in a military jeep.[2802] They were taken to the garden of a military house not far from the convent and on a road behind it that eventually

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[2786] Witness QCQ, T. 23 February 2011, pp. 14, 16. The witnesses noted that there had been an "attack" around the middle of April as well.
[2787] Witness QCQ, T. 23 February 2011, pp. 14-15. Witness QCQ noted that there were many soldiers at the convent that day. She did not, however, describe the uniforms of the soldiers.
[2788] Witness QCQ, T. 23 February 2011, pp. 15-16, 20.
[2789] Witness QCQ, T. 23 February 2011, pp. 14-15.
[2790] Witness QCQ, T. 23 February 2011, p. 14.
[2791] Witness QCQ, T. 23 February 2011, p. 14.
[2792] Witness QCQ, T. 23 February 2011, p. 17.
[2793] Witness QCQ, T. 23 February 2011, p. 18.
[2794] Witness QCQ, T. 23 February 2011, p. 18.
[2795] Witness QCQ, T. 23 February 2011, p. 18.
[2796] Witness QCQ, T. 23 February 2011, p. 18.
[2797] Witness QCQ, T. 23 February 2011, p. 18.
[2798] Witness QCQ, T. 23 February 2011, pp. 16, 18-19.
[2799] Witness QCQ, T. 23 February 2011, pp. 19-20.
[2800] Witness QCQ, T. 23 February 2011, pp. 20-21.
[2801] Witness ZBA, T. 24 February 2011, pp. 10-11, 13. *See* II.6.5.
[2802] Witness ZBA, T. 24 February 2011, p. 10.

led to the main road to Gikongoro. Once there, the soldiers searched them and took their money.[2803]

1124. The witness was not sure who lived in that military house, but was told it belonged to a senior officer.[2804] While in the garden, she saw many soldiers around the age of 25 to 30 years old, all dressed in military uniform and carrying rifles.[2805] The soldiers decided to release them and allowed them to continue to the convent, except for Solange Karenzi.[2806] Solange arrived at the convent 30 minutes later, carrying a piece of paper with the soldiers' names and telephone numbers.[2807]

1125. On 30 April 1994, around 8.00 a.m., Sister Spèciose awoke Witness ZBA, informed her that an attack on the convent was imminent and that targeted persons, including the Karenzi children, needed to hide.[2808] Witness ZBA, although having been told by the sister that she was not a target since she was not from Butare, hid in the bathroom alone.[2809] Around 9.00 a.m. the compound was attacked.[2810]

1126. Witness ZBA remained in the bathroom throughout the attack and therefore did not see the assailants or the events as they unfolded.[2811] When she emerged from her hiding place after the attack, a girl by the name of Diane told her that the refugees had been separated by ethnicity and that Tutsis, including the Karenzi children, had been taken away in a pickup truck.[2812] She heard from Diane that both soldiers and *Interahamwe* had been involved in the attack, but did not specify which camp the soldiers came from.[2813] She was told that they said that if they could not find the Karenzi children, that they would burn the entire convent down and even heard nuns suggest that the witness be turned over to soldiers.[2814] All the victims aboard the pickup truck, including the Karenzi children, were killed at an unknown location.[2815]

Deliberations

1127. The Prosecution relies on witnesses QCQ, ZBA and ZBH to establish that the assailants, which included civilians and soldiers, arrived at the convent on 30 April 1994 and killed approximately 25 children, including the Karenzi kids, at a location below the Ineza Hotel. The Prosecution relies on Witness ZBH to establish that the soldiers were from the ESO and Ngoma camps, and included Lieutenant Hategekimana, Second Lieutenants Ndayambaje and Ngendahimana. Furthermore, the Prosecution argues that Witness ZBH's evidence establishes that Nizeyimana was present during the killings.[2816]

[2803] Witness ZBA, T. 24 February 2011, pp. 10-11.
[2804] Witness ZBA, T. 24 February 2011, p. 11.
[2805] Witness ZBA, T. 24 February 2011, p. 11.
[2806] Witness ZBA, T. 24 February 2011, pp. 5, 11, 16.
[2807] Witness ZBA, T. 24 February 2011, pp. 11, 16.
[2808] Witness ZBA, T. 24 February 2011, pp. 13-14.
[2809] Witness ZBA, T. 24 February 2011, pp. 14, 17.
[2810] Witness ZBA, T. 24 February 2011, pp. 13-14, 17.
[2811] Witness ZBA, T. 24 February 2011, p. 18.
[2812] Witness ZBA, T. 24 February 2011, pp. 18-19.
[2813] Witness ZBA, T. 24 February 2011, pp. 14, 17.
[2814] Witness ZBA, T. 24 February 2011, pp. 16, 19.
[2815] Witness ZBA, T. 24 February 2011, p. 19.
[2816] Prosecution Closing Brief, para. 305.

1128. A clear and compelling picture of aspects of the attack emerges based on the broad consistencies among the testimonies of Witnesses QCQ, ZBH and ZBA. At the outset, each of the witnesses testified that assailants arrived and removed persons from the Benebikira convent on 30 April 1994.[2817] Furthermore, Witness QCQ, an orphan residing at the Benebikira convent, and Witness ZBH, an *Interahamwe* and participant in the attack, provided strikingly similar, first-hand accounts of armed soldiers and *Interahamwe*[2818] moving through the convent,[2819] bringing its residents into the garden,[2820] separating Tutsis from Hutus based on region and identity cards,[2821] and removing primarily young Tutsis in vehicles,[2822] who were sat on or trampled once they were loaded into the vehicle by the *Interahamwe*.[2823]

1129. Their accounts were generally corroborated by Witness ZBA, who hid inside the convent as the attack occurred.[2824] Although she did not observe the assailants or the removal of Tutsis from the convent as she was hiding, she was warned that an attack was imminent. Witness ZBA heard the boots of a soldier who passed in front of her hiding place.[2825] Witnesses ZBA and QCQ both testified that the three Karenzi children were discovered at the convent, forced to board a vehicle and subsequently killed.[2826]

1130. Moreover, a young girl who observed the abduction first-hand confirmed to Witness ZBA that soldiers and *Interahamwe*[2827] had removed people from their hiding places and made them go outside,[2828] separated Tutsis from Hutus,[2829] and then removed the Tutsis in a pickup truck,[2830] where the attackers "were sitting" on the victims.[2831] The quality of the information that Witness ZBA received, although second-hand, appears particularly reliable

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[2817] Witness ZBH, T. 8 February 2011, p. 52; Witness QCQ, T. 23 February 2011, p. 14; Witness ZBA, T. 24 February 2011, p. 13. Witness ZBA noted that the attacked commenced around 9.00 a.m., whereas Witness ZBH only arrived at the convent after 2.00 p.m. However, Witness ZBH noted the presence of other soldiers and *Interahamwe* upon his arrival at 2.00 p.m., suggesting the assault was already ongoing by the time he arrived. Thus, the Chamber does not consider that a material discrepancy exists.

[2818] Witness ZBH, T. 8 February 2011, pp. 52, 61-62, 66-67; Witness QCQ, T. 23 February 2011, pp. 14-15.

[2819] Witness ZBH, T. 8 February 2011, pp. 52-53, 61, 66; Witness QCQ, T. 23 February 2011, p. 14.

[2820] Witness ZBH, T. 8 February 2011, p. 52; Witness QCQ, T. 23 February 2011, pp. 14, 17.

[2821] Witness ZBH, T. 8 February 2011, p. 54; Witness QCQ, T. 23 February 2011, pp. 14-15.

[2822] Witness ZBH, T. 8 February 2011, pp. 52, 61; Witness QCQ, T. 23 February 2011, p. 18. Witness QCQ testified that "more than 30" refugees were abducted. Witness ZBH did not provide live testimony about the number of persons removed. The Chamber notes, however, that in his confession, Witness ZBH's estimated that 25 persons were removed. Witness ZBH was not questioned on the veracity of this statement or the amount of children abducted. Witness ZBH, T. 9 February 2011, p. 53.

[2823] Witness ZBH, T. 8 February 2011, p. 52; Witness QCQ, T. 23 February 2011, pp. 16, 18. Witness ZBH describes the vehicle as a "blue pickup truck" and Witness QCQ similarly makes reference to having seen a "military" "pickup truck", parked outside the convent.

[2824] Witness ZBA, T. 24 February 2011, p. 13.

[2825] Witness ZBA, T. 24 February 2011, p. 18.

[2826] Witness ZBA, T. 24 February 2011, p. 19; Witness QCQ, T. 23 February 2011, p. 19. The Chamber notes that both Witness QCQ and Witness ZBA knew the Karenzi children and is satisfied that they were able to identify them. Witness QCQ met the three kids when they sought refuge at the convent and Witness ZBA was a friend of Solange Karenzi and a neighbour. *See* Witness ZBA, T. 24 February 2011, p. 5; Witness QCQ, T. 23 February 2011, p. 13.

[2827] Witness ZBA, T. 24 February 2011, p. 14.

[2828] Witness ZBA, T. 24 February 2011, pp. 15, 17.

[2829] Witness ZBA, T. 24 February 2011, p. 18.

[2830] Witness ZBA, T. 24 February 2011, p. 19.

[2831] Witness ZBA, T. 24 February 2011, p. 19.

given the directness of the source and the immediacy in which the information was conveyed to her. Furthermore, it is not cumulative of other evidence in the record.

1131. Finally, while the Defence has extensively challenged the testimony of Witness ZBH (discussed below), it chose not to cross-examine Witnesses QCQ and ZBA on this event.[2832] It has not challenged their testimonies in its Closing Brief or oral Closing Arguments.[2833] The Chamber is mindful that it is not required to accept as true statements unchallenged during cross-examination.[2834] Nonetheless, there are no general concerns about the credibility of either witness, and in this instance, their accounts are clear, appear unembellished and are strikingly consistent.[2835] Based on the foregoing, the Chamber is satisfied that on 30 April 1994, from 9.00 a.m. onwards, armed soldiers and *Interahamwe* arrived at the Benebikira convent, separated its residents – who were primarily children – based on ethnicity and removed around 30 of them. The evidence clearly establishes that the three Karenzi children were among those taken from the convent.

1132. Moreover, while the Chamber views Witness ZBH's evidence with caution, it is convinced that the considerable parallels among his account and the other witnesses', along with the fact that his evidence necessarily implicates him in the crime, eliminates the Chamber's general concerns in this instance.[2836] The record establishes beyond reasonable doubt his participation in the attack at the Benebikira convent.

1133. Finally, the Chamber is satisfied, based on the first-hand account of Witness ZBH, as well as the circumstantial evidence of Witnesses QCQ and ZBA, that many, if not all of the Tutsis removed from the Benebikira convent were killed. Specifically, Witness ZBH provided a coherent description of persons taken from the Benebikira convent as well as those apprehended at the Ngoma Camp roadblock being killed below the Ineza Hotel. He described this area as in a wooded area, which was also below "the commercial bank".[2837] His evidence is particularly compelling in this instance in light of having admitted to his participation in these killings in Rwanda. Moreover, the record clearly reflects Tutsis were being targeted and killed in Butare by soldiers and *Interahamwe* around this time, offering further circumstantial support to Witness ZBH's first-hand account.

1134. Witness QCQ was tasked with burying some of the "bodies" found at Kabutare at an unspecified time later on.[2838] She added that "some" bodies were found next to the monastery.[2839] Witness QCQ was not questioned on the exact identity of the bodies, or whether she recognised any of them.[2840] The record does not reflect the proximity of the Ineza Hotel to the unspecified area in Kabutare or "the monastery" to each other. Nonetheless, to the extent Witness QCQ found bodies in a location other than where Witness

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[2832] *See* Witness QCQ, T. 23 February 2011, p. 21; Witness ZBA, T. 24 February 2011, p. 20.
[2833] *See* Defence Closing Briefs, paras. 288-290; T. 7 December 2011, p. 59 (Defence Closing Arguments).
[2834] *Munyakazi* Appeal Judgement, para. 25.
[2835] The Chamber has elsewhere considered Witness ZBA to be a generally reliable witness. *See* II.6.5.
[2836] The Chamber also observes that Witness ZBH confessed in Rwanda to his participation in this crime. *See* Witness ZBH, T. 8 February 2011, pp. 35-36; Exhibit P21 (Witness ZBH's Personal Information Sheet); Exhibit D15B (Translation of Witness ZBH's Confession), pp. 21, 31. *See also* II.3.4.
[2837] Witness ZBH, T. 8 February 2011, pp. 53, 61.
[2838] Witness QCQ, T. 23 February 2011, pp. 19-20.
[2839] Witness QCQ, T. 23 February 2011, p. 20.
[2840] Witness QCQ similarly did not know how they were killed. *See* Witness QCQ, T. 23 February 2011, p. 20.

ZBH participated in killings, the Chamber does not consider that this raises doubts in either of their accounts that persons taken from the Benebikira convent were killed and found dead.

1135. Finally, the Chamber has no doubt that among those killed were the children from the Karenzi family. This conclusion is particularly convincing in light of Witness ZBH's description of the killing of the Tutsis taken from the Benebikira convent and the accounts of Witnesses QCQ and ZBA that these children were not seen after the event.[2841]

1136. Having found the above, the Chamber must determine the identity of the perpetrators, and, in particular, the soldiers who participated in the removal and killing of the Benebikira convent victims. Witnesses QCQ and ZBA were unable to identify the soldiers and the camp from which they originated.[2842] The Chamber considers this reasonable given that Witness ZBA did not observe the event and in light of Witness QCQ's young age and the traumatic circumstances of the event. The same reasoning applies to Witness QCQ's inability to estimate how many soldiers were present.[2843]

1137. Witness ZBH is the sole witness to identify of the soldiers who went to Benebikira convent and removed Tutsi refugees there. Before turning to the merits of this evidence, the Chamber shall address some general and specific credibility challenges.

1138. Witness ZBH confessed to, and was convicted for, his involvement in the killings at the Benebikira convent and other genocide related crimes.[2844] Nonetheless, when questioned about his involvement in the various incidents to which he testified, Witness ZBH consistently deflected any responsibility on his part and instead insisted he was "forced" or tricked by soldiers to participate in killings.[2845] Notably, he testified that Lieutenant Hategekimana compelled him to participate in this particular murder operation.

[2841] *See* Witness QCQ, T. 23 February 2011, p. 19; Witness ZBA, T. 24 February 2011, p. 19. The Chamber is satisfied that both witnesses knew the Karenzi children prior to their abduction and were thus in a position to identify the three children. Witness ZBA resided in the Karenzi house for a period of time and was a friend of one of the children, Solange Karenzi. *See* Witness ZBA, T. 24 February 2011, p. 5. Witness QCQ met the children when they arrived at the convent after the attack on the Karenzi house. *See* Witness QCQ, T. 23 February 2011, p. 14. The Chamber notes that Witness QCQ refers to one child as "Marc", while Witness ZBA refers to him as "Malik". In light of the fact that Witness QCQ identifies the other 2 children, Solange and Mulinga by their correct name, as well as the neighbor accompanying them, the Chamber does not find this discrepancy to be probative.

[2842] *See* Witness QCQ, T. 23 February 2011, pp. 15, 20; Witness ZBA, T. 24 February 2011, p. 18.

[2843] Witness QCQ, T. 23 February 2011, p. 15 ("Q. Approximately, how many soldiers were there in the group? A. There were many soldiers. I could not count them. I also have to tell you that the atmosphere was not conducive to the exercise of me counting the attackers.").

[2844] Witness ZBH, T. 8 February 2011, pp. 35-36; Exhibit P21 (Witness ZBH's Personal Information Sheet); Exhibit D15B (Translation of Witness ZBH's Confession).

[2845] Witness ZBH, T. 8 February 2011, p. 37 ("Q. In 1994, did you have any knowledge about soldiers from ESO committing any acts of violence against civilians in Butare town? And if so, can you name some of the places where the violence occurred. Just briefly. A. Still in that respect, I would say we were involved in the killings, and we wouldn't have committed those killings without the help of soldiers. As a matter of fact, all the investigators who come and meet me are told that. I would like to tell the Chamber that the commanders of camp Ngoma and ESO, including Tharcisse Muvunyi, who was a colonel; and Captain Ildéphonse Nizeyimana; Colonel Alphonse Nteziryayo; Ildéphonse Hategekimana, who was the commander of the Ngoma camp; Lieutenant Alphonse Nteziryayo; Second Lieutenant Modeste Gatsinzi and many others compelled us and sensitised us to understand Tutsis as being our enemies and that we had to do everything in our power to get rid of them. As a matter of fact, during that time there were battles everywhere. Gatsinzi, Muvunyi and Nizeyimana told us that if we did not get rid of those people who belonged to the other ethnic group, those people would later on harm us, and that is why the soldiers compelled us and forced us to be involved in the attacks against the

1139. The Chamber has some concerns that Witness ZBH's evidence in this proceeding may have been used as an opportunity to deflect responsibility for crimes. It might also have been motivated by a desire to obtain lenient treatment from Rwandan judicial authorities, as the witness remained incarcerated at the time of his testimony.[2846] Consequently, his testimony shall be viewed with the appropriate caution.[2847]

1140. Turning to the allegation at issue, the Defence has challenged Witness ZBH's evidence through alleged internal inconsistencies concerning this particular crime. For example, the Defence pointed to the fact that the witness gave different accounts of the presence of weapons during the attack on the Benebikira convent.[2848] The Chamber considers Witness ZBH's clarification that the civilians did not carry weapons, whereas the soldiers were armed, a plausible explanation. Moreover, the witness's answers indicate that he was referring to the civilian attackers when discussing the absence of weapons at the convent.[2849] He further convincingly explained the difference in weaponry used during the attack, by clarifying that he meant "bayonets" when he spoke about "knives".[2850] Notwithstanding, the Chamber considers that the purported inconsistency fails to raise any doubts as they relate to core features of this attack, which are undisputed.

1141. The Chamber turns to Witness ZBH's evidence relating to the identity of soldiers involved in the separation and removal of Tutsis from the Benebikira convent and their ultimate killing. He testified that he was picked up at a roadblock by Lieutenant Ildéphonse Hatgekimana and two of his escorts, Ngendahimana and Ndayambaje, and was driven by them to the Benebikira convent.[2851] Once they got to the convent he saw Lieutenant Fabien Niyonteze, as well as "other soldiers", who were making people get out of the Benebikira convent.[2852] On cross-examination, he further identified a soldier by the name of "Second Warrant Officer Ntamuhanga", whom he later referred to as "Chief Warrant Officer

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Tutsis who had sought refuge in various areas."); T. 8 February 2011, p. 39 ("A. We were led by soldiers who had come from Ngoma camp and from ESO camp. As I told you earlier, anyone who did not want to collaborate with them would at times be killed. All members of the public were therefore obliged to participate in those operations. That is how we killed people."); ("A. I only killed because the accused incited me to kill."); T. 8 February 2011, p. 40 ("A. Often soldiers would take people throughout the town or at roadblocks. That is how they gathered us. They found us either in town or at roadblocks. They often said that they would give us work without specifying what that work was. And when we got to sites -- the various sites we could not refuse doing what they had asked us to do because they had the power."); T. 8 February 2011, p. 54 ("A. If soldiers had not dragged us to kill those people I would not have been in prison today, Mr. President. You have to understand that we could not have resisted those soldiers when they gave us those orders. ... So what I'm saying is that if it had not -- if I had not been compelled to kill under duress I would not have done so.").

[2846] *See* II.3.4. Moreover, Witness ZBH indicated his desire to support the Prosecution by stating that he "remember[s] that once the Defence team of the accused person had attempted to contact [him], but [he] turned down their request because [he] told them that [he] was on the side of the Prosecutor and not on the side of the Defence". T. 8 February 2011, p. 71.

[2847] *See also* II.3.4 (regarding apparent findings of a Rwandan court that Witness ZBH accepted money in return for not testifying against Major Habyarabatuma and encouraged detainees to provide false testimony).

[2848] Witness ZBH, T. 8 February 2011, pp. 66-67.

[2849] Witness ZBH, T. 8 February 2011, pp. 52, 66.

[2850] Witness ZBH, T. 8 February 2011, pp. 52, 62-63, 66.

[2851] *See* Witness ZBH, T. 8 February 2011, pp. 52, 61, 67.

[2852] Witness ZBH, T. 8 February 2011, p. 52.

Ntamuhanga", conducting searches at the convent.[2853] Witness ZBH noted that they killed the Benebikira victims, because "Hategekimana compelled [him]".[2854]

1142. While Witness ZBH testified that the crimes committed at the Benebikira convent were perpetrated by soldiers from Ngoma Camps *and* the ESO, he later explained that it was difficult to determine whether "all of them came from Ngoma camp or whether some of them may have come from ESO camp".[2855] In his view, ESO soldiers were around to "protect the neighbourhood" and thus were also responsible for crimes committed in that area.[2856]

1143. Witness ZBH identified Lieutenant Hategekimana as "the commander of Ngoma camp", and described Ngendahimana and Ndayambaje as being part of his escort.[2857] Similarly, the witness noted that Lieutenant Niyonteze was a "resident of Ngoma Camp".[2858] Witness ZBH was not questioned on the camp to which "Ntamuhanga" belonged and did not provide any further details in this regard. Witnesses ZY, AZD and BDE, as well as Defence Witness Ntamagezo all refer to a "Chief Warrant Officer Ntamuhanga", who was a soldier at ESO in charge of the Military Police platoon in 1994.[2859] The Chamber is satisfied that Witness ZBH was referring to Chief Warrant Officer Ntamuhanga, who was an ESO soldier in 1994.[2860]

1144. However, Witness ZBH's testimony is at odds with his 2003 confession insofar as it relates to the presence of Chief or Second Warrant Officer Ntamuhanga or ESO soldiers in general at the Benebikara convent during the attack. Notably, any reference to Ntamuhanga is absent from his description of the events. The presence of Ntamuhanga was only elicited on cross-examination despite having been questioned in chief about his contact with "other soldiers" or "military personnel".[2861]

1145. The general nature of the identification of one or more ESO soldiers participating in these events is not compelling, particularly given the need to view Witness ZBH's evidence

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[2853] Witness ZBH, T. 8 February 2011, p. 66.
[2854] Witness ZBH, T. 8 February 2011, p. 53.
[2855] Witness ZBH, T. 8 February 2011, pp. 47, 67 ("A. I thank you, Your Honour. Ngendahimana and Ndayambaje were Ildéphonse Hategekimana's escort often. Therefore, it is probable -- highly probable that they lived with him at the Ngoma camp. Even his second lieutenant, Fabien Niyonteze, was resident at the Ngoma camp. But there were so many soldiers at the *maison généraliste*, and I was not able to determine whether -- or to know whether all of them came from Ngoma camp or whether some of them may have come from ESO camp. You see, the entire Itaba neighbourhood where the *maison généraliste* was located on the slopes of the Ngoma hill, the entire neighbourhood was surrounded by soldiers. As far as the entrance of Captain Nizeyimana's residence, as well as that of Lieutenant Hategekimana, the entire neighbourhood was surrounded by soldiers, as far as the faculty of theology.").
[2856] Witness ZBH, T. 9 February 2011, p. 47.
[2857] Witness ZBH, T. 8 February 2011, pp. 52, 67.
[2858] Witness ZBH, T. 8 February 2011, p. 67.
[2859] *See* Witness ZY, T. 26 January 2011, p. 49 (noted that Ntamuhanga joined Nizeyimana in his office after an assembly at the ESO on 9 April 1994); Witness AZD, T. 1 February 2011, pp. 7-9 (described Ntamuhanga as part of Nizeyimana's native region and this close to the Accused); Witness BDE, T. 31 January 2011, p. 56 (described Ntamuhanga as being close to Nizeyimana and in charge of the Military Platoon); Witness Ntamagezo, T. 8 June 2011, pp. 74-75 (noted that Ntamuhanga was the chief of the Military Police Platoon at the ESO).
[2860] The Chamber observes that Witness ZBH referred to Ntamuhanga first as "Second Warrant Officer" and then as "Chief Warrant Officer". In view of the many references to a "Chief Warrant Officer" Ntamuhanga, the Chamber is satisfied that Witness ZBH may have misstated Ntamahunga's rank in first instance, and instead meant to refer to "Chief Warrant Officer" Ntamuhanga. *See* Witness ZBH, T. 8 February 2011, p. 66.
[2861] Witness ZBH, T. 8 February 2011, pp. 53, 66.

with caution. It is too tenuous to support a finding that ESO soldiers, including Chief Warrant Officer Ntamuhanga, were present at the Benebekira convent.

1146. Nevertheless, Witness ZBH's testimony is largely consistent with his 2003 confession to the extent that he provides evidence on the involvement of Lieutenant Hategekimana and his two escorts, Ngendahimana and Ndayambaje.[2862] Witness ZBH's confession before the Gacaca court about Lieutenant Hategekimana's involvement in the crime was made in 2003, while the witness was incarcerated.[2863]

1147. The Chamber observes that prior consistent statements do not bolster a witness's credibility.[2864] However, these circumstances reflect that the witness has maintained Hategekimana's involvement in the crime for a long period. Whatever ulterior motives Witness ZBH has to provide testimony inculpating Hategekimana, the Chamber has no reasonable concerns it has been tainted by his incarceration.

1148. Turning to the ability of Witness ZBH to identify the specific soldiers, he did not explain how he knew Lieutenant Hategekimana, Ngendahimana and Ndayambaje or Lieutenant Niyonteze. Nevertheless, Witness ZBH admitted to having been a "helper" at ESO in 1991[2865] and spending a lot of time with soldiers at roadblocks and other locations during the genocide.[2866] The Chamber is satisfied that these circumstances would have allowed Witness ZBH to identify soldiers from the ESO and Ngoma Camps. This position is certain as it relates to higher ranking officers, such as Lieutenant Hategekimana, who were well known in and around Butare at the time.

1149. In evaluating Witness ZBH's identification, the Chamber considers that circumstantial support for his evidence was provided by the first-hand account of Witness QCQ and the second-hand evidence of Witness ZBA that soldiers participated in removing Tutsis from Benebikira convent. Given the Ngoma Camp's proximity to the convent, the Chamber finds Witness ZBH's identification of the Ngoma Camp soldiers' participation in the removal of Tutsis and their ultimate killing compelling.

1150. In light of these findings, the Chamber must also review evidence relating to Nizeyimana's alleged participation in this attack. The Prosecution argues that Witness ZBH also testified that "Nizeyimana arrived in a Mercedes-Benz lorry driven by Saïd Nassor" with those captured at the Ngoma Camp roadblock. Based on their arguments, Nizeyimana was present when persons apprehended from the Benebikira convent and the Ngoma Camp roadblock were killed below the Ineza Hotel.[2867]

[2862] *See* Exhibit D15B (Translation of Witness ZBH's Confession), pp. 21, 31. Witness ZBH describes being picked up by Lieutenant Hategekimana and two of his escorts, Corporal Ndayambaje and Private E. Ngendahimana and driven to Benebikira convent, where they removed 25 victims and killed them at a location beneath the Ineza Motel. While the Defence has challenged that aspects of Witness ZBH's confession had been modified since 2003, it has not made such arguments with respect to these particular portions of it. Defence Closing Brief, paras. 170-179.
[2863] Exhibit D15B (Translation of Witness ZBH's Confession).
[2864] *Ntakirutimana* Appeal Judgement, para. 147.
[2865] Witness ZBH was not questioned on the amount of time spent at the ESO as a helper in 1991.
[2866] *See* Witness ZBH, T. 8 February 2011, pp. 35-37; T. 9 February 2011, p. 53; Exhibit P21 (Witness ZBH's Personal Information Sheet).
[2867] Prosecution Closing Brief, para. 350.

1151. The Prosecution refers exclusively to testimony from the witness elicited during re-examination.[2868] Notably, the testimony cited is Witness ZBH reading his confession from 2003. He did not confirm nor deny the contents of his confession as it related to this event.[2869] In this regard, the Chamber recalls that the Tribunal's Rules of Procedure and Evidence evince a clear preference for live testimony.[2870] Prior statements of a witness who provides live testimony are primarily relevant to a Trial Chamber in its assessment of the witness's credibility. It is not necessarily the case that they should or could generally, in and of themselves, constitute evidence that the content thereof is truthful.[2871]

1152. The fact that Witness ZBH read his 2003 confession in court, does not necessarily transform it into "live testimony". Rather, the failure to have the witness confirm the accuracy of his 2003 confession leaves the testimony cited by the Prosecution as unchecked, out-of-court hearsay. Raising additional concerns, Witness ZBH was questioned extensively by the Prosecution during his examination in chief about who was in the lorry that carried victims from the Ngoma Camp roadblock to the location below the Ineza Hotel. Rather than referring to Nizeyimana, he identified the soldiers in the vehicle as coming from "Ngoma camp", and provided details explaining how he could identify them.[2872] In this regard, Witness ZBH's 2003 confession and his testimony are fundamentally different. His testimony fails to identify Nizeyimana being in the lorry that transported victims from the Ngoma Camp roadblock. It likewise does not reflect that the ESO captain was present during the ultimate killing of these persons along with those taken from the Benebikira convent.[2873] This aspect of the Prosecution case is dismissed.

1153. Nizeyimana's general absence along with the fact that reliable evidence implicates Ngoma Camp soldiers (rather than ESO soldiers) raises reasonable doubts that Nizeyimana ordered or authorised the murder of Tutsis taken from the Benebikira convent or the Ngoma

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[2868] Prosecution Closing Brief, para. 350 fn. 788 *citing* T. 9 February 2011, p. 53 lns. 20-25.
[2869] Witness ZBH, T. 9 February 2011, p. 53. *See also* T. 9 February 2011, p. 41 (Witness ZBH, on cross-examination, read this aspect of his confession without testifying that Nizeyimana was present during the attack: "A. 'Nassor, Saidi was presently on exile in Oman with Captain Nizeyimana.' Q. Thank you, sir. A. I was about to explain that those two people were on exile, Mr. President, to so that he would better understand me. As I said yesterday, these people from the maison generalist were killed at the same time as the people who were on that lorry and who had been stopped at that roadblocks at various roadblocks.").
[2870] *Simba* Appeal Judgement, paras. 19 ("[The Appeals Chamber] further recalls that in exercising its discretion to admit witness testimony, the Trial Chamber shall be guided by the general principle, enshrined in Rule 90(A) of the Rules, that witnesses be heard directly by the Chambers."), 103. *Cf. Bagosora and Nsengiyumva* Appeal Judgement, para. 543; *Renzaho* Appeal Judgement, para. 469 fn. 1025.
[2871] *See Akayesu* Appeal Judgement, para. 134.
[2872] *See* Witness ZBH, T. 8 February 2011, pp. 54-55 ("Q. At the place below the Ineza hotel where the children from the convent were killed, do you know whether they were the only people killed at that place on that day? A.Thank you, Prosecutor. They were not the only people who were killed there. As I said, we went there on four trips in the vehicle we were using. Other people were stopped at the Ngoma roadblock, which was located almost in front of the camp. And when those people were arrested or stopped they were tied up using their clothes. And a lorry being driven by the son of Saïd Nassor came there and actually made people get out of that lorry. And those people were killed also at the same spot. Q. And can you tell us who was in the lorry? You've said there was a driver who was the son of somebody. A. This driver was called Saïd and he was the son of Nasaur. I -- he was of Arab descent and today he lives in Oman. O-M-A-N. O-M-A-N. Q. What kind of a lorry was it? A. Mercedes Benz lorry. A white Mercedes Benz, model 26-28. Q. Other than Saïd the driver, was there anyone else in the vehicle? A. There were two soldiers in the vehicle. It is obvious that there were soldiers from the Ngoma camp because I used to see them when I would pass in front of Ngoma camp when I used to go to Matyazo.").
[2873] *See* II.3.4.

Camp roadblock or that he made a substantial or significant contribution to these killings. Likewise, it fails to establish that the ESO captain exercised effective control over the perpetrators or that he knew or should have known about these killings.

1154. Notably, the Defence has presented alibi evidence that raises the reasonable possibility that he was reassigned to lead a military training camp at the Mata tea factory in Gikongoro prefecture towards the end of April 1994.[2874] While the Chamber is not persuaded that this evidence creates the reasonable possibility that Nizeyimana only returned to Butare town once, it does raise doubts that he significantly or substantially contributed to these crimes, which occurred after Nizeyimana's reassignment. Based on the foregoing, Nizeyimana cannot be held liable for them.

[2874] *See* II.13.3.

12. WEAPONS DISTRIBUTIONS AND TRAININGS

12.1 Weapons Distribution, 7 April to July 1994

Introduction

1155. The Indictment alleges that Nizeyimana distributed weapons at the ESO to the *Interahamwe*, including *bourgmestres* and civilians from 7 April until mid-July 1994. The Prosecution relies on Witnesses Justin Gahizi, BDE, ZY, AZD, Jules Kayibanda, ZT, ZBH, and Anaclet Dufitumukiza.[2875]

1156. The Defence denies that weapons were distributed to *Interahamwe* at the ESO. It further submits that there is nothing linking Nizeyimana to the underlying allegations. The Defence denies that *Interahamwe* were trained on the ESO grounds or that they were ever present at the ESO. Defence Witnesses RWV09, RWV11, Thomas Ruzindana and ZML13 provided relevant evidence.[2876]

Prosecution Witness Justin Gahizi

1157. In April 1994, Witness Gahizi was a sergeant at the ESO.[2877] When Witness Gahizi returned from Kanombe to the ESO around the second week after President Habyarimana's plane was shot down, he attended various meetings during which Nizeyimana was present.[2878] Witness Gahizi attended the meetings in his capacity of deputy to Warrant Officer Ntibiramira, who coordinated activities between foot soldiers or the troops and officers of the army.[2879] Specifically, Witness Gahizi attended meetings that took place at the officers' quarters, which were located on the other side of a forest known as *Joli Bois*.[2880] Colonel Muvunyi, Nizeyimana and civilian figures such as the *bourgmestres* of the various communes were present during these meetings, including Kanyabashi and the *bourgmestre* of Nkayizu.[2881] According to Witness Gahizi, Nizeyimana had the "monopoly of power" at the meetings.[2882]

1158. The main topic of these meetings was to find ways to track down Tutsis, otherwise referred to as *Inkotanyi*.[2883] Nizeyimana said that the "*Inyenzi* had to be hunted down" and that "people had to be engaged in community work in order to cut down bushes so that the *Inkotanyi* could not hide".[2884] The *bourgmestres* were given rifles or guns during these meetings, which they took back to their respective communes.[2885] The deputy camp

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[2875] Indictment, para. 7; Prosecution Closing Brief, paras. 78-89; T. 7 December 2011, pp. 16-17 (Prosecution Closing Arguments).
[2876] Defence Closing Brief, paras. 5, 85, 88, 92-93, 95, 350, 528-546; T. 7 December 2011, pp. 38-39 (Defence Closing Arguments).
[2877] Witness Gahizi, T. 7 February 2011, p. 22; Exhibit P20 (Witness Gahizi's Personal Information Sheet).
[2878] Witness Gahizi, T. 7 February 2011, pp. 24-25.
[2879] Witness Gahizi, T. 7 February 2011, p. 25.
[2880] Witness Gahizi, T. 7 February 2011, p. 25.
[2881] Witness Gahizi, T. 7 February 2011, p. 25.
[2882] Witness Gahizi, T. 7 February 2011, p. 26.
[2883] Witness Gahizi, T. 7 February 2011, p. 25.
[2884] Witness Gahizi, T. 7 February 2011, p. 26.
[2885] Witness Gahizi, T. 7 February 2011, pp. 25-26.

commander, who was the S2/S3 officer, was in charge of all the weapons.[2886] Nobody could take weapons without his authorisation.[2887] The person in charge of the armoury, nicknamed Parantezi, gave weapons to the *bourgmestre* with Nizeyimana's authorisation.[2888] People in Butare who were learning how to use weapons would come to the ESO to get them.[2889] They were trained for a week or two so that they could kill people after they had been trained.[2890]

Prosecution Witness BDE

1159. Witness BDE, a Hutu, was a cadet at the ESO in April 1994.[2891] Around the beginning of May, Witness BDE saw a vehicle which appeared to belong to the Shyanda commune on the ESO grounds.[2892] It was parked in front of the store, which was approximately 50 to 60 metres from the armoury and came to bring beans.[2893] Once the beans were offloaded, the vehicle parked closer to the armoury.[2894] Soldiers then proceeded to load weapons, such as FAL's and Kalashnikovs, onto the vehicle, after which it left.[2895] There was no one else around the vehicle, apart from the soldiers.[2896] Witness BDE only saw this happen one time and did not know how many weapons were loaded onto the vehicle.[2897]

Prosecution Witness ZY

1160. Witness ZY, a Tutsi, was a cadet at the ESO in April 1994.[2898] On an unspecified date, Witness ZY saw civilians and vehicles "going about in the camp", and specifically recalled seeing the *Interahamwe* Robert Kajuga at the ESO.[2899] He got into an office and left again, but she did not know whose office it was.[2900] Someone told her "[t]hat is the President of the *Interahamwe*, Robert Kajuga".[2901] When the killings intensified in Butare, she saw civilian vehicles parked near the command office.[2902] The civilians would at times open the armoury and load weapons into the vehicles, especially those belonging to the commune office.[2903] There was a back and forth movement near the command office.[2904] Witness ZY

[2886] Witness Gahizi, T. 7 February 2011, p. 26.
[2887] Witness Gahizi, T. 7 February 2011, p. 26.
[2888] Witness Gahizi, T. 7 February 2011, p. 26.
[2889] Witness Gahizi, T. 7 February 2011, p. 27.
[2890] Witness Gahizi, T. 7 February 2011, p. 27.
[2891] Witness BDE, T. 28 January 2011, pp. 8-9; Exhibit P13 (Witness BDE's Personal Information Sheet).
[2892] Witness BDE, T. 28 January 2011, pp. 20-21.
[2893] Witness BDE, T. 28 January 2011, p. 21.
[2894] Witness BDE, T. 28 January 2011, p. 21.
[2895] Witness BDE, T. 28 January 2011, p. 21.
[2896] Witness BDE, T. 28 January 2011, p. 21.
[2897] Witness BDE, T. 28 January 2011, p. 21.
[2898] Witness ZY, T. 26 January 2011, p. 7; Exhibit P11 (Witness ZY's Personal Information Sheet).
[2899] Witness ZY, T. 26 January 2011, p. 67.
[2900] Witness ZY, T. 26 January 2011, p. 67.
[2901] Witness ZY, T. 26 January 2011, p. 67.
[2902] Witness ZY, T. 26 January 2011, p. 67. Witness ZY did not specify on how many occasions she saw weapons being loaded onto civilian vehicles.
[2903] Witness ZY, T. 26 January 2011, pp. 67-68.
[2904] Witness ZY, T. 26 January 2011, p. 67.

"was just going by" when she observed these activities.[2905] She was unable to say who was present when the weapons were being loaded onto the vehicles.[2906]

Prosecution Witness AZD

1161. In April 1994, Witness AZD was a non-commissioned officer at the ESO.[2907] Witness AZD frequently saw vehicles that came from various communes to receive armaments. All communes in the area had commune vehicles.[2908] Nizeyimana assisted the various *bourgmestres* who came to take weapons from the school.[2909] This was not done with the objective of maintaining public order, but rather to assist the civilian authorities to act in a negative manner.[2910]

Prosecution Witness Jules Kayibanda

1162. In April 1994, Witness Kayibanda, a Hutu, was a student at the Butare University.[2911] Around the middle of May, when the killings started, firearms started arriving at the campus.[2912] Witness Kayibanda had a grenade.[2913] Some tall Hutus were able to acquire firearms to protect them from being killed by the young soldiers.[2914] There was thus some form of weapons trafficking and Sergeant Sibomana or Mr. Patrice, an influential and well known student, could be asked to provide weapons or grenades in exchange for buying them a beer.[2915]

Prosecution Witness ZT

1163. In April 1994, Witness ZT, a Tutsi, was a cadet at the ESO.[2916] While Witness ZT did not see the *Interahamwe* take weapons from the armoury, she inferred that they were given their rifles by the ESO, based on the fact that they took their meals at the ESO and were carrying rifles.[2917] Witness ZT explained that the *Interahamwe* were carrying weapons and working together with the ESO soldiers at roadblocks – the very roadblocks Nizeyimana had set up throughout Butare.[2918] Since the *Interahamwe* were allowed to have meals at the ESO,

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[2905] Witness ZY, T. 26 January 2011, p. 67.
[2906] Witness ZY, T. 26 January 2011, p. 67.
[2907] Witness AZD, T. 31 January 2011, p. 64; Exhibit P15 (Witness AZD's Personal Information Sheet).
[2908] Witness AZD, T. 1 February 2011, p. 4.
[2909] Witness AZD, T. 1 February 2011, p. 15.
[2910] Witness AZD, T. 1 February 2011, p. 15.
[2911] Witness Kayibanda, T. 2 February 2011, p. 39; Exhibit P17 (Witness Kayibanda's Personal Information Sheet). Witness Kayibanda was detained in Rwanda for eight years for genocide related crimes. He was released in 2003 as part of a Presidential pardon. Witness Kayibanda admitted to have been incarcerated for having been part of a "criminal association", for the possession of illegal weapons and for looting. T. 2 February 2011, p. 63; T. 3 February 2011, pp. 20, 36.
[2912] Witness Kayibanda, T. 2 February 2011, p. 56.
[2913] Witness Kayibanda, T. 2 February 2011, p. 56. Witness Kayibanda did not say whom he got the grenade from.
[2914] Witness Kayibanda, T. 2 February 2011, p. 56.
[2915] Witness Kayibanda, T. 2 February 2011, p. 56.
[2916] Witness ZT, T. 7 February 2011, p. 7; Exhibit P19 (Witness ZT's Personal Information Sheet).
[2917] Witness ZT, T. 10 February 2011, p. 80.
[2918] Witness ZT, T. 10 February 2011, p. 80.

that "meant that they were allowed to take anything from the camp; and, therefore, the person who authorised them to do all that was Nizeyimana."[2919]

Prosecution Witness ZBH

1164. In April 1994, Witness ZBH, a Hutu, was a civilian who had previously worked as a "helper" at ESO in 1991.[2920] On an unspecified date, Witness ZBH was ordered to offload boxes containing ammunition and grenades that were brought by Lieutenant Hategekimana and the gendarmerie commander during a meeting at Dr. Gatsinzi's bar, and take it to Corporal Gatwaza.[2921] This ammunition was used during the various attacks that they carried out around Butare.[2922]

Prosecution Witness Anaclet Dufitumukiza

1165. In April 1994, Witness Dufitumukiza, a Tutsi, was a gendarme corporal at the Tumba gendarmerie camp in Butare town, who worked as a driver.[2923] On 19 April, Gendarmerie Sergeant Major Mugisha instructed Witness Dufitumukiza to retrieve the gendarmes that had previously been sent to Cyahinda Parish, as well as the corpse of the gendarme who had been killed there at Cyahinda Parish.[2924] When he arrived at the Nyanza communal office, he saw ESO Chief Warrant Officer Kanyashyamba commanding about 11 ESO soldiers who fired support weapons, such as a 60 millimetre mortar and a heavy machine gun, towards Cyahinda Parish.[2925] Only the ESO, a training institution, had such heavy weaponry.[2926]

Defence Witness RWV09

1166. Witness RWV09, a Hutu, was a military officer who was assigned to the ESO Camp around 13 or 14 April 1994.[2927] Witness RWV09 worked in the S4 department, which was in charge of providing supplies to the camp such food, clothing, weapons, and other equipment.[2928] His office would have known if weapons were distributed, because they had to sign a coupon indicating the serial number of the weapon, and the person receiving it would have to counter-sign.[2929] If the register had been signed, Witness RWV09 would have known about it.[2930] He never saw weapons being distributed.[2931]

[2919] Witness ZT, T. 10 February 2011, p. 80.
[2920] Witness ZBH, T. 8 February 2011, pp. 35-36; Exhibit P21 (Witness ZBH's Personal Information Sheet). At the time of his testimony, Witness ZBH was incarcerated for genocide related crimes. T. 9 February 2011, pp. 36-38.
[2921] Witness ZBH, T. 9 February 2011, pp. 18-19.
[2922] Witness ZBH, T. 9 February 2011, pp. 18-19.
[2923] Witness Dufitumukiza, T. 19 January 2011, pp. 72-73; Exhibit P5 (Witness Dufitumukiza's Personal Information Sheet).
[2924] Witness Dufitumukiza, T. 20 January 2011, pp. 6-7, 35, 49, 51.
[2925] Witness Dufitumukiza, T. 20 January 2011, pp. 8-11, 36-37, 47, 53.
[2926] Witness Dufitumukiza, T. 20 January 2011, pp. 9, 38.
[2927] Witness RWV09, T. 8 June 2011, p. 9; Exhibit D58 (Witness RWV09's Personal Information Sheet).
[2928] Witness RWV09, T. 8 June 2011, p. 27.
[2929] Witness RWV09, T. 8 June 2011, p. 28.
[2930] Witness RWV09, T. 8 June 2011, p. 28.
[2931] Witness RWV09, T. 8 June 2011, p. 29.

Defence Witnesses RWV11, Thomas Ruzindana and ZML13

1167. Witnesses RWV11, Ruzindana and ZML13 never saw any civilians or *Interahamwe* at the ESO in April 1994.[2932] Since Witness RWV11 never saw civilians enter the ESO, they could not have been distributed weapons.[2933] According to Witness RWV11, the distribution of weapons was carried out at the Mata training centre.[2934] Similarly, Witness Ruzindana never witnessed any weapons being distributed to civilians inside the ESO camp.[2935] Witness ZML13 only saw "traders" who brought food and supplies.[2936] However, they "knew those traders".[2937]

Deliberations

1168. The Prosecution alleges that Nizeyimana distributed weapons to the *Interahamwe*, including *bourgmestres* and civilians at the ESO from 7 April until mid July 1994 in furtherance of a joint criminal enterprise. Prosecution Witnesses Gahizi, BDE, ZY, AZD, ZBH and Kayibanda all provided evidence of weapons being distributed by the ESO to *bourgmestres* and other civilians.

1169. Specifically, Witness Gahizi testified that he attended meetings at the officers' quarters during which Nizeyimana was present around the third week of April 1994, where guns and rifles were supplied to *bourgmestres* of various communes, including Kanyabashi and the *bourgmestre* of Nkayizu.[2938] Witness Gahizi was present there in his capacity as the deputy to Warrant Officer Ntibiramira.[2939] The witness further noted that people who were learning how to use weapons would come to the ESO to get them, after which they would be trained to kill people.[2940] Before turning to the merits of his evidence, the Chamber notes that it has elsewhere considered in detail the general context in which Witness Gahizi testified and determined that it should apply appropriate caution when approaching his evidence.[2941] The same analysis applies here.

1170. In regards to this allegation, the Defence submits that Witness Gahizi tailored his evidence to the Nizeyimana case.[2942] Specifically, it contends that Witness Gahizi's testimony before this Chamber is materially different from the testimony he gave during the *Muvunyi* proceeding before the Tribunal. The Defence read aloud excerpts from Witness Gahizi's testimony during the *Muvunyi* trial, which lists participants at a meeting in the officers' mess at the *Joli Bois*.[2943] Contrary to his testimony before this Chamber, the witness

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[2932] Witness RWV11, T. 2 June 2011, pp. 8, 17; Exhibit D53 (Witness RWV11's Personal Information Sheet) (Witness RWV11, a Hutu, was an instructor at the ESO in April 1994); Witness Ruzindana, T. 1 June 2011, pp. 24, 18-29; Exhibit D52 (Witness Ruzindana's Personal Information Sheet) (Witness Ruzindana, a Hutu, was a cadet at the ESO in April 1994); Witness ZML13, 6 June 2011, pp. 44, 48; Exhibit D55 (Witness ZML13's Personal Information Sheet) (Witness ZML13, a Hutu, was a cadet at the ESO in April 1994).
[2933] Witness RWV11, T. 2 June 2011, p. 17.
[2934] Witness RWV11, T. 2 June 2011, pp. 16-17.
[2935] Witness Ruzindana, T. 1 June 2011, pp. 28-29.
[2936] Witness ZML13, T. 6 June 2011, p. 48.
[2937] Witness ZML13, T. 6 June 2011, p. 48.
[2938] Witness Gahizi, T. 7 February 2011, pp. 24-26.
[2939] Witness Gahizi, T. 7 February 2011, p. 25.
[2940] Witness Gahizi, T. 7 February 2011, p. 27.
[2941] *See* II.6.2.
[2942] Defence Closing Brief, paras. 87-88, 90.
[2943] Witness Gahizi, T. 8 February 2011, p. 22.

did not include Nizeyimana as part of the list during the *Muvunyi* case. Witness Gahizi explained that the meeting he referred to was not the only one that took place at *Joli Bois* and he confirmed that he had left other people off this list as well.[2944] He reiterated that Nizeyimana was present and that he acknowledged during the *Muvunyi* trial that he did not recall all the participants who were present at that meeting.[2945]

1171. Witness Gahizi testified that he was detained by Nizeyimana towards the end of May 1994.[2946] The Chamber considers that Nizeyimana's incarceration and subsequent treatment of the witness may have affected his impartiality in regards to Nizeyimana. Given Witness Gahizi's possible motive to incriminate Nizeyimana, the Chamber considers the discrepancy between his evidence before this Chamber and his testimony during the *Muvunyi* case in regards to the participants at the meeting concerning.

1172. Of greater significance, Witness Gahizi's evidence about the meetings at *Joli Bois* was brief and non-descript. Specifically, the witness did not provide any dates for the meetings, nor did he specify how many meetings he attended during which the weapons were supplied. Similarly, Witness Gahizi did not provide any dates or further details regarding the "people" who came by the ESO to get weapons and were then trained to kill other people. Indeed, it is not clear that he saw this at all. The lack of detail, combined with the possible motive to incriminate Nizeyimana, raise questions about the quality of his evidence with respect to this allegation.

1173. Witness BDE saw civilian vehicles come to the ESO, particularly those belonging to the communes.[2947] Witness BDE recalled a specific instance around the beginning of May 1994, where she saw a vehicle that belonged to the Shyanda commune, parked in front of the armoury.[2948] While there, soldiers started loading rifles onto the vehicle, though she did not know how many.[2949] Witness BDE admitted that she only saw this occur on one occasion.[2950] Notably, while she identified the vehicle as having "writings to the effect that the vehicle belonged" to the Shyanda commune, she did not see anyone around the vehicle, other than the soldiers loading the weapons.[2951] Indeed, Witness BDE only stated that she saw a car that appeared to belong to the commune and never specified seeing civilians there. Moreover, the witness did not provide any detail in regards to her location when she observed weapons being loaded onto the vehicle. Her evidence fails to provide the necessary details establishing the circumstances from which this can be inferred.

1174. Similarly, Witness ZY saw civilians going about the ESO around the time the killings in Butare intensified.[2952] The civilians would at times walk into the armoury and load weapons into their vehicles, particularly vehicles belonging to the communes.[2953] While her evidence is consistent with Witness BDE to the extent that she describes weapons being loaded onto vehicles that were associated with the communes, she is the only witness to have

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[2944] Witness Gahizi, T. 8 February 2011, pp. 22-23.
[2945] Witness Gahizi, T. 8 February 2011, pp. 22-23.
[2946] Witness Gahizi, T. 8 February 2011, pp. 19-20.
[2947] Witness BDE, T. 28 January 2011, pp. 20-21.
[2948] Witness BDE, T. 28 January 2011, pp. 20-21.
[2949] Witness BDE, T. 28 January 2011, p. 21.
[2950] Witness BDE, T. 28 January 2011, p. 21.
[2951] Witness BDE, T. 28 January 2011, p. 21.
[2952] Witness ZY, T. 26 January 2011, p. 67.
[2953] Witness ZY, T. 26 January 2011, pp. 67-68.

seen the civilians help themselves to the weapons in the armoury. Moreover, Witness ZY did not clarify how often she saw the civilians on the ESO grounds taking weapons and she did not provide any specific dates. Lastly, the witness did not clarify where she was standing when she observed the civilians going about the camp. Witness ZY's general testimony that civilians were at the ESO Camp helping themselves to weapons lacks any contextual information to demonstrate that she observed this.

1175. Likewise, Witness AZD testified that he frequently saw many vehicles from the various communes at the ESO "to receive armaments".[2954] The witness did not explain during what period he saw the vehicles nor did he provide any details on where he was when he observed the vehicles receiving armaments. Witness ZT saw *Interahamwe* on the ESO grounds and inferred from the fact that they ate their meals at the ESO that they were supplied by the ESO with the rifles they were carrying.[2955] She noted that since they came to the ESO for their meals and manned roadblocks together with ESO soldiers that must have meant that they "were allowed to take anything from the camp".[2956] Notably, the witness never saw ESO soldiers providing the *Interahamwe* with weapons and did not provide any dates or further details.

1176. Contrary to the Prosecution witnesses, Defence Witnesses RWV09, RWV11, Ruzindana and ZML13 did not see any weapons being distributed to civilians by the ESO or on the camp's grounds. Indeed, Witnesses RWV09, RWV11 and ZML13 did not see any civilians or *Interahamwe* on the ESO grounds at all during this period. Witness RWV09, who worked in the same office as the department that was in charge of supplying weapons to the camp, stated that he would have known if weapons had been distributed from the armoury.[2957] However, Witness RWV09 did not work for the armoury specifically and was assigned duties other than the distribution of weapons. While he may have been in the same office as those working for the armoury, his duties were different and it is therefore not reasonable, given the context that he would have been aware of every weapon that was distributed from the armoury.[2958] The Chamber does not consider his evidence dispositive.

1177. Witness RWV11 noted that since he did not see any civilians at the ESO, there could not have been any distribution of weapons to them.[2959] He stated that weapons, if any, were distributed at the Mata training centre, rather than at the ESO.[2960] The Chamber observes that while the Defence witnesses did not personally see weapons being distributed, this is not necessarily dispositive to an evaluation of whether it in fact occurred. Indeed, Witness Ruzindana noted that he was unable to attend the officers' mess due to his status, and admitted that he would thus not have known of the presence of civilians or *Interahamwe* there.[2961] Moreover, the record reflects that civilians did enter or were brought to the ESO

[2954] Witness AZD, T. 1 February 2011, p. 4.
[2955] Witness ZT, T. 10 February 2011, p. 80.
[2956] Witness ZT. T. 10 February 2011, p. 80.
[2957] Witness RWV09, T. 8 June 2011, pp. 27-29.
[2958] Witness RWV09 admitted that none of the officers working for the armoury reported to him. Witness RWV09, T. 8 June 2011, p. 29.
[2959] Witness RWV11, T. 2 June 2011, p. 17.
[2960] Witness RWV11, T. 2 June 2011, p. 17.
[2961] Witness Ruzindana, T. 1 June 2011, pp. 28-29.

Camp.[2962] The Chamber considers the fact that these witnesses did not see weapons being distributed of limited probative value.

1178. The Chamber observes that two civilians also provided evidence on the distribution of weapons. Specifically, Witness ZBH was asked to offload boxes with ammunition that were brought by Lieutenant Hategekimana to a meeting at Gatsinzi's bar on an unspecified date, and take them to Corporal Gatwaza.[2963] The Chamber observes that the Indictment specifies that the ESO distributed weapons to civilians at the ESO. Witness ZBH's evidence of the delivery of weapons from the Ngoma Camp commander to a Ngoma Camp corporal, whether through a civilian or not, does not fall within the scope of this Indictment paragraph. Accordingly, the Chamber will not make findings thereon.

1179. Similarly, Witness Kayibanda described how firearms started to arrive at the university around the middle of May 1994.[2964] Specifically, some taller Hutus were acquiring weapons from Sergeant Sibomana and an influential student by the name of Patrice, to protect themselves from being killed by young soldiers.[2965] The Chamber notes that it has elsewhere found that Sibomana was a university student and a sergeant who fell under the *de jure* command of the ESO.[2966] While Witness Kayibanda stated that he owned a grenade, he did not say how he acquired it or whether he ever got weapons through Sibomana. The Chamber observes that it does not appear from Witness Kayibanda's evidence that students obtained the weapons at the ESO.

1180. Moreover, the witness does not provide any basis for his knowledge that Sibomana and Patrice distributed weapons in exchange for beer. Indeed, his evidence fails to provide details on whether he saw the exchange of weapons occur or whether he heard from someone that weapons were being traded. Given the vague and ambiguous nature of his evidence and the fact that it does not appear that the students obtained the weapons at the ESO, as specified in the Indictment, the Chamber considers his evidence of limited probative value.[2967]

1181. Notwithstanding the weaknesses in the Defence evidence, the absence of dates, particular circumstances of observation and the general lack of detail of the Prosecution evidence, leaves the Chamber to decipher the possibly, but not necessarily linked, parts of Prosecution Witnesses Gahizi, BDE, AZD and ZY's testimonies to come to any conclusion in this regard. Indeed, while the witnesses appear to corroborate each others' stories as it relates to the presence of vehicles from various communes on the ESO grounds and the distribution of weapons to them, their testimonies are just that, general.

1182. Of greater significance, even if the Prosecution witnesses' testimonies would lead the Chamber to conclude that weapons were being distributed to civilians at the ESO, the record is devoid of any concrete evidence suggesting that the weapons were used to further the joint criminal enterprise.

[2962] *See* II.4.1; II.4.2. *See also* Witness Nyirasafari, T. 16 June 2011, p. 39.
[2963] Witness ZBH, T. 9 February 2011, pp. 18-19; Exhibit D15B (Witness ZBH's Prior Confession), p. 31.
[2964] Witness Kayibanda, T. 2 February 2011, p. 56.
[2965] Witness Kayibanda, T. 2 February 2011, p. 56.
[2966] *See* II.5.1.
[2967] The Defence objected to Witness Kayibanda's evidence on the basis that it lacked notice of Sibomana's involvement in the distribution of weapons. Defence Motion for Exclusion of Evidence, 29 April 2011, paras. 71-72. Based on its findings in regards to Witness Kayibanda's testimony, the Chamber need not consider whether sufficient notice was provided for this allegation.

1183. Prosecution Witness Dufitumukiza testified that he saw ESO soldiers using weapons during the attack at the Cyahinda Parish, which were only found at the ESO.[2968] The Chamber observes that Witness Dufitumukiza testified about ESO soldiers using the heavy weaponry on the attack of the Cyahinda Parish, rather than *Interahamwe* or civilians. Moreover, the witness does not provide any evidence of the civilians or *Interahamwe* having obtained any weapons from the ESO in furtherance of this attack. Indeed, his testimony does not reveal any knowledge on his part of the distribution of weapons to civilians or *Interahamwe*. Given the lack of knowledge on the part of the witness and the ambiguous nature of his evidence, the Chamber considers his evidence of limited probative value.

1184. Witness AZD stated that Nizeyimana assisted *bourgmestres* in taking weapons from the ESO so that they could act "negatively".[2969] However, Witness AZD was not asked what these "negative" acts constituted or when they occurred. Indeed, his evidence in regards to the purpose for which the weapons were distributed is devoid of any detail other than the fact that they were "negative". This qualification alone is insufficient to sustain a finding of resulting criminal conduct beyond a reasonable doubt. Similarly, Witness Gahizi testified that the general topic discussed during the meeting at the officers' quarters related to the tracking down of Tutsis. However, the witness's evidence does not in any way link the generally discussed issues regarding Tutsis to the distribution of arms to the *bourgmestres* and civilians. In a criminal trial, where the burden of proof is beyond reasonable doubt, this practice does not meet the required threshold. This allegation is dismissed.

[2968] Witness Dufitumukiza, T. 20 January 2011, pp. 8-9, 36-37, 47, 53.
[2969] Witness AZD, T. 1 February 2011, p. 15.

12.2 Training of Civilians and *Interahamwe*, 7 April to July 1994

Introduction

1185. The Indictment alleges that Nizeyimana authorised, ordered, or instigated ESO soldiers to train civilians such as Burundian refugees and university students at various locations including in a valley below the ESO, at Butare Hospital, and in a forest near Butare University. In particular, in accordance with instructions from Nizeyimana, Second Lieutenant Jean Pierre Bizimana trained youths at Butare Hospital and Second Lieutenant Ezechiel Gakwerere used a number of subordinate FAR soldiers and students from the ESO to facilitate the training and cooperation with *Interahamwe*. These acts of training and distribution of weapons were done in furtherance of the joint criminal enterprise. The Prosecution relies on Witnesses ZBH, DCO, YAP and ZCB.[2970]

1186. The Defence submits that there is nothing linking Nizeyimana to the underlying allegations. The Defence denies that *Interahamwe* were trained on the ESO grounds or that they were ever present at the ESO. Lastly, the Defence challenges the credibility of Witnesses ZBH and DCO.[2971]

Evidence

Prosecution Witness ZBH

1187. In April 1994, Witness ZBH, a Hutu, was a civilian who had previously worked as a "helper" at the ESO in 1991.[2972] On an unspecified date, Second Lieutenant Gakwerere and Corporal Rutayisire, alias Rubaga, trained civilians including Witness ZBH.[2973] Specifically, Corporal Rutayisire trained them at a location known as the *foyer de Ngoma*.[2974] During the month of June, ESO soldiers provided training and Nizeyimana, accompanied by Jean Baptiste Hategekimana and others, would often come to "see what was going on".[2975] They learnt how to handle weapons or firearms because they were told that the *Inkotanyi* were about to conquer Butare.[2976] They received the training to defend themselves and the integrity of Butare prefecture.[2977]

Prosecution Witness DCO

1188. Witness DCO, a Tutsi, stayed in the paediatric ward with her sick child at the Butare University Hospital from 29 February until some point in July 1994.[2978] The soldiers had

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[2970] Indictment, para. 7; Prosecution Closing Brief, paras. 90-97.
[2971] Defence Closing Brief, paras. 181, 445, 528-546; T. 7 December 2011, p. 38 (Defence Closing Arguments).
[2972] Witness ZBH, T. 8 February 2011, pp. 35-36; Exhibit P21 (Witness ZBH's Personal Information Sheet). At the time of his testimony, Witness ZBH was incarcerated for genocide related crimes. T. 9 February 2011, pp. 36-38.
[2973] Witness ZBH, T. 8 February 2011, p. 47. Witness ZBH refers to "us" when he talks about the training he received, without specifying who was included in "us".
[2974] Witness ZBH, T. 8 February 2011, p. 47.
[2975] Witness ZBH, T. 8 February 2011, pp. 47-48.
[2976] Witness ZBH, T. 8 February 2011, p. 48.
[2977] Witness ZBH, T. 8 February 2011, p. 48.
[2978] Witness DCO, T. 10 February 2011, pp. 55-56; Exhibit P24 (Witness DCO's Personal Information Sheet).

"settled just close to the hospital", which is the place from where they trained the *Interahamwe*.[2979] The training, which started in May and continued until June, took place on grounds in between the hospital and the ESO, directly behind the hospital kitchen.[2980] Witness DCO could see the training take place from the hospital grounds.[2981]

Prosecution Witness YAP

1189. Witness YAP, a Tutsi, worked at the Butare University Hospital in 1994.[2982] At some point in time, the staff of the university and the hospital, as well as Burundian refugees who worked as interns at the hospital received military training.[2983] The refugees received training after the killings started in Kigali, but long before President Sindikubwabo's speech in Butare.[2984] Witness YAP never personally saw the training take place, but heard about it and went to "cross-check" himself.[2985] He informed the hospital management, Dr. Jotham Nshimyumukiza, who talked to the ESO, but nothing was done.[2986] Two days after, Dr. Nshimyumukiza informed the witness that the ESO had told him that the soldiers could not be punished during the war, implying that they knew about the trainings.[2987]

1190. He often saw Second Lieutenant Bizimana at the hospital as the Burundian refugees were being trained there, but did not know who was responsible for the training of *Interahamwe* outside the hospital.[2988] The *Interahamwe* were trained within the ESO property, downhill from the ESO in a valley.[2989] Specifically, downhill from the transformer where there "was a wood".[2990] This was in a valley through which there was a path that people used to go to Ngoma, opposite the hospital.[2991] Some of the soldiers talked about the training of the *Interahamwe*.[2992]

[2979] Witness DCO, T. 10 February 2011, p. 56.
[2980] Witness DCO, T. 10 February 2011, p. 64 ("Q. Now, Madam Witness, I want you to describe for us in a bit more detail the area that you saw *Interahamwe* being trained at. A. It was behind the hospital, close to ESO. Between ESO – between the ESO and the hospital there – there was a – a field that was farmed. But you need to know that that field was actually with – within ESO but it was next to the hospital. Q. And from what part of the hospital could you see the training going on in that area? A. When you were a little downhill from the kitchen, because we used to go there to ask for food. There were many of us who would go there to ask for food. As a matter of fact, we used to go and ask food from soldiers and often we were given food, at times we were not given food. But, in any event, when we stood at that location downhill from the kitchen we could see that – those grounds where military training was being provided.").
[2981] Witness DCO, T. 10 February 2011, p. 64.
[2982] Witness YAP, T. 21 February 2011, p. 36; Exhibit P32 (Witness YAP's Personal Information Sheet).
[2983] Witness YAP, T. 21 February 2011, p. 40.
[2984] Witness YAP, T. 21 February 2011, pp. 40-41.
[2985] Witness YAP, T. 21 February 2011, p. 41.
[2986] Witness YAP, T. 21 February 2011, p. 41.
[2987] Witness YAP, T. 21 February 2011, p. 41.
[2988] Witness YAP, T. 21 February 2011, p. 41.
[2989] Witness YAP, T. 21 February 2011, p. 42.
[2990] Witness YAP, T. 21 February 2011, p. 42.
[2991] Witness YAP, T. 21 February 2011, p. 42.
[2992] Witness YAP, T. 21 February 2011, p. 42. It is not clear from the transcript whether Witness YAP saw the training of the *Interahamwe* in this valley.

Prosecution Witness ZCB

1191. In April 1994, Witness ZCB, a Tutsi, was a student at the Butare University.[2993] Witness ZCB had reliable information from his classmates that students who were members of the *Interahamwe* were going to be trained in the use of weapons outside the university campus.[2994] Indeed, even prior to the killings, Witness ZCB knew that students from the MRND and CDR parties were going to be trained in the use of weapons at the ESO military camp, or in the wooded area near the ERST centre.[2995]

Defence Witness RWV11

1192. In April 1994, Witness RWV11, a Hutu, was an instructor at the ESO.[2996] Witness RWV11 never saw any civilians or *Interahamwe* at the ESO; much less attend the officer's mess.[2997] Any training of civilians in the military would have taken place in Mata.[2998] As an instructor, Witness RWV11 would have been asked to take part if civilians were being trained at the ESO.[2999]

Defence Witness RWV09

1193. Witness RWV09, a Hutu, was a military officer who was assigned to the ESO around 13 or 14 April 1994.[3000] Witness RWV09 did not see any training of civilians take place at the ESO during the months of April and May.[3001] Similarly, he never saw *Interahamwe* come to the ESO to eat at the officer's mess.[3002]

Defence Witness Thomas Ruzindana

1194. Witness Ruzindana, a Hutu, was a cadet at the ESO in April 1994.[3003] Civilians were never trained at the ESO.[3004] There are normally three types of messes at a military camp: the officers' mess, the non-commission officers' mess and the mess for privates.[3005] The privates were not allowed to attend any mess but their own and the same is true for the non-commissioned officers.[3006] Accordingly, Witness Ruzindana never attended the officers' mess and could therefore not attest to the presence of *Interahamwe* therein.[3007]

[2993] Witness ZCB, T. 17 January 2011, p. 30; Exhibit P1 (Witness ZCB's Personal Information Sheet).
[2994] Witness ZCB, T. 17 January 2011, p. 53.
[2995] Witness ZCB, T. 17 January 2011, p. 53. Witness ZBC did not know when exactly the training started and could not answer whether it took place before President Habyarimana's plane was shot down. T. 17 January 2011, p. 56.
[2996] Witness RWV11, T. 2 June 2011, p. 8; Exhibit D53 (Witness RWV11's Personal Information Sheet).
[2997] Witness RWV11, T. 2 June 2011, p. 17.
[2998] Witness RWV11, T. 2 June 2011, p. 17.
[2999] Witness RWV11, T. 2 June 2011, p. 17.
[3000] Witness RWV09, T. 8 June 2011, p. 9; Exhibit D58 (Witness RWV09's Personal Information Sheet).
[3001] Witness RWV09, T. 8 June 2011, p. 17.
[3002] Witness RWV09, T. 8 June 2011, p. 18.
[3003] Witness Ruzindana, T. 1 June 2011, p. 24; Exhibit D52 (Witness Ruzindana's Personal Information Sheet).
[3004] Witness Ruzindana, T. 1 June 2011, p. 28.
[3005] Witness Ruzindana, T. 1 June 2011, p. 28.
[3006] Witness Ruzindana, T. 1 June 2011, p. 28.
[3007] Witness Ruzindana, T. 1 June 2011, pp. 28-29.

Deliberations

1195. Prosecution Witnesses ZBH, YAP, DCO and ZCB provided evidence on the training of civilians by ESO soldiers. Specifically, Witness ZBH noted that he received training from Second Lieutenant Gakwerere and Corporal Rutayisire at a location known as the *foyer de Ngoma*.[3008] The witness stated that he also received training by ESO soldiers during the month of June 1994 at an unspecified location, during which Nizeyimana, accompanied by Lieutenant Hategekimana and others often came to supervise them.[3009]

1196. The Chamber notes that it has elsewhere discussed in detail the general context in which Witness ZBH testified and found that his evidence is to be approached with caution.[3010] In regards to this allegation, the Defence notes that Witness ZBH's testimony of his training in June 1994 does not comport with the war that was already in the process of being lost.[3011] Witness ZBH explained that the reason for which he received training was to defend Butare because the *Inkotanyi* were about to conquer the city.[3012] The Chamber does not consider it unreasonable that civilians and *Interahamwe* received training at a time when the city was about to be taken and does not find Witness ZBH's evidence contradictory in this regard.

1197. The Chamber has elsewhere determined that Witness ZBH, having frequently collaborated with soldiers during the genocide, would have been in a position to identify soldiers from the different camps in Butare. Notwithstanding, Witness ZBH provides little detail about the training he received. There is no further evidence corroborating the fact that training was given at the *foyer de Ngoma* or that Nizeyimana, in the company of Lieutenant Hategekimana, often visited sites where *Interahamwe* and civilians were trained. Accordingly, the Chamber does not consider his evidence dispositive.

1198. Witness YAP testified that university and hospital staff, as well as Burundian refugees, received military training.[3013] Specifically, the Burundian refugees started to receive training after the killings started in Kigali, but long before President Sindikubwabo's speech.[3014] While he did not know who was responsible for training the *Interahamwe*, he did know that they were being trained on the ESO property.[3015] Notably, Witness YAP conceded that he never saw the training take place, but instead "was informed" about it and went to "cross-check" himself.[3016] The witness does not explain who he received this information from or when he heard about this. Moreover, he does not explain how he "cross-checked" the information he received. In regards to the training of the civilians, Witness YAP noted that "some of the soldiers" talked about the training of *Interahamwe*.[3017]

[3008] Witness ZBH, T. 8 February 2011, pp. 47-48.
[3009] Witness ZBH, T. 8 February 2011, pp. 47-48.
[3010] *See* II.3.4.
[3011] Defence Closing Brief, para. 181.
[3012] Witness ZBH, T. 8 February 2011, p. 48.
[3013] Witness YAP, T. 21 February 2011, p. 40.
[3014] Witness YAP, T. 21 February 2011, pp. 40-41.
[3015] Witness YAP, T. 21 February 2011, p. 42.
[3016] Witness YAP, T. 21 February 2011, p. 41 ("Q. The training of Burundian refugees, was that something you saw yourself, or something that was told to you by other people? A. I was informed. I was told this, but I went and cross-checked myself. As a matter of fact, I informed the hospital management which talked to ESO, but nothing was done. Indeed, I saw Second Lieutenant Bizimana often during that period.").
[3017] Witness YAP, T. 21 February 2011, p. 42.

1199. Witness YAP appears to infer from the presence of Second Lieutenant Bizimana at the hospital during the time of the training that ESO soldiers were responsible for the training of civilians.[3018] Similarly, the witness notes that he informed the hospital management of the ongoing training, who later informed him that ESO soldiers told them that soldiers could not be punished during times of war.[3019] Witness YAP's vague and general hear-say inferences are insufficient basis upon which to make findings beyond a reasonable doubt.

1200. Witness DCO testified that she saw that soldiers "had settled just close to the hospital" from where they started training *Interahamwe* around May until June 1994.[3020] Specifically, the training took place between the ESO and the hospital grounds, directly behind the hospital kitchen.[3021] At the outset, the Chamber has considerable reservations that Witness DCO could observe people being trained at a location in between the hospital and the ESO from a position in the paediatrics ward or from below the maternity wing.[3022]

1201. Moreover, Witness DCO conceded that she did not know the soldiers – noting that she would normally go to Matyazo for treatment – and that Presidential Guards and Ngoma Camp soldiers were around.[3023] Her ability to identify ESO soldiers is less than clear and her insistence that the ESO was located on the side of the hospital below the maternity ward raises further questions as to the quality of her evidence. In this regard, her evidence implicating ESO soldiers in the training of civilians is of limited probative value.[3024]

1202. Similarly, Witness ZCB noted that he heard that students affiliated with the MRND and CDR were going to be trained in the use of weapons at the ESO military camp or in the wooded area around the ERST centre.[3025] Witness ZCB does not provide exact dates of when this occurred other than noting that it started "even prior to the killings".[3026] More importantly, Witness ZCB heard that they "were going to be trained", without specifying whether they in fact received training.[3027] Similarly, Witness ZCB heard about the future training from "reliable" classmates, without identifying who they were or when he heard about. Indeed, it is unclear from his testimony how his classmates knew about the training that was to be given – whether they were to receive such training or in turn had heard about it

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[3018] Witness YAP, T. 21 February 2011, p. 41. Indeed, it is not apparent from Witness YAP's testimony that Second-Lieutenant Bizimana was in any way involved with the training of the Burundian refugees.
[3019] Witness YAP, T. 21 February 2011, p. 41.
[3020] Witness DCO, T. 10 February 2011, p. 56.
[3021] Witness DCO, T. 10 February 2011, p. 64.
[3022] *See* II.9.3.
[3023] Witness DCO, T. 10 February 2011, pp. 59, 72.
[3024] The Defence objected to Witness DCO's evidence of the training of *Interahamwe* on the basic that it had received insufficient notice thereof. Defence Motion for Exclusion of Evidence, 29 April 2011, paras. 73-75. In light of its findings in regards to Witness DCO's testimony, the Chamber need not address the Defence's arguments regarding notice.
[3025] Witness ZCB, T. 17 January 2011, p. 53.
[3026] Witness ZCB, T. 17 January 2011, p. 53.
[3027] Witness ZCB, T. 17 January 2011, p. 53 ("Q. You've told us about other students who had traditional weapons. Do you know who they were? A. As I have already said, most of those students were members of MRND and CDR parties. Even prior to the killings, I had reliable information to the effect that those students were going to be trained in the use of weapons at ESO military camp, or in the wooded area which was near the ERST (sic) centre. Q. Who gave you that information? A. I got the information from some of those students who were my college mates or classmates. Everybody knew that students who were members of the *Interahamwe* were going to be trained in the use of weapons outside the university campus.").

elsewhere. Given the vague and general nature of his hear-say evidence, the Chamber does not consider Witness ZCB's testimony dispositive.

1203. Given the vague and general nature of the evidence, the Chamber does not consider that the Prosecution has met its burden of proving that civilians and *Interahamwe* were trained by ESO soldiers from 7 April until mid-July 1994.[3028] Moreover, even if the Chamber were to find that *Interahamwe* and civilians received training by ESO soldiers, Witness ZBH is the only witness to provide evidence on the purpose of this training. Specifically, Witness ZBH testified that they received training because the *Inkotanyi* were about to conquer Butare and they needed to defend themselves and the integrity of Butare prefecture.[3029] Given the caution with which it decided to approach Witness ZBH's testimony and the uncorroborated nature of his evidence, the Chamber finds his testimony insufficient basis upon which to conclude that Nizeyimana may be held responsible for the training of civilians or that the training described necessarily contributed to crimes within the jurisdiction of the Tribunal.

1204. Notably, the Defence has presented alibi evidence that raises the reasonable possibility that Nizeyimana was reassigned to lead a military training camp at the Mata tea factory in Gikongoro prefecture towards the end of April 1994. It further considers reasonably possible that Nizeyimana was transferred to Nyanza in late May.[3030] While the Chamber is not persuaded that this evidence creates the reasonable possibility that Nizeyimana only returned to Butare town at one time after that date, it does raise serious doubts as to whether he significantly or substantially contributed to the training of civilians at the ESO, to the extent that it took place after Nizeyimana's reassignment. Accordingly, this allegation is dismissed.

[3028] The Chamber notes that Defence Witnesses RWV09, RWV11 and Ruzindana all testified that they did not see civilians at the ESO and therefore did not see them receiving training. Witness RWV09, T. 8 June 2011, p. 17; Witness RWV11, T. 2 June 2011, p. 17; Witness Ruzindana, T. 1 June 2011, p. 28. Moreover, Witness RWV11 notes that he would have been aware, as an instructor, of any training that occurred. Witness RWV11, T. 2 June 2011, p. 17. The Chamber observes that the fact that the witnesses did not see the training take place is not necessarily evidence that it did not occur. Notwithstanding, the merits of this evidence need to be reviewed in detail given the insufficiently credible or reliable Prosecution evidence that such training resulted in crimes within the Tribunal's jurisdiction.
[3029] Witness ZBH, T. 8 February 2011, p. 48.
[3030] *See* II.13.3.

13. ALIBI

1205. The Defence raises alibi evidence for two distinct periods. The first is from 21 to 22 April 1994 and relates to a reconnaissance mission to the Mata tea factory in Gikongoro prefecture. The second starts on 26 April with the commencement of Nizeyimana's assignment as commander of the Mata training facility. The Defence points to evidence that on 26 May 1994, Nizeyimana was reassigned from the Mata training facility to the front in Nyanza. After setting out the relevant standard for assessing an alibi, the Chamber will discuss the evidence related to each of these periods in turn.

13.1 Law

1206. In the *Zigiranyirazo* Appeal Judgement, the Appeals Chamber reaffirmed the basic principles concerning the assessment of alibi evidence:

> An alibi does not constitute a defence in its proper sense. By raising an alibi, an accused is simply denying that he was in a position to commit the crime with which he was charged. An accused does not bear the burden of proving his alibi beyond reasonable doubt. Rather "[h]e must simply produce the evidence tending to show that he was not present at the time of the alleged crime" or, otherwise stated, present evidence "likely to raise a reasonable doubt in the Prosecution case." If the alibi is reasonably possibly true, it must be accepted.
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> Where an alibi is properly raised, the Prosecution must establish beyond reasonable doubt that, despite the alibi, the facts alleged are nevertheless true. The Prosecution may do so, for instance, by demonstrating that the alibi does not in fact reasonably account for the period when the accused is alleged to have committed the crime. Where the alibi evidence does *prima facie* account for the accused's activities at the relevant time of the commission of the crime, the Prosecution must "eliminate the reasonable possibility that the alibi is true," for example, by demonstrating that the alibi evidence is not credible.[3031]

1207. The Appeals Chamber has also held that the manner in which an alibi is presented may impact its credibility.[3032] Therefore, it was within a Trial Chamber's discretion to take into account an Accused's failure to provide timely and adequate notice in assessing alibi evidence.[3033]

[3031] *Zigiranyirazo* Appeal Judgement, paras. 17-18 (internal citations omitted).
[3032] *Kanyarukiga* Appeal Judgement, para. 97; *Munyakazi* Appeal Judgement, para. 18 *citing Kalimanzira* Appeal Judgement, para. 56; *Musema* Appeal Judgement, para. 201.
[3033] *Munyakazi* Appeal Judgement, para. 18 *citing Kalimanzira* Appeal Judgement, para. 56.

13.2 Reconnaissance Mission to Mata Tea, 21 to 22 April 1994

Introduction

1208. The Indictment implicates Nizeyimana in numerous separate crimes that are alleged to have occurred on or around 21 and 22 April 1994.[3034] However, the Defence has presented evidence that Nizeyimana was not present in Butare town from the morning of 21 April to the early evening of 22 April 1994. Specifically, this evidence suggests that he was travelling to or from the Mata tea factory in Gikongoro prefecture where he conducted a reconnaissance mission during that time. Relevant evidence supporting this period of the alibi was given by Defence Witnesses RWV11, ZML13, CKN10, Jean Népomuscène Bunani, Thomas Ruzindana, CKN22, Melchiade Ndikumana, Vincent Ntamagezo, OUV03, RWV09, Irénée Hitayezu, Aggripine Nyiranzabonimana and Augustin Mushimiyimana, as well as Defence Rejoinder Witnesses KEN06, Déo Iyakaremye, RWV17 and Jean Claude Zikamabahari.[3035]

1209. The Prosecution contends that the notice for this period of the alibi was deficient and that the supporting evidence is unreliable and fabricated. In any case, the Prosecution further argues that it has eliminated any reasonable possibility of the alibi's truthfulness through its case-in-chief, cross-examination, and through Prosecution Rebuttal Witnesses Antoinette Bizimenyera and Côsma Twagirayezu.[3036]

Evidence

Defence Witness RWV11

1210. Witness RWV11, a Hutu, was an instructor at the ESO prior to 6 April 1994.[3037] 20 April was a particularly significant day for Witness RWV11 because it was his birthday, which happened to be the day after President Sindikubwabo held his speech in Butare.[3038] The following day, 21 April, he left for a reconnaissance mission with about 15 soldiers, under the command of Nizeyimana.[3039]

1211. On 21 April 1994, Witness RWV11 got up around 6.30 a.m. and the soldiers left the ESO between 7.30 or 8.00 a.m.[3040] The witness rode in a Land Rover along with First Sergeants Bunani, Hitimana and Kagimbangabo, Musirikare and Sergeant Joseph Harerimana.[3041] Corporal Mulindankaka (a driver), Corporal Kayitana (stretcher bearer) and

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[3034] *See* Indictment, paras. 10(v), 14 (iii),16, 23-26.
[3035] Defence Closing Brief, paras. 27-56, 64-67, 69-71, 74-78, 118-136, 149-150; T. 7 December 2011, pp. 40, 44, 46-49, 55-56, 59, 62-63, 75-76 (Defence Closing Arguments).
[3036] Prosecution Closing Brief, paras. 495-514, 521(b)-(c), 522(a)-(c), 523-530; T. 7 December 2011, pp. 5-6, 19-27 (Prosecution Closing Arguments).
[3037] Witness RWV11, T. 2 June 2011, p. 8; Exhibit D53 (Witness RWV11's Personal Information Sheet).
[3038] Witness RWV11, T. 2 June 2011, pp. 22-23.
[3039] Witness RWV11, T. 2 June 2011, pp. 19, 22-23, 65.
[3040] Witness RWV11, T. 2 June 2011, pp. 23, 65.
[3041] Witness RWV11, T. 2 June 2011, p. 23. Bunani's name is erroneously transcribed as "Mbunane" in the English and French transcripts.

First Sergeant Kabandana (in charge of signals and transmission) also joined the mission.[3042] Nizeyimana and about five soldiers rode in an UNAMIR vehicle.[3043]

1212. The soldiers spent considerable time at many roadblocks manned by *Interahamwe* carrying traditional weapons as they journeyed from Butare town to Gikongoro prefecture.[3044] The *Interahamwe* were particularly threatening given the soldiers' use of a UNAMIR vehicle, and Nizeyimana was compelled to speak with them to allow passage.[3045]

1213. The soldiers arrived at the Gikongoro Gendarmerie Camp around 10.00 a.m., and Nizeyimana left to speak with the camp commander.[3046] The witness, who knew a gendarme there well, went with him to the canteen and had a beer.[3047] Other soldiers remained at the vehicles, or also went to eat or drink at the kitchen or canteen.[3048] The reconnaissance team remained there for about one hour before carrying on to Mata.[3049]

1214. There were not as many roadblocks from Gikongoro to Mata and the *Interahamwe* were less "vigilant".[3050] The soldiers arrived at the Mata tea factory around 2.00 to 2.30 p.m.[3051] The witness and other soldiers went to the canteen, where they had roast meat and a beer.[3052] Nizeyimana met with the factory manager, Juvénal, for about 30 to 40 minutes.[3053] Around 3.00 p.m Nizeyimana ordered the soldiers to commence the reconnaissance mission.[3054] Nizeyimana joined Witness RWV11's group, which went downhill to the primary school to look for a sleeping area, while others looked for a water source.[3055] They stopped around 6.00 p.m. and reported their findings to Nizeyimana.[3056]

1215. The soldiers returned to the factory canteen to drink, cook rice and beans, or eat canned food that had been brought along.[3057] Nizeyimana was with the soldiers there, sharing a drink with the factory manager.[3058] The witness went to bed around 9.00 p.m., but believed that some soldiers remained at the canteen until 10.00 or 11.00 p.m.[3059]

1216. The following day, 22 April 1994, the witness had breakfast and the reconnaissance mission recommenced around 7.00 a.m.[3060] Nizeyimana and other unidentified soldiers went to look for a suitable firing range.[3061] The witness went to the river, while other soldiers

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[3042] Witness RWV11, T. 2 June 2011, p. 23.
[3043] Witness RWV11, T. 2 June 2011, p. 23.
[3044] Witness RWV11, T. 2 June 2011, p. 24.
[3045] Witness RWV11, T. 2 June 2011, p. 24.
[3046] Witness RWV11, T. 2 June 2011, pp. 24, 65.
[3047] Witness RWV11, T. 2 June 2011, pp. 24, 64.
[3048] Witness RWV11, T. 2 June 2011, pp. 24, 63-64.
[3049] Witness RWV11, T. 2 June 2011, p. 27.
[3050] Witness RWV11, T. 2 June 2011, p. 27.
[3051] Witness RWV11, T. 2 June 2011, pp. 19, 27.
[3052] Witness RWV11, T. 2 June 2011, pp. 27, 67.
[3053] Witness RWV11, T. 2 June 2011, pp. 27-28, 67.
[3054] Witness RWV11, T. 2 June 2011, pp. 27, 67.
[3055] Witness RWV11, T. 2 June 2011, pp. 27-28.
[3056] Witness RWV11, T. 2 June 2011, pp. 27-28.
[3057] Witness RWV11, T. 2 June 2011, pp. 27-28.
[3058] Witness RWV11, T. 2 June 2011, pp. 28.
[3059] Witness RWV11, T. 2 June 2011, p. 28.
[3060] Witness RWV11, T. 2 June 2011, p. 29.
[3061] Witness RWV11, T. 2 June 2011, pp. 29, 62. The transcripts mistakenly reflect that Nizeyimana went to the "tea plantation" at T. 2 June 2011, pp. 60-61. The reference to the "tea plantation", which was a translation error, was later corrected to reflect that Nizeyimana went to visit the "shooting range". T. 2 June 2011, p. 62.

examined locations for tents and inspected the grounds.[3062] They again reported their findings to Nizeyimana, and the mission concluded around 2.00 p.m.[3063] The group packed their belongings and left Mata, travelling through Kibeho, Runyinya and Matyazo before arriving at the ESO around 5.30 p.m.[3064]

Defence Witness ZML13

1217. Witness ZML13, a Hutu, joined the ESO in 1989 and began military training in 1991.[3065] He was a "pupil sergeant" and Chief Warrant Officer François Ntibirama was his platoon leader in 1994.[3066] Between 7.00 and 8.00 a.m. on 21 April, a corporal informed the witness that he and other non-commissioned officers had to present themselves to the command office in combat uniform.[3067]

1218. The witness joined other soldiers of various ranks at the assembly point. Warrant Officer Ngalinde informed them that they had been selected to go on a reconnaissance mission to Mata.[3068] Among the group were First Sergeants Hitimana and Méthode Mulinda (instructor), Thomas Ruzindana, Shadrack Kagimbangabo, and Corporal Kayitana (stretcher bearer).[3069] In total, between 12 and 15 soldiers, including senior officers, formed part of the mission.[3070]

1219. They left in two vehicles between 8.30 and 9.00 a.m.[3071] Nizeyimana and his bodyguards drove a UNAMIR vehicle and the witness and others loaded into a military jeep.[3072] Along the way to Gikongoro, the convoy passed between 10 to 20 roadblocks. Nizeyimana frequently spoke to those manning the roadblocks, and they stayed at each between 10 to 30 minutes.[3073]

1220. They arrived at the Gikongoro Gendarmerie Camp after travelling about one and a half to two hours.[3074] Nizeyimana went to speak with the camp commander while other soldiers went to the kitchen. The witness remained at the vehicles with a corporal who was driving. The soldiers left after about 45 minutes to an hour.[3075]

1221. They arrived in Mata between 1.30 and 2.00 p.m., and the tea factory director came to greet them.[3076] Some of the soldiers had skewered meat at the tea factory canteen while others had a drink.[3077] Afterward, Nizeyimana and Warrant Officer Ngalinde issued instructions to

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[3062] Witness RWV11, T. 2 June 2011, pp. 29, 60-61.
[3063] Witness RWV11, T. 2 June 2011, pp. 29, 60-61.
[3064] Witness RWV11, T. 2 June 2011, p. 27, 29, 68-69.
[3065] Witness ZML13, T. 6 June 2011, pp. 44, 61-62; Exhibit D55 (Witness ZML13's Personal Information Sheet).
[3066] Witness ZML13, T. 6 June 2011, p. 44.
[3067] Witness ZML13, T. 6 June 2011, pp. 47-48.
[3068] Witness ZML13, T. 6 June 2011, p. 48-49.
[3069] Witness ZML13, T. 6 June 2011, p. 49; T. 7 June 2011, pp. 64-65.
[3070] Witness ZML13, T. 6 June 2011, pp. 56-57.
[3071] Witness ZML13, T. 6 June 2011, p. 49.
[3072] Witness ZML13, T. 6 June 2011, p. 49.
[3073] Witness ZML13, T. 6 June 2011, p. 49-50; T. 7 June 2011, p. 65. Witness ZML13 exited his vehicle at one roadblock in Ruramba. T. 7 June 2011, p. 65.
[3074] Witness ZML13, T. 6 June 2011, p. 49.
[3075] Witness ZML13, T. 6 June 2011, p. 49; T. 7 June 2011, p. 65
[3076] Witness ZML13, T. 6 June 2011, pp. 49-50; T. 7 June 2011, p. 66.
[3077] Witness ZML13, T. 6 June 2011, p. 50.

the soldiers.[3078] One group inspected the neighbourhood, others went to identify the locations for a clinic and tents, another group installed the radio transmitter and tested radio communications, and another group searched for water sources.[3079] Nizeyimana participated in these tasks as well.[3080]

1222. The soldiers stopped reconnaissance activities around 6.30 p.m. and returned to the canteen. Witness ZML13 stayed close to Nizeyimana, Ngalinde as well as the factory's managing director, the "tea maker" and other employees of the factory.[3081] The witness remained until about 10.00 p.m. before he went and slept in the home of a private person.[3082] The officers, including Nizeyimana, spent the evening in the factory guesthouse not far from tea factory building.[3083]

1223. The next morning, the witness awoke between 5.00 and 5.30 a.m. and assembled at the "field" with the others between 6.00 and 6.30 a.m.[3084] They were subdivided into groups that went to find water points, test radio communications and identify a firing range.[3085] Witness ZML13 was with Nizeyimana and others who travelled about three to four kilometres to Nyamyumba to identify a firing range.[3086] They remained there until about 1.00 p.m. before returning to Mata, where the other groups reported on their activities.[3087] The soldiers then went to the canteen to get something to eat and drink.[3088]

1224. They returned to Butare town, using a different route that passed through Kibeho, Amarogo and Matyazo.[3089] They arrived at the ESO around dusk and the witness returned to his dormitory.[3090]

Defence Witness CKN10

1225. Witness CKN10, a Hutu, was a student in the first batch at the ESO and was a sergeant in April 1994.[3091] On 19 April, he was assigned as additional protection for the MRND palace because President Théodore Sindikubwabo was giving a speech there that day.[3092] The following day – 20 April – the witness was at camp but without an assignment.[3093] However, around 2.00 p.m., he was told to prepare for a reconnaissance mission.[3094]

[3078] Witness ZML13, T. 6 June 2011, p. 51.
[3079] Witness ZML13, T. 6 June 2011, p. 50.
[3080] Witness ZML13, T. 6 June 2011, p. 51.
[3081] Witness ZML13, T. 6 June 2011, p. 51.
[3082] Witness ZML13, T. 6 June 2011, p. 51.
[3083] Witness ZML13, T. 6 June 2011, p. 51; T. 7 June 2011, pp. 68-69.
[3084] Witness ZML13, T. 6 June 2011, p. 54.
[3085] Witness ZML13, T. 6 June 2011, p. 54.
[3086] Witness ZML13, T. 6 June 2011, pp. 54-55.
[3087] Witness ZML13, T. 6 June 2011, pp. 55.
[3088] Witness ZML13, T. 6 June 2011, pp. 55
[3089] Witness ZML13, T. 6 June 2011, pp. 55-56; T. 7 June 2011, pp. 69-70.
[3090] Witness ZML13, T. 6 June 2011, pp. 55-56; T. 7 June 2011, p. 75.
[3091] Witness CKN10, T. 26 May 2011, pp. 35, 59; Exhibit D50 (Witness CKN10's Personal Information Sheet).
[3092] Witness CKN10, T. 26 May 2011, pp. 44-46; T. 30 May 2011, pp. 31-32.
[3093] Witness CKN10, T. 26 May 2011, pp. 45-46.
[3094] Witness CKN10, T. 26 May 2011, pp. 45-46.

1226. Between 8.00 and 10.00 a.m. on 21 April 1994, the witness joined Nizeyimana and 12 to 13 other soldiers who left for the Mata tea factory in Gikongoro prefecture.[3095] Nizeyimana, his bodyguard and his driver, Corporal Gahutu, were in a white vehicle that had been left by UNAMIR.[3096] The witness rode in an ESO military Land Rover, driven by Murindankana, along with Warrant Officer Ngalinde, Sergeant Major Rwegisha, First Sergeants Bunani and Hitimana, Sergeants Ruzindana and Harerimana, Kanbandana (a radio operator), Corporal Kayitana (a stretcher bearer) and Nkurunziza.[3097]

1227. En route, they were stopped at more than 10 roadblocks manned by members of the public.[3098] The witness believed that they experienced problems because of the UNAMIR vehicle and the civilians' belief that UNAMIR forces had taken part in the attack against the President.[3099] They remained at these roadblocks between 10 to 45 minutes.[3100]

1228. They arrived at the gendarmerie camp in Gikongoro prefecture around 11.30 a.m. and stopped there for about an hour, eating rice and beans while Nizeyimana met with the camp commander.[3101] They travelled between an hour to an hour and a half, stopping between six to nine times at roadblocks, before reaching the Mata tea factory around 1.00 and 2.00 p.m.[3102] They parked near the factory canteen and were greeted by the Mata tea factory's manager, Juvénal Ndabarinze, as well as three others.[3103] They had a meal in the canteen, remaining there for about an hour before they left around 3.00 p.m.[3104]

1229. The soldiers then inspected the Mata football field as a location for pitching tents, went to Huhambe primary school and then to a river close to the tea plantation to look for sources of water.[3105] They went to each location by vehicle and Nizeyimana was among the soldiers the entire time.[3106] This process took about three hours.[3107]

1230. The soldiers, including Nizeyimana, returned to the canteen around 6.00 p.m. and had a drink with tea factory workers.[3108] They remained there until around midnight.[3109] The witness spent the night in a house not far from the canteen and Nizeyimana spent the evening in the tea factory guest house.[3110]

[3095] Witness CKN10, T. 26 May 2011, pp. 45-48; T. 30 May 2011, pp. 12, 14, 32.
[3096] Witness CKN10, T. 26 May 2011, p. 47; T. 30 May 2011, pp. 8, 41-43. Witness CKN10 could not recall the name of Nizeyimana's bodyguard. T. 30 May 2011, p. 41.
[3097] Witness CKN10, T. 26 May 2011, p. 47; T. 30 May 2011, pp. 7-8. The Land Rover was dark, had a tarpaulin over it and could carry around 11 people. T. 30 May 2011, p. 8.
[3098] Witness CKN10, T. 26 May 2011, p. 48; T. 30 May 2011, pp. 9-10.
[3099] Witness CKN10, T. 30 May 2011, p. 9.
[3100] Witness CKN10, T. 30 May 2011, pp. 11-12.
[3101] Witness CKN10, T. 26 May 2011, p. 48; T. 30 May 2011, pp. 13-14, 32.
[3102] Witness CKN10, T. 26 May 2011, p. 48; T. 30 May 2011, pp. 13-14, 33.
[3103] Witness CKN10, T. 26 May 2011, pp. 48-49; T. 30 May 2011, pp. 15-17.
[3104] Witness CKN10, T. 26 May 2011, p. 48; T. 30 May 2011, pp. 15-17, 33.
[3105] Witness CKN10, T. 26 May 2011, p. 48; T. 30 May 2011, pp. 19, 33. While Witness CKN10 generally testified that the soldiers looked for a location for shooting practice and did radio tests (T. 26 May 2011, p. 48) on the first day, he later explained that these activities were done on the second day (T. 30 May 2011, p. 20).
[3106] Witness CKN10, T. 26 May 2011, p. 49; T. 30 May 2011, p. 19.
[3107] Witness CKN10, T. 30 May 2011, p. 19.
[3108] Witness CKN10, T. 26 May 2011, p. 49; T. 30 May 2011, pp. 18-19.
[3109] Witness CKN10, T. 26 May 2011, p. 49.
[3110] Witness CKN10, T. 26 May 2011, p. 49.

1231. The witness arose the following day, 22 April 1994, around 6.00 to 6.30 a.m.[3111] He and the other soldiers ate at the canteen and resumed their work between 7.30 and 8.00 a.m.[3112] They continued the same reconnaissance carried out the day before, looked for places to jog and searched for a suitable firing range.[3113] In addition, the radio operator installed radio equipment in the guest house and successfully established communications with the ESO command in Butare.[3114]

1232. They ate lunch at the canteen around 12.00 p.m. and left for Butare around 1.30 p.m.[3115] The soldiers returned, passing through Kibeho, Miyogoro and Matyazo before reaching Ngoma commune in Butare prefecture. They were stopped at less than 10 roadblocks, which were manned by civilians armed with traditional weapons. These stops lasted about 15 minutes each and usually required Nizeyimana having to explain why they were using a UNAMIR vehicle. They arrived in Butare town around 5.30 p.m.[3116]

Defence Witness Jean Népomuscène Bunani

1233. Witness Bunani, a Hutu, was an instructor at the ESO in 1994.[3117] On 20 April, while on assignment at Kanage in Kibayi commune near the Akanyaru river, a driver gave the witness a note from Lieutenant Colonel Tharcisse Muvunyi instructing the witness to report to the ESO.[3118] He recalled this date because Corporal Ngendambizi had told him about President Théodore Sindikubwabo's speech on 19 April.[3119] The witness and the driver returned to the ESO with Corporal Nambajimana in a civilian pickup truck, arriving around 2.00 or 2.30 p.m.[3120] Witness Bunani went to see Muvunyi, who instructed the witness to see Nizeyimana.[3121] Nizeyimana informed the witness to prepare to go to Mata.[3122]

1234. Between 7.30 and 8.00 a.m. on 21 April 1994, the witness left for Mata with Nizeyimana, First Sergeants Rwegisha, Methode Mulinda and Nsaguye, Sergeants Shadrack Kagimbangabo, Ruzindana and Nusilikare, Sergeant Major Kabandana (radio operator), Corporals Gahutu and Murindankaka (drivers) and Corporal Kayitana (a nurse or stretcher bearer).[3123] They travelled in a military jeep and a UNAMIR vehicle.[3124] The convoy was

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[3111] Witness CKN10, T. 30 May 2011, p. 20.
[3112] Witness CKN 10, T. 26 May 2011, p. 49; T. 30 May 2011, pp. 19-20.
[3113] Witness CKN10, T. 26 May 2011, p. 49; T. 30 May 2011, p. 20.
[3114] Witness CKN10, T. 30 May 2011, pp. 20-21.
[3115] Witness CKN10, T. 26 May 2011, p. 51; T. 30 May 2011, p. 21.
[3116] Witness CKN10, T. 26 May 2011, p. 51; T. 30 May 2011, pp. 21-27. Witness CKN10 was again in the military vehicle. T. 30 May 2011, pp. 23-24.
[3117] Witness Bunani, T. 10 June 2011, pp. 45, 47; Exhibit D64 (Witness Bunani's Personal Information Sheet).
[3118] Witness Bunani, T. 13 June 2011, pp. 6, 18-19. Witness Bunani testified that his position at Kanage, Kibayi commune was about 40 kilometres from the immigration post. T. 13 June 2011, p. 39.
[3119] Witness Bunani, T. 13 June 2011, pp. 5-6, 40. Witness Bunani did not hear the President's 19 April 1994 speech and was unaware if it was rebroadcast on the radio repeatedly. T. 13 June 2011, p. 40.
[3120] Witness Bunani, T. 13 June 2011, pp. 42-43.
[3121] Witness Bunani, T. 13 June 2011, pp. 6, 19.
[3122] Witness Bunani, T. 13 June 2011, pp. 6, 19, 42.
[3123] Witness Bunani, T. 13 June 2011, pp. 6-7, 43-45.
[3124] Witness Bunani, T. 13 June 2011, p. 7.

stopped at "many" roadblocks manned by civilians armed with machetes along the way.[3125] They stated that *Inyenzi* were among soldiers and so they needed to be checked as well.[3126]

1235. The convoy stopped at the Gikongoro Gendarmerie Camp around 12.00 p.m.[3127] There, Nizeyimana spoke with the camp commander, and Witness Bunani, Rwegisha, Mulinda and other soldiers got drinks at the canteen.[3128] They departed around 12.30 and 1.00 p.m. arriving at the Mata tea factory between 2.00 or 2.30 p.m.[3129] Nizeyimana met with the factory manager, while the soldiers ate at the canteen.[3130] After that, Nizeyimana, Warrant Officer Ngalinde and about two or three others went to look for a firing range on Nyamyumba hill.[3131] Another group looked for a location where the tents for the recruits could be set up.[3132] The witness and his group scouted locations for a training centre and identified water sources.[3133]

1236. The soldiers returned to the canteen between 5.00 and 6.00 p.m.[3134] Witness Bunani left the canteen around 10.30 p.m., while Nizeyimana remained there talking to the factory manager.[3135] Nizeyimana, Ngalinde, Rwegisha, Kabandana and Kayitana stayed at the factory guesthouse, while the drivers slept in the vehicles and the remaining soldiers stayed in tents.[3136]

1237. Following instructions, the soldiers reconvened at the guest house where Nizeyimana stayed the following morning.[3137] Afterward, Nizeyimana and his team continued to look for a firing range and carried out other reconnaissance tasks.[3138] They returned to the canteen between 1.00 and 2.00 p.m. for lunch.[3139] The group departed between 2.00 and 3.00 p.m., passing Kibeho, Huye hill, Muyogoro before arriving at the ESO Camp around 5.00 to 5.30 p.m.[3140]

Defence Witness Thomas Ruzindana

1238. Witness Ruzindana, a Hutu who joined the ESO in 1989 and was in the first batch of the *nouvelle formule*, was a cadet in 1994 whose platoon leader was called Ndayambaje.[3141]

[3125] Witness Bunani, T. 13 June 2011, pp. 7-8.
[3126] Witness Bunani, T. 13 June 2011, pp. 7-8.
[3127] Witness Bunani, T. 13 June 2011, p. 8.
[3128] Witness Bunani, T. 13 June 2011, pp. 8, 45.
[3129] Witness Bunani, T. 13 June 2011, p. 8.
[3130] Witness Bunani, T. 13 June 2011, p. 8.
[3131] Witness Bunani, T. 13 June 2011, pp. 8-9, 13.
[3132] Witness Bunani, T. 13 June 2011, pp. 8-9.
[3133] Witness Bunani, T. 13 June 2011, pp. 9, 13.
[3134] Witness Bunani, T. 13 June 2011, p. 8.
[3135] Witness Bunani, T. 13 June 2011, pp. 9-10.
[3136] Witness Bunani, T. 13 June 2011, pp. 10, 46-47. Witness Bunani stayed about one kilometre away from Nizeyimana's tent. T. 13 June 2011, p. 10.
[3137] Witness Bunani, T. 13 June 2011, pp. 10-11.
[3138] Witness Bunani, T. 13 June 2011, p. 9.
[3139] Witness Bunani, T. 13 June 2011, p. 11.
[3140] Witness Bunani, T. 13 June 2011, pp. 13-14.
[3141] Witness Ruzindana, T. 1 June 2011, pp. 24-25; Exhibit D52 (Witness Ruzindana's Personal Information Sheet). At the time of his testimony, Ruzindana lived in Kibungo, Rwanda. T. 1 June 2011, p. 24.

On 19 April, President Théodore Sindikubwabo gave a speech at the MRND palace in Butare.[3142]

1239. The following day, 20 April 1994, Witness Ruzindana's platoon chief told him to prepare to go on a reconnaissance mission.[3143] Two days after the President's speech, on 21 April, Nizeyimana led the reconnaissance team, which included Witness Ruzindana, Warrant Officer Ngalinde, First Sergeant Mulinda, Sergeant Shadrack Kagimbangabo, Kabandana (radio operator), Mulindankaka (driver), and a Sagahutu.[3144] They left the ESO around 8.00 a.m. in a UNAMIR vehicle and another jeep.[3145]

1240. On their way to Gikongoro, they passed between 10 to 15 roadblocks manned by *Interahamwe*.[3146] He recalled staying at one roadblock in Gikongoro for about 30 to 35 minutes.[3147] Usually, Nizeyimana, accompanied by his three escorts, would explain to those manning the barriers what the purpose of their mission was.[3148] They arrived at the Gikongoro Gendarmerie Camp around 10.20 to 10.30 a.m.[3149] Nizeyimana spoke with the camp commander in the officers' mess, while the witness and other soldiers ate rice and beans with the gendarmes in their canteen.[3150]

1241. The soldiers left the Gikongoro Gendarmerie Camp about an hour after arrival.[3151] They reached the Mata tea factory around 1.30 p.m. having passing between 20 to 25 more roadblocks, where they were stopped for no more than 10 minutes at each.[3152] The Mata tea factory manager, Juvénal Ndabarinze, and three factory employees greeted the soldiers.[3153] The soldiers then ate shredded beef and drank at the factory canteen for about one hour or an hour and a half.[3154]

1242. The reconnaissance started around 3.00 p.m. and lasted until about 6.00 p.m.[3155] The soldiers looked for potable water sources, suitable locations for communication and military installations, grounds for training and to a place to "pitch the camp", as well as searching for vehicular access to bring supplies.[3156] They did not have time to look for a shooting range.[3157] Nizeyimana remained alongside the soldiers and the reconnaissance activities stopped around 6.00 p.m.[3158] The soldiers prepared their dinner in the canteen and Nizeyimana remained with

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[3142] Witness Ruzindana, T. 1 June 2011, pp. 30, 40, 42.
[3143] Witness Ruzindana, T. 1 June 2011, pp. 40-41.
[3144] Witness Ruzindana, T. 1 June 2011, pp. 30-31, 40-42, 62.
[3145] Witness Ruzindana, T. 1 June 2011, pp. 30-31, 46.
[3146] Witness Ruzindana, T. 1 June 2011, pp. 31, 44, 50.
[3147] Witness Ruzindana, T. 1 June 2011, p. 44.
[3148] Witness Ruzindana, T. 1 June 2011, pp. 44-46.
[3149] Witness Ruzindana, T. 1 June 2011, pp. 3145-47, 64-66.
[3150] Witness Ruzindana, T. 1 June 2011, pp. 47-48, 64-67.
[3151] Witness Ruzindana, T. 1 June 2011, pp. 47-49.
[3152] Witness Ruzindana, T. 1 June 2011, pp. 32, 49-50.
[3153] Witness Ruzindana, T. 1 June 2011, pp. 32, 50-51, 65.
[3154] Witness Ruzindana, T. 1 June 2011, pp. 32, 50, 65.
[3155] Witness Ruzindana, T. 1 June 2011, p. 67. The English transcripts incorrectly refer to "the business of recognising" rather than "reconnaissance activities". *See* T. 1 June 2011, p. 70 (French).
[3156] Witness Ruzindana, T. 1 June 2011, pp. 32, 52.
[3157] Witness Ruzindana, T. 1 June 2011, p. 52.
[3158] Witness Ruzindana, T. 1 June 2011, pp. 33, 67. *See also* T. 1 June 2011, p. 70 (French).

them.[3159] The witness went to bed around 9.00 p.m. and slept in the annex of a factory guesthouse, while Nizeyimana stayed in the guesthouse.[3160]

1243. The next day, 22 April 1994, the soldiers got up around 6.30 a.m., had breakfast and continued reconnaissance activities, including a further review of water sources, as well as testing radio communications.[3161] They stopped around midday and had lunch.[3162] At an unidentified time, they left for Butare, passing through Kibeho and Miyogoro.[3163] They passed not more than 10 roadblocks and were stopped no longer than seven to 10 minutes at any of them.[3164] They arrived at the ESO around 6.00 p.m.[3165]

Defence Witness CKN22

1244. Witness CKN22, a Hutu, worked for the Rwandan government in Munini sub-prefecture, Gikongoro in April 1994.[3166] On Wednesday, 20 April, he paid a visit to the Mata tea factory, which he did every Wednesday.[3167] About a kilometre away, his motorcycle broke down.[3168] He left it with a tea factory employee, Callixte Ndayisaba, and borrowed Callixte's motorcycle to return home.[3169]

1245. The next day, Witness CKN22 returned to the Mata tea factory around midday, but his motorcycle had not yet been repaired.[3170] Around 2.00 p.m., while waiting near the tea factory garage, he saw more than 10 soldiers arrive in a military jeep and a UNAMIR vehicle.[3171] The witness recognised Nizeyimana, a captain from the ESO who had been previously pointed out to the witness in 1991 and who was generally well known in Butare.[3172]

1246. The factory manager, Juvénal Ndabarinze, offered the soldiers' drinks.[3173] The witness overheard Nizeyimana inform the director that they were there to conduct a reconnaissance mission.[3174] The witness also heard soldiers discussing that they would inspect a site where they intended to set up tents.[3175] The soldiers left, while the witness remained at the factory.[3176]

[3159] Witness Ruzindana, T. 1 June 2011, pp. 33-34.
[3160] Witness Ruzindana, T. 1 June 2011, p. 34.
[3161] Witness Ruzindana, T. 1 June 2011, pp. 34-35, 51-52.
[3162] Witness Ruzindana, T. 1 June 2011, p. 34.
[3163] Witness Ruzindana, T. 1 June 2011, p. 34.
[3164] Witness Ruzindana, T. 1 June 2011, p. 54.
[3165] Witness Ruzindana, T. 1 June 2011, pp. 34-35.
[3166] Witness CKN22, T. 15 June 2011, pp. 66, 68, 75; T. 16 June 2011, pp. 8-9, 26; Exhibit D73 (Witness CKN22's Personal Information Sheet). At the time of his testimony, Witness CKN22 was living in exile. T. 15 June 2011, p. 75.
[3167] Witness CKN22, T. 15 June 2011, pp. 66, 68; T. 16 June 2011, pp. 8-9, 24.
[3168] Witness CKN22, T. 15 June 2011, p. 68; T. 16 June 2011, p. 5.
[3169] Witness CKN22, T. 15 June 2011, p. 69; T. 16 June 2011, pp. 5, 9.
[3170] Witness CKN22, T. 15 June 2011, p. 69.
[3171] Witness CKN22, T. 15 June 2011, p. 70.
[3172] Witness CKN22, T. 15 June 2011, pp. 70, 77-78, 81-82; T. 16 June 2011, pp. 25, 32-33.
[3173] Witness CKN22, T. 15 June 2011, p. 70. Given his job, Witness CKN22 knew the Mata tea factory manager very well and the two were friends. T. 16 June 2011, pp. 9, 11.
[3174] Witness CKN22, T. 15 June 2011, pp. 70, 77; T. 16 June 2011, p. 25.
[3175] Witness CKN22, T. 15 June 2011, p. 70.
[3176] Witness CKN22, T. 15 June 2011, p. 70.

1247. The soldiers returned to the canteen around 5.30 p.m. and the manager offered them drinks.[3177] The witness remained at a table with Nizeyimana, the manager, Callixte, another civilian who was a male university student and at least one other soldier that evening, discussing various topics.[3178] He went to bed around midnight and slept in the manager's house or office.[3179] He believed that Nizeyimana slept in the factory guesthouse, while some soldiers remained in the factory hangar and others in the canteen.[3180]

1248. The witness awoke around 7.00 a.m. the next morning and saw Nizeyimana washing near the factory guesthouse around 7.30 a.m.[3181] He also saw soldiers outside the canteen taking their breakfast and later observed them moving about the factory.[3182] They returned to the factory canteen between 1.00 and 2.00 p.m. and took their meal.[3183] Nizeyimana had told the witness that they intended to pass through Kibeho and the witness informed the captain that he was going in that direction as well.[3184] The witness drove his motorcycle in front of the soldiers for about 10 to 12 kilometres until they reached Kibeho. The witness bid goodbye to Nizeyimana, waved to the soldiers and they parted ways.[3185]

1249. Witness CKN22 believed that there were four roadblocks between Gikongoro town and Mata.[3186] He experienced little difficulty at them, having only to present his identification card after which he would be allowed to pass.[3187] He did not use the route between Gikongoro town and Butare town and did not know how many roadblocks were along it.[3188]

Defence Witness Melchiade Ndikumana

1250. Witness Ndikumana, a native of Gikongoro prefecture, was a first year student in public health at the National University of Rwanda in Butare in 1994.[3189] On Friday 15 April, the witness went to visit his godfather, Callixte Ndayisaba, who was in charge of quality control at the Mata tea factory.[3190] About one week later, around 20 or 21 April, the Mata tea factory manager, Juvénal Ndabarinze, asked the witness to come to his office.[3191] Witness Ndikumana saw Ndabarinze and about 10 soldiers upon arrival.[3192] The manager presented Nizeyimana as the leader of the group and asked the witness to take care of them at the factory canteen.[3193]

[3177] Witness CKN22, T. 15 June 2011, p. 70.
[3178] Witness CKN22, T. 15 June 2011, pp. 71, 74, 76-77.
[3179] Witness CKN22, T. 15 June 2011, p. 70; T. 16 June 2011, pp. 11-12.
[3180] Witness CKN22, T. 15 June 2011, pp. 70-71; T. 16 June 2011, pp. 10-11.
[3181] Witness CKN22, T. 15 June 2011, p. 71; T. 16 June 2011, pp. 11-12.
[3182] Witness CKN22, T. 15 June 2011, p. 71; T. 16 June 2011, pp. 12-13.
[3183] Witness CKN22, T. 15 June 2011, p. 71.
[3184] Witness CKN22, T. 15 June 2011, p. 71; T. 16 June 2011, pp. 25-26.
[3185] Witness CKN22, T. 15 June 2011, pp. 71, 74, 78; T. 16 June 2011, pp. 13-14.
[3186] Witness CKN22, T. 16 June 2011, p. 31.
[3187] Witness CKN22, T. 16 June 2011, p. 32.
[3188] Witness CKN22, T. 16 June 2011, p. 31.
[3189] Witness Ndikumana, T. 23 May 2011, p. 61; T. 24 May 2011, p. 18; Exhibit D43 (Witness Ndikumana's Personal Information Sheet).
[3190] Witness Ndikumana, T. 23 May 2011, pp. 61-62, 68-70; T. 24 May 2011, pp. 22-23, 25-26, 30-34.
[3191] Witness Ndikumana, T. 23 May 2011, pp. 63-65; T. 24 May 2011, pp. 26, 31, 38.
[3192] Witness Ndikumana, T. 23 May 2011, p. 63.
[3193] Witness Ndikumana, T. 23 May 2011, p. 63.

1251. The witness brought them to the canteen around 1.30 p.m., but did not see any vehicle near the manager's office.[3194] The soldiers ate and drank and about two hours later, Nizeyimana instructed the witness to leave them alone as they had work to do.[3195] The soldiers left and the witness did not observe what they did.[3196] Around 6.30 p.m., when several factory employees had come to the canteen after they finished working, the soldiers also returned.[3197] Nizeyimana was among them, and stayed there until midnight, eating and drinking with the others.[3198] The witness saw that Nizeyimana stayed in a house next to the manager's office.[3199]

1252. They continued their work the following morning.[3200] Around 1:00 p.m. Nizeyimana returned.[3201] He told the witness that they had completed their assignment, and he went to inform the Mata tea factory manager as much.[3202] The group had a drink and ate something before leaving Mata between 2:30 or 3:00 p.m.[3203]

Defence Witness Vincent Ntamagezo

1253. Witness Ntamagezo, a Hutu, was a private cadet in the ESO's third batch in April 1994.[3204] He was assigned to the Military Police platoon on 21 April to provide security in light of the unrest in Butare town.[3205] He remained in this platoon for three days.[3206] On 21 April, around 8.00 or 8.30 a.m., he saw Nizeyimana with Warrant Officer Ngalinde standing around the assembly area, near the UNAMIR jeep.[3207] Witness Ntamagezo spoke with one of the sergeants who stood not far from them, and he told the witness that they were getting ready to go to Mata.[3208] Nizeyimana left that day with other soldiers to prepare for establishment of the Mata training centre.[3209] The witness estimated the distance between himself and Nizeyimana to have been approximately 60 metres.[3210]

[3194] Witness Ndikumana, T. 23 May 2011, p. 63. Witness Ndikumana believed that the soldiers arrived in a vehicle and noted that there was a garage close to the factory. T. 23 May 2011, p. 63.
[3195] Witness Ndikumana, T. 23 May 2011, p. 63.
[3196] Witness Ndikumana, T. 23 May 2011, pp. 63-64.
[3197] Witness Ndikumana, T. 23 May 2011, p. 64.
[3198] Witness Ndikumana, T. 23 May 2011, p. 64.
[3199] Witness Ndikumana, T. 23 May 2011, p. 64.
[3200] Witness Ndikumana, T. 23 May 2011, p. 64.
[3201] Witness Ndikumana, T. 23 May 2011, p. 64.
[3202] Witness Ndikumana, T. 23 May 2011, p. 64.
[3203] Witness Ndikumana, T. 23 May 2011, p. 65.
[3204] Witness Ntamagezo, T. 8 June 2011, p. 55; Exhibit D59 (Witness Ntamagezo's Personal Information Sheet).
[3205] Witness Ntamagezo, T. 8 June 2011, pp. 59, 61.
[3206] Witness Ntamagezo, T. 8 June 2011, p. 59.
[3207] Witness Ntamagezo, T. 8 June 2011, pp. 61-62, 68. Specifically, the UNAMIR jeep was parked next to the flag mast. T. 8 June 2011, p. 68.
[3208] Witness Ntamagezo, T. 8 June 2011, p. 62. Witness Ntamagezo later specified that the sergeant was with Warrant Officer Ngalinde. T. 8 June 2011, p. 68.
[3209] Witness Ntamagezo, T. 8 June 2011, p. 62.
[3210] Witness Ntamagezo, T. 8 June 2011, p. 68.

Defence Witness OUV03

1254. Witness OUV03, a Hutu, was an instructor at the ESO in April 1994.[3211] On 17 April, the chief of the general staff sent a message with an instruction for Nizeyimana to go to Mata.[3212] From that date until 21 April, Nizeyimana prepared for a reconnaissance mission.

1255. On 21 April 1994, Nizeyimana, Warrant Officer Ngalinde and Corporal Rwabutwaza (a radio operator) were among 10 to 12 soldiers who left for Mata to conduct a reconnaissance mission.[3213] The witness observed them leave between 7.00 and 8.00 a.m. in a UNAMIR Nissan jeep and another jeep equipped with a radio transmitter[3214] They conducted radio tests at 6.00 and 8.00 p.m. on that day and at 8.00 a.m. and 2.00 p.m. on 22 April.[3215] The soldiers returned to the ESO before 7.00 p.m. on 22 April, as Witness OUV03 spoke with Corporal Rwabutwaza, who had gone on the mission, before then. Rwabutwaza confirmed that they had no problem establishing a radio connection between the ESO and the tea factory.[3216]

Defence Witness RWV09

1256. Witness RWV09, a Hutu, was a military officer who was assigned to the ESO Camp around 13 or 14 April 1994.[3217] On 18 April, the general staff sent a telegram to the ESO command to set up a camp to train soldiers.[3218] Witness RWV09's division, the S4 office, was given a copy of the message that day.[3219] On the same day, Nizeyimana was instructed to make preparations for this camp.[3220] Over the next three to four days, Nizeyimana looked for instructors, necessary material and equipment.[3221] Around 21 or 22 April, a group, including Nizeyimana, went to Mata for a reconnaissance mission, although the witness was not part of it.[3222]

Defence Witness Irénée Hitayezu

1257. Witness Hitayezu, a Hutu, was an ESO cadet and returned from vacation to the ESO Camp on 20 April 1994.[3223] Upon arrival, the witness's unidentified superior assigned him to reinforce guards at Nizeyimana's residence.[3224] He held this post from 20 to 23 April,

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[3211] Witness OUV03, T. 30 May 2011, pp. 60, 62; T. 1 June 2011, p. 16; Exhibit D51 (Witness OUV03's Personal Information Sheet).
[3212] Witness OUV03, T. 31 May 2011, pp. 22-23, 25-26; T. 1 June 2011, p. 10.
[3213] Witness OUV03, T. 31 May 2011, pp. 28-30; T. 1 June 2011, pp. 12-14.
[3214] Witness OUV03, T. 31 May 2011, pp. 28-29.
[3215] Witness OUV03, T. 31 May 2011, p. 29.
[3216] Witness OUV03, T. 31 May 2011, p. 29; T. 1 June 2011, pp. 12-14.
[3217] Witness RWV09, T. 8 June 2011, pp. 9-10, 26-27, 42; Exhibit D28 (Witness RWV09's Personal Information Sheet).
[3218] Witness RWV09, T. 8 June 2011, pp. 12-13, 41.
[3219] Witness RWV09, T. 8 June 2011, p. 41.
[3220] Witness RWV09, T. 8 June 2011, pp. 13, 32, 41.
[3221] Witness RWV09, T. 8 June 2011, p. 13.
[3222] Witness RWV09, T. 8 June 2011, pp. 13, 45.
[3223] Witness Hitayezu, T. 9 June 2011, pp. 51-52, 55, 65-66; Exhibit D61 (Witness Hitayezu's Personal Information Sheet). Witness Hitayezu was on vacation in Kinigi commune on 6 April 1994. In Kinigi, violence broke out immediately after President Habyarimana's death, so the witness fled Kinigi with his family and assisted them in their refuge and travel until he returned to Butare on 20 April 1994. T. 9 June 2011, pp. 55-60.
[3224] Witness Hitayezu, T. 9 June 2011, p. 52.

beginning at 6.00 p.m. each evening and continuing through the night.[3225] Nizeyimana only stayed at his home on the night of 23 to 24 April.[3226]

1258. Nizeyimana's wife, son, a young girl and domestic worker were present on the evening of 21 April 1994.[3227] The next day, around 7.00 p.m., a military vehicle arrived and Nizeyimana's family welcomed an unidentified man, woman and children.[3228]

Defence Witness Aggripine Nyiranzabonimana

1259. Witness Nyiranzabonimana, a Hutu, was a teacher in 1994 and lived in Buye cellule, Butare town, on the same street as Nizeyimana.[3229] On the evening of 21 April, the witness and her husband, Jean Baptiste Ruzindaza, returned home early, having heard gunshots the previous evening and learning of the deaths of the Maniraho family.[3230]

1260. After 8.00 p.m., the witness and Ruzindaza heard people passing outside their house, followed by about five minutes of gunshots.[3231] While the witness remained in the bedroom, Ruzindaza went to living room and called Nizeyimana seeking an explanation. He was informed that Nizeyimana was not there that night.[3232] Around 5.00 a.m. the following morning, Ruzindaza phoned Nizeyimana again, but Nizeyimana's wife told him that Nizeyimana was not home.[3233]

Defence Witness Augustin Mushimiyimana

1261. In April 1994, Witness Mushimiyimana, a Hutu, was a soldier in the Rwandan army attached to the flight squadron at Kanombe airport, Kigali.[3234] The witness, who had a Tutsi wife, requested leave on 16 April in order to evacuate her to Butare town.[3235] He was given leave, but had to remain in Kigali until he completed work on an aircraft, which occurred on 19 April.[3236]

1262. On 20 April 1994, he drove a UNAMIR vehicle with his Tutsi wife, Corporal Nzambadora and his wife, and the wife of Warrant Officer Pascal Gatengwa to Butare town.[3237] The witness and his wife stayed with his friend, Chief Warrant Officer Célestin Ngalinde, on the night of 20 April.[3238] Ngalinde left the following morning – 21 April – and

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[3225] Witness Hitayezu, T. 9 June 2011, pp. 52, 54.
[3226] Witness Hitayezu, T. 9 June 2011, p. 52.
[3227] Witness Hitayezu, T. 9 June 2011, pp. 53-54.
[3228] Witness Hitayezu, T. 9 June 2011, p. 54.
[3229] Witness Nyiranzabonimana, T. 9 June 2011, p. 71, T. 10 June 2011, pp. 13, 15; Exhibit D62 (Witness Nyiranzabonimana's Personal Information Sheet); Exhibit D63 (Map Drawn by Witness Nyiranzabonimana).
[3230] Witness Nyiranzabonimana, T. 10 June 2011, pp. 2-3.
[3231] Witness Nyiranzabonimana, T. 10 June 2011, pp. 3, 7, 30.
[3232] Witness Nyiranzabonimana, T. 10 June 2011, pp. 3-4, 7-10.
[3233] Witness Nyiranzabonimana, T. 10 June 2011, pp. 3-4, 7-10, 23, 31.
[3234] Witness Mushimiyimana, T. 13 June 2011, pp. 52-53, 58; Exhibit D65 (Witness Mushimiyimana's Personal Information Sheet).
[3235] Witness Mushimiyimana, T. 13 June 2011, pp. 53, 67, 70, 73.
[3236] Witness Mushimiyimana, T. 13 June 2011, pp. 53-54, 72.
[3237] Witness Mushimiyimana, T. 13 June 2011, pp. 54, 63, 66-67, 70, 72.
[3238] Witness Mushimiyimana, T. 13 June 2011, p. 54.

did not return until 6.00 p.m. on 22 April.[3239] Ngalinde told the witness that he was assigned to join Nizeyimana as the second in command on a reconnaissance mission to Mata.[3240]

Prosecution Rebuttal Witness Antoinette Bizimenyera

1263. Witness Bizimenyera, a Tutsi, was married to banker Jean Baptiste Mukimbili, in 1994.[3241] The witness and her family left Ruhango on 19 April and stayed in the guest house of the Bank of Kigali's Butare branch that evening.[3242] Having heard gun fire throughout the night, they telephoned Nizeyimana at his office at 8.00 a.m. on 20 April. He told them to be patient.[3243]

1264. After nothing happened, they called Nizeyimana again around 11.00 a.m.[3244] Minutes later, a vehicle arrived with three soldiers.[3245] They took the witness, her husband and their two children to Nizeyimana's home.[3246] After she arrived, the witness saw Nizeyimana at his home and recalled seeing him there as well the next day, 21 April 1994.[3247] Throughout April, Nizeyimana would leave in the morning, return for lunch and then return after work.[3248] The witness and her family remained at Nizeyimana's home for about one month and a half. [3249]

1265. Mukimbili's older brother, Longin Rudasingwa, also stayed at the home. Indeed, the witness recalled that only her family, Nizeyimana and his wife resided at his house during that period. She did not remember another particular woman staying at the household.[3250]

Prosecution Rebuttal Witness Côsma Twagirayezu

1266. Witness Twagirayezu, a Hutu, was a night watchman employed by the Mata tea factory in 1994.[3251] He guarded five houses of factory employees night and day – including Callixte Ndayisaba (tea maker), Ildéphonse (controller) and his wife Joy Mukundwa, Joseph

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[3239] Witness Mushimiyimana, T. 13 June 2011, pp. 54-55.
[3240] Witness Mushimiyimana, T. 13 June 2011, p. 55.
[3241] Witness Bizimenyera, T. 8 September 2011, pp. 36-38 (identifying Jean Mukimbili, and the witness implicitly confirming that he was her husband); Exhibit P61 (Witness Bizimenyera's Personal Information Sheet) (identifiying Jean-Baptiste Mukimbili as her husband).
[3242] Witness Bizimenyera, T. 7 September 2011, pp. 41-42, 46; T. 8 September 2011, pp. 27, 30, 32-34, 40-41.
[3243] Witness Bizimenyera, T. 7 September 2011, pp. 42-43, 46; T. 8 September 2011, pp. 32, 34, 39, 41-42.
[3244] Witness Bizimenyera, T. 7 September 2011, pp. 42-43; T. 8 September 2011, pp. 32, 34, 41-42.
[3245] Witness Bizimenyera, T. 7 September 2011, pp. 43, 46; T. 8 September 2011, pp. 27, 34-35, 38, 41-42. Witness Bizimenyera originally testified that Nizeyimana was among the soldiers who retrieved her and her family at the bank. T. 7 September 2011, pp. 42-43, 46; T. 8 September 2011, pp. 27, 34-35, 38.
[3246] Witness Bizimenyera, T. 7 September 2011, p. 43; T. 8 September 2011, pp. 27, 34-35, 38-39.
[3247] Witness Bizimenyera, T. 7 September 2011, p. 46; T. 8 September 2011, pp. 38.
[3248] Witness Bizimenyera, T. 7 September 2011, pp. 44-45.
[3249] Witness Bizimenyera, T. 7 September 2011, p. 43.
[3250] Witness Bizimenyera, T. 7 September 2011, pp. 43-44; T. 8 September 2011, pp. 44, 48-49. Witness Bizimenyera also identified a soldier named Kuyubwati – nicknamed "Chuck Norris" – who was stationed among other soldiers at the house and that a Professor named Vincent was a regular visitor. T. 7 September 2011, p. 44; T. 8 September 2011, pp. 43-44.
[3251] Witness Twagirayezu, T. 7 September 2011, p. 30; Exhibit P60 (Witness Twagirayezu's Personal Information Sheet). Witness Twagirayezu was convicted for genocide related crimes and served 12 years in jail. T. 8 September 2011, pp. 8-9.

(accountant) and Julien Butoli – from 6 April until July.[3252] Nizeyimana did not stay at the Mata tea factory overnight from 21 to 22 April.[3253] He first saw Nizeyimana at the Mata tea factory around the end of May.[3254]

Defence Rejoinder Witness KEN06

1267. Witness KEN06, a Hutu, stayed at Nizeyimana's house from 18 April until 2 May 1994.[3255] Due to an illness, she seldom left her bedroom during this time and never once went outside the compound.[3256] Donata Mutezimana, the wife of the Accused, her son and a house maid all stayed on the property. There were also guards posted outside the house.[3257]

1268. Witness KEN06 saw Nizeyimana four times during her stay: once on the evening of the 18 April 1994, twice on 23 April (midday and evening) and once on the morning of 24 April, after which she did not see him again.[3258]

Defence Rejoinder Witness Déo Iyakaremye

1269. In April 1994, Witness Iyakaremye, a Hutu, was a messenger at the Bank of Kigali in Butare.[3259] Jean Baptiste Mukimbiri, a former manager of the Bank of Kigali in Butare, was transferred to the Bank's Ruhango branch at some point before 6 April.[3260] The Bank of Kigali in Butare closed after 6 April.[3261] When the witness returned to work on 19 April, he saw Mukimbiri in the guestroom of the bank with his wife, Antoinette, and their children.[3262] Mukimbiri had returned to Butare town to avoid the violence in Ruhango and was staying with his family in the bank's guestroom.[3263] The witness continued to see Mukimbiri at the bank each day through 22 April and spoke with him on 20, 21 and 22 April.[3264] On the morning of 23 April, two guards at the bank told the witness that they saw a military vehicle take Mukimbiri and his family away the previous evening, on 22 April.[3265]

Defence Rejoinder Witnesses RWV17

1270. Witness RWV17, a Hutu, was employed by the Mata tea factory and lived in a home less than a kilometre from the factory.[3266] In the beginning of the third week of April 1994,

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[3252] Witness Twagirayezu, T. 7 September 2011, p. 30; T. 8 September 2011, p. 12; Exhibit P60 (Witness Twagirayezu's Personal Information Sheet).
[3253] Witness Twagirayezu, T. 7 September 2011, p. 33.
[3254] *See* II.13.3.
[3255] Witness KEN06, T. 20 September 2011, pp. 6, 13, 16-17, 19-21, 26-27, 30-31, 37, 47; Exhibit D77 (Witness KEN06's Personal Information Sheet).
[3256] Witness KEN06, T. 20 September 2011, pp. 13, 32.
[3257] Witness KEN06, T. 20 September 2011, pp. 6, 14, 29, 40-41.
[3258] Witness KEN06, T. 20 September 2011, pp. 9, 11, 14-16, 39-40.
[3259] Witness Iyakaremye, T. 20 September 2011, p. 51; Exhibit D78 (Witness Ikayaremye's Personal Information Sheet).
[3260] Witness Iyakaremye, T. 20 September 2011, pp. 51, 59.
[3261] Witness Iyakaremye, T. 20 September 2011, p. 51.
[3262] Witness Iyakaremye, T. 20 September 2011, pp. 53, 59, 65. Mukimbiri was also standing with the manager, Marcellin Uwanyagasani. T. 20 September 2011, pp. 51, 53.
[3263] Witness Iyakaremye, T. 20 September 2011, pp. 53, 59, 61, 63-64.
[3264] Witness Iyakaremye, T. 20 September 2011, pp. 54, 59, 62-64.
[3265] Witness Iyakaremye, T. 20 September 2011, pp. 54-55.
[3266] Witness RWV17, T. 21 June 2011, pp. 5, 7; Exhibit D80 (Witness RWV17's Personal Information Sheet).

between 10 to 20 soldiers arrived at the Mata tea factory in the afternoon. The witness saw them at the canteen and noted that one was a "grade or rank higher than" his fellow soldiers. The witness's husband identified this person as Nizeyimana, who shared his name. They stayed for one night, and her husband told her that Nizeyimana stayed in the factory guesthouse.[3267]

Defence Witness Jean Claude Zikamabahari

1271. In April 1994, Witness Zikamabahari, a Hutu, ran a small shop in the Mata trading centre.[3268] One afternoon, about two weeks after the President's death, the witness observed soldiers on board a military UNAMIR vehicle and a military Land Rover jeep. He saw them pass his shop and head towards the tea factory and the Nyamyumba military camp.[3269] Throughout the day he "saw those vehicles [go] back and forth" but he did not know their mission.[3270] He believed that they had left by the following afternoon or evening as he did not see the vehicles again.[3271]

Deliberations

1272. The Defence claims that from the morning of 21 April until the early evening of 22 April 1994, Nizeyimana was not in Butare town. Specifically, he and a group of soldiers travelled to Gikongoro prefecture to conduct a reconnaissance at the Mata tea factory for a military training facility. They remained there through the evening of 21 April, conducted additional reconnaissance the following morning and returned to Butare town in the early evening of 22 April.

1273. The details of this 21 to 22 April 1994 reconnaissance mission were led through the accounts of Defence Witnesses RWV11, ZML13, CKN10, Bunani and Ruzindana, all of whom were ESO soldiers. Defence Witnesses RWV09, OUV03 and Ntamagezo, also ESO soldiers, confirmed that Nizeyimana was away from the ESO Camp on those days conducting a reconnaissance mission. Similarly, Defence Witnesses CKN22, Ndikumana and RWV17, civilians in the vicinity of the Mata tea factory, presented evidence that Nizeyimana and soldiers were there on 21 and 22 April. Defence Rejoinder Witness Zikamabahari remembered seeing soldiers at Mata tea factory around the last third of April.

1274. Furthermore, Defence Witness Mushimiyimana, a soldier based in Kigali in 1994, arrived in Butare on 20 April. He testified that his host, ESO Chief Warrant Officer Célestin Ngalinde left his home on 21 April and did not return until the following evening. Ngalinde informed the witness that he had been assigned to go on mission with Nizeyimana to Mata. Defence Witness Habyarimana testified that he met Tharcisse Muvunyi at the ESO Camp around 10.00 p.m. on 21 April and did not see Nizeyimana there that evening. Finally, Defence Witnesses KEN06, a young girl convalescing in Nizeyimana's home, Hitayezu, an ESO soldier assigned to guard Nizeyimana's residence, and Nyiranzabonimana, a neighbour

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[3267] Witness RWV17, T. 21 September 2011, pp. 12, 14, 20-21.
[3268] Witness Zikamabahari, T. 20 September 2011, p. 68; Exhibit D79 (Witness Zikamabahari's Personal Information Sheet).
[3269] Witness Zikamabahari, T. 20 September 2011, pp. 68-69, 77. Witness Zikamabahari generally conceded that he was not certain of when he saw the soldiers.
[3270] Witness Zikamabahari, T. 20 September 2011, p. 69.
[3271] Witness Zikamabahari, T. 20 September 2011, p. 69.

of Nizeyimana, provided evidence tending to suggest that Nizeyimana was not at his home on the evening of 21 April and the following morning.

1275. The Prosecution argues that the manner in which the alibi was raised reflects that it was fabricated.[3272] It further suggests that evolutions in the Defence witnesses' testimonies as well as the precision within their accounts reflect that they lack credibility and were concocted to rebut Prosecution evidence. The Chamber evaluates the merits of the Defence alibi evidence, addressing these allegations in turn.

(i) Notice of Alibi

1276. The Prosecution submits that it was not given notice of the alibi until one business day before the commencement of the Prosecution case.[3273] Furthermore, it contends that the number of alibi witnesses doubled through four additional filings made by the Defence during the Prosecution case.[3274]

1277. The Chamber recalls that late notification of an alibi may support concerns that it was fabricated in order to rebut Prosecution evidence.[3275] However, delays in the finalisation of an alibi witness list alone are insufficient to demonstrate that the Defence sought out witnesses to tailor an accused's alibi to the Prosecution case.[3276] It may, however, when considered among other factors that raise questions about an alibi's credibility, allow a reasonable trier of fact to conclude that the alibi evidence is not reasonably possibly true. These factors may include a troubling uniformity of the alibi evidence, connections between witnesses and the accused, inconsistencies that raise concerns about the evidence, as well as observations made during the site visit, which undermine the reasonableness of the alibi.[3277]

1278. The Defence filed a notice of alibi prior to the commencement of trial on 12 January 2011.[3278] The notice provided an indication that the Defence would present evidence that Nizeyimana left Butare town "in the morning of 21 April 1994 to the following day late in the afternoon" and that he had gone to Mata to establish a "training centre".[3279] The notice lists the names and countries of residence of four of the eight witnesses who ultimately provided first-hand accounts of Nizeyimana's presence at Mata on those dates,[3280] as well as four of the eight witnesses who provided second-hand or circumstantial support to his absence from Butare on 21 and 22 April.[3281] This Chamber previously considered that this

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[3272] Prosecution Closing Brief, paras. 497(c), 505.
[3273] Prosecution Closing Brief, paras. 501, 524.
[3274] Prosecution Closing Brief, paras. 497(c), 500-502, 523-527.
[3275] *See Kanyarukiga* Appeal Judgement, para. 97; *Munyakazi* Appeal Judgement, paras. 25; *Kalimanzira* Appeal Judgement, paras. 54-58.
[3276] *Kanyarukiga* Appeal Judgement, para. 101.
[3277] *See generally Kanyarukiga* Appeal Judgement, paras. 89-171.
[3278] Ildéphonse Nizeyimana's Notice of Alibi (TC), dated 11 January 2011 and filed on 12 January 2011 ("Alibi Notice").
[3279] Alibi Notice, para. 10.
[3280] Alibi Notice, paras. 12(a), (d), (e) and (j) (listing Defence Witnesses Jean Néopomuscène Bunani, CKN10, Melchiade Ndikumana and ZML13)
[3281] Alibi Notice, paras. 12(b), (c), (i) (listing Defence Witnesses Hitayezu, Mushimiyimana, Ntamagezo and OUV03).

notification was in line with the Defence's obligations pursuant to Rule 67(A)(ii)(a) of the Rules.[3282]

1279. The number of alibi witnesses increased throughout the course of the Prosecution case. Indeed, the Chamber allowed the Prosecution to recall rebuttal witnesses in the interests of justice, considering, in particular, the Defence's piece-meal and delayed identification regarding its prospective witnesses, or other evidence on which it intended to rely.[3283] Significantly, the record indicates that Witnesses RWV11, Ruzindana, CKN22 and RWV17 – each providing direct evidence of Nizeyimana's presence at the Mata tea factory during the 21 to 22 April 1994 reconnaissance mission – were first contacted by the Defence after it had filed its notice of alibi.[3284] In this regard, the late identification in these instances may have resulted from ongoing investigations rather than evidence manufacturing.

1280. Notwithstanding, the Chamber observes evolutions in the notice of alibi as it pertained to which ESO soldiers accompanied Nizeyimana on the reconnaissance mission to Mata. The Prosecution, without objection from the Defence, confronted Defence Witnesses CKN10, Ruzindana, ZML13 and Bunani with the assertion that they testified about the presence of additional soldiers in the reconnaissance mission that were not listed within their prior statements to the Defence.[3285]

[3282] Decision on Prosecutor's Urgent Second Motion for Disclosure of Particulars of a Defence of Alibi pursuant to Rules 54 and 67 (A)(ii) (TC), 7 February 2011, paras. 6-7.

[3283] Decision on Prosecutor's Motion for Leave to Present Evidence in Rebuttal to the Alibi Defence (TC), 7 June 2011, paras. 25-26; Decision on Extremely Urgent Motion for Reconsideration of Trial Chamber 7 June 2011 Decision on Prosecutor's Motion for Leave to Present Evidence in Rebuttal to the Alibi Defence (TC), 15 June 2011, paras. 30, 34.

[3284] *See* Witness RWV11, T. 2 June 2011, pp. 69-70 (contacted first by Valens Hahirwa and then about two weeks later, "around the end of April" 2011, met with him and another member of the Defence team); Witness Ruzindana, T. 1 June 2011, p. 56 (was first contacted by the Defence on 28 January 2011); Witness RWV17, T. 21 September 2011, pp. 30-40 (statement indicates Defence met with the witness in July 2011). *See also* Defence Extremely Urgent Motion For Protective Measures for Defence Witnesses re: Witnesses CKN18, CKN20 and CKN22, 21 April 1994 (filing for protective measures for newly identified Witness CKN22), Annex A (explaining that counsel was unable to meet witnesses) *and* T. 16 June 2011, p. 15.

[3285] Witness CKN10 was confronted with a statement to Defence investigators that he only mentioned Ngalinde, Bunani, Mulinda, Hitimana, and Nkurunziza and reference to a "stretcher-bearer" among those who went on the reconnaissance mission to Mata. Witness CKN10, T. 30 May 2011, p. 40. To the contrary, the statement does not identify Rwegisha, Ruzindana, Murindankaka, Harerimana, Kanbanda or Gahutu, persons the witness testified had accompanied them. *See* Witness CKN10, T. 26 May 2011, p. 47 *and* Witness CKN10, T. 30 May 2011, pp. 41-42. The Prosecution also pointed out that Witness CKN10 failed to identify in his testimony-in-chief that Nkurunziza accompanied the group. Witness CKN10, T. 30 May 2011, p. 41. The Prosecution noted that in the summary of Ruzindana's evidence given by the Defence, he recalled the names of Warrant Officer Ngalinda, Sergeant Mulinda, Sergeant Kagimbangabo, Sergeant Hitimana, Sergeant Nkurinziza, Sergeant Musirakare and Sergeant Bunani and an unnamed "stretcher-bearer" as present during the reconnaissance mission. Witness Ruzindana, T. 1 June 2011, p. 62. The Prosecution observed that while testifying before the Chamber, the witness also recalled the names of Kabandana, Sagahutu, Mulindankaka (referred to as Merindankaka), and corporal Kayitana. Witness Ruzindana, T. 1 June 2011, p. 62. The Prosecution noted that in Witness ZML13's prior statement to members of the Defence, the witness had only identified Nizeyimana, Ngalinde and Kagimbangabo as going to Mata. Witness ZML13, T. 7 June 2011, p. 64. Yet, during his testimony the prior day, he also identified Hitimana, Kayitana, Mulinda and Ruzindana. Witness ZML13, T. 7 June 2011, p. 64. The Prosecution challenged Bunani's recollection of the event, noting that in a prior statement to the Defence, he only identified Ngalinde, Rwegisha, Hitimana, Mulinda, Musirikari, Nsaguye, and Nkurunziza as the soldiers that travelled to Mata. Witness Bunani, T. 13 June 2011, p. 43. Nonetheless, he could now recall six additional persons – namely Gahutu, Murindankaka, Kabandana, Kayitana, Kagimbangabo and Ruzindana. Witness Bunani, T. 13 June 2011, pp. 43-44. *See* Prosecution Closing Brief, para. 508. The

1281. Of particular significance, the original notice of alibi, as well as information provided through the Defence witness will-say statements does not appear to have identified Witness Ruzindana as a member of the reconnaissance mission.[3286] Even if Ruzindana had been contacted after the notice was filed, the addition of key information once at trial – *i.e.* the presence of Ruzindana – along with the growing uniformity of evidence distinct from the notice provided raises some concerns about its credibility.[3287] The Chamber considers this relevant to the assessment of alibi evidence and shall consider it.

(ii) Merits of Alibi Evidence for the Reconnaissance Mission

1282. The Prosecution asserts that the content of the Defence evidence indicates that it was fabricated. In particular, evidence provided by the key alibi witnesses who accompanied Nizeyimana to and from the Mata tea factory contained "unmemorable detail" about mundane events in the midst of the war. Considering that the events occurred over the course of a "single day 17 years ago", and that many of the witnesses did not take notes, the Prosecution alleges that their present recollections are "'over-cooked' fabrications" concocted to meet the needs of the Accused.[3288]

1283. The Chamber notes that there is no direct evidence of witness tampering or collusion.[3289] The primary alibi witnesses who accompanied Nizeyimana to Mata or saw him there on 21 and 22 April 1994 were living in four different countries at the time of their testimonies.[3290] Witnesses who gave evidence tending to indicate that Nizeyimana was not in

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Prosecution also argues that Witness RWV11 added three names. *See* Prosecution Closing Brief, para. 508(c). He was not cross-examined on this point.

[3286] Witness RWV11, a late identified alibi witness, appears to have identified Ruzindana. *See* Amended Pre-Defence Brief, 27 March 2011, No. 28 in Annex of Summaries of Anticipated Statements from Nizeyimana Defence Witnesses.

[3287] In so finding, the Chamber is mindful of the limited probative value of will-say statements, particularly where their contents have not been confirmed by the witnesses. *See Kalimanzira* Appeal Judgement, para. 180. In this context, the Chamber notes that only Witness ZML13 testified that the will-say was incorrect. *See* Witness ZML13, T. 6 June 2011, pp. 65-66. Others questioned about the differences tacitly acknowledged the contents of their will-say statements by explaining the differences between them and their testimony. Specifically, Witnesses CKN10 and Ruzindana noted that the interceding 17 years made it difficult to initially recall all the persons present. Witness CKN10, T. 30 May 2011, pp. 42-43; Witness Ruzindana, T. 1 June 2011, p. 62. The Defence highlighted that Witness CKN10's statement reflected that the names provided were not exhaustive. *See* Witness CKN10, T. 30 May 2011, p. 42 (those identified in the statement were also "among others"). Witnesses Ruzindana and Bunani explained that continued efforts allowed them to recall additional names. Witness Ruzindana, T. 1 June 2011, p. 62; Witness Bunani, T. 13 June 2011, pp. 43-44 (also denying that anyone helped him remember the additional names). Witness ZML13 did not verify his prior statements given to the Defence, raising the reasonable possibility that names were omitted by the person interviewing him.

[3288] Prosecution Closing Brief, paras. 503-505.

[3289] *See, e.g.*, Witness Ruzindana, T. 1 June 2011, pp. 62 (testifying that the last time he had contact with any member of the reconnaissance team was in 2006), 63 (acknowledging that he had previously sworn to tell the truth and denying that his testimony was not a result of loyalty to Nizeyimana); Witness CKN10, T. 30 May 2011, pp. 44-46 (indicating that the last time he spoke with anyone on the reconnaissance mission was in 2006); Witness RWV11, T. 2 June 2011, p. 71 (denying that, out of loyalty, he tailored his evidence to help acquit Nizeyimana and that he should be punished if guilty); Witness Bunani, T. 13 June 2011, p. 44 (denied having spoken with anyone in Arusha that assisted him in identifying additional members of the reconnaissance mission).

[3290] *See* Witness Ruzindana, T. 1 June 2011, p. 24 (lived in Kibungo, Rwanda at the time of his testimony); Witness RWV11, T. 2 June 2011, p. 46 *and* Exhibit D53 (Witness RWV11's Personal Information Sheet); Witness ZML13, T. 6 June 2011, pp. 42 (confirming accuracy of Exhibit D55), 63 *and* Exhibit D55 (Witness

Butare the evening of 21 April (and or the following day) came from five different countries.[3291] Only two of the witnesses – Witnesses ZML13 and Habyarimana – lived in a country uninhabited by another witness who provided direct or circumstantial alibi evidence.[3292]

1284. The circumstances concerning where the alibi witnesses lived are equivocal as to whether they colluded. However, the geographic proximity of these witnesses, without more, fails to establish that they reasonably did.[3293]

1285. Turning now to the merits of the alibi evidence, for the sake of clarity, the Chamber will first assess evidence of the soldiers who attested to accompanying Nizeyimana to Mata from 21 to 22 April 1994. It will next examine the evidence of civilian witnesses who stated that they saw Nizeyimana there around the same time. The Chamber will also consider other circumstantial and second-hand evidence placing Nizeyimana in Mata as well as general evidence that Nizeyimana was not in Butare or at his residence from 21 to 22 April 1994. Notwithstanding this organisation, the Chamber has approached each section bearing in mind the evidence in others.

(a) Soldiers Who Participated in the Reconnaissance Mission

1286. At the outset, the Chamber observes remarkable consistency among the alibi evidence of Witnesses RWV11, CKN10, ZML13, Bunani and Ruzindana – the soldiers who testified that they accompanied Nizeyimana on the 21 to 22 April 1994 reconnaissance mission. They spoke with precision about the dates of the trip. Their evidence also reflects general consistency as to the duration of travel to the Mata tea factory and the difficulties encountered at roadblocks along the way. The soldiers all described modest reconnaissance activities, which terminated in the early evening. They all recounted spending the night and that Nizeyimana stayed in the factory guesthouse. Their accounts are also consistent on the following day's events, including further reconnaissance activities followed by lunch and the return to Butare town in the early evening via the route through Kibeho.

1287. The Chamber observes that the mere presentation of alibi evidence does not necessarily raise the reasonable possibility that it is true and that it is within the discretion of

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ZML13's Personal Information Sheet); Exhibit D50 (Witness CKN10's Personal Information Sheet); Exhibit D64 (Witness Bunani's Personal Information Sheet) (lived in Gisenyi, Rwanda at the time of his testimony); Witness CKN22, T. 15 June 2011, p. 65 (confirming accuracy of Exhibit D73) *and* Exhibit D73 (Witness CKN22's Personal Information Sheet); Exhibit D43 (Witness Ndikumana's Personal Information Sheet) (lived in the Congo at the time of his testimony).

[3291] Witness Mushimiyimana, T. 13 June 2011, pp. 70, 74 (lived in Kampala, Uganda at time of testimony); Exhibit D77 (Witness KEN06's Personal Information Sheet); Exhibit D61 (Witness Hitayezu's Personal Information Sheet) (Rwanda); Exhibit D59 (Witness Ntamagezo's Personal Information Sheet) (Rwanda); Exhibit D51 (Witness OUV03's Personal Information Sheet); Exhibit D58 (Witness RWV09's Personal Information Sheet); Exhibit D45 (Witness Habyarimana's Personal Information Sheet) (Switzerland); Exhibit D62 (Witness Nyiranzabonimana's Personal Information Sheet) (Congo).

[3292] The Chamber does not consider evidence of communal lodging while in Arusha, indicative of collusion, particularly as many of the witnesses testified that the facts of the case or their testimonies were not discussed among them.

[3293] Defence Closing Brief, para. 119; T. 7 December 2011, p. 63 (Defence Closing Arguments).

the Chamber to assess it.[3294] Furthermore, the Chamber recalls its central role, as the trier of fact, in assessing witness demeanour and credibility, when evaluating evidence.[3295]

1288. The Chamber is mindful of its obligation to provide a reasoned opinion on issues of central relevance. Such reasoned opinion, reliant on references to transcripts and exhibits to allow for thorough and objective review of the trial and the Chamber's deliberations, can fall short of perfect expression. Indeed, a witness's demeanour and credibility is not always clearly depicted on paper. As a starting point, the Chamber notes the unanimous and unequivocal view of each member of this Bench that witnesses who testified that they were with Nizeyimana at Mata – Witnesses CKN10, Ruzindana, RWV11, ZML13, Bunani, Ndikumana and CKN22 – testified in a manner that reflected a predisposition to convince the Bench of facts that – at best – they were less than sure, or – at worst – were simply not untrue. Independent of the several other specific considerations detailed below, the Chamber concludes that these witnesses were simply not credible as it related to the alibi evidence they provided.

1289. The Chamber now turns to other general credibility assessments of Defence alibi witnesses who were ESO soldiers and testified to having accompanied Nizeyimana to Mata – namely, Witnesses Bunani, RWV11, CKN10, Ruzindana and ZML13. The record reflects intimate personal or considerable professional links among the witnesses and Nizeyimana. For example, Witness Bunani was Nizeyimana's brother-in-law since 1990.[3296] He and Witness RWV11 both joined the ESO in the late 1980s. Nizeyimana had been their instructors and both held instructor positions by 1994.[3297] Similarly, Witnesses CKN10, Ruzindana and ZML13 all joined the ESO in 1989 and were members of the first batch of the *nouvelle formule*.[3298]

[3294] *See Kanyarukiga* Appeal Judgement, paras. 89-171 affirming the trial Chamber's assessment and rejection of the accused's alibi evidence); *Munyakazi* Appeal Judgement, paras. 22-27 (same); *Kalimanzira* Appeal Judgement, paras. 59-70 (same); *Rutaganda* Appeal Judgement paras. 257-261 (same).

[3295] *See, e.g.*, *Simba* Appeal Judgement, para. 116 ("The Appeals Chamber will not lightly overturn findings of a trier of fact who was able to directly assess the demeanor of a witness giving live testimony."); *Nahimana et al.* Appeal Judgement, para. 14 (deference is given to the Trial Chamber "since [it] is in a better position to evaluate testimony, as well as the demeanour of witnesses"); *Ntakirutimana* Appeal Judgement, paras. 204 ("[T]he Trial Chamber is in a unique position to evaluate the demeanour of the testifying witness"), 316 ("The Trial Chamber has the advantage of observing witnesses in person and is, as such, better positioned than the Appeals Chamber to assess the reliability and credibility of the evidence"); *Bagilishema* Appeal Judgement, para. 12 ("The Appeals Chamber has . . . repeatedly explained the reasons for . . . deference to the factual findings of the Trial Chambers. As the ICTY Appeals Chamber put it in the *Kupreškić* Appeal Judgement: The Trial Chamber has the advantage of observing witnesses in person and so is better positioned than the Appeals Chamber to assess the reliability and credibility of the evidence."); *Kamuhanda* Appeal Judgement, para. 138 (emphasising the need to "defer to the Trial Chamber on issues of credibility, particularly given the importance of witness demeanour"); *Kajelijeli* Appeal Judgement, para. 50 ("The Appeals Chamber stresses that a Trial Chamber is best placed to evaluate the demeanour of witnesses giving live testimony."). *See also Seromba* Appeal Judgement, para. 11 (with respect to factual determinations by the Trial Chamber, the Appeals Chamber "must give deference to the Trial Chamber that received the evidence at trial".).

[3296] Witness Bunani, T. 13 June 2011, pp. 18, 21 (married to Nizeyimana's sister since 1990).

[3297] Witness RWV11, T. 2 June 2011, pp. 8-9, 71 ("[Nizeyimana] is the one who trained me when he was still second lieutenant when I arrived at ESO."); Witness Bunani, T. 10 June 2011, pp. 45-47, T. 13 June 2011, p. 21 ("I was a cadet and he was my instructor.").

[3298] Witness CKN10, T. 26 May 2011, p. 35, T. 30 May 2011, pp. 37, 64 (first learned about Nizeyimana in 1991 as a cadet); Witness Ruzindana, T. 1 June 2011, p. 24 (joined the first batch in 1989); Witness ZML13, T. 6 June 2011, pp. 44, 62 (got to know Nizeyimana in 1991 when he commenced military exercises).

1290. The considerable overlap in tenure of these soldiers and Nizeyimana at the ESO Camp raises concerns about the partiality of these witnesses. Nizeyimana's role within the S3 office, which was responsible for training, suggests that at a minimum, he and Witnesses Bunani and RWV11 directly collaborated prior to the events of 1994.[3299] Furthermore, the evidence reflects that these soldiers collaborated with Nizeyimana during the genocide, and in particular, at the training centre at the Mata tea factory.[3300] The Chamber considers that their considerable tenure at the ESO along with Nizeyimana is relevant to a consideration of their credibility.

1291. Furthermore, Witness Bunani lived with Nizeyimana in exile for approximately one year after they fled Rwanda.[3301] Some witnesses were asked and confirmed their loyalty to or respect for Nizeyimana,[3302] although some rejected that they would alter their testimonies in favour of Nizeyimana.[3303] Their relationships with Nizeyimana do not render the witnesses' testimony *per se* unreliable or lacking credibility. However, these circumstances bolster other concerns when viewed in light of the Chamber's assessment of their demeanours and other factors which raise concern about the quality of this evidence.

1292. Of particular significance, fundamental doubts about the truthfulness and or accuracy of the evidence emerged particularly as the Defence alibi witnesses attempted to testify with respect to the timing of the mission. Specifically, Defence witnesses who accompanied Nizeyimana – Witnesses Bunani, Ruzindana, ZML13, RWV11 and CKN10 – were nearly categorical that the mission commenced on the morning of 21 April 1994. However, gaps in the evidence, specious explanations, as well as other general credibility concerns raise fundamental doubts.[3304]

[3299] *But see* Witness Ruzindana, T. 1 June 2011, p. 63 (testifying that because Nizeyimana was an officer and he was a non-commissioned officer, he had "no special relationship with [him]"); Witness ZML13, T. 6 June 2011, p. 47 (knew Nizeyimana as the S2/S3 officer, but could not approach the captain because he was an officer and that the witness was "afraid of him").

[3300] *See* II.13.3.

[3301] Witness Bunani, T. 13 June 2011, p. 22.

[3302] Witness RWV11, T. 2 June 2011, p. 71 ("Q. Well, you are not a soldier anymore. So does he still have your loyalty? A. He is the one who trained me when he was still second lieutenant when I arrived at ESO. I believe I still owe him loyalty. I worked with him without any problem whatsoever. He was my trainer or instructor."); Witness Bunani, T. 13 June 2011, p. 48 ("Q. You've come here today to support your brother-in-law and your friend, Captain Nizeyimana; correct? A. I agree with you."); Witness Ruzindana, T. 1 June 2011, pp. 62-63 ("Q. ... Is it true or is it false that at that time he had both your loyalty and your respect? A. What you are saying is true.").

[3303] Witness RWV11, T. 2 June 2011, p. 71 (denying that, out of loyalty, he tailored his evidence to help acquit Nizeyimana and asserting that Nizeyimana should be punished if guilty); Witness Ruzindana, T. 1 June 2011, p. 63 (acknowledging that he had previously sworn to tell the truth and denying that his testimony was a result of loyalty to Nizeyimana and that his respect for Nizeyimana would lead him to "breach any law."); Witness CKN10, T. 30 May 2011, p. 54 (confirming that he would respect Nizeyimana if he would meet him in the context of military service and that he "did not have anything against [Nizeyimana]").

[3304] The Chamber observes that many of these Defence witnesses tended to suggest that they recalled the date of the alibi mission on their own. *See* Witness CKN10, T. 30 May 2011, p. 50 ("Q. Well, you've told us that [Hahirwa] asked you some questions and you gave him some answers. And so now I'm asking whether he asked you about any specific dates on the first occasion that you met. A. He asked me questions in connection with some dates. Q. Did he specifically ask you about the dates of April 21 and April 22, 1994? A. He asked me on what date we were assigned the mission to go to Mata."); Witness Ruzindana, T. 1 June 2011, pp. 56-57 ("Q. And during the first meeting that you had with Valens, were you asked about specific dates? A. No. He did not ask me any questions regarding specific dates. But I would like a clarification. When you ask me if he asked me questions relating to specific dates, what are you referring to when you talk about specific dates? Q. Well, in

1293. The Chamber first turns to the evidence of Witness Bunani as it relates to timing of the mission. He recalled being called back to the ESO specifically on 20 April 1994 – the day before the reconnaissance mission left – because it was the day after President Théodore Sindikubwabo's 19 April 1994. Notably, the witness did not hear the speech and only learned about it from a soldier. He was unaware of whether it was rebroadcast.[3305] In the Chamber's view, Witness Bunani's evidence provides a doubtful basis for establishing the date of the reconnaissance mission.

1294. Of greater significance, Witness Bunani was unable to recall what day – either 9, 10 or 11 April 1994 – he was sent on another mission of similar significance – to patrol the Burundian border – days after another significant event in the Rwandan genocide – the killing of President Juvénal Habyarimana on 6 April.[3306] His explanation, in this instance, was that the event occurred "a long time ago".[3307] While it is reasonable that the witness could not recall the exact date, the contrast with his ability to then recall with precision the date of the reconnaissance mission – a relatively uneventful trip by all Defence accounts – is not.

1295. Indeed, although it occurred years before the genocide, Witness Bunani could not presently remember the day he was married.[3308] These factors support the Chamber's firm suspicions that natural lapses in his memory have been resolved in favour of Nizeyimana, his brother-in-law, in order to place Nizeyimana outside of Butare town at a time when numerous killings involving ESO soldiers were occurring there. It reaffirms the individual suspicions of the Chamber that Witness Bunani's demeanour raised concerns about his credibility as it related to the reconnaissance mission.

1296. Witness Ruzindana's evidence about the timing of the reconnaissance mission is similarly doubtful as to when it occurred. He insisted that the mission occurred on 21 April

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particular, did he ask you about the dates of 21st and 22nd April 1994? A. Not at all."); Witness RWV11, T. 2 June 2011, p. 70 ("Q. So, when you met him on that first date, that first meeting, did he ask you about specific dates? A. No, he did not ask me any such questions. He simply asked me if I had lived in the same camp as Nizeyimana, when I left the camp and when Nizeyimana left the camp. Those were the only questions he asked me. When he asked me questions and when he was taking notes on the laptop computer, sometimes I would remember events that had taken place at any given date and I would give the date or the dates."); Witness Bunani, T. 13 June 2011, p. 43 ("BY MS. GRAY: Q. Now, Mr. Witness, you've told us about going to Mata. And I just want to confirm that when you met with the Defence last year, did you provide them with as much information as you could remember about who went to Mata with you? A. I gave them some information. However, they did not ask me many questions regarding Mata. Rather, they were interested they were more interested in my identity as well as in my family. Q. Are you suggesting, Mr. Witness, that they were not all that interested in the date that you went to Mata? A. They asked me questions about those dates, but they did not really place an emphasis on that. Rather, they asked me questions regarding when I joined the army and details regarding my family. And I answered their questions."); Witness ZML13, T. 6 June 2011, p. 66 ("BY MS. GRAY: Q. Mr. Witness, did you tell Mr. Léopold about Mata when you met with him in July last year? A. Yes, he asked me questions on our mission to Mata. Q. And did you discuss that again with him and Myriam when they came back to see you in October or November last year? A. Yes, they asked me again if I had gone on mission to Mata."); Witness Ndikumana, T. 24 May 2011, p. 8 ("Q. Well, in particular, didn't the Defence team ask you about the dates of April 21st and April 22nd? ... Didn't they ask you about the dates of April 21st and April 22nd? A. Regarding 21st and 22nd of April, the first meeting, I gave information related to those dates by giving an account of facts as I had experienced the events during that period. So I was the one who gave them those dates. So that's how come the Defence team came to note down those dates. But otherwise, during my statement there was there were no questions put to me in respect of 21st or 22nd or any specific dates.").

[3305] Witness Bunani, T. 13 June 2011, p. 40.

[3306] *See* Witness Bunani, T. 13 June 2011, pp. 5, 34, 37.

[3307] Witness Bunani, T. 13 June 2011, pp. 34, 37.

[3308] Witness Bunani, T. 13 June 2011, p. 21.

1994, determining the date based on the timing of President Théodore Sindikubwabo's speech at the MRND palace in Butare.[3309] While he did not attend the speech, Witness Ruzindana remarked that it was "a truly unusual speech ... [a]nd that is the reason why I remember it well".[3310]

1297. Witness Ruzindana's evidence correctly places the President's speech on 19 April 1994. However, it does not demonstrate the he heard it that day.[3311] When questioned about whether he could have been informed about the reconnaissance mission two or three days after Sindikubwabo's speech (rather than one day), he conceded he had no other reference points.[3312] Notably, Witness Ruzindana could not recall the day of the week that he left on the reconnaissance mission for Mata.[3313]

1298. Furthermore, the Chamber has serious doubts that Witness Ruzindana went on the reconnaissance mission. As discussed above, none of the originally identified Defence alibi witnesses appear to have identified Witness Ruzindana as a member of the reconnaissance mission prior to testifying at trial. His description of the alleged numbers of roadblocks passed by the reconnaissance mission en route to Mata appears exceptionally high.[3314] Given the otherwise detailed nature of his account, such variances raise considerable concerns about his credibility.

1299. The Chamber next turns to Witness ZML13's testimony. He testified that he could recall the date of the Mata mission with precision as 21 April 1994.[3315] He explained that he had a dentist appointment for that date in order to have a tooth pulled.[3316] Moreover, there was a ceremony related to the prospective marriage of his sister.[3317]

1300. The Chamber considers Witness ZML13's ability to remember a dentist appointment, after 17 years lacks any credibility. The same is true with respect to his shifting evidence about the ceremony regarding his sister's engagement.[3318] In the Chamber's view, the particular days are unmemorable and the witness's explanations failed to assure the Chamber

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[3309] *See* Witness Ruzindana, T. 1 June 2011, pp. 30-31, 40-43.
[3310] Witness Ruzindana, T. 1 June 2011, p. 40.
[3311] *See* Witness Ruzindana, T. 1 June 2011, pp. 30, 40, 42.
[3312] Witness Ruzindana, T. 1 June 2011, pp. 40-41 ("Q. Why do you think it was one day after the president's speech that your platoon chief told you this, rather than two days or three days or some other number of days? Why exactly one day? A. That is a difficult question for me to answer. I have no other references allowing me to confirm to you that it was one day after the speech that he gave ... us that message. Army messages can be transmitted in writing or verbally, but I recall that on that occasion my platoon chief contacted me and informed me that I was part of the section which will go on reconnaissance.").
[3313] Witness Ruzindana, T. 1 June 2011, p. 42.
[3314] For example, Witness Ruzindana saw around 20 to 25 roadblocks en route from the Gikongoro Gendarmerie Camp to the Mata tea factory. Witness Ruzindana, T. 1 June 2011, p. 49. However, Witness CKN10 testified that they passed six to nine roadblocks on this stretch. Witness CKN10, T. 30 May 2011, p. 13. Witness RWV11 estimated there were fewer roadblocks between the Gikongoro Gendarmerie Camp and Mata than the route from Butare town to the Gikongoro Gendarmerie Camp. Witness RWV11, T. 2 June 2011, p. 27. Significantly, Witness CKN22 testified to traveling the road between the Gikongoro Gendarmerie Camp and Mata and stated that there were only four roadblocks. Witness CKN22, T. 16 June 2011, p. 31.
[3315] Witness ZML13, T. 6 June 2011, p. 47 ("I clearly recall the date. And I cannot forget that date. It was – it was the 21st April.").
[3316] Witness ZML13, T. 6 June 2011, p. 48; T. 7 June 2011, pp. 58-59, 61.
[3317] Witness ZML13, T. 6 June 2011, p. 48; T. 7 June 2011, pp. 55, 59-60.
[3318] On the one hand, Witness ZML13 testified that he was waiting to attend the ceremony, (T. 6 June 2001, p. 48; T. 7 June 2011, pp. 59-60), but that he knew that he could not go given the prevailing war (T. 7 June 2011, pp. 59-60).

of an exceptional ability to recall them.[3319] Indeed, Witness ZML13 could only estimate dates upon which he relocated to the Mata training centre just days later. Notably, those estimates shifted over the course of his examination.[3320]

1301. Moreover, Witness ZML13 demonstrated categorical assuredness of Nizeyimana's uninterrupted presence at the Mata tea factory once training commenced there.[3321] Notably, he maintained this position even when confronted with the Defence concession that Nizeyimana left Mata within that period.[3322] Even if the witness's explanations as to the timing of the reconnaissance mission were plausible, the Chamber maintains doubts that Witness ZML13's testimony is credible due to the obvious desire to provide baseless and exaggerated exculpatory evidence in favour of Nizeyimana.

1302. The Chamber now considers the testimonies of Witnesses RWV11 and CKN10. Their evidence that the reconnaissance mission started on 21 April 1994, when viewed in isolation, includes plausible explanations as to how each recalled the date could more than 17 years later. Specifically, Witness RWV11 testified that 20 April was a day of particular personal significance to him, which would reasonably allow him to recall the date with precision. He recalled getting inebriated that evening and that he left early the next morning, 21 April, on the reconnaissance mission.[3323]

1303. Similarly, Witness CKN10 specified that he learned about the reconnaissance mission on 20 April 1994, the day after he provided security for President Théodore Sindikubwabo on 19 April. They left on the mission the following day – 21 April.[3324] The witness accurately identified the day of Sindikubwabo's speech in Butare town.[3325] Understandably, his assignment to reinforce security for the President would have been memorable.[3326]

[3319] In this regard, the Chamber observes that Witness ZML13 purported to recall the day his tooth was pulled – 11 October 1994. Witness ZML13, T. 7 June 2011, p. 60.

[3320] *Compare* Witness ZML13, T. 6 June 2011, p. 56 ("Q. Now, Mr. Witness, did you ever go back to Mata? A. Yes. Q. And when was that? A. It was towards the end of April, between the 23rd and the 27th of April. In any case, it was towards the end of April."), *with* Witness ZML13, T. 7 June 2011, p. 72 ("Q. Because we were advised that you returned to Mata towards late April. Yesterday you told us that it was towards the end of April, and then you gave us the dates of 23-27 April. And now you're telling us it's the 26th or the 27th of April, aren't you? A. Yes, I said it was towards the end of April, and when you asked me a precise date I told you I couldn't give you a precise date. And I said it was maybe the 26th, maybe the 27th. Q. You've said, Mr. Witness, it was towards the end of April, because you're not sure of exactly when you went back the second time. Right? A. No, that is not the reason. [...] In Kinyarwanda, when you talk about the end of the month, you start around the 25th right to the end of the month [...] Q. Okay. And the 30th of April, you've just confirmed, would also be within that range of the end of April. Correct? A. In Rwanda, the end of the month usually refers to the period between the 25th to the end of the month, the 31st. Q. Is it possible, Mr. Witness, that you returned to Mata in early May? A. No, I returned before the end of April. Q. I'm suggesting that there's not a lot of difference between the end of April and early May. You'd accept that? A. There is a difference. For those of us who were soldiers, it was at the end of the month that we received our salaries.").

[3321] *See, e.g.*, Witness ZML13, T. 6 June 2011, p. 60 ("JUDGE PARK: Therefore, Captain Nizeyimana had stayed there with you without a single absence. THE WITNESS: I personally know that Captain Nizeyimana never left Mata during that period.").

[3322] Witness ZML13, T. 7 June 2011, pp. 73-74.

[3323] Witness RWV11, T. 2 June 2011, pp. 22-23, 37, 64-65.

[3324] *See* Witness CKN10, T. 26 May 2011, p. 46; T. 30 May 2011, pp. 31-32.

[3325] *See, e.g.*, Witness AZM, T. 20 January 2011, pp. 67-70 (who attended the MRND palace and was present for the speech testified that it was given on 19 April 1994).

[3326] Witness CKN10, T. 30 May 2011, p. 31.

1304. Notwithstanding, the Chamber must assess this evidence in light of its own impressions of the witnesses and in the context of the larger record. With respect to Witnesses RWV11 and CKN10, the Chamber was left with the strong impression that both tailored their evidence to provide information that was exculpatory to Nizeyimana.

1305. For example, Witness RWV11 testified to having met with Defence representatives on two occasions. The second occasion occurred just over one month before testifying. Notably, the witness described it as happening "around the end of April".[3327] Thus, by the witness's own account, the meeting happened around the same day of particular personal significance to him that allowed him to recall the date of the reconnaissance mission. Notwithstanding the similar reference point and the distance of only "more than a month" – rather than 17 years – he could not recall the date this occurred.[3328]

1306. Other inconsistencies between Witness RWV11's testimony and other evidence raise suspicions that he sought to provide exculpatory evidence rather than testify to facts of which he was certain. He testified that Nizeyimana left to care for his sick child prior to the arrival of the Ruhutinyanya family on the evening of 17 April 1994, suggesting the captain's lack of involvement in the ultimate decision made with respect to that family.[3329] Notwithstanding, other Defence evidence reflects Nizeyimana's arrival at ESO Camp (and not his subsequent departure)[3330] and three Prosecution witnesses placed Nizeyimana there after Witness RWV11 testified that Nizeyimana had left.[3331]

1307. Moreover, Witnesses RWV11 and CKN10 (like Witnesses ZML13) also showed near categorical assuredness of Nizeyimana's uninterrupted presence at the Mata tea factory once training commenced there.[3332] The Chamber has elsewhere discussed in detail the absurdity

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[3327] *See* Witness RWV11, T. 2 June 2011, p. 69.
[3328] Witness RWV11, T. 2 June 2011, p. 69. The Chamber observes that the Defence first indentified Witness RWV11 as an alibi witness in its Pre-Defence Brief, filed on 28 March 2011.
[3329] *See* II.4.1.
[3330] *Compare* Witness RWV11, T. 2 June 2011, p. 59, *with* Witness CKN10, T. 26 May 2011, p. 43.
[3331] *See, e.g.*, Witness XAG, T. 25 January 2011, pp. 30-32, 40-41 (arrived at the ESO Camp around "dusk" or when it was "dark", and met Nizeyimana); Witness YAL, T. 25 January 2011, p. 49 (arrived at the ESO around 8.30 p.m. and was taken to Nizeyimana); Witness AZM, T. 20 January 2011, pp. 67-68 (members of the security delegation were welcomed into the officers' mess by Nizeyimana where they had a drink; around 7.00 p.m. they heard over the radio that the Butare prefect had been removed).
[3332] *See, e.g.*, Witness RWV11, T. 2 June 2011, pp. 59-60 ("A. ... What I said was that as from the 26th of April between the 26th of April and the 26th of May, I saw Captain Nizeyimana every day for this entire period of training. Q. ... and I also asked you whether or not you are absolutely certain of that. A. I am the one telling you. I saw him every day. He was with us during this entire period of training. Q. There's no question in your mind. A. Every day we would report to him about the situation. We would report to him. I am an eyewitness. Q. So there's no question in your mind? A. We reported to him every day. I remember that I saw him every day. We could not give reports to somebody who was absent. Q. I heard you say that. But now I'm asking about your level of certainty with respect to the recollection. And with respect to that recollection, is there any question in your mind? A. No shadow of doubt whatsoever. This is something I know. I am 100 per cent certain that I saw him every day."); Witness CKN10, T. 30 May 2011, pp. 28 ("A. ... But in the evenings, we would meet him and talk about our work and we would exchange ideas. Q. Every evening? A. Yes. Q. He never missed an evening? A. We had dinner with him in the evenings and we used to go to have our dinner with him in the evenings. And what I would say, rather, is that if a soldier could not go to the place where we all took our dinner where we all had our dinner, then that specific soldier would go to his place to have dinner with him."), 28-29 ("Q. And isn't it the case that during the time you were involved in this training at Mata, that Captain Nizeyimana could have easily gone back and forth to Butare on any given day without you being aware of it? A. I am wondering what he could have gone to do in Butare because he had been replaced in his position there.

of Witnesses RWV11's and CKN10's evidence tending to reflect knowledge of Nizeyimana's whereabouts throughout this entire period given the size and nature of the training operation.[3333] Moreover, Defence evidence is inconsistent with their testimonies concerning the circumstances that allowed them to repeatedly meet Nizeyimana.[3334] These factors weigh strongly against the credibility of these witnesses. Their evidence as it pertains to the date of the reconnaissance mission, while plausible, is not credible.

1308. Having reviewed the credibility concerns of Witnesses RWV11, ZML13, CKN10, Bunani and Ruzindana as it relates to their evidence about the date of the reconnaissance mission, the Chamber turns to evaluate the general plausibility and reliability of what happened during it. These ESO soldiers provided consistent accounts regarding the mission's purpose. They all testified that the mission left the ESO Camp on the morning of 21 April 1994 in two vehicles, including one left by UNAMIR. The soldiers encountered civilians who manned roadblocks along the way, and stopped at the Gikongoro Gendarmerie Camp, where some soldiers ate and drank. They carried on to the Mata tea factory, arriving in the early afternoon. The soldiers ate again, conducted reconnaissance activities until the early evening, and many, including Nizeyimana remained in the factory's canteen late that evening. Nizeyimana stayed in the factory guesthouse. Reconnaissance activities recommenced the following morning – 22 April. Nizeyimana and the soldiers left in the early afternoon, taking a different route that passed through Kibeho, and returned to Butare town in the late afternoon or early evening.

1309. As noted above, there is remarkable consistency among these witnesses. Notwithstanding, differences emerge. For example, the evidence of Witnesses CKN10 and Ruzindana is somewhat general. However, it tends to depict the soldiers conducting the reconnaissance together as a single unit on 21 April 1994.[3335] Their evidence, again general, also tends to reflect that Nizeyimana remained among them as this was occurring.[3336]

1310. On the other hand, Witnesses RWV11 and Bunani specified that soldiers conducted discrete aspects of the mission and in separate groups on 21 April 1994. Their evidence, however, is inconsistent as to which group Nizeyimana accompanied.[3337] While Witness ZML13 testified about the division of the soldiers into groups, he appears to suggest that they

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Secondly, I'm telling you that he was a commander who was in charge of operations in Mata. Therefore, he could not have left Mata without informing us.").

[3333] *See* II.13.3.

[3334] *See* II.13.3.

[3335] *See* Witness CKN10, T. 26 May 2011, p. 48, T. 30 May 2011, p. 19; Witness Ruzindana, T. 1 June 2011, pp. 32, 52 (referring to "we" when describing reconnaissance tasks carried out on 21 April 1994 and without making distinctions).

[3336] *See* Witness CKN10, T. 26 May 2011, p. 49 ("Q. And where was Mr. Nizeyimana when you were doing this? A. He was with us. Be it at a time when ... we were received by the management of the factory or all along the groundwork which we ground preparation work, he was with us"); Witness Ruzindana, T. 1 June 2011, p. 33 ("Q. During the reconnaissance, where was Mr. Nizeyimana? A. Since he was the head of the mission, he was the commander, he had to remain beside us. He was the one who had to prepare the report of the mission. It is therefore obvious that he had to stay by us every time and had to be with us every time we went anywhere.").

[3337] *Compare* Witness RWV11, T. 2 June 2011, pp. 27-28 (Nizeyimana accompanied Witness RWV11's group to the primary school to look for a sleeping area for the soldiers), *with* Witness Bunani, T. 13 June 2011, pp. 9, 13 (Nizeyimana, Ngalinde and the two or three others in their group went to look for a shooting range at Nyamyumba hill).

conducted their tasks together.[3338] Witness ZML13, like Witnesses CKN10 and Ruzindana, also appears to indicate Nizeyimana was with all the soldiers.[3339]

1311. Furthermore, when pressed for particulars, Witnesses CKN10 and Ruzindana gave fundamentally conflicting evidence about what areas were accessed on foot and which were reached by vehicle.[3340] Witness Bunani testified that some of the soldiers looked for a shooting range on 21 April 1994, while Witnesses CKN10, Ruzindana, ZML13 and RWV11 specified that this occurred on the following day.[3341]

1312. The differences and ambiguities in the witnesses' accounts could have naturally resulted from the considerable passage of time. Their evidence reflects that the mission was uneventful. However, the field activities, where the most striking differences emerge, were the primary purpose of the mission. Mindful of its impressions of each witness, the Chamber finds it odd that there tended to be greater uniformity among the evidence of inane details, such as the meals they ate on 21 April 1994,[3342] or who remained with the vehicles while at the Gikongoro Gendarmerie Camp[3343] rather than the tasks that they performed.

1313. Indeed, these discrepancies when viewed among the uniformity of evidence as it related to the most exculpatory aspects that demonstrate Nizeyimana's presence outside of Butare – the date of the trip and the timing of each event – is not credible. For example, the witnesses generally provided estimates as to timing of events. While minor differences emerge, the essentially uniform recollection of the timing related to such insignificant events is astounding.[3344]

[3338] Witness ZML13, T. 6 June 2011, pp. 50-51 (testifying that they were separated into groups but that they, in fact, "constituted the same group and [the soldiers] did virtually everything together but – if there was a specific task to be accomplished").

[3339] Witness ZML13, T. 6 June 2011, p. 51 ("Q. ... Now, do you know what Captain Nizeyimana was doing while you were accomplishing the tasks that you were given? A. Yes. He went round to see if the groups were actually carrying out the duties that had been assigned to them. In actual fact he was participating in the work that we had been assigned.").

[3340] *Compare* Witness CKN10, T. 30 May 2011, pp. 19 (referring to the Mata football field, Huhamba primary school and the river close to the plantation, the witness stated "[w]e went to all those places in motor car"), 20 (the firing range had to be accessed by foot), *with* Witness Ruzindana, T. 1 June 2011, p. 52 (testifying that there were no roads leading to the water sources or the site where the tents would be pitched; those who reconnoitered the shooting range went in vehicles).

[3341] *Compare* Witness Bunani, T. 13 June 2011, p. 9, *with* Witness Ruzindana, T. 1 June 2011, p. 52 *and* Witness CKN10, T. 30 May 2011, p. 20 *and* Witness ZML13, T. 6 June 2011, pp. 54-55 *and* RWV11, T. 2 June 2011, pp. 29, 60, 62.

[3342] *See, e.g.*, Witness CKN10, T. 30 May 2011, pp. 13, 32-33 (ate rice and beans at the Gikongoro Gendarmerie Camp and roasted beef or "kebab" on arrival in Mata); Witness Ruzindana, T. 1 June 2011, pp. 33, 47, 64-67 (ate rice and beans at the Gikongoro Gendarmerie Camp; ate "shredded roast beef" and cooked rice and beans when they arrived at the Mata tea factory); Witness RWV11, T. 2 June 2011, pp. 27-28, 67 (the witness ate roasted meat, canned food and drank beer on arrival at Mata, while some ate canned food upon arrival; that evening rice and beans and canned food were eaten); Witness ZML13, T. 6 June 2011, pp. 50-51 (ate skewered meat upon arrival at Mata and in the evening on 21 April 1994 they ate roasted meat in the factory canteen).

[3343] *See* Witness RWV11, T. 2 June 2011, pp. 63-64 (specifying that Witness ZML13 remained with the vehicles but was unable to identify who else went where) *and* Witness ZML13, T. 7 June 2011, p. 65 (confirming that he stayed with the vehicles).

[3344] Timing of departure from the ESO: Witness CKN10, T. 26 May 2011, p. 47 (between 8.30 and 10.00 a.m.), T. 30 May 2011, p. 14 (departed around 8.00 a.m.); Witness Ruzindana, T. 1 June 2011, pp. 30, 46 (departed around 8.00 a.m.); Witness RWV11, T. 2 June 2011, p. 23 (departed between 7.30 and 8.00 a.m.); Witness ZML13, T. 6 June 2011, p. 49 (departed between 8.30 and 9.00 a.m.); Witness Bunani, T. 13 June 2011, p. 6 (between 7.30 and 8.00 a.m.). Timing of arrival at the Gikongoro Gendarmerie Camp: Witness CKN10, T. 30

1314. For the most part, the witnesses simply remembered the schedule. Those who provided explanations of how certain times were recalled, however, lacked reliability. Witness ZML13 stated that he "did not look at [his] watch, but [thought they] left ESO between 8:30 and 9.00 a.m.".[3345] When questioned about what time they arrived in Mata, he qualified his answer, stating that it was "just an estimate".[3346] Nonetheless, his "estimate" aligned neatly with those of the other witnesses, including Witness Ruzindana, who was without a watch.[3347]

May 2011, p. 14 (arrived at the Gikongoro Gendarmerie Camp at 11.30 a.m.); Witness Ruzindana, T. 1 June 2011, pp. 45-47 (arrived between 10.20 and 10.30 a.m.); Witness RWV11, T. 2 June 2011, p. 65 (arrived at the Gikongoro Gendarmerie Camp "about" 10.00 a.m.).Witness ZML13, T. 6 June 2011, p. 49 (trip from the ESO to the Gikongoro Gendarmerie Camp took 1.5 to 2 hours – *i.e.* 10.00 to 11.00 a.m.); Witness Bunani, T. 13 June 2011, p. 8 (arrived "around" 12.00 p.m.). Duration of stay at the Gikongoro gendarmerie camp: Witness CKN10, T. 30 May 2011, p. 13 (about one hour); Witness Ruzindana, T. 1 June 2011, pp. 47 ("about one hour"), 49 (left gendarmerie "around 11.30" – *i.e.* about an hour after arriving); Witness RWV11, T. 2 June 2011, p. 27 (spent about one hour and "a few minutes" at the Gikongoro Gendarmerie Camp); Witness ZML13, T. 6 June 2011, p. 49 (45 to 60 minutes); Witness Bunani, T. 13 June 2011, p. 8 (left between 12.30 and 1.00 p.m. – *i.e.* about one half hour or an hour after arriving). Timing of Arrival at the Mata tea factory: Witness CKN10, T. 26 May 2011, p. 48, T. 30 May 2011, p. 14 (between 1.00/1.30 and 2.00 p.m.); Witness Ruzindana, T. 1 June 2011, pp. 32, 49 (around 1.30 p.m.); Witness RWV11, T. 2 June 2011, pp. 27 (between 2.00 and 2.30 p.m.); Witness ZML13, T. 6 June 2011, p. 50 (between 1.30 and 2.00 p.m.); Witness Bunani, T. 13 June 2011, p. 8 ("around" 2.00-2.30 p.m.). Timing of reconnaissance exercise on 21 April 1994: Witness CKN10, T. 30 May 2011, pp. 14 (left canteen between 1.30 and 2.00 p.m.), 17 (remained in canteen for about one hour and left around 3.00 p.m.); Witness Ruzindana, T. 1 June 2011, pp. 32 (remained in canteen for about "an hour or so", or "an hour, 30 minutes thereabouts"), 67 *and* p. 70 (French) (reconnaissance activities lasted from 3.00 to 6.00 p.m.); Witness RWV11, T. 2 June 2011, pp. 27 (started reconnaissance "around" 3.00 p.m.), 67 ("started at" 3.00 p.m.). Timing of completion of reconnaissance exercise on 21 April 1994: Witness CKN10, T. 30 May 2011, pp. 17 (returned to canteen around 6.00 p.m.), 19 (reconnaissance took about three hours); Witness Ruzindana, T. 1 June 2011, pp. 33, 67 *and* p. 70 (French) (stopped reconnaissance "around" 6.00 p.m.); Witness RWV11, T. 2 June 2011, p. 27 (conducted reconnaissance "till around" 6.00 p.m.); Witness ZML13, T. 6 June 2011, p. 51 (reconnaissance ended at "sundown" or approximately 6.30 p.m.); Witness Bunani, T. 13 June 2011, p. 8 (completed reconnaissance "between" 5.00 and 6.00 p.m.). Timing of reconnaissance work the next day: Witness CKN10, T. 26 May 2011, p. 49, T. 30 May 2011, p. 19 (ate breakfast and resumed work between 7.30 and 8.00 a.m.); Witness Ruzindana, T. 1 June 2011, p. 34 (got up around 6.30 a.m., ate breakfast and continued reconnaissance work); Witness RWV11, T. 2 June 2011, p. 29 (ate breakfast and started reconnaissance work around 7.00 a.m.); Witness ZML13, T. 6 June 2011, p. 54 (assembled in the field between 6.00 and 6.30 a.m. and subdivided into groups). Timing of lunch and departure on 22 April 1994: Witness CKN10, T. 26 May 2011, p. 51, T. 30 May 2011, p. 21 (stopped reconnaissance and ate lunch around 12.00 p.m.; left for Butare around 1.30 p.m.); Witness Ruzindana, T. 1 June 2011, p. 34 (stopped reconnaissance work around "midday", ate lunch and returned to Butare); Witness RWV11, T. 2 June 2011, p. 29 (finished reconnaissance "around" 2.00 p.m.); Witness ZML13, T. 6 June 2011, p. 55 (reconnaissance ended around 1.00 p.m.); Witness Bunani, T. 13 June 2011, pp. 11 (stopped reconnaissance "towards noon" or returned to canteen "between" 1.00 and 2.00 p.m.) 11-12 (left for Butare "around" 3.00 p.m.), 13 (returned to canteen at 2.00 p.m.), 13 (left for Butare town "between" 2.00 and 3.00 p.m.). Timing of arrival in Butare town: Witness CKN10, T. 26 May 2011, p. 51 (arrived in Butare around 5.30 p.m.); Witness Ruzindana, T. 1 June 2011, p. 34 (arrived at the ESO "around" 6.00 p.m.); Witness RWV11, T. 2 June 2011, p. 29 (arrived at the ESO "around" 5.30 p.m.); Witness ZML13, T. 6 June 2011, p. 55 (arrived in Butare "at dusk"); Witness Bunani, T. 13 June 2011, p. 13 (arrived at ESO "between" 5.00 and 5.30 p.m.).

[3345] Witness ZML13, T. 6 June 2011, pp. 49-50.

[3346] Witness ZML13, T. 6 June 2011, p. 50.

[3347] Witness Ruzindana, T. 1 June 2011, pp. 3-321, 45-47 (arrived at Mata at 1.30 p.m.; testified that they arrived at the gendarmerie at 10.20 – 10. 30 a.m., but admitted that this was only an estimate because he did not have a watch and used the position of the sun to work out the time).

1315. It is incredible that after so many years and without recourse to notes, the witnesses were able to provide the timings of this uneventful mission with such confidence and with such remarkable uniformity. Suspiciously, Witness Bunani volunteered relatively precise times of events without being asked.[3348] Moreover, Witness RWV11, when pressed, had considerable difficulties as it related to providing the timing of when he left for Mata only days later.[3349]

1316. Moreover, all the soldiers who were asked, testified that Nizeyimana spent the night at the factory guesthouse.[3350] Witness Bunani was the only witness to testify how he knew where Nizeyimana stayed – namely, because the captain ordered the soldiers to reconvene there the next morning.[3351] However, no other witness testified to meeting Nizeyimana at his guesthouse the following morning,[3352] and Witness ZML13 testified to assembling in a "field".[3353] Notwithstanding uniformity of the evidence as to where Nizeyimana stayed, inconsistencies emerged among the Defence witnesses as to where they slept.[3354] The uniformity relating to where Nizeyimana slept combined with the confusion of where the witnesses stayed raise additional suspicions that evidence was tailored to reflect Nizeyimana's presence during the reconnaissance mission.

1317. Of additional significance, the evidence led by the soldiers regarding what was occurring at the Mata tea factory is in stark contrast with the evidence of other Defence witnesses. Notably, Witnesses Bunani and ZML13 expressly testified that the factory was

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[3348] *See* Witness Bunani, T. 13 June 2011, pp. 11-12 ("Q. What did you do at the canteen? A. We ate and drank ... just as we had done the day before. And around – ... 3 p.m. we returned to Butare."; "MR. PRESIDENT. "After eating and drinking, what did you do next? ... A. "We came back at noon ... and returned at 2.00 p.m.").

[3349] *See, e.g.*, Witness RWV11, T. 2 June 2011, pp. 32-33 ("MR. PRESIDENT: And you started at what time? Again, roughly. THE WITNESS: I don't remember the exact time when we left ESO. MR. PRESIDENT: I'm asking you to tell me approximately. THE WITNESS: I don't remember the exact time. MR. PRESIDENT: Was it in the afternoon? THE WITNESS: When the convoy of Burundians arrived, everybody was looking at them. After that we were asked to be ready. ... MR. PRESIDENT: ... Mr. Witness, I'm asking you for an approximate time. You surely know whether you started before 7 o'clock in the morning. You know whether you started before 9 o'clock. You know whether you started at noon. You know whether you started at 3 o'clock in the afternoon. Some approximate time. THE WITNESS: If I remember correctly, I think that we left ESO between ten and eleven. But, of course, that's an approximate time. I'm not very sure about the exact time.").

[3350] Witness ZML13, T. 6 June 2011, p. 51 (testified that officers slept in the factory guesthouse without providing a basis for this knowledge), T. 7 June 2011, pp. 68-69 (confirmed that Nizeyimana slept in the factory guesthouse, which was approximately one kilometre from the factory); Witness CKN10, T. 26 May 2011, p. 49 (testified that Nizeyimana slept in the factory guesthouse without providing a basis for this knowledge); Witness Ruzindana, T. 1 June 2011, p. 34 (testified that Nizeyimana slept in the factory guesthouse without providing a basis for this knowledge).

[3351] Witness Bunani, T. 13 June 2011, pp. 9-11.

[3352] *See* Witness CKN10, T. 26 May 2011, p. 49, T. 30 May 2011, p. 19 (ate breakfast and resumed work between 7.30 and 8.00 a.m.); Witness Ruzindana, T. 1 June 2011, p. 34 (got up around 6.30 a.m., ate breakfast and continued reconnaissance work); Witness RWV11, T. 2 June 2011, p. 29 (ate breakfast and started reconnaissance work around 7.00 a.m.).

[3353] Witness ZML13, T. 6 June 2011, p. 54 (assembled in the field between 6.00 and 6.30 a.m. and then subdivided into groups).

[3354] *Compare* Witness ZML13, T. 6 June 2011, p. 51 (spent the night in a private home with his non-officer colleagues) *and* Witness CKN10, T. 26 May 2011, p. 49 (spent the night in a house not far from the canteen), *with* Witness Ruzindana, T. 1 June 2011, p. 34 (slept in one of the "annexes" that belonged to the tea factory), *with* Witness Bunani, T. 13 June 2011, pp. 10, 46 (approximately five people stayed in the guesthouse), 47 (some drivers slept in vehicles), 47 (all the soldiers other than Nizeyimana, Ngalinde, Rwigisha, Sergeant Major Kabanda and Kayitana stayed in tents).

operational when they arrived during the reconnaissance mission.[3355] Similarly, Witness RWV11 described factory workers "going about their normal business".[3356] However, Witnesses RWV17, who lived and worked near the Mata tea factory, and Zikamabahari, who worked at the Mata trading centre, explained that the factory was not functioning and people were not working from 6 April until around mid-May 1994.[3357] Again, the evidence of these soldiers, attempting to reflect a picture of normalcy at the Mata tea factory, notwithstanding the situation elsewhere in Gikongoro prefecture is contradicted and unbelievable.

1318. Moreover, the Chamber has considerable doubts about the purported duration of this reconnaissance mission. First, evidence about the lengthy delays experienced at roadblocks is unbelievable when viewed in light of the entire record. Moreover, the casual pace and attitude towards the reconnaissance mission appears inconsistent with its purpose as well as its temporal proximity to President Théodore Sindikubwabo's speech and the undisputed violence that erupted in Butare town following it. The Chamber shall address these issues in turn.

1319. At the outset, many of the soldiers' estimates of the number of roadblocks between the ESO and Mata lacked credibility. In particular, Witness ZML13 recalled passing 10 to 20 roadblocks from Butare to the Gikongoro Gendarmerie Camp.[3358] Witness Ruzindana saw around 20 to 25 roadblocks from the Gikongoro Gendarmerie Camp to Mata.[3359] Notably, Witness CKN22 testified to having travelled the stretch between Mata and Gikongoro Gendarmerie Camp, but only encountered four barriers.[3360] Indeed, Witness CKN18, a civilian recruit, testified that he did not encounter any roadblocks while travelling from the ESO Camp to Mata on 30 April 1994.[3361] Inconsistencies as to the number of roadblocks as it relates to this evidence raises concerns about this evidence. It has left the Chamber with the strong impression that witnesses who purportedly accompanied Nizeyimana exaggerated the number of roadblocks on the way in order to explain the lengthy travel time.

1320. Furthermore, the witnesses generally testified that they encountered numerous and lengthy delays at the civilian manned barriers.[3362] In particular, Witness RWV11 stated that they were "obliged to spend a long time" at the roadblocks,[3363] and Witness CKN10 recalled

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[3355] Witness Bunani, T. 13 June 2011, p. 46; Witness ZML13, T. 7 June 2011, p. 67.
[3356] Witness RWV11, T. 2 June 2011, p. 68.
[3357] Defence Witness RWV17, T. 21 September, 2011, pp. 10-11, 13, 21, 27-29; Defence Witness Zikamabahari, T. 20 September 2011, pp. 68, 72, 74. *See also* Prosecution Witness Twagirayezu, T. 7 September 2011, p. 30 (the Mata tea factory suspended its activities for about three weeks during the genocide and resumed in May).
[3358] Witness ZML13, T. 7 June 2011, p. 65.
[3359] Witness Ruzindana, T. 1 June 2011, p. 49; Witness CKN10, T. 30 May 2011, p. 13 (passed five to ten roadblocks between Gikongoro and Mata); Witness Bunani, T. 13 June 2011, p. 7 (crossed "a lot of roadblocks"). *But see* Witness RWV11, T. 2 June 2011, p. 27 (testified that there were fewer roadblocks between Gikongoro and Mata than between Butare and Gikongoro).
[3360] Witness CKN22, T. 16 June 2011, p. 31.
[3361] Witness CKN18, T. 15 June 2011, pp. 43-44, 47, 58.
[3362] Witness CKN10, T. 30 May 2011, pp. 9-13, 23-25, 27; Witness Ruzindana, T. 1 June 2011, pp. 31, 44-46, 49-50; Witness RWV11, T. 2 June 2011, pp. 24, 27; Witness ZML13, T. 6 June 2011, p. 49-50, T. 7 June 2011, p. 65; Witness Bunani, T. 13 June 2011, pp. 7-8.
[3363] Witness RWV11, T. 2 June 2011, p. 24 ("were obligated to spend a long time"); *see also* Witness Ruzindana, T. 1 June 2011, p. 46 ("were obligated to stop").

that they were stopped for as long as 45 minutes at one.[3364] Witnesses CKN10, RWV11, and Bunani remembered experiencing hostility at the barriers.[3365] Witnesses CKN10, Ruzindana, and ZML13 stated that Nizeyimana negotiated with those manning the roadblocks in order to secure passage.[3366]

1321. This collective evidence of delay again, when viewed in context, lacks credibility. Armed with Kalashnikovs, as well as R4, G3 and FAL rifles and ammunition,[3367] it is unbelievable that 12 to 15 soldiers with years of experience and led by Nizeyimana would tolerate such impediment by civilians armed with only the most rudimentary weapons.[3368]

1322. Indeed, a broad view of the record further undermines the credibility of this evidence. For example, some Defence witnesses explained that they encountered problems particularly because of the UNAMIR vehicle that carried Nizeyimana. Yet, Witness Mushimiyimana drove about 136 kilometres from Kigali to Butare in a UNAMIR pickup truck and passed roadblocks.[3369] Notwithstanding, he noted that given the fact that he "was in military uniform", had a corporal with him and "a road pass", the convoy, which included his Tutsi wife, was "not really disturbed".[3370]

1323. Indeed, the Defence evidence about the delays experienced at the civilian manned roadblocks is inconsistent with other evidence that ESO soldiers – particularly those not accompanied by large amounts of civilians – had little problems at roadblocks manned by civilians.[3371] There is other evidence that civilian officials or military who were Hutu did not experience these problems.[3372]

1324. Of greater significance, these same soldiers testified to travelling to Mata days later, but this time in buses loaded with civilian recruits. Yet, they experienced no problems at

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[3364] Witness CKN10, T. 30 May 2011, p. 11; *see also* Witness Ruzindana, T. 1 June 2011, p. 44 (were stopped at the Butare-Gikongoro roadblock for 30 to 35 minutes); Witness ZML13, T. 6 June 2011, pp. 49-50 (spent as much time as 30 minutes at a roadblock).

[3365] Witness CKN10, T. 30 May 2011, p. 9 ("crossed many roadblocks manned by members of the public who were very hostile"); Witness RWV11, T. 2 June 2011, p. 24 (the *Interahamwe* manning the roadblocks "threatened [the soldiers] and ... said that some [soldiers] had Tutsi features"); Witness Bunani, T. 13 June 2011, pp. 7-8 (civilians manning the roadblocks stated that there were "*Inyenzi* even among the soldiers" requiring them to be checked, creating a "very tense" situation).

[3366] Witness CKN10, T. 30 May 2011, p. 25; Witness Ruzindana, T. 1 June 2011, pp. 44, 55; Witness ZML13, T. 7 June 2011, p. 65.

[3367] *See* Witness CKN10, T. 30 May 2011, pp. 24, 26. *Cf.* Witness ZML13, T. 6 June 2011, p. 48 (brought their "weapons" to the assembly area before leaving for Mata).

[3368] *See* Witness RWV11, T. 2 June 2011, p. 24 (*Interahamwe* carried traditional weapons such as spears, machetes, swords and clubs); Witness Bunani, T. 13 June 2011, p. 7 (civilians were armed with "machetes and sticks"). *Cf.* Witness CKN10, T. 30 May 2011, pp. 24-25 (in the context of describing roadblocks on the route from Mata to Butare testified that civilians at roadblocks had "traditional weapons").

[3369] Witness Mushimiyimana, T. 13 June 2011, pp. 54, 66, 71.

[3370] Witness Mushimiyimana, T. 13 June 2011, pp. 53-54, 71.

[3371] *See* II.4.1, where Prosecution Witnesses XAG and YAL gave compelling evidence of the ESO soldiers being able to pass a roadblock manned by armed civilians and extracting them and the Ruhutinyanya family from it.

[3372] Indeed, Witness Hitayezu testified that, although dressed in civilian attire and in a taxi, it took him about one hour and 30 minutes "or maybe slightly more" to travel from Gitarama to Butare and through the roadblocks en route. Witness Hitayezu, T. 9 June 2011, p. 66. Similarly, Witness CKN22 testified to also passing about five roadblocks between Gikongoro, where the gendarmerie camp was located, and Mata. When asked if he experienced any difficulties, he promptly replied "No", stating he merely presented his identity card and that the persons manning the roadblocks let him through. Witness CKN22, T. 16 June 2011, p. 32.

these civilian manned roadblocks[3373] and there is evidence that they were able to reach Mata in only approximately two hours.[3374] Notably, Witness Ufitimana, who went to Mata around 30 April 1994, estimated that one could travel from Butare to Mata between 45 minutes and one hour.[3375] Under the circumstances, the Chamber considers the Defence evidence about the purported delays incurred on their trips to and from the Mata tea factory unbelievable.

1325. Further concerns about the soldiers' credibility arise when considering the trip's leisurely tempo. Inexplicably, many of the soldiers appear to have eaten two lunches on 21 April 1994, only briefly conducted modest reconnaissance for a few hours that afternoon and then drank with Nizeyimana, late into the evening. While there is evidence that certain tasks were not accomplished until the following day, others were simply repeated. Given the mission's purpose, its purported temporal proximity to President Sindikubwabo's speech and the violence that seised Butare town in the days that followed, the nature of the reconnaissance mission appears absurdly carefree. It simply cannot be believed. Rather it appears aimed at artificially lengthening the reconnaissance mission.

1326. Beyond this, the Chamber notes that the reconnaissance activities appeared to be of the most basic nature. As such, the Chamber finds it unbelievable that an emissary of Nizeyimana's stature would have been necessary to accompany such a mission and to interface with local law enforcement or civilian representatives in order to complete it. Moreover, the fact that Nizeyimana would not have been included in these activities is supported by credible Prosecution evidence.[3376]

1327. Furthermore, the frailties of the alibi evidence discussed above are exacerbated when viewed among highly convincing and credible evidence of Nizeyimana's direct participation in the killing of Remy Rwekeza and attack on Witness ZAV on 21 April 1994,[3377] his direct participation and presence during the murder of those taken from the Matabaro and Nyirinkwaya households on the evening of 22 April,[3378] as well as his involvement in

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[3373] *See, e.g.*, Witness Ruzindana, T. 1 June 2011, p. 68; Witness RWV11, T. 2 June 2011, p. 29; Witness Bunani, T. 13 June 2011, p. 16.
[3374] *See* Witness RWV11, T. 2 June 2011, p. 32; This evidence appears more reasonable in light of observations made during the Judicial Site Visit, which determined that the 58.4 kilometre journey from the ESO to Mata could be covered in one and a half hours. *See* Confidential Report on the Site Visit, 3 to 7 October 2011, p. 5.
[3375] Witness Ufitimana, T. 26 May 2011, pp. 11-12, 19-20, 29.
[3376] Witness AZD, T. 1 February 2011, pp. 18-19 ("Q. Do you have any knowledge about whether Captain Nizeyimana went on a reconnaissance mission to Mata for the purpose of setting up the civil defence training there and that he went on this reconnaissance mission on the 21st and 22nd of April 1994? A. Thank you, Counsel. I don't know whether he went on reconnaissance mission to Mata. I don't know about that. Personally, as a soldier and as one of the NCOs at that time, I don't see how he could have gone there for reconnaissance, because Mata was very well known to us. So that was not a place for reconnoitring, but as someone who was in the officers' corps and who was aware of military tactics, at least at that level, I don't see why he should have gone to Mata for a reconnaissance mission, to a place which was near him and which was under his military region and which everybody knew about. Thank you. Q. Do you have any knowledge about whether at the ESO there was a notice board or a place where notices were posted with respect to officers who would leave the camp to go on such reconnaissance missions? A. Thank you for your question. Yes, there was a notice board where all messages were posted. I am talking about messages from our headquarters and general staff, but, personally, I did not see that particular message. That message was not posted there. But, yes, there was a notice board. Q. So specifically then, on the notice board, are you able to say whether or not on the 21st and 22nd of April there was a notice indicating that Captain Nizeyimana had gone to Mata on a reconnaissance mission? A. That was never posted on the notice board. I never saw that being mentioned on the notice board.").
[3377] *See* II.7.1.
[3378] *See* II.6.6.

Gicanda's killing, which occurred around 20 April.[3379] In the Chamber's view, the diversity of credible sources of Nizeyimana's involvement in crimes, some of which are directly in conflict with the alibi evidence, eliminate the reasonable possibility of its truthfulness.

1328. Indeed, the record further reflects that around 21 April 1994, ESO soldiers directly contributed to the targeted killings of individuals[3380] and coordinated attacks on institutions harbouring Tutsis.[3381] By this time, roadblocks manned by ESO soldiers had been turned towards targeting Tutsi civilians.[3382] These killings, among the first after President's Théodore Sindikubwabo's speech, marked a cathartic shift in what "ensuring security" meant in Butare town. Under the circumstances, the Chamber considers it inconceivable that a senior officer charged with intelligence and operations would leave for the purposes of the modest reconnaissance mission conducted at a snail's pace. Moreover, the Chamber considers that each of these alibi witnesses have a strong personal interest of placing themselves outside of Butare town for as long as possible around this time given the significant involvement of ESO soldiers in attacks on civilians in Butare around this period.

1329. The Chamber considers this evidence, particularly as it relates to Nizeyimana's presence on a reconnaissance mission conducted on 21 to 22 April 1994, as lacking any credibility. In reaching this conclusion, the Chamber has also assessed this evidence in light of other alibi evidence, discussed below, tending to place Nizeyimana at the Mata tea factory on 21 to 22 April and other evidence reflecting his absence from Butare town on those dates.

(b) Civilian Witnesses Who Saw Nizeyimana at Mata from 21 to 22 April 1994

1330. The Chamber turns to the civilian witnesses – Witnesses CKN22, Ndikumana and RWV17 – who provided direct evidence of Nizeyimana's presence in Mata on or around 21 and 22 April 1994. Witnesses CKN22, Ndikumana and RWV17 were consistent as it related to the timing of the soldiers' arrival at the Mata tea factory.[3383] Each testified to the soldiers being in the canteen, and Witnesses CKN22 and Ndikumana testified that this was followed by them conducting activities on their own.[3384] Witnesses CKN22 and Ndikumana stated that the soldiers returned to the canteen in the early evening, drank late into the night and stayed over.[3385] Like the ESO soldiers who appeared as witnesses, the three civilian witnesses asserted that Nizeyimana slept in the factory guesthouse.[3386] Witness CKN22 and Ndikumana testified that the soldiers continued to work around the Mata tea factory before leaving in the early afternoon.[3387] Witness CKN22 also confirmed that the soldiers returned on a route that

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[3379] *See* II.6.2.
[3380] *See* II.6.5.
[3381] *See* II.5.1.
[3382] *See* II.7.3.
[3383] Witness RWV17, T. 21 September 2011, p. 12 (soldiers arrived "in the afternoon"); Witness Ndikumana, T. 23 May 2011, p. 63 (brought the soldiers who had arrived to the canteen around 1.30 p.m); Witness CKN22, T. 15 June 2011, p. 70 (saw about 10 soldiers arrive around 2.00 p.m.).
[3384] Witness RWV17, T. 21 September 2011, pp. 12-13; Witness Ndikumana, T. 23 May 2011, p. 63; Witness CKN22, T. 15 June 2011, p. 70.
[3385] Witness Ndikumana, T. 23 May 2011, p. 64; Witness CKN22, T. 15 June 2011, p. 70, T. 16 June 2011, pp. 11-12.
[3386] Witness RWV17, T. 21 September 2011, pp. 12-14, 20-21; Witness Ndikumana, T. 23 May 2011, p. 64; Witness CKN22, T. 15 June 2011, p. 70, T. 16 June 2011, pp. 10-11.
[3387] Witness Ndikumana, T. 23 May 2011, p. 65; Witness CKN22, T. 15 June 2011, p. 71, 74, 75, T. 16 June 2011, pp. 13-14.

passed through Kibeho.[3388] Notably, Witness CKN22's evidence provides circumstantial support for Witness Ndikumana's presence at the Mata tea factory on 21 April.[3389]

1331. At the outset, the Chamber finds Witness RWV17's evidence to be of limited probative value. She could only estimate the date that she saw soldiers at the Mata tea factory canteen.[3390] Her identification of Nizeyimana is hearsay, having learned who he was from her husband. The circumstantial evidence supporting the identification, namely that he wore "a grade or rank higher than" his fellow soldiers is not dispositive.[3391] Moreover, her evidence fails to provide any basis for knowledge as it relates to where Nizeyimana slept.[3392]

1332. With respect to Witnesses CKN22 and Ndikumana, the Chamber observes that their evidence converged with the accounts of the ESO soldiers who testified about the reconnaissance mission. Notably, Witness Ndikumana could only estimate the dates he saw the soldiers and Nizeyimana.[3393] Witness CKN22, however, provided a detailed explanation as to how he could recall the timing with precision. Specifically, his work required that he travel to the Mata tea factory every Wednesday.[3394] On Wednesday 20 April 1994, his motorcycle broke down, forcing him to return the following day, 21 April, when he saw Nizeyimana and soldiers arrive there.[3395]

1333. Even if Witness CKN22 could plausibly recall the relevant dates, the Chamber emphasises the unanimous and unequivocal impression of each member of this Bench that his evidence, as well as that of Witness Ndikumana's, lacked credibility. In the context of the violence that gripped the Gikongoro prefecture, their testimonies justifying their presence at the Mata tea factory did not ring true. Indeed, in some cases their evidence about the relative normalcy at the factory was flatly contradicted by other evidence in the record. Likewise, their uncorroborated contacts with these soldiers cannot be believed. The Chamber shall set forth the dispositive considerations below.

[3388] Witness CKN22, T. 15 June 2011, p. 71, 74, 75; T. 16 June 2011, pp. 13-14.
[3389] *See* Witness CKN22, T. 15 June 2011, pp. 76-77 (describing an unnamed, male university student among those sitting with Nizeyimana in the canteen on the evening of 21 April 1994).
[3390] *See* Witness RWV17, T. 21 September 2011, pp. 12, 20-21 (confirming that she "did not remember the specific dates").
[3391] Witness RWV17, T. 21 September 2011, p. 14.
[3392] Witness RWV17, T. 21 September 2011, p. 14.
[3393] For example, Witness Ndikumana first recalled the event happening "towards the 21st, maybe 20th". Witness Ndikumana, T. 23 May 2011, p. 63. He later testified that he believed that the soldiers left "the following morning – it was the 20th". T. 23 May 2011, p. 64. Indeed, he subsequently said that to state the dates "precisely would be misleading" but that "it must have been the 21st and the 22nd". T. 23 May 2011, p. 65. During cross-examination, the witness's testimony as to how determined his arrival in Mata to have been on 15 April 1994 was because that was about a week after a wedding of a friend of his. T. 23 May 2011, p. 61; T. 24 May 2011, pp. 8-9, 22-26. In any event, he confirmed that the day he first saw Nizeyimana was also an estimate. *See* T. 24 May 2011, p. 26 ("Q. If you arrived in Mata before the 15th, then the calculation of when you saw Captain Nizeyimana would change, right? A. Captain Ildéphonse Nizeyimana came to Mata approximately a week after I had arrived in Mata. Q. It could be a little less than a week? A. Less than a week? Q. That is possible. A. Approximately one week after my arrival in Mata. When I say 'approximately', it could be one week less one day less than one week. That's what I meant. It could have been one day less than the week. Q. Could it have been one day more? A. One day more after what? MR. PRESIDENT: More than one week. If it is approximately one week, it means it could be one day less; it could be one day more. Approximately, it gives a leeway on both sides. Is that not what you have been asked? THE WITNESS: Yes, Mr. President.").
[3394] Witness CKN22, T. 15 June 2011, pp. 66, 68; T. 16 June 2011, pp. 8, 17, 24.
[3395] *See* Witness CKN22, T. 15 June 2011, pp. 69-70.

1334. The evidence reflects that in the days prior to the reconnaissance mission, areas of the Gikongoro prefecture not far from the Mata tea factory were gripped with violence.[3396] Yet, in the midst of this violence, Witness Ndikumana explained that he went to the home of his godfather – Callixte Ndayisaba – so he could focus on his university course work.[3397] Similarly, Witness CKN22 testified that he was at the Mata tea factory to speak with particular individuals and ensure that regular tea production was occurring notwithstanding the war.[3398] Witness CKN22 assured the Chamber that "there was no problem at the factory" and that it "was functioning".[3399] Likewise, Witness Ndikumana's evidence reflected that factory workers closed their work on the evening of 21 April 1994 in order to have a drink with the soldiers.[3400]

1335. At the outset, the Chamber finds the explanations given by Witnesses Ndikumana and CKN22 unbelievable on their face. These doubts are exacerbated when viewed among contradictory Defence evidence. In particular, Witnesses RWV17, who lived and worked near the Mata tea factory, and Witness Zikamabahari, who worked in the Mata trading centre, explained that the factory was not functioning and that people were not working from 6 April until around mid-May 1994.[3401] This stark contradiction with the evidence of Witnesses CKN22 and Ndikumana raises concerns about their credibility.

1336. Of additional significance, Witness RWV17 testified that the factory's executive management, including Juvénal Ndabarinze, and its tea maker, Callixte Ndayisaba, were convicted for genocide related crimes, including an attack on Karama parish.[3402] Notably, the attack on Karama parish occurred in April 1994, around the time of the reconnaissance mission.[3403]

[3396] *See* Prosecution Witness Twagirayezu, T. 8 September 2011, pp. 8-9, 13-14 (attacks occurred about two kilometres from the witness's home on Rubona hill and commenced on 9 or 10 April 1994; the witness participated in attacks between 10 and 12 April), 10 (witness's home was about two kilometres from the Mata tea factory); Defence Witness CKN22, T. 15 June 2011, p. 74 (the distance from Mata to Kibeho is between 10 and 12 kilometres), T. 16 June 2011, pp. 27-28 (from 9 April 1994, Tutsis fled to Kibeho parish: Hutus attacked Tutsis at Kibeho around 14 April 1994 resulted in the deaths of "a large number" of people), 27-28 (from 15 April 1994 attacks were committed in Munini sub-prefecture); Defence Witness Ndikumana, T. 24 May 2011, pp. 36 (Tutsis fled to Kibeho and were attacked there no later than 14 or 15 April 1994), 37 (Karama parish was attacked prior to Nizeyimana's arrival at Mata around 21 April 1994).

[3397] Witness Ndikumana, T. 23 May 2011, p. 69; T. 24 May 2011, p. 38.

[3398] *See* Witness CKN22, T. 15 June 2011, pp. 68-69, 75.

[3399] Witness CKN22, T. 15 June 2011, p. 75.

[3400] Witness Ndikumana, T. 23 May 2011, p. 64 ("Q. Did you see them later in the day? A. Around the evening, around 6:30 p.m., we met again at the canteen. And since most of the workers at the factory had closed, they were going to the factory for a drink. And at that time around 6:30 p.m., I saw that group of soldiers returning to the canteen. They drank and ate."). *See also* T. 23 May 2011, p. 63 (French) ("*Q. Les avez-vous revus plus tard dans la journée? R. Vers la soirée, à peu près vers 18 h 30, comme ça, nous nous sommes encore rencontrés à la cantine. Comme, aussi, la plupart du personnel de l'usine avait fini le travail, ils allaient se rafraîchir « le » mémoire à l'usine et, à cette heure-là, à peu près, vers 18 h 30, comme ça, j'ai revu le groupe de ces militaires revenir à l'usine... plutôt à la cantine. Ils ont bu et ils ont mangé.*").

[3401] Witness RWV17, T. 21 September, 2011, pp. 10, 13, 21, 27-29; Witness Zikamabahari, T. 20 September 2011, pp. 72, 74. *See also* Prosecution Witness Twagirayezu, T. 7 September 2011, p. 30 (the Mata tea factory suspended its activities for about three weeks during the genocide and resumed in May).

[3402] Witness RWV17, T. 21 September 2011, pp. 44-45.

[3403] *See* Prosecution Witness MKA, T. 21 February 2011, p. 5 (her sister had been shot at Karama parish, removed to the Butare University Hospital and subsequently removed on 22 April 1994); Defence Witness Ndikumana, T. 24 May 2011, p. 37 (Karama parish was attacked prior to Nizeyimana's arrival in Mata around 21 April 1994).

1337. Witnesses CKN22 and Ndikumana testified to their familiar associations with Ndabarinze and Ndayisaba and the direct association with them around this time.[3404] Notwithstanding, Witness CKN22 testified that Ndabarinze did not inform him of his participation in the attack on Karama parish[3405] and was unaware of any attack there.[3406] Similarly, Witness Ndikumana was unaware that Ndayisaba – the witness's godfather – had been imprisoned for his participation in the attack.[3407]

1338. The evidence of Witnesses CKN22 and Ndikumana, failing to reflect any knowledge that persons closely associated with them were alleged to have participated in genocide related crimes does not ring true.[3408] Indeed, Witness CKN22's purported ignorance is astounding when considering the nature of his work and his reasons for being at the Mata tea factory. Having also considered the demeanour of these two witnesses, each member of this Bench was left with the strong impression that their evidence was guided by ulterior motives. These witnesses, both living in exile at the time of their testimonies,[3409] had interests in cultivating a record that reflected them doing nothing at the Mata tea factory around this time.[3410]

1339. Indeed, other inconsistencies and obvious exaggerations related to the reconnaissance mission itself raise further concerns about the evidence of Witnesses CKN22 and Ndikumana. Specifically, the presence of these particular civilians finds no direct support from the soldiers who testified about the reconnaissance mission.[3411] Under some circumstances, such omissions would be normal. However, they are glaring when viewed in the prevalent contact they purportedly had with Nizeyimana and the reconnaissance team.

[3404] *See* Witness CKN22, T. 16 June 2011, pp. 9, 11, 28; Witness Ndikumana, T. 23 May 2011, pp. 61-63, 68, T. 24 May 2011, pp. 30-34, 38. Notably, Witness Ndikumana testified that Juvénal Ndabarinze had a nickname – the "brave" – for the witness. T. 23 May 2011, p. 63, T. 24 May 2011, pp. 38-39.
[3405] Witness CKN22, T. 16 June 2011, p. 29.
[3406] Witness CKN22, T. 16 June 2011, p. 28.
[3407] Witness Ndikumana, T. 24 May 2011, p. 37.
[3408] Witness CKN22 testified that was unaware that his sub prefecture superior had been implicated in crimes in his sub prefecture (T. 16 June 2011, p. 30) and was ignorant of what crimes his prefecture superior had been indicted for (T. 16 June 2011, p. 29). Based on the Chamber's assessment of the witness's demeanour and the nature of his work during the genocide, it finds this testimony unbelievable.
[3409] *See* Witness Ndikumana, T. 23 May 2011, p. 68 (living in Polokolo, Congo), T. 24 May 2011, pp. 35-36, 39 (fled Rwanda in September in light of threats based on his "ethnic status"); Exhibit D73 (Witness CKN22's Personal Information Sheet) (extracted).
[3410] The Prosecution, without objection, suggested to Witness CKN22 that he had been implicated in a meeting in Muganza on 13 April 1994, which he denied. *See* Witness CKN22, T. 16 June 2011, p. 30. Similarly, Witness Ndikumana similarly denied his involvement in attacks against Tutsis with the Mata tea factory manager. Witness Ndikumana, T. 24 May 2011, pp. 38-39.
[3411] *See, e.g.* Witness Ruzindana, T. 1 June 2011, pp. 32, 50-51 (describing the factory manager and three "civilians" later described as "employees" greeting the soldiers on their arrival); Witness CKN10, T. 26 May 2011, p. 48 (received by "the management of the Mata tea factory"), T. 30 May 2011, p. 15 (greeted by factory manager and three other "people"); Witness ZML13, T. 7 June 2011, p. 66 (the factory manager greeted them); Witness RWV11, T. 2 June 2011, pp. 27, 67 (a man notified the factory manager upon the soldiers' arrival and Nizeyimana met with factory manager upon arrival); Witness Bunani, T. 13 June 2011, p. 8 (Nizeyimana spoke with the factory manager in the canteen when the soldiers arrived). The evidence of Witnesses CKN22 and ZML13 closely align as they describe Nizeyimana in the canteen that evening with the Mata tea factory director (Juvénal Ndabarinze) and its tea maker (Callixte Ndayisaba). Indeed, Witness CKN22 appears to place Witness Ndikumana at the table. Notwithstanding, Witness ZML13 describes "other employees" – rather than Witnesses CKN22 or Ndikumana – as sitting with Nizeyimana.

1340. Furthermore, while the evidence of Witnesses CKN22 and Ndikumana consistently describe Nizeyimana's continued presence at the Mata training centre, differences also emerge. For example, Witness Ndikumana is the only witness who testified that the soldiers congregated in the Mata tea factory manager's office before going to the canteen.[3412] Indeed, Witness ZML13 specified that he did not visit any of the factory offices, including the director's.[3413]

1341. Witness CKN22 is the only person to testify that soldiers slept in the canteen and the factory hangar where "tea was weighed and dried".[3414] Notably, Witness CKN22 stated that he led the soldiers between 10 to 12 kilometres from the Mata tea factory to Kibeho on their return trip to Butare on 22 April 1994. This detail, however, is glaringly absent from the five soldiers who all discussed the return trip. In some contexts, the variances would not be material. However, when viewed in light of the striking similarities as it related to Nizeyimana's presence and the general nature of events, the discrepancies raise doubts as to whether certain evidence was tailored. That which fits neatly within Nizeyimana's alibi, in the Chamber's view, is undercut by these inconsistencies as well as the facially unbelievable aspects of their testimonies, discussed below.

1342. As mentioned above, the Chamber has considerable reservations as it relates to why Witness CKN22 was at the Mata tea factory, particularly in light of the violence that he conceded was gripping Gikongoro prefecture. Furthermore, the purported disruption of his motorcycle, which did not prevent him from returning to his home on 20 April 1994, but kept him at the Mata tea factory from 21 to 22 April right until the soldiers left, stretches beyond coincidence to the unbelievable.

1343. Moreover, for having no prior relationship with Nizeyimana, Witness CKN22's testimony that Nizeyimana informed the witness about the reconnaissance mission[3415] appears unbelievable given that he was not affiliated with the tea factory and in view of the supposed secrecy of the mission.[3416] The Chamber considers that the alibi evidence related to the purpose of the reconnaissance mission would not have allowed for such familiarity.

1344. Furthermore, Witness CKN22's evidence of the extremely informal conversation with Nizeyimana,[3417] and relatively intimate contacts between the witness and the captain appear absurd.[3418] Likewise, his testimony that Nizeyimana kept him informed of the reconnaissance

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[3412] *Compare* Witness Ndikumana, T. 23 May 2011, p. 63, *with* Witness CKN10, T. 26 May 2011, p. 48, T. 30 May 2011, pp. 15-16 *and* Witness Ruzindana, T. 1 June 2011, pp. 50-51, 65 *and* Witness Bunani, T. 13 June 2011, p. 8.

[3413] Witness ZML13, T. 7 June 2011, pp. 66-67.

[3414] Witness CKN22, T. 15 June 2011, p. 70; T. 16 June 2011, pp. 10-11.

[3415] *See* Witness CKN22, T. 15 June 2011, p. 77; T. 16 June 2011, p. 25.

[3416] *See, e.g.*, Witness CKN10, T. 30 May 2011, p. 17 ("THE WITNESS: When we left the canteen, we went and actually reconnoitred the area. MR. PRESIDENT: And was that in the company of the manager and his three companions? THE WITNESS: No. The manager could not be with us because we are bound by the code of professional secrecy. So as soldiers we could not really share with civilians what we learned from our duties.").

[3417] *See, e.g.*, Witness CKN22, T. 15 June 2011, p. 74 ("THE WITNESS: ... People used to tell me that I looked like Captain Nizeyimana. And I told him that people said I looked like him. So we talked about that. That took us a long time. And he said, 'If people are saying that you look like me, maybe my father passed by your house. As far as these matters are concerned, that could be one reason why you look like me.'").

[3418] *See, e.g.*, Witness CKN22, T. 15 June 2011, p. 71, T. 16 June 2011, pp. 11-12, 26 (went to greet Nizeyimana as the captain was preparing for the day at his guesthouse around 7.30 a.m.). *See also* Witness CKN22, T. 15

mission's plans to take an alternative route back to Butare[3419] – given that such a tactic was used as a security precaution[3420] – also strikes each member of this Bench as unbelievable.

1345. Finally, the Chamber observes that Witness CKN22 testified to returning to Mata the two following weeks and meeting Nizeyimana on both occasions.[3421] This, however, is not reflected in the signed statement that he gave to the Defence.[3422] The witness explained that he did not find it necessary to put everything in this statement.[3423] The omission appears striking given the Defence's reliance on alibi.

1346. With respect to Witness Ndikumana, the Chamber has already questioned his evidence as it relates to why he was staying with his godfather. Moreover, the Chamber finds it odd that the manager of the tea factory decided that Witness Ndikumana would be in the best position to receive the soldiers upon their arrival at the Mata tea factory. As noted above, this evidence is inconsistent with other accounts in the record. The Chamber considers it unbelievable as well. Ultimately, the Chamber does not consider Witness Ndikumana reliable.

1347. Having considered the direct evidence of Nizeyimana's presence in Mata, the Chamber is mindful of Witness Zikamabahari's account of seeing soldiers in a military Land Rover and an UNAMIR vehicle about two weeks after President Juvénal Habyarimana's death. However, his evidence reflected that he was uncertain as to the timing of his sighting.[3424] His testimony on this point is not dispositive. Likewise, it is insufficiently reliable or credible to support assertions that Nizeyimana was part of a reconnaissance mission there.

1348. Having reviewed the alibi evidence of civilian witnesses who tended to place Nizeyimana at the Mata tea factory around 21 to 22 April 1994, the Chamber does not consider it sufficiently credible to call into question otherwise compelling direct and circumstantial evidence placing Nizeyimana in Butare around the same time. Likewise, it does not mitigate the concerns that the Chamber has with regard to the alibi evidence provided by soldiers, which are discussed above. Moreover, the Chamber has considered this in the context of other general evidence that soldiers were seen at the Mata tea factory.

1349. The Chamber has also assessed these conclusions in light of other second-hand or circumstantial alibi evidence, discussed below, tending to place Nizeyimana at the Mata tea factory or away from Butare on 21 to 22 April 1994.

June 2011, pp. 71-73, T. 16 June 2011, p. 26 (visiting with Nizeyimana at his guesthouse a week after he first met the captain).

[3419] *See* Witness CKN22, T. 15 June 2011, p. 71; T. 16 June 2011, pp. 25-26 (the day prior to the soldiers' return Nizeyimana informed the witness of their "itinerary").

[3420] *See* Witness Ruzindana, T. 1 June 2011, p. 34 ("Q. Which route did you take? Did you take the same route that you came by or another route? A. No. The military rule is such that you do not take – use the same road that you had used initially. So this time around we took another route."). *Cf.* Witness ZML13, T. 1 June 2011, p. 55 ("A. After the meal we returned to Butare. The captain told us that we had to use another road that was different from the one we used when we came to Mata.").

[3421] Witness CKN22, T. 15 June 2011, pp. 79-81; T. 16 June 2011, p. 26.

[3422] Exhibit P58 (Witness CKN22's Statement), 4 April 2011.

[3423] Witness CKN22, T. 16 June 2011, p. 16.

[3424] Witness Zikamabahari, T. 20 September 2011, pp. 68, 77.

(c) *Circumstantial and Second-Hand Evidence of Nizeyimana's Participation in the Reconnaissance Mission*

1350. Three ESO soldiers – Witnesses Ntamagezo, OUV03 and RWV11 – as well as a soldier visiting the ESO – Witness Mushiyimana – all gave affirmative evidence of Nizeyimana's participation in the Mata reconnaissance mission. At the outset, their evidence is not direct, but circumstantial and second-hand.

1351. Witness Ntamagezo recalled Nizeyimana having gone on mission to Mata on 21 April 1994 because that was the day he was assigned to the Military Police platoon and it was the first time he saw "someone shoot dead another person".[3425] The Chamber has considered this specific evidence in the context of the Maniraho killing. Having assessed Witness Ntamagezo's demeanour, the Chamber did not find him credible.[3426]

1352. As stated in the Chamber's assessment of Witness Ntamagezo's evidence in relation to the Maniraho killing, it has concluded that his testimony about the date – 21 April 1994 – is not reliable. While he emphasised that it occurred on 21 April, he could not recall what day of the week that was, and his attempts to emphasize his basis for knowledge only grew more suspicious upon further examination. The Chamber observes that the witness admitted that did not keep a diary in which he took down notes at the time, and was therefore "not in a position to remember all the dates".[3427]

1353. Witness Ntamagezo's inability to provide dates stands in stark contrast with his ability to recall the date of the reconnaissance trip, which he was not even a part of. This contrast is suspicious in light of the Chamber's fundamental concerns, discussed above, about the witness's explanation as to why he could recall the events of 21 April 1994 so clearly. In this context, the Chamber has concerns that Witness Ntamagezo tailored his evidence so that it would be favourable to the Accused. Indeed, the Chamber observes that the Prosecution has led evidence that Witness Ntamagezo had a close personal relationship with Nizeyimana because they both hailed from "the north".[3428] The Chamber finds that Witness Ntamagezo's evidence relating to this alibi lacks credibility.

1354. Similarly, Witness OUV03, who also did not join the mission to Mata, was certain Nizeyimana left on 21 April and returned on 22 April 1994.[3429] He saw the convoy depart in the morning between 7.00 and 8.00 a.m. and was sure of the date because members of his department went on that mission and were thus absent from the ESO.[3430] Moreover, he also used Nizeyimana's mission to Cyahinda, which he placed on 17 April, as a point of

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[3425] Witness Ntamagezo, T. 8 June 2011, pp. 58-59, 61-62, 66.
[3426] *See* II.6.4.
[3427] *See* II.6.4.
[3428] Witness BDE, T. 31 January 2011, p. 28. The Chamber has considered Defence evidence that there were no divisions between ESO soldiers based on what regions they came from or ethnicities. *See* Witness ZML07, T. 18 May 2011, p. 23; Witness CKN10, T. 26 May 2011, p. 41; Witness RWV11, T. 2 June 2011, pp. 16-17; RWV09, T. 8 June 2011, pp. 18-19; Witness Ruzindana, T. 1 June 2011, p. 27; Witness ZML13, T. 6 June 2011, p. 47. The Chamber considers much of this evidence lacks credibility. Moreover, it is very general and does not raise any doubts with respect to specific evidence of Nizeyimana's particular relationships with particular soldiers.
[3429] Witness OUV03, T. 31 May, 2011, pp. 27-29
[3430] Witness OUV03, T. 31 May, 2011, p. 29; T. 1 June 2011, pp. 12-13.

reference.[3431] The combination of events led Witness OUV03 to conclude, without hesitation, that the mission to Mata took place on 21 April.[3432]

1355. The Chamber views Witness OUV03's evidence as unreliable. It considered that his demeanour raised questions about his credibility. Moreover, Witness OUV03 repeatedly sought to place Nizeyimana away from the ESO or Butare town on critical dates, notwithstanding evidence to the contrary. Specifically, Witness OUV03 testified that Nizeyimana was absent from a meeting convened at the ESO on the night of 6 April 1994, following the death of President Habyaryimana, because he had just spent a few days at home with a "serious flu".[3433]

1356. This testimony is contradicted by direct, second-hand and circumstantial evidence that Nizeyimana was at the ESO Camp that evening.[3434] It is inconceivable that, in light of Nizeyimana's rank and position among the general staff, he would have remained at home notwithstanding the killing of the Rwandan president and the recommencement of hostilities with the RPF.

1357. Similarly, Witness OUV03 led evidence that Nizeyimana was gone from ESO and Butare town on 24 April 1994 as well. He stated that Nizeyimana, accompanied by Ngalinde and other soldiers, went on a one day mission to Mata on 24 April, following the initial reconnaissance mission, but before the final departure to the training facility towards the end of April.[3435] According to the witness, Nizeyimana left early in the morning, around 8.00 a.m., and returned that same evening.[3436] The goal of this mission was to inspect the grounds at the Mata training centre and to build tents.[3437]

1358. Notably, Witnesses Hitayezu and KEN06, who testified to being at Nizeyimana's home, stated that Nizeyimana was absent from his residence as of 24 April.[3438] The Chamber has elsewhere considered their evidence in detail and found that they lack basic credibility.[3439] Their evidence is far from dispositive in this instance as well.

1359. Tellingly, however, not a single other witness testified about this mini-reconnaissance mission. It is inconceivable that soldiers who allegedly accompanied Nizeyimana on 21 to 22 April trip to Mata tea factory and then returned there as instructors would have been unaware of this second mission. Yet none of these ESO soldiers mentioned a one-day mission to the Mata training facility on 24 April.[3440] That Nizeyimana, a captain and one of the camp's staff

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[3431] Witness OUV03, T. 1 June 2011, pp. 10-11, 13, 15.
[3432] Witness OUV03, T. 1 June 2011, p. 12.
[3433] Witness OUV03, T. 30 May 2011, p. 71.
[3434] *See e.g.,* Prosecution Witness AZD, T. 31 January 2011, pp. 68-69, T. 1 February 2011, pp. 27, 31-32, 41 (Nizeyimana was present at a meeting chaired by Colonel Marcel Gatsinzi's following the death of President Habyarimana, informing those present of the events that transpired that night) *and* Exhibit D6 (Names of Persons at 6 April 1994 meeting); Prosecution Witness YAA, T. 1 February 2011, p. 61 (Nizeyimana had handed down instructions to subordinates on the night of 6 April, following President Habyarimana's death); Defence Witness RWV11, T. 2 June 2011, pp. 33, 36 (did not believe that Nizeyimana left ESO Camp between 6 and 7 April 1994; saw him there from his post and before he went to bed on 6 April).
[3435] Witness OUV03, T. 31 May 2011, pp. 30, 34; T. 1 June 2011, pp. 9-10, 13-14.
[3436] Witness OUV03, T. 31 May 2011, pp. 30, 34; T. 1 June 2011, p. 13.
[3437] Witness OUV03, T. 31 May 2011, p. 34.
[3438] Witness Hitayezu, T. 9 June 2011, p. 52; Witness KEN06, T. 20 September 2011, pp. 14-15, 39.
[3439] *See* II.6.6.
[3440] *See, e.g.,* Witness RWV11, T. 2 June 2011, pp. 65-66 ("Q. Now – so those are the five dates that you've told us about that you mentioned earlier, and just now you've added another date that you say you can never forget,

officers, would be involved in such menial activities is likewise contradicted by credible Prosecution evidence that he would not.[3441] Having also considered Witness OUV03's demeanour, the Chamber is left with the strong impression that he repeatedly tailored in a fashion that would distance Nizeyimana from the ongoing violence in Butare town during this period.

1360. Furthermore, the Chamber doubts that the absence of a colleague who worked with Witness OUV03 would necessarily provide a basis for him to recall with precision the date of this reconnaissance mission. Notably, the only person from the witness's office that he identified as participating in this event was a radio operator called Corporal Rwabutwaza.[3442] However, the presence of Rwabutwaza on the reconnaissance mission is unsupported by the record, raising further concerns about Witness OUV03's evidence.[3443]

1361. Furthermore, while Witness OUV03 was able to remember Nizeyimana's movements in regards to the reconnaissance mission to Mata, he could not recall the date upon which Lieutenant Gakwerere left the ESO because Witness OUV03 "had a lot to do" when the lieutenant left for the field.[3444] By contrast, he received messages in regards to Nizeyimana's

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which is the 26th. Now, can you tell us what it was you did between the time that you say you got back to the ESO camp from the reconnaissance mission and when you left again. A. I continued occupying the defensive position at the southern entrance from the 22nd of April when we returned to the camp up to the morning of the 26th of April. Q. Now, at the defensive position that you occupied near that entrance to the camp, are you able to tell us anything that happened on that first day back at your position? A. I did not see anything unusual. Q. The next day, anything unusual? A. Nothing unusual up to the 26th when we, once again, left the camp. But before the 26th I – we – I did not see anything unusual."); Witness Ruzindana, T. 1 June 2011, pp. 41-42 ("Q. Is it possible that your reconnaissance mission that you took to Mata, you describe as the first one, could have taken place as late as the 24th of April? A. No. I am categorical. When we conducted the first mission, which was a reconnaissance mission, I recollect clearly that it was two days after the date on which President Sindikubwabo made his speech. And I'm sure you will remember that President Sindikubwabo made his speech on the 19th of April. So it was on the 21st that we conducted the reconnaissance mission. I am sure of that."); Witness CKN10, T. 26 May 2011, pp. 52-52 ("Q. Sir, I'm – I'm going to go back, sir. If your dates are correct, which is a question of evidence, you returned from Mata on the 22nd. That's your evidence. What did you do on the 23rd, if you recall? A. I told you that we completed the first recce exercise on the 23rd. And we went back to Mata on the 26th April for the training of the new – of the recruits.").

[3441] Witness AZD, T. 1 February 2011, pp. 18-19 ("Q. Do you have any knowledge about whether Captain Nizeyimana went on a reconnaissance mission to Mata for the purpose of setting up the civil defence training there and that he went on this reconnaissance mission on the 21st and 22nd of April 1994? A. Thank you, Counsel. I don't know whether he went on reconnaissance mission to Mata. I don't know about that. Personally, as a soldier and as one of the NCOs at that time, I don't see how he could have gone there for reconnaissance, because Mata was very well known to us. So that was not a place for reconnoitring, but as someone who was in the officers' corps and who was aware of military tactics, at least at that level, I don't see why he should have gone to Mata for a reconnaissance mission, to a place which was near him and which was under his military region and which everybody knew about. Thank you. Q. Do you have any knowledge about whether at the ESO there was a notice board or a place where notices were posted with respect to officers who would leave the camp to go on such reconnaissance missions? A. Thank you for your question. Yes, there was a notice board where all messages were posted. I am talking about messages from our headquarters and general staff, but, personally, I did not see that particular message. That message was not posted there. But, yes, there was a notice board. Q. So specifically then, on the notice board, are you able to say whether or not on the 21st and 22nd of April there was a notice indicating that Captain Nizeyimana had gone to Mata on a reconnaissance mission? A. That was never posted on the notice board. I never saw that being mentioned on the notice board.").

[3442] Witness OUV03, T. 31 May, 2011, pp. 28-29.

[3443] Indeed, other alibi evidence suggests that the radio operator who joined the mission was Kabandana, rather than Rwabutwza. *See, e.g.*, Witness RWV11, T. 2 June 2011, p. 23; Witness Bunani, T. 13 June 2011, pp. 7, 44, 47; Witness Ruzindana, T. 1 June 2011, pp. 30, 62.

[3444] Witness OUV03, T. 31 May, 2011, p. 36.

movements and was thus able to recall with precision the various dates upon which Nizeyimana left the ESO.[3445]

1362. The Chamber has doubts about this explanation given that Witness OUV03 estimated that he received between four to 18 messages a day[3446] and did not take down notes, but that "the information received and the message serve[d] as a reference for [him]".[3447] Later he clarified that they did not register the comings and goings of officers, but that it was noted down at the guard post.[3448] Significantly, when asked about other missions undertaken by Nizeyimana, the witness was unable to recall the dates with precision.[3449]

1363. The Chamber considers it reasonable, given the large amount of messages received on any given day and the passage of time, that the witness would not have been able to remember with detail the dates upon which Nizeyimana was absent from the ESO during April 1994. However, the witness's insistence on the particular dates of particular incidents raises doubts about his credibility. The Chamber is left with the strong impression that Witness OUV03 tailored his evidence about the reconnaissance mission and Nizeyimana's involvement.

1364. Indeed, Witness OUV03's insistence on particular dates is inconsistent with other Defence evidence as it relates to the establishment of the Mata training centre. He insisted that the telegram sent from the army's Chief of Staff putting Nizeyimana in charge of the Mata training facility arrived on 17 April 1994.[3450] To the contrary, Witness RWV09's evidence reflects that that message arrived on 18 April, and he provided a particular basis for explaining why.[3451] Under normal circumstances, the variances would be reasonable. However, based on the Chamber's observations of Witness OUV03, this only reinforces its fundamental reservations about the witness's credibility.

1365. Like Witnesses Ntamagezo and OUV03, Witness RWV09 did not join the mission to Mata, but remembered that Nizeyimana left on 21 or 22 April 1994.[3452] Notably, Witness RWV09 admitted that this was an estimate, rather than a precise date.[3453] His evidence about the reconnaissance mission was brief. Other than his evidence that Nizeyimana was being placed in charge of the new training facility, his evidence failed to provide details reflecting why he knew Nizeyimana also went on the reconnaissance mission. His testimony is not dispositive.[3454]

[3445] Witness OUV03, T. 31 May, 2011, pp. 36, 48.
[3446] Witness OUV03, T. 1 June 2011, p. 11.
[3447] Witness OUV03, T. 31 May, 2011, p. 37. Witness OUV03 did not keep any of the messages received or any other documentation for that matter. He explained that a lot was lost during the war. T. 31 May 2011. p. 37. Witness OUV03 later said he kept a notebook in which he recorded "important events that occurred in 1994", but that he was obliged to destroy them so as not to compromise his safety. T. 1 June 2011, pp. 8-9.
[3448] Witness OUV03, T. 31 May, 2011, p. 54.
[3449] Witness OUV03, T. 31 May 2011, pp. 49 (could not recall the date upon which Nizeyimana went to the university), 51 (could not recall the date upon which Nizeyimana went to the *Groupe Scolaire*).
[3450] *See* Witness OUV03, T. 31 May 2011, pp. 22-23, 25-26; T. 1 June 2011, p. 10.
[3451] Witness RWV09, T. 8 June 2011, pp. 12-13, 41-42.
[3452] Witness RWV09, T. 8 June 2011. pp. 13, 45.
[3453] Witness RWV09, T. 8 June 2011. p. 45.
[3454] Indeed, the Chamber observes that the Defence provided no notice in its Notice of Alibi or Pre-Defence Brief that Witness RWV09 would be providing alibi evidence.

1366. Witness Mushimiyimana, a soldier based in Kigali in 1994, testified that he arrived in Butare on 20 April.[3455] His host, ESO Chief Warrant Officer Célestin Ngalinde, left his home on 21 April and did not return until the following evening around 6.00 p.m. Ngalinde informed the witness that he had been assigned to go on a reconnaissance mission with Nizeyimana to Mata.[3456] Significantly, the witness provided no explanation or basis for his knowledge that he arrived in Butare on 20 April and that Ngalinde left the following day. There is no context or general point of reference which suggests that Witness Mushimiyimana would have been able to recall with precision the date upon which he arrived in Butare.

1367. Moreover, like the other Defence witnesses, Witness Mushimiyimana was unable to recall dates for many other incidents he was questioned about. Specifically, the witnesses did not know when the Belgian troops were killed, when the government was sworn in or the days when he met the Defence to discuss his testimony.[3457] Accordingly, the Chamber finds his evidence of limited probative value in this regard. Finally, the Chamber considers his second-hand evidence of Nizeyimana accompanying the reconnaissance mission to be of limited probative value. Having observed the witness's demeanour while testifying, and in light of the issues discussed above, the Chamber views this testimony with suspicion.

1368. Having reviewed the circumstantial and second-hand evidence of Nizeyimana's participation in the reconnaissance mission to the Mata tea factory around 21 to 22 April 1994, the Chamber does not consider it sufficiently reliable to establish the reasonable possibility of its truthfulness. Likewise, it does not mitigate the concerns that the Chamber has with regard to the direct alibi evidence provided by soldiers and civilians, which are discussed above. Moreover, the Chamber has considered this in the context of other general evidence that soldiers were seen at the Mata tea factory. The Chamber has also assessed this evidence in light of other evidence, discussed below, tending to reflect that Nizeyimana was not in Butare and his residence on 21 to 22 April 1994.

(d) Evidence Reflecting Nizeyimana's General Absence from Butare Town

1369. The Chamber considers the evidence from Defence witnesses who generally testified that Nizeyimana was not present from 21 to 22 April 1994. Notably, Defence Witness Emmanuel Habyarimana testified he was at the ESO Camp on 21 April around 10.00 p.m. He spoke with Lieutenant Colonel Tharcisse Muvunyi that evening, but he did not see Nizeyimana at the camp. While the Chamber considers aspects of Witness Habyarimana's evidence credible, it observes that this evidence is not inconsistent with other evidence placing Nizeyimana elsewhere in Butare town. It is not dispositive.

1370. The Chamber has elsewhere discussed the evidence of Witnesses Hitayezu and KEN06, who testified that they were either guarding or inside Nizeyimana's home on the night of 21 April 1994. For the reasons discussed elsewhere, the Chamber does not find their evidence credible.[3458] Defence Witness Nyiranzabonimana also testified that he her husband had tried to call Nizeyimana's home on the evening of 21 April and early the following

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[3455] Witness Mushimiyimana, T. 13 June 2011, p. 54. Witness Mushimiyimana insisted that he was not part of the mission that escorted President Sindikubwabo to Butare on 18 April 1994. T. 13 June 2011, p. 68.
[3456] Witness Mushimiyimana, T. 13 June 2011, pp. 54-55.
[3457] Witness Mushimiyimana, T. 13 June 2011, pp. 60-63.
[3458] *See* II.6.6.

morning but could not reach him.[3459] This circumstantial evidence of Nizeyimana's absence is inconclusive. It does not resolve the frailties in the direct or indirect alibi evidence placing Nizeyimana at the Mata tea factory so as to create the reasonable possibility of its truthfulness.

(iii) Conclusions

1371. Having assessed the credibility of the alibi evidence in isolation, the Chamber finds it either lacking credibility or insufficiently probative to even suggest the reasonable possibility of Nizeyimana's presence on a 21 to 22 April 1994 reconnaissance mission to the Mata tea factory. As discussed above, the frailties of the alibi evidence discussed above are exacerbated when viewed among highly convincing and credible evidence of Nizeyimana's direct participation in the killing of Remy Rwekeza and the attack on Witness ZAV on 21 April,[3460] his direct participation and presence during the murder of those taken from the Matabaro and Nyirinkwaya households on the evening of 22 April,[3461] as well as his involvement in Gicanda's killing, which occurred around 20 April.[3462] In the Chamber's view, the diversity of credible sources of Nizeyimana's involvement in crimes, some of which are in direct conflict with the alibi evidence also eliminate the reasonable possibility of its truthfulness.

1372. Indeed, the record further reflects that around 21 April 1994, ESO soldiers directly contributed to the targeted killings of individuals[3463] and coordinated attacks on institutions harbouring Tutsis.[3464] Given the highly convincing evidence of Nizeyimana's direct participation in similar conduct, the Chamber considers it improbable that a captain, with considerable tenure in the offices charged with intelligence and operations, would be absent from Butare town as ESO resources were deployed in such operations.

[3459] *See* II.6.6.
[3460] *See* II.7.1.
[3461] *See* II.6.6.
[3462] *See* II.6.2.
[3463] *See* II.6.5.
[3464] *See* II.5.1.

13.3 Mata Training Camp and Transfer to the Front, 26 April 1994 Onwards

Introduction

1373. The Indictment implicates Nizeyimana in several distinct crimes that are alleged to have occurred between 26 April to 26 May 1994.[3465] The Defence submits that from 26 April to 26 May 1994, Nizeyimana was assigned as commander of the Mata training facility in Gikongoro prefecture. He only travelled to Butare once during that period. The Defence relies on the testimony of Witnesses CKN10, ZML13, RWV11, Jean Népomuscène Bunani, Thomas Ruzindana, Désiré Ufitimana, CKN18, Melchiade Ndikumana, CKN22, OUV03, RWV09, Augustin Mushimiyimana, BEJ01, Alphonse Higaniro and Étienne Mutabazi. Defence rejoinder Witnesses Jean Claude Zikamabahari and RWV17 also provided relevant testimony.[3466]

1374. The Prosecution repeats arguments that the alibi was fabricated to rebut its case. Prosecution evidence eliminates the reasonable possibility of its truthfulness. In addition to Prosecution evidence placing Nizeyimana in Butare, Rebuttal Witnesses Côsma Twagirayezu, Fulgence Rwirahira and Antoinette Bizimenyera provided relevant evidence for this period.[3467]

Evidence

Defence Witness CKN10

1375. Witness CKN10, a Hutu, was a sergeant at the ESO in April 1994.[3468] After taking part in the reconnaissance mission on 21 and 22 April, the witness returned to Mata on 26 April with 500 to 550 Burundian recruits by bus.[3469] Witness CKN10 left Mata at the end of the training session in late May.[3470] Nizeyimana was the overall commander of the recruits that were being trained in Mata and the instructors would accordingly defer to him in regards to problems that arose in the course of the training.[3471] Witness CKN10 ate with Nizeyimana every evening while they were there and they would "talk about [their] work and [they] would exchange ideas".[3472] When Nizeyimana travelled, he would inform them of his trip.[3473] Nizeyimana had significant responsibilities in Mata and could therefore not have easily

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[3465] Indictment, paras. 14(iv), 17, 27-29.
[3466] Defence Closing Brief, paras. 23-33, 52-120, 137-149, 151-152, 167-168, 201, 551, 576, 625-626; T, 7 December 2011, pp. 38-46, 48, 62 (Defence Closing Arguments).
[3467] Prosecution Closing Brief, paras. 495-505, 507, 516-521, 523-531; T. 7 December 2011, pp. 4-6, 10, 19-24 (Prosecution Closing Arguments).
[3468] Witness CKN10, T. 26 May 2011, pp. 35, 59; Exhibit D50 (Witness CKN10's Personal Information Sheet).
[3469] Witness CKN10, T. 26 May 2011, pp. 51-52, 58. New recruits arrived in Mata on 30 April and 1-2 May 1994, bringing the total to about 2500 recruits. T. 26 May 2011, pp. 53-54.
[3470] Witness CKN10, T. 26 May 2011, p. 53.
[3471] Witness CKN10, T. 26 May 2011, p. 55.
[3472] Witness CKN10, T. 26 May 2011, p. 56; T. 30 May 2011, p. 28.
[3473] Witness CKN10, T. 30 May 2011, p. 28. It appears from Witness CKN10's testimony that he is referring to instructors when he states "us" or "we". T. 26 May 2011, p. 55; T. 30 May 2011, p. 28.

returned to Butare town during this period.[3474] Moreover, he had been replaced in his position at the ESO.[3475]

Defence Witness ZML13

1376. In April 1994, Witness ZML13, a Hutu, was a student in the first batch at the ESO.[3476] Following the reconnaissance mission to Mata on 21 to 22 April, Witness ZML13 returned as an instructor on 26 or 27 April, with Nizeyimana, who was the mission head, Warrant Officer Ngalinde and some other non-commissioned officers.[3477] The convoy travelled through Gikongoro, with Nizeyimana in a separate vehicle behind the bus in which Witness ZML13 was riding.[3478]

1377. As commander of the training centre, Nizeyimana was responsible for monitoring the staff and supervising all activities and training.[3479] The recruits at Mata hailed from Burundi and Rwanda and arrived in buses.[3480] Nizeyimana issued orders every morning.[3481] While in Mata, Witness ZML13 would see Nizeyimana every day, all day and throughout the night.[3482] At the end of May 1994, Nizeyimana was transferred to the front.[3483] Nizeyimana did not leave Mata prior to his transfer.[3484] When Niyimana left, he was replaced by Second Lieutenant Modeste Gatsinzi.[3485]

Defence Witness RWV11

1378. In April 1994, Witness RWV11, a Hutu, was an instructor at the ESO.[3486] On the morning of 26 April, six buses of Kirundi-speaking recruits stopped at the ESO.[3487] The buses left for Mata via Gikongoro, between 10.00 and 11.00 a.m., where the recruits would undergo military training.[3488] Witness RWV11 joined the convoy and arrived in Mata at approximately 1.00 p.m.[3489] While there were roadblocks along the way, they were a large military convoy and thus experienced little delay.[3490] On 30 April, a group of 1,500 recruits from Gikongoro and Butare prefects were delivered to Mata for training.[3491]

1379. Nizeyimana, who was in charge of the training centre, managed the schedule and resolved training-related problems.[3492] Witness RWV11 saw Nizeyimana every day.[3493]

[3474] Witness CKN10, T. 30 May 2011, pp. 28-29.
[3475] Witness CKN10, T. 30 May 2011, pp. 28-29.
[3476] Witness ZML13, T. 6 June 2011, p. 44; Exhibit D55 (Witness ZML13's Personal Information Sheet).
[3477] Witness ZML13, T. 6 June 2011, pp. 49, 56-57, 60-61; T. 7 June 2011, p. 72.
[3478] Witness ZML13, T. 6 June 2011, pp. 49, 60-61.
[3479] Witness ZML13, T. 6 June 2011, p. 57.
[3480] Witness ZML13, T. 6 June 2011, p. 57.
[3481] Witness ZML13, T. 6 June 2011, p. 57.
[3482] Witness ZML13, T. 6 June 2011, pp. 57-58; T. 7 June 2011, pp. 72-73, 75.
[3483] Witness ZML13, T. 6 June 2011, p. 58; T. 7 June 2011, pp. 73-74.
[3484] Witness ZML13, T. 6 June 2011, p. 60; T. 7 June 2011, pp. 72-74.
[3485] Witness ZML13, T. 6 June 2011, p. 58; T. 7 June 2011, pp. 73-74.
[3486] Witness RWV11, T. 2 June 2011, p. 8; Exhibit D53 (Witness RWV11's Personal Information Sheet).
[3487] Witness RWV11, T. 2 June 2011, p. 29.
[3488] Witness RWV11, T. 2 June 2011, pp. 29, 32-33.
[3489] Witness RWV11, T. 2 June 2011, pp. 29, 33.
[3490] Witness RWV11, T. 2 June 2011, pp. 31-32.
[3491] Witness RWV11, T. 2 June 2011, pp. 29-30.
[3492] Witness RWV11, T. 2 June 2011, pp. 30-31.

Specifically, he saw him in the mornings before the training and reported to him in the evenings at the canteen, where he would stay until he went to bed.[3494] Nizeyimana's absence from a training session would have been noticed because there was a "permanent need to be in touch with him".[3495] Around 25 May 1994, Nizeyimana left Mata for a new post in the Nyanza operational sector and was replaced by Lieutenant Gatsinzi.[3496] Prior to his departure, Nizeyimana did not leave the Mata training grounds at any time.[3497]

Defence Witness Jean Népomuscène Bunani

1380. In April 1994, Witness Bunani, a Hutu, was an instructor at the ESO.[3498] After a reconnaissance mission on 21 April, Witness Bunani and other ESO instructors prepared for a return to Mata to train recruits.[3499] On 25 April, Witness Bunani and other instructors joined 10 buses full of Burundian refugee recruits and left the ESO for Mata around 10.00 a.m.[3500] They passed through several roadblocks on the road, but since they "were an important convoy" they did not stay for long at these barriers.[3501]

1381. The Burundian recruits began training upon arrival in Mata on 25 April 1994.[3502] A second group of recruits from Butare and Gikongoro arrived around 30 April.[3503] Nizeyimana was commander of the training centre, and Warrant Officer Ngalinde was the second-in-charge.[3504] As commander, Nizeyimana coordinated training classes, ordered firearms and food rations from the ESO, and received daily reports from instructors.[3505] He spent a significant amount of time with the instructors and advised them when they had difficulties.[3506] Nizeyimana had a vehicle in Mata, which he used for necessities.[3507] On one occasion in late May, Nizeyimana left the grounds to go to Butare town and returned in a different vehicle.[3508] Witness Bunani left Mata to return to his border post around 30 May, and he recalled that Nizeyimana left the training centre three days prior for a position in the Nyanza operational sector.[3509]

[3493] Witness RWV11, T. 2 June 2011, pp. 30-31, 59.
[3494] Witness RWV11, T. 2 June 2011, pp. 30-31.
[3495] Witness RWV11, T. 2 June 2011, p. 31.
[3496] Witness RWV11, T. 2 June 2011, p. 30.
[3497] Witness RWV11, T. 2 June 2011, pp. 59-60 ("Q. That's exactly what I asked you about, and I also asked you whether or not you are absolutely certain of that. A. I am the one telling you. I saw him every day. He was with us during this entire period of training. Q. There's no question in your mind. A. Every day we would report to him about the situation. We would report to him. I am an eyewitness. Q. So there's no question in your mind? A. We reported to him every day. I remember that I saw him every day. We could not give reports to somebody who was absent. Q. I heard you say that. But now I'm asking about your level of certainty with respect to the recollection. And with respect to that recollection, is there any question in your mind? A. No shadow of doubt whatsoever. This is something I know. I am 100 per cent certain that I saw him every day.").
[3498] Witness Bunani, T. 10 June 2011, pp. 45, 47; Exhibit D64 (Witness Bunani's Personal Information Sheet).
[3499] Witness Bunani, T. 13 June 2011, pp. 6, 14-16.
[3500] Witness Bunani, T. 13 June 2011, pp. 15-16.
[3501] Witness Bunani, T. 13 June 2011, p. 16.
[3502] Witness Bunani, T. 13 June 2011, pp. 15-16.
[3503] Witness Bunani, T. 13 June 2011, p. 16.
[3504] Witness Bunani, T. 13 June 2011, pp. 17, 19.
[3505] Witness Bunani, T. 13 June 2011, pp. 17, 50.
[3506] Witness Bunani, T. 13 June 2011, pp. 17, 20, 50.
[3507] Witness Bunani, T. 13 June 2011, p. 20.
[3508] Witness Bunani, T. 13 June 2011, p. 20.
[3509] Witness Bunani, T. 13 June 2011, pp. 16, 18, 20.

Defence Witness Thomas Ruzindana

1382. Witness Ruzindana, a Hutu, was a cadet at the ESO in April 1994.[3510] On 26 April, Witness Ruzindana and about 25 to 30 other instructors returned to Mata to train recruits.[3511] They travelled through Gikongoro and arrived in Mata around 11.00 a.m.[3512] The convoy passed roadblocks along the way, but they did not spend much time at them and did not stop at the gendarmerie camp on this occasion.[3513] Recruits from Burundi travelled with them and were transported in buses.[3514] A second wave of recruits from Rwanda arrived in Mata about three days later.[3515]

1383. The training of recruits took place every day, including Sundays, from about 6.00 a.m. until 6.30 p.m., when they ate dinner.[3516] Nizeyimana, as the commander of the camp, supervised their activities, made some corrections and taught some courses.[3517] Sometime in May 1994, Nizeyimana was transferred to another position and was replaced by Second Lieutenant Gatsinzi.[3518] Witness Ruzindana remained at the training centre until the end of June 1994.[3519]

Defence Witness Désiré Ufitimana

1384. Witness Ufitimana, a Hutu, was a cadet at the ESO in April 1994.[3520] On 30 April, Witness Ufitimana departed for Mata to train new recruits from Burundi and Rwanda.[3521] Some ESO soldiers had already travelled to Mata before he did, around 25 April.[3522] The journey from Butare took approximately 45 minutes to an hour.[3523] Nizeyimana was the officer in charge of the training camp.[3524]

1385. As the officer in charge of the training centre, Nizeyimana drew up and posted the daily program on a notice board.[3525] Witness Ufitimana had limited contact with Nizeyimana.[3526] Given his subordinate rank as an instructor and non-commissioned officer, Witness Ufitimana did not have a much to discuss with the commander of the camp.[3527]

[3510] Witness Ruzindana, T. 1 June 2011, pp. 24-25; Exhibit D52 (Witness Ruzindana's Personal Information Sheet).
[3511] Witness Ruzindana, T. 1 June 2011, pp. 35, 68-69. Two land rovers accompanied the buses. T. 1 June 2011, pp. 68-69.
[3512] Witness Ruzindana, T. 1 June 2011, p. 68.
[3513] Witness Ruzindana, T. 1 June 2011, p. 68.
[3514] Witness Ruzindana, T. 1 June 2011, pp. 35-36, 67-69.
[3515] Witness Ruzindana, T. 1 June 2011, p. 36. Witness Ruzindana estimated there to have been between 1,000 and 1,500 recruits at the camp during the time he was an instructor there. T. 1 June 2011, p. 69.
[3516] Witness Ruzindana, T. 1 June 2011, p. 37.
[3517] Witness Ruzindana, T. 1 June 2011, p. 37.
[3518] Witness Ruzindana, T. 1 June 2011, p. 38.
[3519] Witness Ruzindana, T. 1 June 2011, p. 38. Witness Ruzindana could not recall the exact date upon which he left Mata in June. T. 1 June 2011, p. 38.
[3520] Witness Ufitimana, T. 26 May 2011, p. 5; Exhibit D49 (Witness Ufitimana's Personal Information Sheet).
[3521] Witness Ufitimana, T. 26 May 2011, pp. 11, 20-21, 28-29. Witness Ufitimana estimated there to be about 800 people at Mata. T. 26 May 2011, pp. 11-12.
[3522] Witness Ufitimana, T. 26 May 2011, p. 11.
[3523] Witness Ufitimana, T. 26 May 2011, pp. 20-21.
[3524] Witness Ufitimana, T. 26 May 2011, p. 12.
[3525] Witness Ufitimana, T. 26 May 2011, p. 13.
[3526] Witness Ufitimana, T. 26 May 2011, p. 12.
[3527] Witness Ufitimana, T. 26 May 2011, p. 12.

Indeed, the non-commissioned officers would not eat their meals with the officers.[3528] The witness only saw Nizeyimana twice between 30 April and 25 May 1994 and was generally unaware of his daily activities.[3529] The witness left for Rubona after 25 May.[3530]

Defence Witness CKN18

1386. Witness CKN18, a Hutu, voluntarily registered for enlistment in the national army at his commune office in Nyakizu.[3531] He was subsequently transferred to the ESO camp on 27 April 1994.[3532] Witness CKN18 stayed at the ESO for three days before being relocated to the Mata sector with approximately 500 to 600 other recruits from different communes.[3533] They departed from the ESO in buses, loaded with water, tents and other supplies, and reached Mata about two hours later.[3534] The witness did not see roadblocks en route.[3535]

1387. At Mata, the witness met other recruits who were undergoing training, some of whom had come from Burundi.[3536] The recruits slept in large military tents which accommodated over 60 men.[3537] Training started at around 5.30 a.m. every day and lasted until about 5.00 p.m.[3538] The senior officers, including the instructors, lodged and ate in a separate area from the recruits, who could not go there without good reason.[3539] Captain Nizeyimana was the commander of the training camp and gave orders to the instructors and sometimes led training.[3540] Nizeyimana stayed in the house of the tea factory manager situated close to the senior officers' lodgings, but he did not eat with the senior officers.[3541] Nizeyimana had a white UNAMIR jeep while at Mata.[3542] After three weeks of training, Nizeyimana was transferred to the Nyanza front and was replaced by Second Lieutenant Modeste Gatsinzi.[3543] On 28 May 1994, Witness CKN18 left Mata for Nyanza, where he later saw Nizeyimana leading combat.[3544]

[3528] Witness Ufitimana, T. 26 May 2011, p. 13.
[3529] Witness Ufitimana, T. 26 May 2011, pp. 13-14.
[3530] Witness Ufitimana, T. 26 May 2011, pp. 14, 29.
[3531] Witness CKN18, T. 15 June 2011, pp. 43-44, 54-56; Exhibit D72 (Witness CKN18's Personal Information Sheet).
[3532] Witness CKN18, T. 15 June 2011, pp. 43-44, 54-56.
[3533] Witness CKN18, T. 15 June 2011, pp. 43, 57.
[3534] Witness CKN18, T. 15 June 2011, pp. 44, 46, 58 ("Q. And from there you've told us that you took buses to Mata. What types of buses were they? A. They were buses that the Japanese government had given to the government Rwanda – government of Rwanda as part of technical assistance cooperation between Japan and Rwanda. Q. Were they the ONATRACOM buses? A. Yes. They were ONATRACOM buses which were also used by other governmental institutions.").
[3535] Witness CKN18, T. 15 June 2011, p. 47.
[3536] Witness CKN18, T. 15 June 2011, p. 44. Witness CKN18 estimated there to have been more than 500 recruits from Burundi. T. 15 June 2011, p. 44.
[3537] Witness CKN18, T. 15 June 2011, p. 44.
[3538] Witness CKN18, T. 15 June 2011, p. 44.
[3539] Witness CKN18, T. 15 June 2011, pp. 45, 47.
[3540] Witness CKN18, T. 15 June 2011, pp. 44-45, 58.
[3541] Witness CKN18, T. 15 June 2011, pp. 45-47 ("In any case, Nizeyimana and his instructors lived in the same area. There ... wasn't a large distance between where he lived and where his instructors lived.").
[3542] Witness CKN18, T. 15 June 2011, p. 46.
[3543] Witness CKN18, T. 15 June 2011, p. 45.
[3544] Witness CKN18, T. 15 June 2011, pp. 45, 59-60.

Defence Witness Melchiade Ndikumana

1388. In April 1994, Witness Ndikumana, a Hutu, was a student at the National University of Rwanda.[3545] On 15 April, he went to stay with his godfather, Callixte Ndayisaba, who worked at the Mata tea factory.[3546] Around 21 April, the factory manager asked the witness to host a group of soldiers who had arrived at the factory.[3547] Captain Nizeyimana was presented to him as the leader of this group.[3548] About three or four days after his first meeting with Nizeyimana, the witness saw the captain again in Mata.[3549] Nizeyimana arrived with a large convoy of more than eight buses, which parked in front of the factory and carried soldiers dressed in deep green camouflage uniforms.[3550] The soldiers established a military camp about five to eight kilometres from the factory.[3551] He observed soldiers gathered together and noted that they would split up and go off in groups in the afternoons.[3552]

1389. Captain Nizeyimana stayed in a house near the factory director's residence, while the senior staff lived about 800 metres to one kilometre from the factory grounds.[3553] Every now and again, Witness Ndikumana would visit Nizeyimana where he lived and sometimes saw him in the tea factory canteen.[3554] He recalled that Nizeyimana was always accompanied by an escort of three soldiers.[3555] The last time Witness Ndikumana saw Captain Nizeyimana was sometime in May 1994, but he could not recall the exact date.[3556] When Witness Ndikumana left Mata around 12 May, Captain Nizeyimana was still at the training camp.[3557]

Defence Witness CKN22

1390. In April 1994, Witness CKN22, a Hutu, worked for the prefect in Gikongoro.[3558] Around 9.00 a.m., on Wednesday, 27 April, Witness CKN22 passed through Mata, where he saw Nizeyimana and a group of around 80 soldiers.[3559] The witness went to the guesthouse

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[3545] Witness Ndikumana, T. 23 May 2011, p. 61; Exhibit D43 (Witness Ndikumana's Personal Information Sheet).
[3546] Witness Ndikumana, T. 23 May 2011, pp. 61-62, 66, 68-70; T. 24 May 2011, pp. 25, 30.
[3547] Witness Ndikumana, T. 23 May 2011, p. 63; T. 24 May 2011, p. 38.
[3548] Witness Ndikumana, T. 23 May 2011, p. 63.
[3549] Witness Ndikumana, T. 23 May 2011, p. 65.
[3550] Witness Ndikumana, T. 23 May 2011, pp. 65-66; T. 24 May 2011, p. 28 ("Q. Now, on that day, the buses that he came in, were these the green ONATRACOM buses? A. These were large yellow buses mixed with yellow with light blue and of Japanese make. MR. PRESIDENT: Which Japanese make? THE WITNESS: I am saying they are Japanese make, because these are large buses for public transportation and everybody said they are made in Japan, but I am not able to tell you the name – the model. MR. PRESIDENT: So they are only Japanese, because they are large buses? THE WITNESS: No. It is commonly said that those buses being used for public transportation were imported from Japan.").
[3551] Witness Ndikumana, T. 23 May 2011, p. 68.
[3552] Witness Ndikumana, T. 23 May 2011, p. 66.
[3553] Witness Ndikumana, T. 23 May 2011, pp. 66, 68.
[3554] Witness Ndikumana, T. 23 May 2011, pp. 70, 72.
[3555] Witness Ndikumana, T. 23 May 2011, p. 66.
[3556] Witness Ndikumana, T. 23 May 2011, p. 70.
[3557] Witness Ndikumana, T. 23 May 2011, pp. 66, 70, 72; T. 24 May 2011, pp. 33-34.
[3558] Witness CKN22, T. 15 June 2011, pp. 66, 68, 75; T. 16 June 2011, pp. 8-9, 26; Exhibit D73 (Witness CKN22's Personal Information Sheet).
[3559] Witness CKN22, T. 15 June 2011, pp. 71-73, 79.

where Nizeyimana was staying and talked with him for about 10 minutes, during which Nizeyimana told Witness CKN22 that he was setting up a training centre at Mata.[3560]

1391. The following week, at around 9.00 a.m., the witness returned to Mata.[3561] He met with Nizeyimana in the guesthouse again, and Nizeyimana explained that they were setting up the training centre in Mata due to difficulties in transporting recruits to the training centre in Bugesera.[3562] Nizeyimana also mentioned that the recruits at Mata were Burundian.[3563] The witness went back to Mata on an unspecified date in June and found that while the camp was still operational, Nizeyimana had been replaced by Second Lieutenant Gatsinzi.[3564]

Defence Witness OUV03

1392. Witness OUV03, a Hutu, was an instructor at the ESO in April 1994.[3565] On 17 April, Witness OUV03 heard from Sergeant Major Semajeli that Nizeyimana was assigned to set up the training camp in Mata.[3566] Nizeyimana was relieved of his duties at the ESO on 18 April and replaced by Second Lieutenant Gakwerere.[3567] On 26 April, Nizeyimana left for Mata, one day after the arrival of Captain Ndayisaba.[3568] He was accompanied by Warrant Officer Ngalinde, other ESO instructors, and the new recruits.[3569] The recruits arrived at the ESO in the afternoon the day before, on 25 April, from the Mutara operational section command.[3570] Nizeyimana followed the convoy in his own UNAMIR vehicle.[3571] Witness OUV03 saw some of the buses leaving in the distance around 9.30 or 10.00 a.m.[3572]

1393. On 30 April 1994, recruits from Butare and Gikongoro under the command of Second Lieutenant Gatsinzi stopped at the ESO before they left for Mata in buses and pickup trucks.[3573] Witness OUV03 did not see Nizeyimana at the ESO after 26 April.[3574] The witness saw a message regarding Nizeyimana's transfer to the Nyanza operational unit on 26 May.[3575]

Defence Witness RWV09

1394. In April 1994, Witness RWV09, a Hutu, was a student at the Butare University and a soldier at the ESO.[3576] Witness RWV09 lived at the ESO in mid-April and stayed there

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[3560] Witness CKN22, T. 15 June 2011, pp. 73, 79.
[3561] Witness CKN22, T. 15 June 2011, pp. 79-80.
[3562] Witness CKN22, T. 15 June 2011, p. 80.
[3563] Witness CKN22, T. 15 June 2011, p. 80.
[3564] Witness CKN22, T. 15 June 2011, p. 73.
[3565] Witness OUV03, T. 30 May 2011, pp. 60, 62; T. 1 June 2011, pp. 16-17; Exhibit D51 (Witness OUV03's Personal Information Sheet).
[3566] Witness OUV03, T. 31 May 2011, pp. 22-24; T. 1 June 2011, pp. 10-11, 15.
[3567] Witness OUV03, T. 31 May 2011, pp. 22-23; T. 1 June 2011, pp. 10-11.
[3568] Witness OUV03, T. 31 May 2011, pp. 27, 30-32; T. 1 June 2011, p. 12.
[3569] Witness OUV03, T. 31 May 2011, pp. 30-31.
[3570] Witness OUV03, T. 31 May 2011, pp. 30-32. Witness OUV03 noted that the recruits were of the Rwandan Army and came from areas that were controlled by the enemy. T. 31 May 2011, p. 32.
[3571] Witness OUV03, T. 31 May 2011, pp. 29-30.
[3572] Witness OUV03, T. 31 May 2011, pp. 30, 32-33; T. 1 June 2011, pp. 12-13. Specifically, Witness OUV03 saw the last three buses leave for Mata. T. 31 May 2011, p. 33.
[3573] Witness OUV03, T. 31 May 2011, p. 33.
[3574] Witness OUV03, T. 31 May 2011, pp. 33-34.
[3575] Witness OUV03, T. 31 May 2011, pp. 33-34.
[3576] Witness RWV09, T. 8 June 2011, p. 8; Exhibit D58 (Witness RWV09's Personal Information Sheet).

through July.[3577] On 18 April, the witness's department received a copy of a telegram addressed to the ESO commander regarding the creation of a training centre at Mata.[3578] Nizeyimana was in charge of establishing the training centre and, over the next three or four days, he assembled a team of instructors to train recruits.[3579] He was replaced in his duties at the ESO by Second Lieutenant Gakwerere.[3580] On 25 or 26 April, around 9.00 a.m., Nizeyimana, Second Lieutenant Marcel Gatsinzi and other ESO instructors left for Mata with Burundian recruits from the Mutara sector.[3581] Their convoy included a UNAMIR jeep, a Toyota Stout pickup truck, and eight buses.[3582] Sometime after 25 or 26 April, Rwandan recruits also went to Mata for training.[3583]

1395. During training, the UNAMIR vehicle and the Toyota Stout would return to the ESO to collect food supplies for Mata.[3584] On an unspecified date, Nizeyimana and his driver returned from Mata to the ESO in a UNAMIR jeep and left in a double cabin Mitsubishi.[3585] When vehicles came from Mata, they were refueled at the ESO and provided with reserve fuel.[3586] The reserve jerricans of fuel were also available at Mata training centre.[3587]

Defence Witness Augustin Mushimiyimana

1396. In April 1994, Witness Mushimiyimana, a Hutu, was a non-commissioned officer, based at the flight squadron at Kanombe airport.[3588] On 20 April, Witness Mushimiyimana arrived in Butare, where he was hosted by Warrant Officer Ngalinde at his house.[3589] Ngalinde left for the Mata training centre on 25 or 26 April, several days before the witness returned to Kigali on 28 April.[3590]

Defence Witness BEJ01

1397. In April 1994, Witness BEJ01, a Hutu, was a professor at the Butare University.[3591] He befriended Nizeyimana in June 1993 and occasionally visited his house.[3592] At some point between 24 and 28 April, Nizeyimana's wife told the witness that her husband had been transferred.[3593]

[3577] Witness RWV09, T. 8 June 2011, pp. 9, 42.
[3578] Witness RWV09, T, 8 June 2011, pp. 13, 41.
[3579] Witness RWV09, T. 8 June 2011, p. 13.
[3580] Witness RWV09, T. 8 June 2011, p. 13.
[3581] Witness RWV09, T. 8 June 2011, pp. 16, 32, 45.
[3582] Witness RWV09, T. 8 June 2011, pp. 16, 19-20.
[3583] Witness RWV09, T. 8 June 2011, p. 16.
[3584] Witness RWV09, T. 8 June 2011, p. 19.
[3585] Witness RWV09, T. 8 June 2011, pp. 16, 19.
[3586] Witness RWV09, T. 8 June 2011, pp. 19-20.
[3587] Witness RWV09, T. 8 June 2011, p. 19.
[3588] Witness Mushimiyimana, T. 13 June 2011, pp. 52-53; Exhibit D65 (Witness Mushimiyimana's Personal Information Sheet).
[3589] Witness Mushimiyimana, T. 13 June 2011, p. 54.
[3590] Witness Mushimiyimana, T. 13 June 2011, pp. 55, 63.
[3591] Witness BEJ01, T. 9 June 2011, p. 19; Exhibit D60 (Witness BEJ01's Personal Information Sheet).
[3592] Witness BEJ01, T. 9 June 2011, pp. 11, 14, 16, 19.
[3593] Witness BEJ01, T. 9 June 2011, pp. 11-12, 20.

1398. Witness BEJ01 only saw Nizeyimana once between the captain's transfer and the witness's departure from Butare, which was between 20 and 27 May 1994.[3594] On that occasion, he went to Nizeyimana's house and talked with him for about 15 minutes.[3595] The witness specifically recalled that Nizeyimana was not in Butare town on 14 May when Witness AJP killed a young girl.[3596]

Defence Witness Alphonse Higaniro

1399. In April 1994, Witness Higaniro, a Hutu, managed a Butare-based company called SORWAL.[3597] Witness Higaniro was a friend and neighbour of Nizeyimana and visited his home on a weekly basis.[3598] Around 28 April, Witness Higaniro went to Nizeyimana's house to greet him.[3599] When he arrived, Nizeyimana's wife told the witness that he had gone on mission and was not living in Butare at that time.[3600] The witness was unable to recall exactly where Nizeyimana's wife said the mission had taken him but believed it might have been Gikongoro.[3601] Witness Higaniro last saw Nizeyimana on 7 April at the ESO.[3602]

Defence Witness Etienne Mutabazi

1400. Witness Mutabazi, a Hutu, was a FAR officer working at the Ministry of National Defence in April 1994.[3603] He was stationed at the Nyanza operational sector from late May to June.[3604] Nizeyimana joined the Nyanza operational sector command towards the end of May, but was unable to recall the precise date.[3605] They remained in Nyanza for about three weeks, during which time he saw Nizeyimana often.[3606]

Prosecution Rebuttal Witness Côsma Twagirayezu

1401. Witness Twagirayezu, a Hutu, was a night watchman employed by the Mata tea factory in April 1994.[3607] He performed guard duties at the factory and at the homes of five factory employees.[3608] The Mata tea factory suspended its activities for about three weeks during the genocide.[3609] The military training of Burundian and Rwandan recruits in Mata started in early May, led by Lieutenant Gakwerere and Burundian instructors.[3610] They

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[3594] Witness BEJ01, T. 9 June 2011, pp. 12, 20-22.
[3595] Witness BEJ01, T. 9 June 2011, pp. 12, 14-15, 20.
[3596] Witness BEJ01, T. 9 June 2011, pp. 9-11, 32.
[3597] Witness Higaniro, T. 6 June 2011, p. 5; Exhibit D54 (Witness Higaniro's Personal Information Sheet).
[3598] Witness Higaniro, T. 6 June 2011, pp. 6-7.
[3599] Witness Higaniro, T. 6 June 2011, pp. 6, 30.
[3600] Witness Higaniro, T. 6 June 2011, pp. 6, 31, 38.
[3601] Witness Higaniro, T. 6 June 2011, pp. 31, 38.
[3602] Witness Higaniro, T. 6 June 2011, pp. 5, 8.
[3603] Witness Mutabazi, T. 12 May 2011, pp. 7-8; Exhibit D29 (Witness Mutabazi's Personal Information Sheet).
[3604] Witness Mutabazi, T. 12 May 2011, pp. 8-9, 11-12.
[3605] Witness Mutabazi, T. 12 May 2011, pp. 9-12.
[3606] Witness Mutabazi, T. 12 May 2011, p. 37.
[3607] Witness Twagirayezu, T. 7 September 2011, p. 30; Exhibit P60 (Witness Twagirayezu's Personal Information Sheet). Witness Twagirayezu was convicted for genocide related crimes and served 12 years in jail. T. 8 September 2011, pp. 8-9.
[3608] Witness Twagirayezu, T. 7 September 2011, p. 30; T. 8 September 2011, p. 12.
[3609] Witness Twagirayezu, T. 7 September 2011, p. 30.
[3610] Witness Twagirayezu, T. 7 September 2011, pp. 30-32; T. 8 September 2011, pp. 16-17.

arrived on foot.[3611] Nizeyimana first arrived in Mata around late May in order to supervise the training.[3612] The witness saw him there on three occasions between 26 May and 5 June.[3613] Indeed, Nizeyimana was not there every day and if he was, he would always return to Butare town at night.[3614] Witness Twagirayezu knew who Nizeyimana was, because the witness asked his name when Nizeyimana wanted to enter his boss's office.[3615]

Prosecution Rebuttal Witness Fulgence Rwirahira

1402. In April 1994, Witness Rwirahira, a Hutu, worked as a telecommunications officer at the ESO.[3616] His immediate supervisor was Senior Warrant Officer Nzabonimpa.[3617] Witness Rwirahira's office was in the same building as Nizeyimana's, though in a different hall, and he saw Nizeyimana several times a day.[3618] He last saw Nizeyimana at the ESO towards the end of May.[3619] He knew Nizeyimana had been transferred, due to the communications he received in his capacity as a telecommunications officer.[3620] He passed the message on to his supervisor, Nzabonimpa, who in turn had to pass the message on to the commander of the camp.[3621]

1403. Nizeyimana, who continued to hold the S2/S3 post, was still present in the military region of Butare between 26 April and 26 May 1994.[3622] As the S2/S3, Captain Nizeyimana was responsible for military operations in the Butare region, which included the training of new recruits.[3623] In late May, Nizeyimana was transferred to the front, along with other ESO soldiers, to lead a significant contingent of recently trained recruits.[3624] The witness twice handled the communication of Nizeyimana's redeployment.[3625] While Witness Rwirahira did not know exactly what Nizeyimana did on a daily basis, he knew that Nizeyimana would leave for the field at times but was primarily based in Butare.[3626]

Prosecution Rebuttal Witness Antoinette Bizimenyera

1404. On 20 or 21 April 1994, Witness Bizimenyera, a Tutsi, and her family moved into Nizeyimana's house in Butare and stayed there for one month and a half.[3627] The witness remembered seeing Nizeyimana at his home on 21 April and regularly throughout the month

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[3611] Witness Twagirayezu, T. 8 September 2011, p. 16.
[3612] Witness Twagirayezu, T. 7 September 2011, p. 32; T. 8 September 2011, pp. 17-18. Witness Twagirayezu did not see Nizeyimana in Mata continuously for a month starting from 26 April. T. 7 September 2011, p. 33.
[3613] Witness Twagirayezu, T. 8 September 2011, pp. 20-21.
[3614] Witness Twagirayezu, T. 8 September 2011, p. 20.
[3615] Witness Twagirayezu, T. 7 September 2011, p. 32.
[3616] Witness Rwirahira, T. 7 September 2011, pp. 7, 9; Exhibit P59 (Witness Rwirahira's Personal Information Sheet).
[3617] Witness Rwirahira, T. 7 September 2011, p. 7.
[3618] Witness Rwirahira, T. 7 September 2011, p. 9.
[3619] Witness Rwirahira, T. 7 September 2011, pp. 9-10.
[3620] Witness Rwirahira, T. 7 September 2011, p. 9.
[3621] Witness Rwirahira, T. 7 September 2011, p. 9.
[3622] Witness Rwirahira, T. 7 September 2011, pp. 9-11.
[3623] Witness Rwirahira, T. 7 September 2011, pp. 8, 10-11, 20.
[3624] Witness Rwirahira, T. 7 September 2011, pp. 9, 19.
[3625] Witness Rwirahira, T. 7 September 2011, pp. 9-10, 24.
[3626] Witness Rwirahira, T. 7 September 2011, pp. 10-11.
[3627] Witness Bizimenyera, T. 7 September 2011, pp. 42-43; T. 8 September 2011, pp. 27, 30-32, 34-35, 40-41; Exhibit P61 (Witness Bizimenyera's Personal Information Sheet).

of April.[3628] Nizeyimana went to work in the morning, returning for lunch with his soldiers, and again in the evening.[3629] Witness Bizimenyera used to see Nizeyimana in April, but from May onward, she hardly saw him and only heard his voice.[3630] Towards the end of her stay, Witness Bizimenyera was largely confined to one room neighbouring the sitting room, and became less certain of Nizeyimana's movements.[3631]

Defence Rejoinder Witness Jean Claude Zikamabahari

1405. In April 1994, Witness Zikamabahari, a Hutu, ran a small shop in Mata.[3632] One afternoon, about two weeks after President Habyarimana's death, the witness observed soldiers pass his shop and head towards the tea factory on board a UNAMIR vehicle and a military jeep.[3633] Three or four days after those vehicles left, the witness saw a significant contingent of Burundians arrive on ONTRACOM buses.[3634] Witness Zikamabahari, conversant in Kirundi, spoke to the recruits, who told him they had come to Mata to undergo military training.[3635] The recruits were accompanied by soldiers.[3636] Three or four days after the Burundians came, a second convoy of buses arrived bringing more soldiers and recruits from the neighbouring districts.[3637]

1406. The witness would sometimes go to the tea factory canteen and to the training grounds to meet friends from the camp.[3638] While there, Captain Nizeyimana was pointed out to Witness Zikamabahari as the camp's commander by Sergeant Claude Rukundo.[3639] The training in Mata lasted for about two months, "right up until the end of June".[3640] Witness Zikamabahari knew that Witness Twagirayezu lived on Cyafurwe hill and was a watchman at the home of an employee of the tea factory.[3641]

Defence Rejoinder Witness RWV17

1407. In April 1994, Witness RWV17, a Hutu, was employed by the Mata tea factory and lived about 500 to 600 metres from the grounds.[3642] Witness Twagirayezu was employed by the factory to guard her house at night.[3643] However, Witness Twagirayezu did not report for

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[3628] Witness Bizimenyera, T. 7 September 2011, pp. 45-46.
[3629] Witness Bizimenyera, T. 7 September 2011, p. 44.
[3630] Witness Bizimenyera, T. 7 September 2011, pp.44-45.
[3631] Witness Bizimenyera, T. 7 September 2011, p. 45; T. 8 September 2011, pp. 44-45.
[3632] Witness Zikamabahari, T. 20 September 2011, p. 68; Exhibit D79 (Witness Zikamabahari's Personal Information Sheet).
[3633] Witness Zikamabahari, T. 20 September 2011, pp. 68-69.
[3634] Witness Zikamabahari, T. 20 September 2011, pp. 69-70.
[3635] Witness Zikamabahari, T. 20 September 2011, pp. 70-71.
[3636] Witness Zikamabahari, T. 20 September 2011, p. 71.
[3637] Witness Zikamabahari, T. 20 September 2011, pp. 71-72.
[3638] Witness Zikamabahari, T. 20 September 2011, p. 71.
[3639] Witness Zikamabahari, T. 20 September 2011, pp. 71-72.
[3640] Witness Zikamabahari, T. 20 September 2011, p. 72.
[3641] Witness Zikamabahari, T. 20 September 2011, pp. 72-73, 75. Witness Zikamabahari's evidence suggests that Twagirayezu's home in Cyafurwe was some distance from the tea factory, measurable in kilometres. T. 20 September 2011, pp. 74-75.
[3642] Witness RWV17, T. 21 September 2011, pp. 5, 7; Exhibit D80 (Witness RWV11's Personal Information Sheet).
[3643] Witness RWV17, T. 21 September 2011, pp. 7-9, 19.

work during the time the factory was closed, between 7 April and mid-May.[3644] Around 18 May, Witness Twagirayezu returned to duty and told Witness RWV17 that he had been at his family's home in Cyafurwe.[3645]

1408. During the beginning of the third week of April 1994, Witness RWV17 saw Nizeyimana and 10 to 20 soldiers at the Mata tea factory, where they stayed for one night.[3646] About four days later, the witness heard a group of people near the factory and was told by her husband that Nizeyimana had returned to train ESO soldiers.[3647] The witness never saw Nizeyimana during that time but heard from her husband that he had been replaced in late May.[3648]

Deliberations

1409. The Defence submits that Nizeyimana was absent from Butare starting the morning of 26 April until 26 May 1994, as he was placed in charge of a military training centre at the Mata tea factory in Gikongoro prefecture. He only returned to the ESO once during that period, on 17 May, to exchange his vehicle, after which he returned to Mata. After 26 May, Nizeyimana was transferred to the Nyanza war front. While at Mata, Nizeyimana was "omnipresent" in the supervision and execution of an accelerated training program for a substantial number of recruits.[3649]

1410. The Prosecution concedes that Nizeyimana was eventually placed in charge of the Mata training facility in Gikongoro prefecture.[3650] However, it suggests that this transfer did not occur until sometime in late May 1994, rather than the end of April.[3651] It points to evidence led through several Prosecution witnesses suggesting that Nizeyimana maintained a regular presence at the ESO Camp and in Butare town.

1411. Thus, the critical question for the Chamber to decide is whether there is a reasonable possibility of Nizeyimana's departure from the ESO Camp and Butare town around 26 April 1994, whether he maintained a continuous presence at the Mata tea factory, and consequently whether he was outside Butare town from that point on. The Chamber shall address these considerations in turn.

(i) Timing of Nizeyimana's Arrival at the Mata Training Facility

1412. Defence Witnesses RWV11, ZML13, CKN10, Bunani, Ruzindana and Ufitimana – all ESO soldiers who testified that they were instructors at the Mata training facility – provided

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[3644] Witness RWV17, T. 21 September 2011, pp. 10-11, 13, 21, 26-29.
[3645] Witness RWV17, T. 21 September 2011, pp. 21-22, 24-25.
[3646] Witness RWV17, T. 21 September 2011, pp. 12, 14.
[3647] Witness RWV17, T. 21 September 2011, p. 16.
[3648] Witness RWV17, T. 21 September 2011, p. 16.
[3649] Defence Closing Brief, para. 58.
[3650] Prosecution Closing Brief, paras. 519-520. *See also* Witness AZD, T. 1 February 2011, p. 17 (Nizeyimana was sent to Mata as the officer in charge of training); Witness YAA, T. 1 February 2011, pp. 67-68 (Nizeyimana was at the training centre in Mata); Witness ZY, T. 26 January 2011, p. 70 (heard that Nizeyimana had gone to the Mata training centre); Witness ZAW, T. 26 January 2011, pp. 14-15 (Nizeyimana went to the training camp in Mata); Witness ZY, T. 26 January 2011, p. 70 (Nizeyimana was no longer assigned to the ESO and she heard that he was in Mata instead); Witness Twagirayezu, T. 7 September 2011, p. 32, T. 8 September 2011, p. 17 (saw Nizeyimana at the training centre in Mata); Witness Rwirahira, T. 7 September 2011, pp. 18-20, 27.
[3651] Prosecution Closing Brief, paras. 520-521.

relatively consistent first-hand evidence regarding the mission from the ESO to establish the training camp on or around 26 April 1994. Specifically, Witness RWV11 noted that he joined a convoy of approximately six buses of Kirundi-speaking recruits that departed the ESO around 11.00 a.m. on 26 April and arrived in Mata via Gikongoro around 1.00 p.m.[3652] Witness ZML13 testified that he thought that he returned to Mata on 26 or 27 April.[3653] Witness CKN10 returned to Mata on 26 April by bus, together with 500 to 550 Burundian recruits.[3654] Witness Ruzindana testified that he and other instructors travelled to Mata via Gikongoro in buses with recruits, arriving in Mata around 11.00 a.m. on 26 April.[3655] Witness Bunani, who thought they left on 25 April, joined other instructors and Burundian recruits by bus to Mata, arriving there around 10.00 a.m.[3656]

1413. Witness Ufitimana arrived at the Mata training camp on 30 April 1994, when training had already begun.[3657] However, he noted that other instructors had departed for Mata around 25 April, before he did.[3658] Defence Witnesses OUV03 and RWV09, stationed at the ESO, saw ESO personnel and recruits leave the ESO Camp for Mata on the morning of 26 April.[3659] Witness CKN18 testified that after enlisting in Nyakizu commune, he was transferred to Mata on 30 April along with 500 to 600 recruits.[3660] There, he met a large group from Burundi who had already started their training.[3661] In addition, Witnesses Ndikumana and Zikamabahari saw a group of buses arrive in Mata around 25 or 26 April.[3662] Witness Ndikumana saw soldiers wearing deep green camouflage uniforms on board.[3663] Witness Zikamabahari, conversant in Kirundi, spoke to the passengers who told him they had come to Mata to undergo military training.[3664]

1414. Of greater significance, Defence Witnesses ZML13, OUV03 and RWV09 identified Nizeyimana in the convoy travelling to Mata around 26 April 1994. Specifically, Witness ZLM13 testified that he travelled in a convoy with Nizeyimana, who had his own vehicle, Warrant Officer Ngalinde, and other non-commissioned officers.[3665] Witness OUV03 saw Nizeyimana leave for Mata on 26 April, together with Warrant Officer Ngalinde and other ESO instructors.[3666] Nizeyimana followed the convoy of recruits in his own UNAMIR

[3652] Witness RWV11, T. 2 June 2011, pp. 29, 32-33.
[3653] Witness ZML13, T. 6 June 2011, pp. 49, 56-57, 59-61; T. 7 June 2011, pp. 71-72.
[3654] Witness CKN10, T. 26 May 2011, pp. 51-52.
[3655] Witness Ruzindana, T. 1 June 2011, pp. 35-36, 67-69.
[3656] Witness Bunani, T. 13 June 2011, p. 16.
[3657] Witness Ufitimana, T. 26 May 2011, pp. 11, 28-29.
[3658] Witness Ufitimana, T. 26 May 2011, pp. 11, 29.
[3659] Witness OUV03, T. 31 May 2011, pp. 27, 30-33, T. 1 June 2011, pp. 12-13; Witness RWV09, T. 8 June 2011, pp. 13, 16, 32, 45.
[3660] Witness CKN18, T. 15 June 2011, pp. 43-44, 54-58.
[3661] Witness CKN18, T. 15 June 2011, p. 44. However, Witness CKN18 did not mention having seen Nizeyimana on the convoy to Mata. Further evidence of the general campaign of recruitment taking place in Butare at the end of April 1994 is reflected in Exhibit D71 (Letter from Muvunyi to *bourgmestre*, 19 April 1994).
[3662] Witness Ndikumana,T. 23 May 2011, p. 65; Witness Zikamabahari, T. 20 September 2011, pp. 69-70.
[3663] Witness Ndikumana,T. 23 May 2011, pp. 65-66.
[3664] Witness Zikamabahari, T. 20 September 2011, pp. 69-71 (the recruits were accompanied by soldiers who were there to organise the training). Witness Zikamabahari did not refer to Nizeyimana as part of the convoy that arrived in Mata.
[3665] Witness ZML13, T. 6 June 2011, pp. 49, 56-57, 60-61.
[3666] Witness OUV03, T. 31 May 2011, pp. 27, 30-32; T. 1 June 2011, p. 12.

vehicle.[3667] Witness RWV09 testified about a convoy that left the ESO on or about 26 April around 9.00 a.m., including Nizeyimana, Second Lieutenant Gatsinzi, ESO instructors and Burundian recruits. The convoy included a UNAMIR vehicle, eight buses and a Toyota Stout pickup truck.[3668]

1415. Similarly, Rejoinder Witness Ndikumana saw Nizeyimana arrive with a large convoy of eight buses, three or four days after 21 April 1994.[3669] Further circumstantial support was provided by Witness CKN22 who saw Nizeyimana in the company of 80 other soldiers at the training site on Wednesday, 27 April.[3670] Nizeyimana's presence in the convoy that departed around 26 April is conspicuously absent from the evidence provided by Witnesses Bunani, CKN10, RWV11 and Ruzindana, who all took part in the mission to Mata that departed around 26 April.

1416. At the outset, the Chamber has elsewhere discussed in detail its overwhelming credibility concerns as it relates to Witnesses RWV11, ZML13, CKN10, Bunani and Ruzindana, as well as civilian Witnesses Ndikumana and CKN22. Having viewed their testimonies first-hand, the Chamber has considerable suspicions that their evidence was tailored to positively impact these proceedings against Nizeyimana.[3671] These concerns apply with equal force as it relates to the timing of Nizeyimana's arrival at the Mata training facility.

1417. Furthermore, even if the Chamber were to give *prima facie* credibility to the accounts of these witnesses, the recollection of their date of departure is of varying quality and is not dispositive. Specifically, Witnesses RWV11 and Bunani simply remembered the date without providing any point of reference, while Witness CKN10 made reference to a "campaign notebook" in which he had recorded some events of 1994.[3672] Witness Ruzindana estimated the date of departure to have been 26 April, based on an unconvincing recollection of the reconnaissance mission's date as his point of reference.[3673] Witness ZML13 noted that the

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[3667] Witness OUV03, T. 31 May 2011, p. 30.
[3668] Witness RWV09, T. 8 June 2011, pp. 13, 16, 20, 32, 45.
[3669] Witness Ndikumana, T. 23 May 2011, pp. 65-66.
[3670] Witness CKN22, T. 15 June 2011, pp. 71-73, 78-79.
[3671] *See* II.13.2.
[3672] Witness RWV11, T. 2 June 2011, pp. 65-66 ("Q. Now – so those are the five dates that you've told us about that you mentioned earlier, and just now you've added another date that you say you can never forget, which is the 26th. Now, can you tell us what it was you did between the time that you say you got back to the ESO camp from the reconnaissance mission and when you left again. A. I continued occupying the defensive position at the southern entrance from the 22nd of April when we returned to the camp up to the morning of the 26th of April. Q. Now, at the defensive position that you occupied near that entrance to the camp, are you able to tell us anything that happened on that first day back at your position? A. I did not see anything unusual. Q. The next day, anything unusual? A. Nothing unusual up to the 26th when we, once again, left the camp. But before the 26th I – we – I did not see anything unusual."); Witness Bunani, T. 13 June 2011, pp. 15-16; Witness CKN10, T. 30 May 2011, pp. 2-3. Witness CKN10 did not provide this notebook to the Chamber or the Defence counsel.
[3673] Witness Ruzindana testified that it was three or four days after the return from the reconnaissance mission that he travelled back to Mata. He remembered the date for the reconnaissance mission by using President Sindikubwabo's speech as a reference. Nevertheless, the witness conceded that 17 years had since passed and that he could not be completely certain about the amount of days spent at the ESO after the reconnaissance mission and before the second trip to Mata. Witness Ruzindana, T. 1 June 2011, pp. 40-43. *See also* II.13.2.

training mission commenced between 25 and 31 April, using his payday at the end of the month as a reference point.[3674]

1418. Similarly, the Chamber has elsewhere discussed in detail the context in which Witnesses Ndikumana and CKN22 testified and did not find their testimonies credible.[3675] The same analysis applies here. Indeed, as noted elsewhere Witness Ndikumana could only estimate the dates he saw the soldiers and Nizeyimana.[3676] By contrast, Witness CKN22 provided a detailed explanation as to how he could recall the timing with precision. Specifically, his work required that he travel to the Mata tea factory every Wednesday.[3677] On Wednesday 27 April, he happened to pass by Mata around 9.00 a.m. where he saw Nizeyimana in the company of other soldiers.[3678] According to Witness CKN22, Nizeyimana had time to converse with him for 10 minutes on this day, during which Nizeyimana spoke about the training camp.[3679] Witness CKN22 then met Nizeyimana *again* the following Wednesday when he had further communications with Nizeyimana at his guesthouse.[3680]

1419. As noted elsewhere, the Chamber does not consider Witness OUV03's evidence reliable, particularly as it relates to the recollection of dates.[3681] Moreover, despite being able to recall with precision every move of Nizeyimana, Witness OUV03 was unable to remember dates specific to others, such as Lieutenant Gakwerere, because he had "a lot to do" during that time.[3682]

1420. More importantly, Witness OUV03 recalled having seen the convoy, including Nizeyimana, leave from a distance.[3683] The Chamber does not consider that Witness OUV03 would have been able to discern with clarity the members of the convoy from a distance and would therefore not have been in a position to ascertain whether Nizeyimana formed part of this convoy or whether he was seated in the UNAMIR vehicle. Indeed, Witness OUV03 specified that he saw the last three buses from a distance and did not provide a basis for his

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[3674] Witness ZML13, T. 7 June 2011, p. 72 ("Q. Because we were advised that you returned to Mata towards late April. Yesterday you told us that it was towards the end of April, and then you gave us the dates of 23-27 April. And now you're telling us it's the 26th or the 27th of April, aren't you? A. Yes, I said it was towards the end of April, and when you asked me a precise date I told you I couldn't give you a precise date. And I said it was maybe the 26th, maybe the 27th. Q. You've said, Mr. Witness, it was towards the end of April, because you're not sure of exactly when you went back the second time. Right? A. No, that is not the reason. ... In Kinyarwanda, when you talk about the end of the month, you start around the 25th right to the end of the month ... Q. Okay. And the 30th of April, you've just confirmed, would also be within that range of the end of April. Correct? A. In Rwanda, the end of the month usually refers to the period between the 25th to the end of the month, the 31st. Q. Is it possible, Mr. Witness, that you returned to Mata in early May? A. No, I returned before the end of April. Q. I'm suggesting that there's not a lot of difference between the end of April and early May. You'd accept that? A. There is a difference. For those of us who were soldiers, it was at the end of the month that we received our salaries.").
[3675] *See* II.13.2.
[3676] *See* II.13.2.
[3677] Witness CKN22, T. 15 June 2011, pp. 66, 68; T. 16 June 2011, pp. 8-9, 17, 20-21.
[3678] *See* Witness CKN22, T. 15 June 2011, pp. 71-73, 78-79.
[3679] Witness CKN22, T. 15 June 2011, pp. 73, 79-80.
[3680] Witness CKN22, T. 15 June 2011, pp. 73, 80.
[3681] *See* II.13.2.
[3682] Witness OUV03, T. 31 May 2011, p. 36.
[3683] Witness OUV03, T. 31 May 2011, pp. 30, 32-33; T. 1 June 2011, pp. 12-13.

knowledge that Nizeyimana followed the convoy separately in a UNAMIR vehicle.[3684] The Chamber does not consider Witness OUV03's evidence dispositive.

1421. Like Witness OUV03, Witness RWV09 did not join the mission to Mata, but remembered that Nizeyimana departed "some days" after the reconnaissance mission, "around" 26 April 1994 with the first recruits.[3685] When pressed on the date, Witness RWV09 conceded that the convoy departed sometime in late April or early May but that he did "not know the exact date".[3686] His estimate was based on an approximate date of 18 April, when he learned that the general staff had requested the ESO to establish a training camp.[3687] Given Witness RWV09's admitted inability to accurately identify the dates, the Chamber considers his evidence of limited probative value in this regard.

1422. While the Chamber found Witness Ufitimana's evidence to be generally credible and coherent, the witness estimated that he left for Mata around 30 April 1994. Witness Ufitimana did not provide a basis for this estimate or another incident as a reference to recall the exact date upon which he left for Mata. Indeed, Witness Ufitimana conceded that he was not a computer and that he could not recall everything.[3688] Unlike the other Defence witnesses, Witness Ufitimana noted that he did not see Nizeyimana there regularly.[3689] In fact, he was introduced to the platoon he was to train when he arrived at the Mata training camp and subsequently undertook the task without further involvement by Nizeyimana or contact with him.[3690]

1423. Similarly, Witness CKN18, a recruit who was sent to the Mata training centre on or around 30 April 1994, was not asked about Nizeyimana's presence at the training centre upon arrival or whether Nizeyimana travelled with his convoy to Mata. Further bolstering Witness Ufitimana's account, Witness CKN18 noted that Nizeyimana was lodged elsewhere and recalled that the recruits, including himself, were not housed in the same area as the senior officers.[3691] Indeed, the recruits were not allowed to venture into the area where the senior officers stayed and would thus have had little knowledge as to the whereabouts of Nizeyimana during this time.[3692] Moreover, it does not appear from Witness CKN18's evidence that he knew Nizeyimana prior to arrival, and he would therefore not have been able to identify Nizeyimana when he first got to Mata. The Chamber considers Witness CKN18's evidence of limited probative value in this regard.

1424. By contrast, Prosecution Witnesses AZD, ZAW, ZY, BDE and ZT testified that Nizeyimana did not leave for Mata until mid to late May 1994.[3693] Similarly, Rebuttal

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[3684] Witness OUV03, T. 31 May 2011, p. 30.
[3685] Witness RWV09, T. 8 June 2011, pp. 13, 16, 32, 45.
[3686] Witness RWV09, T. 8 June 2011, p. 45.
[3687] Witness RWV09, T. 8 June 2011, pp. 13, 41-42, 45.
[3688] Witness Ufitimana, T. 26 May 2011, p. 28.
[3689] Witness Ufitimana, T. 26 May 2011, pp. 12-14.
[3690] Witness Ufitimana, T. 26 May 2011, p. 12.
[3691] Witness CKN18, T. 15 June 2011, pp. 45-47.
[3692] Witness CKN18, T. 15 June 2011, pp. 45, 47.
[3693] Witness AZD, T. 1 February 2011, p. 17 (knew that Nizeyimana was sent to Mata as the officer in charge of training around the end of May); Witness ZAW, T. 26 January 2011, p. 43 (could no longer recall the date upon which Nizeyimana went to Mata, but knew it was around the end of May); Witness ZY, T. 26 January 2011, p. 70 (Nizeyimana was "no longer assigned" to the ESO by mid to late May 1994); Witness ZT, T. 7 February 2011, p. 15 (thought that Nizeyimana was absent from the ESO towards the end of May or in early June);

Witness Twagirayezu stated that he first saw Nizeyimana in Mata around the end of May.[3694] With respect to Witnesses AZD, ZAW, ZY, BDE and ZT, the Chamber has considered general credibility challenges to their evidence and finds no reason to view their evidence with caution. However, their accounts concerning Nizeyimana's specific assignment to the Mata training facility are general in nature. Indeed, neither their positions within the ESO, nor specific evidence before this Chamber reflect involvement in the preparation or execution of training at the Mata tea factory.

1425. The Prosecution witnesses, in the Chamber's view, did not provide a sufficiently credible basis for their knowledge of when Nizeyimana was assigned to command the Mata training facility, giving no notable dates of reference which they used to estimate Nizeyimana's departure.[3695] Indeed, Prosecution Rebuttal Witness Rwirahira, the one Prosecution witness who appeared to hold a position within the ESO's command structure that would have enabled him to be apprised of Nizeyimana's assignments, corroborated Defence evidence that Nizeyimana was transferred towards the end of April 1994.[3696] The Chamber observes that Witness Rwirahira testified that Nizeyimana was supervising the training of recruits at the Ngoma Camp.[3697] However, the totality of the record unequivocally reflects that the training occurred at the Mata tea factory rather than the Ngoma Camp. Notwithstanding this discrepancy, the Chamber considers Witness Rwirahira's evidence credible insofar as it corroborates Defence evidence on Nizeyimana's departure in late April and subsequent transfer to the front around the end of May.

Witness BDE, T. 31 January 2011, pp. 56-57 (Nizeyimana was transferred to Mata for disciplinary reasons towards the end of May).

[3694] Prosecution Rebuttal Witness Twagirayezu, T. 7 September 2011, p. 32; T. 8 September 2011, pp. 17-18 (Nizeyimana first arrived in Mata around late May). The Chamber notes that the Defence has challenged Witness Twagirayezu's credibility on the grounds that he was not anywhere near the factory during the operative time period. Defence Closing Brief, paras. 137-142, 145. Indeed, Witness RWV17, whose house the witness guarded during the night, asserted that she did not see Witness Twagirayezu between 7 April and 18 May 1994 and that he did not report for work during this time. Defence Rejoinder Witness RWV17, T. 21 September 2011, pp. 10-11, 13, 21, 26-29. When Witness Twagirayezu did resume his work on 18 May, he told Witness RWV17 that he had been at his house in Cyafurwe. T. 21 September 2011, pp. 21-22, 24-25. Moreover, the Chamber observes that Witness Twagirayezu's description of the camp's operation tends to contradict that of the record. Accordingly, the Chamber considers Witness Twagirayezu's evidence of little probative value.

[3695] Specifically, Witness AZD did not provide any basis for his knowledge of Nizeyimana's departure and admitted that he did not know the exact dates of Nizeyimana's reassignment. Witness AZD, T. 1 February 2011, pp. 17-18. Witness ZAW could no longer recall the date upon which Nizeyimana left for Mata and provided no further reference indicating that he would have remembered that it occurred sometime towards the end of May. Witness ZAW, T. 26 January 2011, pp. 42-43. Witness ZY knew that Nizeyimana was no longer assigned to the ESO at some point, but was vague and general about the exact date of his departure. Moreover, she provided no reference indicating she would have recalled when Nizeyimana left. Indeed, she heard that he had been sent to Mata, but did not specify how she knew or who informed her of Nizeyimana's reassignment. Witness ZY, T. 26 January 2011, p. 70. Contrary to both Defence and Prosecution evidence, Witness BDE suggested that Nizeyimana was transferred to Mata for disciplinary purposes. Witness BDE, T. 31 January 2011, pp. 56-57. Like Witness ZY, Witness BDE provided no basis for her knowledge thereof or any reference by which she would have recalled that Nizeyimana left towards the end of May. Witness ZT thought that Nizeyimana left for Mata towards the end of May, but provided no basis for this assertion. Witness ZT, T. 7 February 2011, p. 15. Lastly, Rebuttal Witness Rwirahira heard that Nizeyimana had been sent to supervise the instruction at the Ngoma Camp towards the end of April. Witness Rwirahira, T. 7 September 2011, pp. 10-11, 18-207. While the date corroborates the evidence provided by the Defence, the record does not reflect Nizeyimana's presence at the Ngoma Camp during this period.

[3696] Witness Rwirahira, T. 7 September 2011, pp. 10-11.

[3697] Witness Rwirahira, T. 7 September 2011, pp. 10-11, 18-19.

1426. Furthermore, and unlike the alibi evidence relating to the purported 21 to 22 April 1994 reconnaissance mission, the Chamber is satisfied that the alibi evidence, when viewed collectively, creates the reasonable possibility that Nizeyimana would arrive at the Mata tea factory alongside the significant number of recruits in late April. It seems logical to this Chamber that the person charged with running the training centre would be present at its inception to ensure its organisation and efficacy.[3698] Likewise, when reviewing the record as a whole, the Prosecution evidence has failed to eliminate the reasonable possibility of its truthfulness with direct evidence demonstrating to the contrary.

1427. Similarly, the Chamber finds that Defence evidence, when viewed in light of corroborative Prosecution evidence, is sufficient to establish that Nizeyimana was transferred to the Nyanza war front towards the end of May 1994. Specifically, Witnesses RWV11, ZML13 and Bunani all testified that they no longer saw Nizeyimana at the training centre because he had been transferred to the Nyanza front.[3699] Similarly, Witnesses Mutabazi and CKN18, stationed at the Nyanza operational sector, both saw Nizeyimana there sometime towards the end of May.[3700] While not specific about the location, Witness Ruzindana provided circumstantial evidence of Nizeyimana having been transferred from Mata elsewhere around late May.[3701] Providing further corroboration, Prosecution Witness Rwirahira handled messages indicating that Nizeyimana was transferred to the Nyanza front sometime in late May.[3702]

(ii) Nizeyimana's Uninterrupted Presence at Mata Training Facility

1428. Having established that Nizeyimana was reassigned to Mata towards the end of April and had left for the Nyanza front towards the end of May 1994, the Chamber must assess whether there is a reasonable possibility that Nizeyimana maintained a continuous and uninterrupted presence over the course of the month at the training centre in Mata, save for the one day he returned to the ESO to exchange a vehicle.

1429. Defence Witnesses ZML13, CKN10 and RWV11 provided unequivocal testimony of Nizeyimana's uninterrupted and continuous presence in Mata for the period between late

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[3698] Defence Witnesses CKN10, Ruzindana, Bunani, Ufitimana, RWV11 and ZML13 all identified Nizeyimana as their commander at Mata and provided detailed accounts of his supervisory and instructional responsibilities. Witness CKN10, T. 26 May 2011, p. 55 (Nizeyimana was the overall commander of all the recruits); Witness Ufitimana, T. 26 May 2011, p. 13 (Nizeyimana was leading the training centre); Witness Ruzindana, T. 1 June 2011, p. 37 (Nizeyimana, as commander of the training centre, supervised their activities and taught some courses); Witness RWV11, T. 2 June 2011, pp. 30-31 (Nizeyimana, as the person in charge of the training centre, managed the schedule and resolved training-related problems); Witness ZML13, T. 6 June 2011, p. 57 (Nizeyimana, as commander, was responsible for monitoring the staff and supervising all activities and training); Witness Bunani, T. 13 June 2011, pp. 17, 50 (Nizeyimana, as the commander of the training centre, coordinated training classes, ordered supplies and received daily reports from the instructors); Witness Ufitimana, T. 26 May 2011, p. 12 (Nizeyimana was the officer in charge of the training centre).

[3699] Witness RWV11, T. 2 June 2011, p. 30; Witness Bunani, T. 13 June 2011, pp. 18, 20; Witness ZML13, T. 6 June 2011, p. 58, T. 7 June 2011, pp. 73-74.

[3700] Witness Mutabazi, T. 12 May 2011, pp. 9-10, 12 (Nizeyimana joined the Nyanza operational sector sometime in late May); Witness CKN18, T. 15 June 2011, pp. 45, 59-60 (saw Nizeyimana at the front while fighting at Nyanza after 28 May 1994).

[3701] Witness Ruzindana, T. 1 June 2011, p. 38.

[3702] Witness Rwirahira, T. 7 September 2011, pp. 9-10.

April and late May 1994.[3703] According to these witnesses, Nizeyimana's responsibility as the commander of the camp would have made it difficult for him to return to the ESO, and his absence would not have gone unnoticed.[3704] Indeed, given his position as commander, the witnesses insisted that Nizeyimana could be seen at the camp from morning until evening, every single day. Specifically, Witnesses ZML13 stated that he saw Nizeyimana every day, all day, and even during the evenings.[3705] Witness RWV11 also saw Nizeyimana every day, in the mornings when the witness reported to him and in the evenings at the canteen.[3706] Witness CKN10 testified that he ate with Nizeyimana every evening and they would talk about their work and exchange ideas.[3707]

1430. In light of the Defence's concession that Nizeyimana left the camp to travel to Butare on 17 May 1994, the Chamber accords little weight to the witnesses' categorical testimonies that Nizeyimana did not leave the grounds at any time during this period. Notably, when confronted with Nizeyimana's undisputed departure, Witness ZML13 maintained instead that

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[3703] Witness ZML13, T. 6 June 2011, p. 60 ("JUDGE PARK: Therefore, Captain Nizeyimana had stayed there with you without a single absence. THE WITNESS: I personally know that Captain Nizeyimana never left Mata during that period."); Witness RWV11, T. 2 June 2011, p. 31 ("... Captain Nizeyimana had a very difficult task to accomplish, and he could not have been absent from that training. And had he been absent from that training, his absence would have been noticed because there was permanent need to be in touch with him."); Witness CKN10, T. 30 May 2011, pp. 28-29 ("Q. And isn't it the case that during the time you were involved in this training at Mata, that Captain Nizeyimana could have easily gone back and forth to Butare on any given day without you being aware of it? A. I am wondering what he could have gone to do in Butare because he had been replaced in his position there. Secondly, I'm telling you that he was a commander who was in charge of operations in Mata. Therefore, he could not have left Mata without informing us.").

[3704] Witness CKN10, T. 26 May 2011, p. 55, T. 30 May 2011, pp. 28-29; Witness RWV11, T. 2 June 2011, p. 31; Witness ZML13, T. 6 June 2011, pp. 57-58.

[3705] Witness ZML13, T. 6 June 2011, p. 58 ("Q. How many times every week would you say you saw Captain Nizeyimana? A. While we were in Mata, I would see him every day, from morning till evening. I would see him throughout the day, even at night. Q. Why would you see him at night? A. Sometimes there were night exercises which he checked or monitored. For example, there were crawling exercises carried out at night, and he was there to supervise. And sometimes we would go and take a drink at night, and he would join us. So we would see him."); T. 7 June 2011, pp. 72-73, 75.

[3706] Witness RWV11, T. 2 June 2011, pp. 59-60 ("A. That is not what I said. I did not refer to the period after the 26th of May. What I said was that as from the 26th of April -- between the 26th of April and the 26th of May, I saw Captain Nizeyimana every day for this entire period of training. Q. That's exactly what I asked you about, and I also asked you whether or not you are absolutely certain of that. A. I am the one telling you. I saw him every day. He was with us during this entire period of training. Q. There's no question in your mind. A. Every day we would report to him about the situation. We would report to him. I am an eyewitness. Q. So there's no question in your mind? A. We reported to him every day. I remember that I saw him every day. We could not give reports to somebody who was absent. Q. I heard you say that. But now I'm asking about your level of certainty with respect to the recollection. And with respect to that recollection, is there any question in your mind? A. No shadow of doubt whatsoever. This is something I know. I am 100 per cent certain that I saw him every day.").

[3707] Witness CKN10, T. 26 May 2011, p. 56 ("MR. PRESIDENT: And you were eating together in the cafe every day and every evening. THE WITNESS: Yes. MR. PRESIDENT: In the company of Captain Nizeyimana? THE WITNESS: We all ate at the same place."); T. 30 May 2011, p. 28 ("Q. And because you were so busy with your instructions regarding the recruits, you have no way of knowing whether Captain Nizeyimana himself was moving back and forth between Mata and Butare? A. Although I was busy, when a commander travels, then he would inform us of his trip and then in the evening he would take meals with us and we would discuss our plans of action regarding what we should be doing in the subsequent days. Q. And he would do that personally? A. Whenever I had a personal problem, I would contact him. In general, when an instructor had a problem, he would contact him. There were many instructors. There were many recruits. And, of course, he could not have been everywhere at the same time. But in the evenings, we would meet him and talk about our work and we would exchange ideas.").

he "personally [knew] that Captain Nizeyimana never left Mata" during that period.[3708] In view of these contradictions, the Chamber considers the sweeping and absolute nature of the witnesses' claims to be unbelievable.

1431. Further undermining Witnesses ZML13, RWV11 and CKN10's evidence, Witness Ufitimana, a soldier of similar rank and tenure, testified that it would not have been possible for him to dine with officers, given that his rank as a non-commissioned officer precluded any such interaction.[3709] This is corroborated by Witness CKN18, a recruit, who testified that non-commissioned officers ate separately from officers like Nizeyimana.[3710] Notably, Witness Ufitimana's interactions with Nizeyimana during the day were also limited as he did not have much to discuss with him given the witness's position as "a mere non-commissioned officer".[3711] He only saw Nizeyimana once or twice during his month at Mata.[3712] Indeed, it would appear highly unlikely, given Nizeyimana's rank, that he would have had daily, continuous contact with all the instructors while carrying out his duties as a commander. The Chamber considers that Witness Ufitimana's account fundamentally undermines the evidence provided by Witnesses ZML13, RWV11 and CKN10 as it relates to their frequent contact with Nizeyimana. The Chamber, having also viewed the demeanour of Witnesses ZML13, RWV11 and CKN10, finds them less than credible.

1432. Indeed, it is inconceivable that in a vast camp, with over 2,000 recruits undergoing training at various locations, three lower-ranking instructors – even combined – could testify accurately about the presence or absence of a single individual at every given moment over the course of one month. The instructors were leading an intense and uninterrupted training schedule and were individually responsible for upwards of 50 men.[3713] Furthermore, Nizeyimana's lodging at the guesthouse was around one kilometre from the factory buildings, making it impossible for the instructors to have seen him at all times. This further discredits the testimony that they would have known if Nizeyimana left and that they saw him at all times.[3714] Accordingly, the Chamber finds the accounts of Witnesses ZML13, RWV11 and

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[3708] Witness ZML13, T. 6 June 2011, p. 60; T. 7 June 2011, pp. 73-74.

[3709] Witness Ufitimana, T. 26 May 2011, p. 13. *Compare* T. 26 May 2011, pp. 5-7 (Witness Ufitimana started at the ESO in 1989 as part of the *nouvelle formule*), *with* Witness CKN10, T. 26 May 2011, p. 35 (started at the ESO in 1989 as part of the *nouvelle formule)*, *and* Witness ZML13, T. 6 June 2011, p. 44 (Witness ZML13 was a "pupil sergeant" at the ESO in 1994 after having entered with the 'first batch' in 1989), *and* Witness RWV11, T. 2 June 2011, pp. 8-9 (Witness RWV11 joined the ESO in 1988 and was an instructor teaching the Rules of Teaching and Development of the Infantry [REI]).

[3710] Witness CKN18, T. 15 June 2011, pp. 45, 47.

[3711] Witness Ufitimana, T. 26 May 2011, p. 12.

[3712] Witness Ufitimana, T. 26 May 2011, pp. 13-14.

[3713] Witness Ufitimana, T. 26 May 2011, p. 14 (some of the Burundian recruits rebelled, because the training was too intense); Witness CKN10, T. 26 May 2011, p. 53 (trained from 5.30 a.m. until 5.30 p.m., save for breakfast and lunch breaks); Witness Ruzindana, T. 1 June 2011, p. 37 (rose at 6.00 a.m. for morning exercises and finished their last lessons by 6.30 p.m.); Witness RWV11, T. 2 June 2011, p. 31 (began training at 5.00 a.m. every day and ended at 5.00 p.m., without leave on weekends); Witness ZML13, T. 6 June 2011, pp. 56, 58, T. 7 June 2011, pp. 72-73, 75 (there was training on Sundays); Witness Ndikumana, T. 23 May 2011, pp. 66, 68 (camp was established about five to eight kilometres from the tea factory; the witness observed the soldiers meet together in the morning and split off into groups during the afternoon); Witness Bunani, T. 13 June 2011, p. 17 (training classes included about 60 recruits; they would wake up early every morning and conclude at 5.00 p.m.).

[3714] Witness Bunani, T. 13 June 2011, p. 10; Witness ZML13, T. 7 June 2011, pp. 68-69; Witness CKN22, T. 15 June 2011, pp. 72-73, 80. While the Defence witnesses do not provide a consistent or precise description of the location of Nizeyimana's residence at Mata, the evidence clearly establishes that Nizeyimana lived separately

CKN10 about Nizeyimana's continuous and uninterrupted presence at the Mata training facility lacking any credibility.

1433. Contrary to Witnesses CKN10, RWV11 and ZML13's testimonies, the other ESO instructors, Witnesses Bunani, Ufitimana and Ruzindana, were not as categorical about their daily sighting of Nizeyimana. Indeed, Witness Bunani could not recall how many times Nizeyimana left the camp, but remembered one instance when Nizeyimana returned to Butare some time in late May 1994 to exchange his vehicle.[3715] Witness Ufitimana, in fact, only saw Nizeyimana twice over the course of the month.[3716] Witness Ruzindana was not asked about Nizeyimana's absence from the camp.

1434. In support of Witnesses CKN10, RWV11 and ZML13's evidence that Nizeyimana never left Mata for the ESO, Witnesses OUV03 and RWV09, who were both at the ESO Camp during the operative time period, generally testified that they did not see Nizeyimana return to the ESO once he left for Mata. Specifically, Witness OUV03 did not see Nizeyimana at the ESO after he left on 26 April 1994.[3717] Similarly, Witness RWV09 noted that he only saw Nizeyimana at the ESO once after late April, when he returned to exchange his vehicle.[3718]

1435. At the outset, the Chamber notes that it has elsewhere expressed doubts about the credibility of Witness OUV03.[3719] It has the same reservations as it relates to his testimony concerning this second alibi period. Moreover, the Chamber notes that Witness OUV03 estimated there to have been approximately 300 soldiers defending the ESO at the time.[3720] Given the size and amount of soldiers passing through the camp on any given day, the Chamber does not consider that Witness OUV03's account that he did not see Nizeyimana suggests the reasonable that Nizeyimana did not return to the ESO Camp or Butare generally.

1436. The Chamber further notes that despite Witness OUV03's insistence that he was informed of Nizeyimana's whereabouts at all times, he did not know of Nizeyimana's return to the ESO to exchange his vehicle sometime in May, as confirmed by Witness RWV09, who worked in the same department, and Witness Bunani, who noted Nizeyimana's absence from Mata.[3721] These contradictions raise additional concerns that Witness OUV03 tailored his evidence to support Nizeyimana's alibi rather than testify to facts he was certain of.

1437. Similarly, Witness RWV09's account that he did not see Nizeyimana at the ESO Camp during the operative time period, save for one unspecified day, does not raise the reasonable possibility that Nizeyimana did not return to the ESO Camp or Butare town generally during that period. Indeed, Witness RWV09 did not work in the same office as Nizeyimana and did not report to him.[3722] Notably, Witness RWV09 admitted to spending

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from the instructors. *See* Witness Ufitimana, T. 26 May 2011, p. 13; Witness CKN18, T. 15 June 2011, pp. 45-47; Witness Ndikumana, T. 23 May 2011, pp. 66, 68.

[3715] Witness Bunani, T. 13 June 2011, p. 20. Witness Bunani did not provide any detail about the length of Nizeyimana's absence or the type of vehicle in which Nizeyimana left and returned.

[3716] Witness Ufitimana, T. 26 May 2011, pp. 13-14.

[3717] Witness OUV03, T. 31 May 2011, pp. 30-31, 33.

[3718] Witness RWV09, T. 8 June 2011, pp. 16, 19.

[3719] *See* II.13.2.

[3720] *See* Witness OUV03, T. 31 May 2011, p. 9.

[3721] Witness RWV09, T. 8 June 2011, p. 19; Witness Bunani, T. 13 June 2011, p. 20.

[3722] Witness RWV09, T. 8 June 2011, pp. 8, 26-28.

most of his time in his office, thus calling into question his ability to monitor Nizeyimana's whereabouts throughout the day.[3723] His evidence is of limited probative value.

1438. Defence Witness BEJ01, a close friend and neighbour of Nizeyimana, testified that he saw Nizeyimana once in Butare during the operative period. Specifically, he saw Nizeyimana sometime between 20 and 27 May 1994, during which time he spoke with Nizeyimana for approximately 15 minutes.[3724] The Chamber notes that Witness BEJ01 does not claim to have been present at Nizeyimana's residence at all times, every single day, between late April and late May. While Nizeyimana's wife told Witness BEJ01 that Nizeyimana had been transferred and no longer lived at the residence, the witness did not know where Nizeyimana had been sent and the Chamber does not believe that he would have been in a position to know Nizeyimana's comings and goings in Butare at all times over the course of the month.[3725] Moreover, the fact that Nizeyimana worked outside of Butare is not inconsistent with him returning on some occasions. Witness BEJ01's evidence is thus of limited probative value.

1439. Of greater significance, Witness BEJ01 told the Belgian authorities in 1995 that he in fact did see Nizeyimana between 7 April and 20 May 1994.[3726] When confronted with his prior statement, Witness BEJ01 asserted that translation issues had caused the inconsistency.[3727] He explained that in Kinyarwanda, when a person says they visited a person, it really means that he visited that person's family.[3728] When confronted with another excerpt from his prior statement, which reflects that Nizeyimana visited his house during this time period, the witness did not provide an explanation and conceded he was talking about Nizeyimana, rather than his family.[3729]

1440. Witness BEJ01's evidence before this Chamber is materially inconsistent with his prior statement in regards to Nizeyimana's absence from Butare and the interactions he had with Nizeyimana. The Chamber therefore does not consider Witness BEJ01's evidence as it relates to this time period credible. He, like many of the other alibi witnesses, appeared to tailor his evidence before this Chamber in a manner that was most favourable to the Accused. This suspicion is further bolstered by the witness's friendship with Nizeyimana and his evidence that the ESO captain provided him protection during the genocide.[3730]

1441. Contrary to the Defence evidence, Prosecution Witnesses AZD, YAA, ZAW, ZY, BDE and AJP[3731] and Rebuttal Witnesses Bizimenyera[3732] and Rwirahira all provided

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[3723] Witness RWV09, T. 8 June 2011, p. 27 ("Q. And you spent most of your time physically in this office? A. Yes.").
[3724] Witness BEJ01, T. 9 June 2011, pp. 12, 14-15, 20.
[3725] Witness BEJ01, T. 9 June 2011, pp. 11-12, 37.
[3726] Witness BEJ01, T. 9 June 2011, pp. 21-23.
[3727] Witness BEJ01, T. 9 June 2011, pp. 22-23.
[3728] Witness BEJ01, T. 9 June 2011, pp. 22-23.
[3729] Witness BEJ01, T. 9 June 2011, pp. 23-24.
[3730] *See* Witness BEJ01, T. 9 June 2007, pp. 19 (describing friendship with Nizeyimana), 26-27 (discussing security provided by relationship with Nizeyimana).
[3731] Witness AJP was sure that Nizeyimana did not leave the house for a month as of 26 April 1994, since he saw Nizeyimana at his residence during this time. Witness AJP, T. 15 February 2011, p. 28. Additionally, Witness AJP testified that he travelled with Nizeyimana to Mata one evening, possibly in May, and returned the same evening. T. 15 February 2011, p. 27. The Chamber notes that it has elsewhere considered in detail the context in which Witness AJP testified and determined that his evidence is to be viewed with caution. *See* II.6.1. Notwithstanding, Witness AJP's frequent proximity to Nizeyimana finds broad support in the record. *See* II.6.1.

evidence suggesting that Nizeyimana regularly returned to Butare town and the ESO Camp. Indeed, Witnesses AZD, YAA, ZAW, BDE and ZY, all ESO soldiers, saw Nizeyimana return to the ESO approximately two or three times a week.[3733] The Chamber notes that it has elsewhere discussed in detail the context in which Witnesses AZD, ZAW, BDE and ZY provided evidence and found them generally credible.[3734] Despite the general nature of their evidence, and the absence of specific details about their sightings of Nizeyimana during this period, the witnesses generally corroborate each other.[3735]

1442. The Prosecution witnesses are corroborated by Rebuttal Witnesses Rwirahira, who testified that he shared an office building with Nizeyimana at the ESO Camp and saw him there frequently during the relevant period.[3736] The Chamber, which considers Witness Rwirahira's evidence generally credible, observes that Witness Rwirahira worked with Defence Witness OUV03 in the same department.[3737] While the Chamber finds Witness OUV03's evidence probative as it relates to Nizeyimana's whereabouts, it has noted elsewhere that it does not find his evidence credible.[3738] Despite working for the same department, Witness OUV03's evidence is materially different from Witness Rwirahira's and contradicts Defence evidence suggesting that Nizeyimana returned on one occasion to exchange his car. The Chamber does not consider Witness OUV03's evidence dispositive.

Nevertheless, Witness AJP's evidence in regards to Nizeyimana's continued presence in Butare from late April to late May 1994 finds no support in either Defence or Prosecution evidence. Indeed, the Prosecution witnesses, while having seen Nizeyimana at the ESO or in Butare on occasions, all confirmed that he had been reassigned to Mata at some point and was therefore no longer based in Butare. The Chamber therefore accords little weight to Witness AJP's evidence in this regard.

[3732] The Chamber observes that Rebuttal Witness Bizimenyera was confined to a room during the operative time period and admitted that she did not in fact see Nizeyimana, but instead relied on his voice to ascertain whether he was at the house. Witness Bizimenyera, T. 7 September 2011, p. 45; T. 8 September 2011, p. 43. This raises questions about her ability to accurately identify Nizeyimana as having been at the house during the relevant time period.

[3733] Witness AZD, T. 1 February 2011, p. 18 (Nizeyimana would still return to Butare often); Witness YAA, T. 1 February 2011, p. 68 (saw Nizeyimana approximately three times a week); Witness ZAW, T. 26 January 2011, pp. 14-15 (Nizeyimana would always come back to the ESO at least once or twice a week); Witness BDE, T. 31 January 2011, pp. 26, 40-41, 57 (saw Nizeyimana with Chief Warrant Officer Ntibiramira sometime in late May); Witness ZY, T. 26 January 2011, p. 70 (Nizeyimana came by the ESO about two to three times a week during that time).

[3734] *See* II.4.1; II.7.3.

[3735] The Chamber notes that the Defence confronted Witness YAA with his testimony in the *Muvunyi* case, during which he stated that Nizeyimana was no longer at the ESO when the witness returned to Butare from Kigali in May 1994, because he was training recruits in Mata. Witness YAA, T. 2 February 2011, pp. 2-3; Exhibit D8 (Excerpt of Witness YAA's testimony in *Muvunyi* trial). Witness YAA explained that he tried to inform the Chamber that Nizeyimana was no longer at the ESO on a "permanent basis". T. 2 February 2011, pp. 2-3. When confronted with his testimony that Nizeyimana would return to get fuel and other materials at the ESO, the witness clarified that Nizeyimana did not have to come to the ESO himself and that instead his officers would come to Butare to collect fuel and other necessities. T. 2 February 2011, pp. 4-5, 22-25. Instead, Nizeyimana came on his own for "his purposes". T. 2 February 2011, p. 28. The Chamber is not convinced by Witness YAA's explanations and considers his testimony of limited probative value in this regard.

[3736] Witness Rwirahira, T. 7 September 2011, p. 9.

[3737] Witness Rwirahira, T. 7 September 2011, p. 7. The Defence challenges whether Witness Rwirahira was ever at the ESO, given the limited knowledge he had of specific soldiers working there and the dates of events he was questioned about. Defence Closing Brief, para. 147. The Chamber observes that the Defence presented no concrete evidence of Witness Rwirahira having lied about his position at the ESO and consequently finds no basis for this assertion. The mere fact that the witness could not recall dates, people or events does not show that he was in fact never at the ESO.

[3738] *See* II.13.2.

1443. Indeed, the Prosecution evidence that Nizeyimana would return to Butare town and the ESO Camp appears highly convincing when considering Nizeyimana's circumstances and the relative ease with which he could travel between the two locations. At the outset, Nizeyimana was married and his wife was pregnant and living at their house in Butare during the period when he was stationed at Mata.[3739] Even when considering that Nizeyimana's wife was a soldier herself, the Chamber finds it inconceivable that he would never return to Butare town to check on her once assigned to Mata. Indeed, credible Prosecution evidence suggests that Nizeyimana would return to check on his family.[3740]

1444. Having reviewed the credibility concerns of Witnesses CKN10, ZLM13, RWV11, Bunani and Ruzindana in regards to the date upon which the convoy left for Mata, the Chamber turns to evaluate the general plausibility and reliability of what happened during the trip there. Contrary to the evidence provided in regards to the reconnaissance mission on 21 and 22 April 1994, Witnesses RWV11 and Bunani testified that the trip to Mata from the ESO, which followed the route through Gikongoro, was undertaken in less than two hours.[3741]

1445. Three days later, after 27 April 1994, Witness CKN18 came to Mata with 500-600 recruits and arrived in Mata in about two hours.[3742] Notably, Witness Ufitimana, who also arrived in Mata around 30 April, estimated that the journey from the ESO to Mata could be completed by car in 45 minutes to an hour.[3743] The witnesses provided consistent evidence to the extent that they were all travelling as part of a larger convoy, including buses with recruits. While the convoy passed roadblocks on the way to Mata during this trip, Witnesses RWV11 and Bunani noted that they did not spend much time at the barriers and were able to pass with little delay, because they were an "important convoy".[3744] Their evidence in regards to the timing of the trip to Mata towards the end of April is corroborated by other ESO witnesses who experienced little difficulties when traversing roadblocks manned by civilians.[3745]

[3739] Prosecution Witness AJP, T. 15 February 2011, pp. 28, 30, 35 (recalled Donata Mutezimana being pregnant when they fled); Defence Witness Nyiranzabonimana, T. 10 June 2011, p. 14 (did not deny that Nizeyimana had young children, but testified that she did not know them); Defence Witness Bunani, T. 13 June 2011, p. 22 (Nizeyimana had children from his marriage with Donata while in exile); Defence Witness Hitayezu, T. 9 June 2011, pp. 53-54 (Nizeyimana's wife and son lived in his home in Butare); Defence Rejoinder Witness KEN06, T. 20 September 2011, p. 6 (Nizeyimana's wife was caring for their child at home). Moreover, Defence evidence suggests that Nizeyimana's child was ill, requiring his attention during April 1994. *See* Defence Witness OUV03, T. 31 May 2011, pp. 24-25 (on 17 April 1994, Nizeyimana's wife, Donata Mutezimana, was absent from the ESO, and her S1 responsibilities were taken over by another soldier, because she was at home caring for her "very sick" child), 55 (on 16 and 17 April 1994, Nizeyimana reported to Witness OUV03 that he was taking his child to hospital); Defence Witness KEN06, T. 20 September 2011, pp. 17-19 (on 19 April 1994, Donata took her sick child to the hospital).

[3740] *See, e.g.*, Witness AZD, T. 1 February 2011, p. 45 (recalled that Nizeyimana returned to visit his family).

[3741] Witness RWV11, T. 2 June 2011, p. 31 ("[...] on the 26th of April from Butare to Mata, we spent maximum two hours."); *see also* Witness Bunani, T. 13 June 2011, p. 16 (estimated that they left the ESO around 10.00 a.m.); Witness Ruzindana, T. 1 June 2011, pp. 68-69 (their convoy arrived at Mata around 11.00 a.m.). Defence Witnesses CKN10, ZML13 and Ruzindana did not provide evidence on the time it took to travel from the ESO to Mata towards the end of April 1994.

[3742] Witness CKN18, T. 15 June 2011, pp. 43-44, 46, 58.

[3743] Witness Ufitimana, T. 26 May 2011, pp. 20-21.

[3744] Witness RWV11, T. 2 June 2011, p. 31; Witness Bunani, T. 13 June 2011, p. 16.

[3745] *See* II.4.1, where Witnesses XAG and YAL gave compelling evidence of ESO soldiers being able to pass a roadblock manned by armed civilians and extracting the witnesses and the Ruhutinyanya family from it.

1446. The Defence evidence reflects that it was possible to make the journey between Butare town and Mata with relative ease within approximately two hours. Indeed, the distance is consistent with the proposition that one would travel back and forth between the two locations within the same day, particularly a well-know and high-ranking military official.[3746] Notably, Witnesses Bunani and RWV09, who noted that Nizeyimana returned to the ESO on one occasion during May to exchange his vehicle, did not mention any difficulties encountered by Nizeyimana on the way to the ESO and back.

1447. Moreover, the Defence's evidence reflects that Nizeyimana had access to at least one vehicle while he was in Mata, which he used to return to Butare town on at least one occasion.[3747] Similarly, the Chamber notes the existence of a significant supply line connecting the ESO and the Mata training camp. Indeed, Witness CKN10 testified that the camp depended on the supply line from the ESO to bring resources for approximately 2,500 recruits.[3748] Witnesses ZML13 and RWV09 both testified to the use of vehicles between Butare and Mata to transport supplies.[3749] The Chamber finds that the training facility in Mata was neither isolated nor self-sufficient but retained significant links with the ESO Camp in Butare. The existence of an important supply line and the transportation means available to Nizeyimana reflects that he would have been able to move between the two locations independently and with relative ease. Given his significant position within ESO's hierarchy, it is unlikely that he would not have returned to camp notwithstanding his position as the Mata training facility's camp commander.

1448. Moreover, the frailties of the alibi evidence discussed above are exacerbated when viewed among highly convincing and credible evidence of Nizeyimana's direct participation in the killing of Beata Uwambaye around 5 May 1994.[3750] In the Chamber's view, the credible source of Nizeyimana's involvement in this crime, which is in direct conflict with the alibi evidence, eliminates the reasonable possibility that he remained in Mata and only departed from it once during the entire alibi period.

1449. Having assessed the credibility of the alibi evidence in isolation, the Chamber finds it either lacking credibility or insufficiently probative to raise the reasonable possibility of

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[3746] Defence Witness CKN22, T. 16 June 2011, p. 25 (stated that Nizeyimana was a significant military figure in Butare); Prosecution Witness BDE, T. 31 January 2011, p. 54 (Nizeyimana was influential at the ESO); Prosecution Witness Gahizi, T. 7 February 2011, pp. 23, 26, 38 ("At no day did anyone prohibit Captain Nizeyimana from moving about Butare.").

[3747] Witnesses RWV09, OUV03 and CKN18 all noted that Nizeyimana had a UNAMIR vehicle at his disposal during late April and late May 1994. Witness RWV09, T. 8 June 2011, pp. 19-20; Witness OUV03, T. 31 May 2011, pp. 29-30; Witness CKN18, T. 15 June 2011, p. 46. Their evidence is further corroborated by Witnesses ZML13 and Bunani who noted that Nizeyimana travelled in his own vehicle. Witness ZML13, T. 6 June 2011, pp. 49, 60-61; Witness Bunani, T. 13 June 2011, p. 20.

[3748] Witness CKN10, T. 30 May 2011, pp. 27 ("Q. The provisions and food to feed the recruits, where did that come from? A. All of those supplies came from ESO. However, food was prepared at Mata. Q. So, the cooking equipment and the eating utensils, the uniforms, the clothing, foot ware, all of that came from ESO? A. Yes, that's correct. Q. And you told us this was for approximately 2,500 recruits? A. Yes. Q. So, for example, the 2,500 recruits are having their meals provided by supplies from ESO in an amount of about 7,500 meals a day, right? A. Yes."), 28 (military vehicles and civilian vehicles serviced the supply route).

[3749] Witness ZML13, T. 7 June 2011, p. 75 (testified that vehicles were used to transport supplies to the camp from Butare); Witness RWV09, T. 8 June 2011, pp. 19-21, 27-28 (remembered a vehicle came back to Mata to collect supplies including food and fuel from the ESO). In fact, Witness RWV09 testified that the UNAMIR vehicle Nizeyimana drove to Mata was one of two vehicles used to transport food and fuel supplies between the ESO and Mata. T. 8 June 2011, p. 19.

[3750] *See* II.7.2.

Nizeyimana's continued and uninterrupted absence from the ESO Camp and Butare town from late April to late May 1994. As discussed above, the frailties of the alibi evidence are exacerbated when viewed among convincing and credible evidence of Nizeyimana's presence in Butare town during this time period, the means of transportation available to him and the relative ease with which he would have been able to return. Under the circumstances, the Chamber considers it inconceivable that a senior officer would have been completely absent from ESO Camp this entire time or that a husband would not visit his pregnant wife in the midst of an ongoing war.

CHAPTER III: LEGAL FINDINGS

1. INTRODUCTION

1450. The Prosecution has charged Nizeyimana under Articles 6 (1) and (3) of the Statute, with genocide (Count 1); extermination, murder and rape as crimes against humanity (Counts 2, 3 and 4, respectively); as well as murder and rape as serious violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II (Counts 5 and 6, respectively).

1451. In its factual findings, the Chamber has found that Nizeyimana participated in the killing of the Ruhutinyanya family (II.4.1), the attack on Cyahinda Parish (II.4.2), the killing of Rosalie Gicanda (II.6.2), the murders of Remy Rwekaza and Beata Uwambaye at the Gikongoro / Cyangugu and Kigali roads junction checkpoint and the shooting of Witness ZAV at the same location (II.7.1, II.7.2). It has also found Nizeyimana was involved in the execution of persons taken from the Matabaro and Nyirinkwaya residences (II.6.6). Likewise, the Chamber shall also address Nizeyimana's criminal responsibility as it pertains to the killing of Pierre Claver Karenzi at the Hotel Faucon roadblock (II.6.5).

1452. No factual allegations supporting Nizeyimana's liability for rape as a crime against humanity (Count 4) or rape as a serious violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II (Count 6) have been proven. The Chamber dismisses Counts 4 and 6.

2. CRIMINAL RESPONSIBILITY

2.1 Article 6 (1)

2.1.1 Joint Criminal Enterprise

(i) Elements

1453. Article 6 (1) of the Statute has been interpreted to contain three forms of joint criminal enterprise: basic (or category I), systemic (or category II) and extended (or category III).[3751] At the close of its case, the Prosecution indicated that it was pursuing the basic and extended forms of joint criminal enterprise.[3752]

1454. The required *actus reus* for each form of joint criminal enterprise comprises three elements.[3753] First, a plurality of persons is required.[3754] Second, the existence of a common purpose which amounts to or involves the commission of a crime provided for in the Statute is required. The common purpose need not be previously arranged or formulated; it may materialise extemporaneously.[3755] Third, the participation of the accused in the common purpose is required, which involves the perpetration of one of the crimes provided for in the Statute.[3756] This participation need not involve the commission of a specific crime under one of the provisions (for example, murder, extermination, torture, or rape), but may take the form of assistance in, or contribution to, the execution of the common purpose.[3757] While the contribution need not be necessary or substantial, it "should at least be a significant contribution to the crimes for which the accused is to be found responsible".[3758]

1455. The categories of joint criminal enterprise vary only with respect to the *mens rea* element.[3759] The basic form of joint criminal enterprise requires the intent to perpetrate a certain crime, this intent being shared by all co-perpetrators.[3760] Where the underlying crime requires a special intent, such as discriminatory intent, the accused, as a member of the joint criminal enterprise, must share the special intent.[3761]

1456. For the extended form of joint criminal enterprise, the accused may be found responsible provided that he participated in the common criminal purpose with the requisite intent and that, in the circumstances of the case, (i) it was foreseeable that such a crime might be perpetrated by one or more of the persons used by him (or by any other member of the

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[3751] *Kvočka et al.* Appeal Judgement, paras. 82-83; *Ntakirutimana* Appeal Judgement, paras. 463-465; *Vasiljević* Appeal Judgement, paras. 96-99; *Krnojelac* Appeal Judgement, para. 30.
[3752] *See* T. 7 December 2011, p. 13 (Prosecution Closing Arguments).
[3753] *Kvočka et al.* Appeal Judgement, para. 96; *Ntakirutimana* Appeal Judgement, para. 466; *Vasiljević* Appeal Judgement, para. 100; *Krnojelac* Appeal Judgement, para. 31.
[3754] *Brđanin* Appeal Judgement, paras. 364, 430.
[3755] *Brđanin* Appeal Judgement, paras. 364, 418.
[3756] *Brđanin* Appeal Judgement, para. 364.
[3757] *Brđanin* Appeal Judgement, para. 424; *Kvočka et al.* Appeal Judgement, para. 96, *citing Vasiljević* Appeal Judgement, para. 100; *Simba* Trial Judgement, para. 387.
[3758] *Brđanin* Appeal Judgement, para. 430.
[3759] *Simba* Appeal Judgement, para. 77; *Brđanin* Appeal Judgement, para. 365; *Duško Tadić* Appeal Judgement, paras. 227-228.
[3760] *Ntakirutimana* Appeal Judgement, para. 467; *Vasiljević* Appeal Judgement, para. 101; *Krnojelac* Appeal Judgement, para. 32.
[3761] *Brđanin* Appeal Judgement, para. 429; *Kvočka et al.* Appeal Judgement, paras. 109-110.

joint criminal enterprise) in order to carry out the *actus reus* of the crimes forming part of the common purpose; and (ii) the accused willingly took that risk.[3762]

(ii) Notice

1457. The mode and extent of an accused's participation in an alleged crime are material facts that must be clearly set forth in the indictment.[3763] In cases where the Prosecution intends to rely on a theory of joint criminal enterprise, the Prosecution must plead the purpose of the enterprise, the identity of its participants, the nature of the accused's participation in the enterprise and the period of the enterprise.[3764] The Indictment should also clearly indicate which form of joint criminal enterprise is being alleged.[3765] Failure to specifically plead joint criminal enterprise, including the supporting material facts and the category, constitutes a defect in the indictment.[3766]

1458. The Defence argues that the Prosecution failed to provide adequate notice of its intention to rely on joint criminal enterprise as a mode of liability. Specifically, the Defence submits that the Prosecution did not plead with sufficient particularity the participants of the joint criminal enterprise and the nature of Nizeyimana's contributions thereto.[3767] The Chamber recalls that it has already addressed the Defence objections as to sufficiency of notice pertaining to the members of the joint criminal enterprise.[3768] The Defence has not provided any justification supporting reconsideration of this decision.[3769]

1459. In response to the Defence arguments that the Indictment fails to sufficiently set forth Nizeyimana's contributions to the joint criminal enterprise, the Prosecution argues that his contributions are clearly set forth in the specifics delineating the particular criminal conduct in paragraphs 6 through 35 of the Indictment.[3770]

1460. The Chamber observes that paragraph 5 of the Indictment refers to the basic and extended forms of joint criminal enterprise through reference to the relevant *mens rea* for each. This paragraph further identifies that joint criminal enterprise's purpose is "the commission of genocide against the Tutsi ethnic group" as well as those "presumed to

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[3762] *Martić* Appeal Judgement, para. 168; *Brđanin* Appeal Judgement, para. 411.
[3763] *Kvočka et al.* Appeal Judgement, paras. 28, 42; *Krnojelac* Appeal Judgement, para. 138.
[3764] *Simba* Appeal Judgement, para. 63; *Simić* Appeal Judgement, para. 22; *Ntagerura et al.* Appeal Judgement, para. 24; *Krnojelac*, Decision on Form of Second Amended Indictment (TC), 11 May 2000, para. 16.
[3765] *Simba* Appeal Judgement, para. 63; *Simić* Appeal Judgement, para. 22; *Gacumbitsi* Appeal Judgement, para. 162, *referring to Kvocka et al.* Appeal Judgement, paras. 28, 42.
[3766] *Simić* Appeal Judgement, para. 22; *Gacumbitsi* Appeal Judgement, para. 162; *Kvočka et al.* Appeal Judgement, paras. 43-54.
[3767] Defence Closing Brief, paras. 587-593.
[3768] *See* Decision on Defence Preliminary Motion on Defects in the Indictment (TC), 16 December 2010, paras. 24-28.
[3769] A Trial Chamber may exercise its discretion to reconsider a decision when one of the following criteria has been met: "(i) a new fact has been discovered that was not known to the Chamber at the time it made its original Decision; (ii) there has been a material change in circumstances since it made its original Decision; or (iii) there is reason to believe that its original Decision was erroneous or constituted an abuse of power on the part of the Chamber, resulting in an injustice." The party seeking reconsideration bears the burden of demonstrating the existence of the enumerated circumstances. *See* Decision on Defence Motion to Reconsider the June 15 Decision on the Extremely Urgent Motion for Reconsideration of Trial Chamber 7 June 2011 Decision on Prosecutor's Motion for Leave to Present Evidence in Rebuttal to the Alibi Defence (TC), 1 July 2011, para. 13 (internal citations omitted).
[3770] T. 7 December 2011, p. 15 (Prosecution Closing Arguments).

support the Tutsi in Butare prefecture". This paragraph also lists participants by name as well as category, refers to Nizeyimana's participation, in part, through his "orders, authorization or instigation". Finally, this paragraph identifies that the joint criminal enterprise existed from "6 April 1994 through 17 July 1994".

1461. The Chamber further observes this chapeau paragraph incorporates by reference paragraphs 6 through 35 of the Indictment, which set forth the particulars upon which the Prosecution seeks to establish Nizeyimana's responsibility. Indeed, as reflected in a prior decision relating to the identity of participants, the chapeau paragraph alleging joint criminal enterprise was intended to be read in conjunction with the "additional information ... provided in the concise statement of facts" that followed.[3771]

1462. With respect to the proven criminal conduct, the Chamber is satisfied that the paragraphs setting forth the material facts related to each event provide further specificity as it relates to the purpose of the joint criminal enterprise,[3772] the participants[3773] and Nizeyimana's specific contribution as it relates to each event.[3774] Furthermore, these Indictment paragraphs all provide relatively targeted dates that fall within the broader period for which the joint criminal enterprise is alleged to have existed.[3775]

[3771] *See* Decision on Defence Preliminary Motion on Defects in the Indictment (TC), 16 December 2010, para. 27.

[3772] The purpose of the joint criminal enterprise for Indictment paragraph 13 was to kill Tutsi civilians who had taken refuge at Cyahinda Parish; the purposed listed in Indictment paragraph 19, was to target Tutsis civilians, who were members of the Ruhuntinyanya family; the purpose identified in Indictment paragraph 22, was to forcibly remove and kill members of the Matabaro and Nyirinkwaya families; the purposed listed in Indictment paragraph 23 was to forcibly remove and kill Rosalie Gicanda and other persons who were residing at her home; for Indictment paragraph 24, the purpose was to kill two civilians identified as Tutsis, namely Remy Rwekaza and Witness ZAV; for Indictment paragraph 25, to kill a civilian identified as Tutsi, namely Pierre Claver Karenzi was the stated purpose; for Indictment paragraph 29, to kill a civilian identified as Tutsi, namely Beata Uwambaye was the listed purpose.

[3773] With respect to the participants of the joint criminal enterprise, the Chamber observes that the operative paragraphs of the Indictment all identify the assailants as members of the joint criminal enterprise. Furthermore, Indictment paragraph 13 repeats categories of participants as well as identifies "Warrant Officer Paul Kanyeshyamba" and ESO soldiers, which are all listed in the chapeau paragraph as members of the joint criminal enterprise; Indictment paragraph 19 identifies ESO soldiers, including Second Lieutenant Bizimana and a number of subordinate FAR soldiers from his platoon and others, including Chief Warrant Officers Paul Kanyeshyamba and Francois Ntibiramira and First Sergeant Nyirimanzi, which are all expressly identified as members of the joint criminal enterprise; Indictment paragraph 22 identifies as ESO soldiers "who were members of the joint criminal enterprise"; Indictment paragraph 23 identifies Second Lieutenant Jean Pierre Bizimana, who is also identified in the chapeau paragraph, and a number of subordinate FAR soldiers, including Corporal Aloys Mazimpaka and others, and armed civilians including Dr. Kageruka; Indictment paragraph 24 identifies "unknown FAR soldiers who were members of the joint criminal enterprise"; Indictment paragraph 25 identifies "ESO soldiers who were members of the joint criminal enterprise"; Indictment paragraph 29 identifies the participants as "unknown FAR soldiers who were members of the joint criminal enterprise".

[3774] The manner in which Nizeyimana contributed to the joint criminal enterprise in Indictment paragraph 13 is identified as authorizing, ordering or instigating; Indictment paragraph 19 describes the contribution as ordering, authorizing or instructing; Indictment paragraph 22 indicates leading, instructing; Indictment paragraph 23 refers to ordering or authorizing; Indictment paragraphs 24 and 29 refer to ordering.

[3775] The time period reflected for Indictment, para. 13 is "from on or about 15 April 1994 until 20 April 1994"; for Indictment paragraph 19, the period is "between 16 April and 19 April 1994"; for Indictment paragraph 22, the period is "on or about 20 April 1994"; for Indictment paragraph 23, the period is "on or about 21 April 1994"; for Indictment paragraph 24, the time period is "on or about 21 April 1994"; for Indictment paragraph 25, the period is "on or about 21 April 1994"; for Indictment paragraph 29, the time period is "on or about 5 May 1994".

1463. Moreover, the Chamber observes that the Prosecution continued to give timely, clear and consistent notice of its intent to pursue joint criminal enterprise liability with respect to the proven criminal conduct through its Pre-Trial Brief.[3776] Similarly, the Prosecution reiterated its position in its opening statements.[3777] Based on the foregoing, the Chamber finds that the Prosecution has provided timely, clear and consistent notice with respect to its reliance on the basic and extended forms of joint criminal enterprise.

2.1.2 Ordering

(i) Elements

1464. "Ordering" requires that a person in a position of authority instruct another person to commit an offence. No formal superior-subordinate relationship between the accused and the perpetrator is required. It is sufficient that there is proof of some position of authority on the part of the accused that would compel another to commit a crime in following the accused's order. The authority creating the kind of relationship envisaged under Article 6 (1) of the Statute for ordering may be informal or of a purely temporary nature.[3778]

(ii) Notice

1465. Ordering is clearly pleaded in the Indictment's chapeau paragraph alleging Article 6 (1) liability. This mode is repeated in several of the paragraphs alleging particular crimes and Nizeyimana's course of conduct in relation to them.[3779] Much of the proven criminal conducted is also identified as examples of Nizeyimana's responsibility for "ordering" crimes in the Prosecution Pre-Trial Brief.[3780] This position was affirmed in the Prosecution's opening statement.[3781] Indeed, the Defence has not made any objections as it relates to the

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[3776] Indeed, the Prosecution Pre-Trial Brief refers to these killings in the context of the "Joint Criminal Enterprise in Butare". *See* Pre-Trial Brief, p. 17 *and* paras. 54-55. The Defence argues that the Pre-Trial Brief cannot be used to cure any defect in the Indictment as it was filed prior to the operative Indictment. See Defence Motion for Exclusion of Evidence, 29 April 2011, paras. 26-27. The Chamber recalls that the operative Indictment was filed pursuant to a Chamber order requesting the Prosecution to make several specific changes to a few discrete paragraphs of the Indictment. *See* Decision on Defence Preliminary Motion on Defects in the Indictment (TC), 16 December 2010, pp. 21-22. Other than these specific requested modifications, the operative Indictment as a whole remained largely identical in language to the previous version. Notwithstanding, the subsequent changes, references in the previously filed Pre-Trial Brief and its Annex of witness summaries remain clearly linked to the paragraphs of the operative Indictment. The Defence's challenges also do not relate to the modified text. In this context, the Chamber considers that the fact that the Pre-Trial Brief was filed shortly before the operative Indictment does not prevent it from being used to cure certain defects, if any. *Cf. Renzaho* Appeal Judgement, para. 122. Indeed, in *Nchamihigo*, the Appeals Chamber looked at a Pre-Trial Brief as well as an opening statement that were submitted prior to the operative Indictment to determine if a defect relating to the accused's role in the attack on Shangi parish had been cured. *See Nchamihigo* Appeal Judgement, paras. 13, 337-344, Annex B, p. 156.

[3777] *See* T. 17 January 2011, p. 16 (Prosecution Opening Statement) (referring to Pre-Trial Brief paragraph 55 as providing a more expanded treatment of its theory of joint criminal enterprise).

[3778] *Semanza* Appeal Judgement, paras. 361, 363.

[3779] *See, e.g.*, Indictment, paras. 13 ("ordered" and "orders"), 23 ("ordered" and "orders"), 24 ("ordered" and "orders"), 29 ("ordered" and "orders").

[3780] Pre-Trial Brief, para. 30. *Cf.* Pre-Trial Brief, paras. 75, 78-79 (describing Nizeyimana as having "ordered" the killings of Rwekaza and Uwambaye).

[3781] *See* T. 17 January 2011, p. 14 (Prosecution Opening Statement) (referring to Pre-Trial Brief, paras. 28-30 as it related to "ordering" liability).

pleading of this mode of liability. Accordingly, the Chamber considers that timely clear and consistent notice was given as it relates to this mode of liability for these crimes.

2.1.3 Aiding and Abetting

(i) Elements

1466. The *actus reus* of aiding and abetting is constituted by acts or omissions specifically aimed at assisting, encouraging, or lending moral support to the perpetration of a specific crime, and which have a substantial effect upon the perpetration of the crime.[3782] Whether a particular contribution qualifies as "substantial" is a "fact-based inquiry", and need not "serve as condition precedent for the commission of the crime."[3783] Tacit approval and encouragement, which substantially contributed to the crime, may also amount to aiding and abetting. In such cases, the accused's authority, combined with his presence at, or very near the crime scene, especially if considered together with prior conduct, may amount to an official sanction of the crime, thereby substantially contributing to it.[3784]

1467. The requisite mental element of aiding and abetting is knowledge that the acts performed assist the commission of the specific crime of the principal perpetrator.[3785] In cases of specific intent crimes, such as genocide, the aider and abetter must know of the principal perpetrator's specific intent.[3786]

(ii) Notice

1468. Where it is alleged that the accused planned, instigated, ordered, or aided and abetted in the planning, preparation or execution of the alleged crimes, the Prosecution is required to identify the "particular acts" or the "the particular course of conduct" on the part of the accused which forms the basis for the charges in question.[3787] The Prosecution should only plead those modes of responsibility on which it intends to rely.[3788]

1469. The Appeals Chamber has previously noted that it is the practice of the Prosecution to merely quote the provisions of Article 6 (1) of the Statute in the indictment, leaving it to the Trial Chamber to determine the appropriate form of participation. It has warned that "in order to avoid possible ambiguity, it is advisable to indicate in relation to each individual count precisely and expressly the particular nature of the responsibility alleged".[3789] Nonetheless, if an individual count of the indictment does not indicate precisely the form of responsibility

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[3782] *Ntawukulilyayo* Appeal Judgement, para. 214 citing *Karera* Appeal Judgement, para. 321, *Nahimana et al.* Appeal Judgement, para. 482.
[3783] *Ntawukulilyayo* Appeal Judgement, para. 214 citing *Kalimanzira* Appeal Judgement, para. 86, *Rukundo* Appeal Judgement, para. 52; *Blagojević and Jokić* Appeal Judgement, para. 134.
[3784] *Brđanin* Appeal Judgement, paras. 273, 277.
[3785] *Ntawukulilyayo* Appeal Judgement, para. 222; *Blagojević and Jokić* Appeal Judgement, para. 127; *Simić* Appeal Judgement, para. 86; *Vasiljević* Appeal Judgement, para. 102; *Blaškić* Appeal Judgement, para. 46; *Ntagerura et al.* Appeal Judgement, para. 370.
[3786] *Ntawukulilyayo* Appeal Judgement, para. 222; *Blagojević and Jokić* Appeal Judgement, para. 127; *Simić* Appeal Judgement, para. 86; *Krstić* Appeal Judgement, paras. 140-141. *See also Ntakirutimana* Appeal Judgement, paras. 500-501.
[3787] *Ntagerura et al.* Appeal Judgement, para. 25.
[3788] *Kvočka et al.* Appeal Judgement, para. 41.
[3789] *Semanza* Appeal Judgement, para. 259.

pleaded, an accused might have received clear and timely notice, for instance, in other paragraphs of the indictment. Thus, in considering whether an accused received clear and timely notice, the indictment must be considered as a whole.[3790]

1470. The Indictment's chapeau paragraph charging modes of liability pursuant to Article 6 (1) of the Statute contains reference to each mode expressly contained within this article, including aiding and abetting. This paragraph incorporates by reference all paragraphs setting forth the particular events that support these modes of liability.[3791]

1471. The Chamber observes that with respect to the Indictment paragraphs pleading the proven criminal conduct, the mode of "aiding and abetting" has not been expressly repeated. Indeed, some paragraphs use phrases such as "joint criminal enterprise",[3792] or terms such as "ordered",[3793] and "orders",[3794] as well as "instigated",[3795] or "instigation".[3796] Such language invokes particular modes of liability under Article 6 (1) of the Statute – namely joint criminal enterprise, ordering and or instigation. The practice of specifying certain modes of liability in the paragraphs pleading the material particulars supporting the alleged crimes, but not other modes upon which it also intends to rely, creates ambiguity as to whether the unspecified modes apply.[3797]

1472. Notwithstanding, the Chamber is of the view that the language supporting aiding and abetting is contained within the specific Indictment paragraphs notwithstanding any express reference to this mode. Indeed, many of the proven paragraphs include phrases such as "authorized",[3798] "authorization",[3799] or "instructions",[3800] which, when read in the context of the chapeau paragraph, provide clear indication that aiding and abetting is alleged as a mode of liability.

1473. In this regard, the Chamber is of the view that the circumstances are materially similar to that in the *Gacumbitsi* case, where the operative paragraph, when read in view of the chapeau paragraph pleading aiding and abetting liability, contained facts that, if proven, would necessarily support an aiding and abetting conviction.[3801] Conversely, the scenario is distinguishable from that in the *Ntawukulilyayo* case, where the operative paragraphs failed to set forth conduct that, if proven, could support a conviction for ordering.[3802]

1474. Moreover, the Pre-Trial Brief indicates the Prosecution's intent to prove that Nizeyimana is responsible for "aiding and abetting the commission of crimes charged in the

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[3790] *Semanza* Appeal Judgement, paras. 259, 358; *Ntakirutimana* Appeal Judgement, para. 473; *Aleksovski* Appeal Judgement, para. 171, fn. 319. *See also Gacumbitsi* Appeal Judgement, paras. 120-124.
[3791] Indictment, para. 5.
[3792] Indictment, paras. 13, 19, 22-25, 29.
[3793] Indictment, paras. 13, 23-25, 29.
[3794] Indictment, paras. 13(ii), 19, 29.
[3795] Indictment, para. 13.
[3796] Indictment, paras. 13(ii), 19.
[3797] *See Ntawukulilyayo* Appeal Judgement, para. 197.
[3798] Indictment, paras. 13, 23.
[3799] Indictment, para. 23.
[3800] Indictment, paras. 13(ii), 19, 22-23.
[3801] *See Gacumbitsi* Appeal Judgement, para. 123.
[3802] *See Ntawukulilyayo* Appeal Judgement, para. 198 (finding that the particulars set forth in paragraphs that described the proven criminal conduct failed to identify conduct that would have formed a basis for the "ordering" mode of liability).

Indictment", broadly applying this mode of liability to the Indictment.[3803] Similarly, in its opening statement, the Prosecution stated its intention to rely on aiding and abetting liability for "all the 6 (1) crimes that are pled in the Indictment".[3804] Indeed, the Defence has not made any objections as it relates to the pleading of this mode of liability. Accordingly, the Chamber considers that timely clear and consistent notice was given as it relates to this mode of liability for the proven criminal conduct.

2.2 Article 6 (3)

2.2.1 Law

1475. For an accused to incur criminal responsibility under Article 6 (3) of the Statute, in addition to establishing beyond reasonable doubt that his or her subordinate is criminally responsible, the following elements must be established beyond reasonable doubt: (1) the existence of a superior-subordinate relationship; (2) that the superior knew or had reason to know that his or her subordinate was about to commit a crime or had done so; and (3) that the superior failed to take necessary and reasonable measures to prevent or punish the commission of the crime by his or her subordinate.[3805]

1476. The threshold for a superior-subordinate relationship is established by showing that the accused had effective control over a subordinate at the time the offence was committed. Effective control requires that the accused had the material ability to prevent or punish criminal conduct. The superior must also have possessed power or authority over subordinates, either *de jure* or *de facto*. The superior-subordinate relationship entails that the accused, by virtue of his or her position, is senior to the perpetrator in a formal or informal hierarchy.[3806] This requirement is not satisfied by a showing of general influence on the part of the accused.[3807]

1477. A direct and individualised superior-subordinate relationship is not required for responsibility pursuant to Article 6 (3). Effective control may descend from the superior to the subordinate culpable of the crime through intermediary subordinates.[3808] The doctrine of command responsibility encompasses a civilian superior, but his or her effective control – whether *de jure* or *de facto* – should be similar to that of a military superior.[3809]

1478. Factors indicative of effective control include the accused's position, the procedure for appointment, the actual tasks performed, his or her capacity to issue orders, the nature of

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[3803] Pre-Trial Brief, para. 43.
[3804] *See* T. 17 January 2011, pp. 15-16 (Prosecution Opening Statement).
[3805] *Dragomir Milošević* Appeal Judgement, para. 280; *Orić* Appeal Judgement, para. 18; *Nahimana et al.* Appeal Judgement, para. 484; *Gacumbitsi* Appeal Judgement, para. 143.
[3806] *See Halilović* Appeal Judgement, para. 210 ("[T]he material ability to punish and its corresponding duty to punish can only amount to effective control over the perpetrators if they are premised on a pre-existing superior-subordinate relationship between the accused and the perpetrators. In this regard, the ability to exercise effective control in the sense of material power to prevent or punish necessitates a pre-existing relationship of subordinate, hierarchy or chain or command."), *citing Delalić et al.* Appeal Judgement, para. 303; *Blaškić* Appeal Judgement, para. 372; *Kajelijeli* Appeal Judgement, paras. 85-86; *Blagojević and Jokić* Appeal Judgement, paras. 301-303; *Gacumbitsi* Appeal Judgement, para. 143; *Nyiramasuhuko et al.* Trial Judgement, para. 5647.
[3807] *Ntagerura et al.* Trial Judgement, para. 628; *Semanza* Trial Judgement, para. 402; *Kajelijeli* Appeal Judgement, paras. 85-87; *Bagosora et al.* Trial Judgement, para. 2012.
[3808] *Orić* Appeal Judgement, para. 20; *Nahimana et al.* Appeal Judgement, para. 785.
[3809] *Bagilishema* Appeal Judgement, para. 52.

such orders, and whether any orders were followed.[3810] The Chamber recalls that although the authority to issue orders may be indicative of effective control over subordinates, it does not automatically establish such control.[3811] Effective control can only be determined by looking at the evidence in its entirety on a case-by-case basis.[3812]

2.2.2 Deliberations

1479. The Indictment alleges Nizeyimana's superior responsibility over "subordinate" Rwandan army soldiers, which are further specified as several named ESO soldiers, as well as a "number of other officers, soldiers and recruits from ESO". The Indictment also alleges Nizeyimana's superior responsibility over *Interahamwe*, "other militias and armed civilians".[3813]

1480. Within its Factual Findings, the Chamber has found that Nizeyimana cannot be held responsible as superior pursuant to Article 6 (3) of the Statute as it relates to certain proven criminal conduct.[3814]

1481. At the outset, Nizeyimana did not hold the highest military rank at the ESO Camp during the relevant period. Rather, Lieutenant Colonel Tharcisse Muvunyi was appointed Camp Commander on 7 April 1994, replacing Marcel Gatsinzi who had been promoted as the Rwandan army's Chief of Staff.[3815] There is evidence that Muvunyi's position as the ESO Camp Commander gave him broad *de jure* authority over the ESO Camp.[3816] Moreover, by assuming this post, there is also evidence that Muvunyi acceded to the position of the Butare and Gikongoro operational commander, imbuing him with broad *de jure* authority over regional military activities.[3817] It is undisputed that Muvunyi was Nizeyimana's *de jure* superior.

[3810] *Strugar* Appeal Judgement, para. 254; *Halilović* Appeal Judgement, para. 66; *Blaškić* Appeal Judgement, para. 69.

[3811] *Strugar* Appeal Judgement, para. 253.

[3812] *Strugar* Appeal Judgement, para. 254; *Halilović* Appeal Judgement, para. 66; *Nyiramasuhuko et al.* Trial Judgement, para. 5651.

[3813] *See* Indictment, paras. 36, 45, 49, 53, 57. *See also* Indictment, para. 2(D). The ESO soldiers expressly identified in the Indictment are "Sous-Lieutenants Jean Pierre Bizimana, Modeste Gatsinzi, Alphonse Ndayambaje, Tharcisse Ndendahimana and Ezechiel Gakwerere, Chief Warrant Officer Ntibiramira, Chief Warrant Officer Damien Ntamuhanga, Chief Warrant Officer Paul Kanyeshyamba, Sergeant Ezechier Rwaza, Sergeant Major Innocent Sibomana, [and] Corporal Fulgence Niyibizi."

[3814] *See* II.1; II.5.1; II.6.1; II.6.4; II.8.1-8.38.2; II.9.1-II.9.3; II.10; II.11.

[3815] Prosecution Witness BDE, T. 28 January 2011, p. 10; Defence Witness OUV03, T. 31 May 2011, pp. 2-3, 12-13; Defence Witness CKN10, T. 26 May 2011, pp. 36, 40; Witness RWV11, T. 2 June 2011, p. 9; Witness ZML13, T. 6 June 2011, p. 47; Witness Ruzindana, T. 1 June 2011, pp. 26-27; Prosecution Witness AZD, T. 31 January 2011, p. 66; Prosecution Witness BDE, T. 28 January 2011, p. 10; Prosecution Witness ZY, T. 27 January 2011, p. 67; Witness YAA, T. 2 February 2011, p. 18. *See also* Witness Dufitumukiza, T. 20 January 2011, p. 20 (Muvunyi was the ESO commander). *But see* Defence Witness Habyarimana, T. 25 May 2011, pp. 51-52 (Gatsinzi, although appointed as chief of staff, was not replaced as the ESO Camp Commander, which would require a "legal act"; conceded that Gatsinzi left ESO for Kigali and that Muvunyi was the next highest ranking officer).

[3816] Exhibit D47(F) (Rules of Organization of the Rwandan Army), p. 2, art. 7 ("*[Le Commandant de L'Ecole] a l'authorité sur tout le personnel mis à la disposition de l'Ecole pour son fonctionnement*").

[3817] Prosecution Witness AZD, T. 31 January 2011, pp. 65-66, T. 1 February 2011, pp. 24-25 (Muvunyi was the '*commandant de place*' in the area after 7 April 1994); Witness BDE, T. 28 January 2011, p. 11 (Muvunyi replaced Gatsinzi as the operational commander of Butare prefecture when Gatsinzi was promoted to chief of staff); Defence Witness CKN10, T. 30 May 2011, p. 35 (the ESO commander was also commander of the

1482. Notwithstanding, the record reflects that Nizeyimana held a leadership position within the ESO Camp from the early 1990s.[3818] By April 1994, Nizeyimana possessed the rank of captain. Contemporaneous documentation indicates that Muvunyi was the senior officer in the S2/S3 office prior to 7 April, although it further reflects that Nizeyimana was in this post as well.[3819] However, the Defence has conceded, and the evidence firmly reflects that by 7 April, Nizeyimana was the ESO Camp's S2 officer – charged with military intelligence – as well as the S3 officer – responsible for training and operations.[3820]

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operational sector of Butare prefecture); Defence Witness OUV03, T. 30 May 2011, p. 20 (ESO commander doubled as area commander). *See also* Exhibit D71 (Letter from Muvunyi to *bourgmestre*, 19 April 1994) (Muvunyi's request to *bourgmestres* is made under the title of Butare Gikongoro *Commandant de Place*) *and* Defence Witness CKN20, T. 15 June 2011, pp. 5-6 (verifying that, in his position with the Ngoma commune office, he saw this document).

[3818] Prosecution Witness BDE, T. 28 January 2011, pp. 9-10 (the witness joined the ESO in November 1990 and believed that Nizeyimana was already there, acting as the S3 officer); Prosecution Witness Gahizi, T. 7 February 2011, p. 23 (joined the ESO in 1991 and testified that Nizeyimana was the S2/S3 duty officer, although he had not yet attained the rank of captain); Prosecution Witness ZY, T. 26 January 2011, p. 51 (in August 1992, Nizeyimana was the S2/S3 officer); Prosecution Witness ZT, T. 7 February 2011, pp. 7-8 (Nizeyimana was the S2/S3 officer at the ESO in September 1992); Prosecution Witness ZAW, T. 26 January 2011, pp. 3, 41-42 (Nizeyimana was in the post of S2/S3 when the witness arrived in 1991, and held that position in April 1994 as well); Defence Witness OUV03, T. 1 June 2011, p. 17 ("Captain Nizeyimana" commenced working at the ESO in January or February 1990); Defence Witness Bunani T. 10 June 2011, pp. 46-47, T. 13 June 2011, pp. 21 (joined the ESO in 1988 as a member of the 24th batch and knew Nizeyimana, who was his instructor, before he started courting Nizeyimana's sister in 1989); Witness RWV11, T. 2 June 2011, pp. 8, 71 (Nizeyimana was a second lieutenant and trained the witness when he arrived at the ESO; the witness arrived at the ESO in 1988). *See also* Defence Witness MAL01, T. 16 May 2011, pp. 62, 71, 79-80 (Witness MAL01, a nurse moved to Butare in 1990 and was introduced to Nizeyimana by her husband when she arrived; Nizeyimana was a captain at the ESO at that point).

[3819] *See* Exhibit D48 (Situation of Report of Rwandan Army Officers, 1 March 1994), p. 4.

[3820] *See* Amended Pre Defence Brief, 20 April 2011, paras. 8(b), (c). *See also* Prosecution Witness AZD, T. 31 January 2011, pp. 65, 69, T. 1 February 2011, p. 7 (Nizeyimana was the S2/S3 officer, and was directly under Muvunyi in the chain of command), 65 (S2 officer was in charge primarily of intelligence gathering and the S3 was in charge of training and operations); Prosecution Witness ZAW, T. 26 January 2011, p. 3 (Nizeyimana was the S2/S3 officer at the ESO in April 1994); Witness ZY, T. 26 January 2011, p. 50 (Nizeyimana was the S2/S3 officer in charge of intelligence and training); Witness BDE, T. 28 January 2011, p. 10 (Nizeyimana was the S2/S3 officer in charge of intelligence and information as well as training); Prosecution Witness Gahizi, T. 7 February 2011, pp. 23 (after President Juvénal Habyarimana's death, Nizeyimana was the S2/S3 officer and had already been promoted to rank of captain), 39 (Nizeyimana was the S2/S3 officer); Prosecution Witness Dufitumukiza, T. 20 January 2011, pp. 20 (Nizeyimana was the S2/S3 officer in charge of intelligence and operations), 21 (S3 officer was in charge of military operations, identifying men to carry out operations; the S2 is in charge of military intelligence, which he submitted to his superiors); Defence Witness CKN10, T. 26 May 2011, pp. 36-37, 39 (testifying that around 6 and 7 April 1994, Nizeyimana was the S2/S3 officer), 56 (at the level of commander and general staff, the S3, in collaboration with the S2 was in charge of preparing and planning a military operation); Defence Witness RWV09, T. 8 June 2011, pp. 10 (around 15 April 1994, after Muvunyi's promotion to Camp Commander, Nizeyimana was the S2/S3 officer), 12 (Nizeyimana, as the S2/S3 officer, took orders from Muvunyi); Defence Witness ZML13, T. 6 June 2011, p. 47 (Nizeyimana was an "officer working at the S2/S3 office"); Defence Witness Ruzindana, T. 1 June 2011, p. 26 (Nizeyimana was the S2 officer, in charge of intelligence and the S3 officer, in charge of operations or training). *Cf.* Defence Witness OUV03, T. 31 May 2011, pp. 12-13 (while Nizeyimana was only the S3, he was responsible for intelligence in the field); Defence Witness Habyarimana, T. 25 May 2011, p. 13 (S2 was in charge of intelligence and S3 was in charge of operations). In this regard, the limited and general Defence evidence that Muvunyi continued to hold these posts after 7 April 1994, in light of the entire record, is unpersuasive. Defence Witness RWV11, T. 2 June 2011, pp. 9-10 (Nizeyimana worked in the S2/S3 office, although Muvunyi retained that position even after promoted to Camp Commander on 7 April 1994); Witness Ruzindana, T. 1 June 2011, p. 27 (although Muvunyi was promoted to acting camp commander, he remained head of S2/S3 services).

1483. In this context, the Defence has presented evidence reflecting the limited *de jure* responsibilities and command limitations as it relates to the functions of the S2/S3 officer.[3821] The Defence further points to evidence that, as a member of the camp's general staff, Nizeyimana's position as S2/S3 was that of an advisor.[3822] Defence evidence suggests that he had no troops under his direct authority, as company commanders reported directly to the camp commander.[3823] This also limited Nizeyimana's ability to impose punishments.[3824]

1484. However, contemporaneous documentation and evidence indicates that Nizeyimana, given his rank as an officer, had obligations to maintain discipline of lower ranking soldiers.[3825] It is undisputed that he was required to report criminal conduct of any subordinate officer.[3826] As discussed in greater detail below, credible Prosecution and Defence evidence reflects that Nizeyimana remained a formidable figure within the ESO's hierarchy, notwithstanding any *de jure* limitations to his authority.

1485. The Chamber concludes that Nizeyimana possessed some, although not absolute, *de jure* authority over soldiers of lower rank at the ESO. Notwithstanding, the critical question when evaluating whether an accused may be held liable as a superior relies on whether he or she exercised effective control over alleged subordinates. In this respect, the possession of *de jure* authority, without more, provides only some evidence of effective control.[3827] Likewise, the absence of *de jure* authority, while relevant, is not dispositive.[3828]

[3821] *See, e.g.*, Witness Habyarimana, T. 25 May 2011, pp. 12-13 (the S2 at the ESO was primarily tasked with mapping and cartography for training purposes as well as facilitating good relationships between the school and the "diverse environment" around it; the S3 was primarily tasked with designing classes); Witness RWV09, T. 8 June 2011, p. 32 (Nizeyimana's authority over soldiers was limited to transmitting orders received from the camp commander to these soldiers); Witness RWV11, T. 2 June 2011, p. 10 (there was no second in command at the ESO; Nizeyimana worked in Muvunyi's office).

[3822] *See, e.g.*, Witness Habyarimana, T. 25 May 2011, pp. 13-14 (officers of the general staff acted as advisors and did not have units underneath them); Witness OUV03, T. 31 May 2011, p. 15 (the S2/S3 could make proposals to the camp commander). *Cf.* Witness RWV09, T. 8 June 2011, p. 32 (Nizeyimana could only transmit orders from the camp commander).

[3823] Witness Ruzindana, T. 1 June 2011, p. 27 (the heads of platoons submit their reports directly to the camp commander); Witness Habyarimana, T. 25 May 2011, pp. 13-14 (the S-officers do not have soldiers under their command).

[3824] Prosecution Witness BDE, T. 31 January 2011, p. 47 (confirming that only a commander of a unit could punish a soldier). *See also* Exhibit D5E (Regulations on Discipline within the Rwandan Armed Forces), p. 16 (Article 60 states that power to punish is related to office not rank; the authority to proscribe punishments is held by, for example, operational commanders and unit commanders; there is no reference to members of the general staff holding such authority).

[3825] *See* Prosecution Witness AZD, T. 1 February 2011, p. 15 *and* Exhibit D5E (Regulations on Discipline within the Rwandan Armed Forces), p. 6 (Chapter 2 states that officers of high ranks have the right and duty to ensure that all soldiers with ranks lower than theirs respect general rules of discipline even when they are not directly under them).

[3826] Exhibit D5E (Regulations on Discipline within the Rwandan Armed Forces), p. 16 (Article 60 states that all soldiers have the duty to reveal offences committed by their subordinates); Defence Witness Habyarimana, T. 25 May 2011, pp. 41-42 (members of the general staff would be required to report a penal offence committed by an officer or soldier to the appropriate unit commander; if the offending soldier was command staff, the report would be sent to the ESO Camp Commander). *See also* Prosecution Witness BDE, T. 31 January 2011, p. 48 (Nizeyimana could refer a cadet to the ESO Camp Commander for punishment). *See also* Defence Closing Brief, para. 580.

[3827] *Orić* Appeal Judgement, paras. 91-92. *See also Bizimungu et al.* Trial Judgement, para. 1887; *Renzaho* Trial Judgement, para. 752.

[3828] *Orić* Appeal Judgement, para. 91 (*de jure* authority is not necessary to proving effective control); *Nahimana* Appeal Judgement, para. 625 (same).

1486. The record reflects that Nizeyimana, based on his rank, position and duration of service at the ESO, was a figure of considerable actual authority within the ESO's command structure. General, credible evidence demonstrates that Nizeyimana was respected and viewed as competent,[3829] was feared by lower ranking soldiers at the ESO,[3830] and was an imposing figure within the ESO command structure.[3831] Within an operational framework, Nizeyimana had the authority to issues orders to soldiers.[3832] Indeed, while general evidence indicates that there was no official second in command at the ESO,[3833] Prosecution and Defence evidence indicates that Nizeyimana was viewed as exercising this type of authority.[3834]

1487. Furthermore, Nizeyimana had positive relationships with several lower ranking, yet influential officers within the ESO Camp, including Second Lieutenant Jean Pierre Bizimana.[3835] The Chamber finds this evidence, particularly in light of Muvunyi's limited

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[3829] *See* Defence Witness ZML07, T. 18 May 2011, pp. 43-44 (denied that lower-ranking soldiers did not respect Nizeyimana and that Nizeyimana was ineffective); Defence Witness CKN10, T. 30 May 2011, p. 37 (the witness could not recall a case when a lower-ranking officer did not have respect for Nizeyimana or that Nizeyimana had the reputation of being an ineffective officer); Defence Witness Ruzindana, T. 1 June 2011, p. 63 (Nizeyimana had the soldiers' respect and loyalty).

[3830] *See* Prosecution Witness BDE, T. 28 January 2011, p. 11, T. 31 January 2011, p. 54 (everybody was afraid of Nizeyimana); Defence Witness ZML13, T. 6 June 2011, p. 47 (soldiers were afraid of Nizeyimana); Defence Witness CKN10, T. 30 May 2011, p. 37 (the ESO cadets feared Nizeyimana after Gatsinzi left).

[3831] Prosecution Witness AZD, T. 1 February 2011, p. 11 (Nizeyimana had significant authority and thus "an indisputable influence"); Prosecution Witness BDE, T. 31 January 2011, p. 54 (Nizeyimana was very influential); Prosecution Witness YAL, T. 25 January 2011, p. 52 (Nizeyimana was an influential person and everyone talked about him); Defence Witness CKN10, T. 30 May 2011, p. 37 (had no contact with Nizeyimana given his subordinate rank and Nizeyimana was the second most feared officer); Defence Witness Ufitimana, T. 26 May 2011, p. 12 (had limited contact with Nizeyimana, given the witness's subordinate ranking). Similarly, civilians also commented on his rank within the ESO. *See* Prosecution Witness AZM, T. 20 January 2011, p. 68 (there were few captains in Butare, like Nizeymana, and people said he was in charge of intelligence).

[3832] Prosecution Witness BDE, T. 31 January 2011, p. 50 (Nizeyimana had "the power" to issues orders to all three batches and could command them); Prosecution Witness Gahizi, T. 8 February 2011, p. 27 (Nizeyimana had powers over a group of soldiers); Prosecution Witness AZD, T. 1 February 2011, pp. 9-10 (Nizeyimana set up a sub-unit called the Military Police); Prosecution Witness Dufitmukukiza, T. 20 January 2011, p. 21 (when Muvunyi was not present, Nizeyimana would issue orders); Defence Witness RWV09, T. 8 June 2011, pp. 32-33 (conceding that Nizeyimana had authority over soldiers sent on "patrols", "to the field" or "sent to communes", although he remained responsible to his "hierarchical superior"). Civilian witnesses also commented on Nizeyimana's ability to command ESO soldiers. *See* Prosecution Witness AJP, T. (Nizeyimana had a degree of power over ESO soldiers).

[3833] Witness Habyarimana, T. 25 May 2011, p. 12 (did not believe there was any second-in-command at the ESO); Witness RWV11, T. 2 June 2011, p. 10 (was unaware of a "second in command officially named at ESO").

[3834] Prosecution Witness Gahizi, T. 7 February 2011, p. 26 (described Nizeyimana as the "deputy commander at ESO" as well as the S2/23 officer); Prosecution Witness Dufitumukiza, T. 20 January 2011, pp. 20 (Muvunyi was the ESO commander and Nizeyimana was "his assistant or deputy" in the S2/S3 intelligence and operations position), 21 (based on the witness's impressions, Nizeyimana was the "*de facto* deputy commander of ESO"); Prosecution Witness YAA, T. 2 February 2011, pp. 4 (Nizeyimana was the second-in-command at the ESO);Witness CKN10, T. 30 May 2011, p. 37 ("Q. No, but my question is asking you about ESO officers. So can you tell us who among the ESO officers were the most feared. A. I believe Captain Nizeyimana was the second, if I were to take account of the ranks of the soldiers who were in ESO."). *Cf.* Defence Witness Habyarimana, T. 25 May 2011, p. 53 (the S2/S3 was usually specialised with the same skills and was of sufficiently high rank to allow him to also act as the second in command).

[3835] *See* Witness AZD, T. 1 February 2011, pp. 7-8; Witness AJP, T. 15 February 2011, p. 6; Witness BDE, T. 28 January 2011, pp. 26, 28-29; Witness ZAW, T. 26 January 2011, pp. 9-10.

tenure at the ESO Camp prior to the genocide,[3836] highly relevant to Nizeyimana's ability to exercise effective control over ESO soldiers and cadets. Moreover, the relative inexperience and youth of ESO cadets is another factor that, in some cases, might have given Nizeyimana the material ability to prevent and punish criminal conduct of subordinate ESO soldiers.

1488. Given the record, the Chamber is not satisfied that Nizeyimana, in general, had the material ability at *all* times to prevent or punish *all* crimes committed by *all* subordinate military personnel at the ESO. The Chamber is satisfied, however, that under certain circumstances Nizeyimana exercised this power, notwithstanding the possibility that Muvunyi did as well. Indeed, the law is clear that the effective control test implies that more than one person may be held responsible for the same crime committed by a subordinate.[3837]

1489. In assessing Nizeyimana's superior responsibility, the proven criminal conduct is the most relevant to determining whether he may be held liable pursuant to Article 6 (3) of the Statute for the crimes of ESO soldier or civilian assailants. The Chamber shall conduct this analysis on a case-by-case basis below.

[3836] Witness ZML13, T. 6 June 2011, p. 62 (Muvunyi was assigned to the ESO Camp "about a month prior to the genocide").
[3837] *See Strugar* Trial Judgement, para. 365.

3. GENOCIDE

3.1 Introduction

1490. Count 1 of the Indictment charges Nizeyimana with genocide pursuant to Article 2 (3)(a) of the Statute.

3.2 Law

1491. To find an accused guilty of the crime of genocide, it must be established that the accused committed any of the enumerated acts in Article 2 (2) of the Statute with the specific intent to destroy, in whole or in part, a group, as such, that is defined by one of the protected categories of nationality, race, ethnicity, or religion.[3838] Although there is no numeric threshold, the perpetrator must act with the intent to destroy at least a substantial part of the group.[3839] The perpetrator need not be solely motivated by a criminal intent to commit genocide, nor does the existence of personal motive preclude him from having the specific intent to commit genocide.[3840]

1492. In the absence of direct evidence, a perpetrator's intent to commit genocide may be inferred from relevant facts and circumstances that can lead beyond any reasonable doubt to the existence of the intent. Factors that may establish the specific intent include the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership in a particular group, or the repetition of destructive and discriminatory acts.[3841]

1493. The Indictment charges Nizeyimana with killing or causing serious bodily or mental harm to members of the Tutsi ethnic group. It is firmly established that the Tutsi ethnicity is a protected group.[3842] Killing members of the group requires a showing that the principal perpetrator intentionally killed one or more members of the group.[3843] The term "causing serious bodily harm" refers to acts of sexual violence, serious acts of physical violence falling short of killing that seriously injure the health, cause disfigurement, or cause any serious injury to the external or internal organs or senses.[3844] The serious bodily or mental harm, however, need not be an injury that is permanent or irremediable.[3845] Several judgements of the Tribunal indicate that serious mental harm refers to more than minor or temporary

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[3838] *Nahimana et al.* Appeal Judgement, paras. 492, 496, 522-523; *Niyitegeka* Appeal Judgement, para. 48; *Gacumbitsi* Appeal Judgement, para. 39.
[3839] *Seromba* Appeal Judgement, para. 175; *Gacumbitsi* Appeal Judgement, para. 44.
[3840] *Simba* Appeal Judgement, para. 269; *Ntakirutimana* Appeal Judgement, paras. 302-304; *Niyitegeka* Appeal Judgement, paras. 48-54; *Krnojelac* Appeal Judgement, para. 102, *citing Jelisić* Appeal Judgement, para. 49.
[3841] *Seromba* Appeal Judgement, para. 176 *citing Seromba* Trial Judgement, para. 320; *Nahimana et al.* Appeal Judgement, paras. 524-525; *Simba* Appeal Judgement, para. 264; *Gacumbitsi* Appeal Judgement, paras. 40-41; *Rutaganda* Appeal Judgement, para. 525; *Semanza* Appeal Judgement, para. 262, *citing Jelisić* Appeal Judgement, para. 47; *Kayishema and Ruzindana* Appeal Judgement, paras. 147-148.
[3842] *See* Decision on Prosecutor's Motion for Judicial Notice of Facts of Common Knowledge (TC), 3 March 2010, paras. 2, 5. *See also Karemera et al.*, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006, para. 25; *Semanza* Appeal Judgement para. 192.
[3843] *Kayishema and Ruzindana* Appeal Judgement, para. 151.
[3844] *Seromba* Appeal Judgement, paras. 46-49; *Ntagerura et al.* Trial Judgement, para. 664; *Semanza* Trial Judgement, para. 320; *Kayishema and Ruzindana* Trial Judgement, para. 110.
[3845] *Ntagerura et al.* Trial Judgement, para. 664; *Semanza* Trial Judgement, paras. 320, 322.

impairment of mental faculties.[3846] One, however, has noted that there is no jurisprudential basis for this conclusion and that what constitutes serious mental harm should be assessed on a case-by-case basis.[3847]

3.3 Deliberations

(i) Ruhutinyanya Family

(a) Article 6 (1)

1494. The Chamber recalls its findings that around 18 April 1994, Nizeyimana ordered the removal of the Ruhutinyanya family, which included Tutsis, knowing that the implementation of this order would lead to the slaughter of the Ruhutinyanya family. The Chamber concluded that ESO soldiers removed members of the Ruhutinyanya family to a roadblock near the Akanyaru border crossing. The ESO soldiers that brought them there, and / or the armed civilian and *Interahamwe* manning the barrier, directly participated in the killing of members of this family.[3848]

1495. Notably, on the preceding day, ESO soldiers extracted the Ruhutinyanya family from this very roadblock, which was manned by armed *Interahamwe*, who refused to let the family pass. The civilians, armed with firearms and traditional weapons, acted in a threatening manner towards the Tutsi family and those escorting them. Furthermore, the record reflects that the family was referred to by ESO soldiers as *Inyenzi* or *Inkotanyi*. Having considered that Second Lieutenant Bizimana led the removal of the Ruhutinyanya family from the ESO Camp and the fact that they were ultimately killed, the Chamber has no doubt that both the ESO soldiers as well as *Interahamwe* at the roadblock possessed genocidal intent when the family was killed.

1496. The Chamber considers that Nizeyimana's orders to return the family to the location from which they were first retrieved amounted to significant and substantial contributions to their deaths. In light of Nizeyimana's awareness that the implementation of these instructions would lead to the killing of this family, the only reasonable conclusion is that he too possessed genocidal intent.[3849] The Chamber also finds that Nizeyimana was aware of the genocidal intent held by the principal perpetrators.

1497. This conclusion is bolstered by the evidence reflecting Nizeyimana's anger towards the presence of this Tutsi family, characterised by him and others as *Inyenzi* or *Inkotanyi*, and his disgust that they were being protected. Indeed, such disgust falls squarely within the Chamber's conclusions elsewhere that Nizeyimana, around this same time, was involved in

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[3846] *Seromba* Appeal Judgement, para. 46; *Kajelijeli* Trial Judgement, para. 815; *Ntagerura et al.* Trial Judgement, para. 664; *Semanza* Trial Judgement, paras. 321-322; *Kayishema and Ruzindana* Trial Judgement, para. 110.
[3847] *See Kanyarukiga* Trial Judgement, para. 637 *citing Kayishema and Ruzindana* Trial Judgement, para. 113.
[3848] II.4.1.
[3849] In finding that Nizeyimana acted with genocidal intent, the Chamber has considered evidence that he lodged at least one Tutsi, Antoinette Bizimenyera, at his home during a period when Tutsis were being targeted and killed in Butare town. In view of Nizeyimana's conduct in relation to these particular crimes, his selective and limited assistance raises no doubt with respect to this conclusion. *Cf. Simba* Trial Judgement paras. 417-418; *Kvočka* Appeal Judgement, paras. 232-233. The Chamber considers this evidence in light of all its findings related to whether or not Nizeyimana possessed genocidal intent.

the planning and authorisation of an overwhelming military assault on displaced Tutsis at Cyahinda Parish.[3850]

1498. Given the findings above, the Chamber considers that Nizeyimana could bear responsibility pursuant to Article 6 (1) for having aided and abetted the killing of members of the Ruhutinyanya family. However, this killing involved a plurality of persons, sharing a common purpose and acting in concert to commit a crime provided for in the Statute. The Chamber has concluded that Nizeyimana's contribution to the crime was both significant and substantial. The record further demonstrates that Nizeyimana agreed to a common purpose and also possessed genocidal intent. Under the circumstances, Nizeyimana's liability is most appropriately characterised as participating in a basic joint criminal enterprise.[3851] The Chamber enters a conviction for the crime on this basis.

(b) Article 6 (3)

1499. The record demonstrates that Nizeyimana could also bear superior responsibility for the killings of the Ruhutinyanya family. As reflected in the factual findings, Nizeyimana was the officer consulted on the evening of the family's arrival, as well as the morning that they were removed from the ESO Camp by subordinate ESO soldiers. Nizeyimana's actions were stern and he ordered the removal of the family, knowing that the outcome of his instructions would lead to their deaths.

1500. Indeed, the Chamber considers it significant that Second Lieutenant Jean Pierre Bizimana was the highest ranking soldier who ultimately enacted Nizeyimana's orders. The Chamber recalls evidence reflecting the relatively close relationship between Nizeyimana and this soldier. It has found elsewhere that Bizimana reported to Nizeyimana after participating in the killing of Rosalie Gicanda and others taken from her household days after this event.

1501. Noting this evidence, as well as Nizeyimana's position within the ESO hierarchy and the considerable authority he possessed, the Chamber has no doubt that Nizeyimana was in a position to prevent the actions of the ESO soldiers, which led to the killing of the Ruhutinyanya family. Given the nature of his participation, as well as evidence reflecting widespread knowledge that the Ruhutinyanya family was killed, the Chamber has no doubt that Nizeyimana was also aware of the ensuing commission of a crime. Likewise, Nizeyimana was obligated and had reasonable measures available to him to punish the ESO soldiers.

1502. In so finding, the Chamber considers that Muvunyi too, may have had effective control over the perpetrators. However, the Chamber does not consider that the possibility of

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[3850] *See* II.4.2.

[3851] In so finding, it is immaterial whether ESO soldiers and or armed civilians and *Interahamwe* physically killed members of the Ruhutinyanya family at the roadblock near the Akanyaru border crossing. Even if the ESO soldiers only transported the Ruhutinyanya family to this barrier, Nizeyimana and the ESO soldiers, who were members of the joint criminal enterprise, could be held accountable for the crimes of the imputed members, which fell squarely within the common purpose to kill the Tutsis of Butare, including this family. *See Martić* Appeal Judgement, para. 171. Furthermore, the Chamber considers that the Indictment and Pre-Trial Brief, when read together, give notice of the Prosecution's position that members of the Ruhutinyanya family might have been killed by persons manning the roadblock. *See* Indictment, para. 19 *and* Pre-Trial Brief, paras. 86, 153-154, Annex to Pre-Trial Brief, paras. 1 (p. 1), 6 (p. 7), 29 (pp. 23-24).

this parallel authority reasonably eliminates Nizeyimana's effective control over the ESO soldiers who transported the Ruhutinyanya family to their deaths. The Chamber shall consider how these conclusions impact sentencing as Nizeyimana may not be convicted pursuant to Articles 6 (1) and 6 (3) of the Statute.[3852]

(ii) Cyahinda Parish

(a) Article 6 (1)

1503. The Chamber recalls its findings that soldiers, including around 11 ESO soldiers and Chief Warrant Kanyashyamba, participated in the attack on Cyahinda Parish around 18 April 1994 that resulted in the killing of thousands of displaced civilians who were primarily Tutsis. The Chamber has concluded that the actions of the ESO soldiers played a direct role in the killing of the Tutsis there.[3853]

1504. Moreover, the Chamber has determined that the only reasonable conclusion was that Nizeyimana both contributed to the planning of this military operation and that he authorised the participation of ESO soldiers in it.[3854] These conclusions were made in light of the fact that Nizeyimana visited the Cyahinda parish the preceding day, his tenure as the S2/S3 officer in charge of intelligence and operations, and the ESO's role as the operational command for the Butare and Gikongoro region. The Chamber also considered relevant evidence that Nizeyimana both issued orders to, and held power over, Kanyashyamba.[3855]

1505. Given the nature of the attack, the Chamber finds that the assailants intentionally killed members of the Tutsi ethnic group. In light of the high density of Tutsis among the displaced persons and the fact that they had gathered there largely as a result of attacks on Tutsis in neighbouring communes, the Chamber has no doubt that the assailants, including the ESO soldiers who participated in the attack, possessed genocidal intent.

1506. Given Nizeyimana's participation in the security committee's visit to Cyahinda Parish on the day prior to the attack, there is no question that Nizeyimana was aware of the circumstances that led the primarily Tutsis refugees to the parish. Through his subsequent participation in the planning of the military operation as well as his authorisation of the ESO soldiers who participated in it, the Chamber has no doubt that Nizeyimana possessed genocidal intent and that he was aware of that held by the principal perpetrators.

1507. Furthermore, when evaluating the impact of Nizeyimana's contribution, the Chamber recalls that Nizeyimana's presence at the Cyahinda Parish necessarily allowed him to examine – from military intelligence and operations perspectives – the strengths and weaknesses of the displaced Tutsis who had fortified themselves within the parish. It is noteworthy that during the ensuing attack, ESO soldiers utilised specialised arms that could weaken structural safe havens for the refugees within the parish facilities and kill numbers of them from a safe distance. In light of the fact that the primarily Tutsi refugees had previously staved off initial, armed assaults by the *bourgmestre* and gendarmes, the use of these heavy weapons is not coincidental. Indeed, the Chamber has no doubt that the participation of the ESO soldiers and the weaponry utilised reflect Nizeyimana's on-the-ground assessment of

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[3852] *See, e.g.*, *Setako* Appeal Judgement, para. 266; *Renzaho* Appeal Judgement, para. 564.
[3853] II.4.2.
[3854] II.4.2.
[3855] II.4.2.

the situation at Cyahinda Parish and were a direct result of Nizeyimana's contributions to the planning and authorisation of this assault. There is no question that Nizeyimana's contributions proved to be both significant and substantial to the ensuing extermination operation.

1508. Given the findings above, the Chamber considers that Nizeyimana could bear responsibility pursuant to Article 6 (1) for having aided and abetted the attack on Cyahinda Parish. However, this attack involved a plurality of persons, sharing a common purpose and acting in concert to commit a crime provided for in the Statute. The Chamber has concluded that Nizeyimana's contribution to the crime was both significant and substantial. The record further demonstrates that Nizeyimana agreed to the common purpose and also possessed genocidal intent. Under the circumstances, Nizeyimana's liability is most appropriately characterised as participating in a basic joint criminal enterprise with assailants, and, in particular, the ESO soldiers who participated in this attack. The Chamber enters a conviction for this crime on this basis.

(b) Article 6 (3)

1509. Although Nizeyimana clearly participated in the planning and authorised ESO soldiers to participate in the attack, the Chamber is not satisfied that Nizeyimana could bear superior responsibility for the actual killings pursuant to Article 6 (3) of the Statute. The evidence reasonably reflects that ESO soldiers were not the only military force involved in this attack. Given the significant scale of this operation, the Chamber is not satisfied that Nizeyimana was the highest ranking military authority involved in the planning and operational aspects of this assault. It is also possible that, at the time of the attack, the ESO soldiers were re-subordinated and thus potentially under the effective control of another commander at the time of the actual killings.[3856] Under the circumstances, Nizeyimana's material ability to prevent the crimes committed by ESO soldiers or subsequently punish them has not been proved beyond reasonable doubt. The Chamber has the same doubts as it relates to civilians and other participants in this attack.

(iii) Gicanda

(a) Article 6 (1)

1510. The Chamber has found that Second Lieutenant Bizimana led a group of ESO soldiers in the killing of Rosalie Gicanda and others taken from her household on or around 20 April 1994. Gicanda, the former Queen of Rwanda, was a Tutsi, although the ethnic identities of the other victims are unproven. Moreover, Bizimana reported this killing to Nizeyimana and the Chamber has concluded that Nizeyimana authorised it.[3857]

1511. Given the nature of the attack, the Chamber has no doubt that Gicanda was targeted and intentionally killed because she was a Tutsi. Notably, only days earlier, Bizimana had participated in an operation that led to the murder of members of the Ruhutinyanya family,

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[3856] *See Blagojević and Jokić* Appeal Judgement, paras. 300-304 (affirming the Trial Chamber's determination that while a superior exercised "command control" over a subordinate who had committed crimes, the presence of a parallel authority who was present in the area and issuing orders and instructions, raised doubts that the Defendant exercised "effective control" over that subordinate).
[3857] II.6.2.

who were also killed on the basis of their Tutsi ethnicity. Likewise, the murder of Gicanda and others in her household followed President Sindikubwabo's 19 April 1994 speech, which marked a significant increase in violence and the targeting of Tutsi civilians within Butare town. The Chamber has no doubt that the murder of Gicanda, referred to as an "old lady" and who was a symbol of the former monarchy, was killed in order to set a striking example that Tutsis, as well as Hutus perceived as sympathetic to the plight of the Tutsis, were the enemy.

1512. Furthermore, there is evidence that shortly after this attack, ESO and other soldiers continued to participate in targeted killings of Tutsis. Specifically, around 21 April 1994, ESO soldiers participated in the separation and killing of Tutsis at the Butare University.[3858] Around 29 April, ESO soldiers participated in the separation and removal of Tutsis at the *Groupe Scolaire*, which led to their subsequent slaughter.[3859] There is additional evidence that, starting in the last third of April, soldiers used lists to identify and kill Tutsis at the Butare University Hospital.[3860] In this context, the Chamber has no doubt that the physical perpetrators who killed Gicanda and others taken from her home possessed genocidal intent.[3861]

1513. The Chamber recalls that Bizimana reported the killing to Nizeyimana and it has concluded that Nizeyimana authorised the murder. When viewing his actions in the context of other proven conduct, including his role in the Ruhutinyanya family killing, the Cyahinda Parish massacre, and killings at roadblocks, the Chamber has no doubt that Nizeyimana possessed genocidal intent. The only reasonable conclusion, particularly in light of his relationship and repeated collaboration with Second Lieutenant Bizimana, is that Nizeyimana was also aware of the genocidal intent held by the attackers.

1514. Finally, given Nizeyimana's high rank and considerable authority within the ESO, as well as his relationship with Second Lieutenant Bizimana, Nizeyimana's authorisation of the killing before the attack, and his continued authorisation after, amounted to significant and substantial contributions to the crime in the form of moral support and approval.

1515. Given the findings above, the Chamber considers that Nizeyimana could bear responsibility pursuant to Article 6 (1) for having aided and abetted the killing of Rosalie Gicanda and others removed from her home. However, this attack involved a plurality of persons, sharing a common purpose and acting in concert to commit a crime provided for in the Statute. The Chamber has concluded that Nizeyimana's contribution to the crime was both significant and substantial. The record further demonstrates that Nizeyimana agreed to the common purpose and also possessed genocidal intent. Under the circumstances, Nizeyimana's liability is most appropriately characterised by his participation in a joint criminal enterprise.

[3858] II.5.1.
[3859] II.10.
[3860] II.8.1.
[3861] The fact that this operation targeted one Tutsi in particular no way impacts the conclusion that the perpetrators possessed the intent to destroy at least a substantial part of the Tutsi ethnic group. The Chamber reiterates that this killing must be viewed in the context of the targeted and systematic killing of Tutsis perpetrated by ESO soldiers and others in Butare around this time. Moreover, the symbolic importance of the killing Gicanda as a means of identifying the enemy is also relevant. *Cf. Jelisić* Trial Judgement, para. 82 ("Genocidal intent may ... consist of the desired destruction of a more limited number of persons selected for the impact that their disappearance would have upon the survival of the group as such.").

(b) Article 6 (3)

1516. The record demonstrates that Nizeyimana could also bear superior responsibility for the killings of Rosalie Gicanda and those removed from her home. The Chamber has found that Nizeyimana authorised the killings. The record reflects that Second Lieutenant Jean Pierre Bizimana also reported the killing to Nizeyimana afterward. In addition, the record demonstrates that Nizeyimana and Second Lieutenant Jean Pierre Bizimana were relatively close.

1517. Noting this evidence, as well as Nizeyimana's position within the ESO hierarchy and the considerable authority he possessed, the Chamber has no doubt that Nizeyimana was in a position to prevent this crime and to take reasonable measures to punish it.[3862] Given his prior authorisation, as well as the ensuing report of the crime's completion, the Chamber has no doubt that Nizeyimana authorised the killing of Rosalie Gicanda, which led to her death and others taken from her residence.

1518. In so finding, the Chamber considers that Muvunyi may have possessed these same powers of effective control. However, absent credible evidence of Muvunyi's involvement in this event, the Chamber does not consider that this parallel authority reasonably eliminates Nizeyimana's effective control over the perpetrators of this crime. The Chamber shall consider how these conclusions impact sentencing as Nizeyimana may not be convicted pursuant to Articles 6 (1) and 6 (3) of the Statute.[3863]

(iv) Remy Rwekaza, Witness ZAV and Beata Uwambaye

(a) Article 6 (1)

1519. In its factual findings, the Chamber concluded that Nizeyimana ordered ESO soldiers to kill Remy Rwekaza and Witness ZAV, both Tutsis, at the Gikongoro / Cyangugu and Kigali roads junction roadblock, on or about 21 April 1994. The soldiers shot and killed Rwekaza. Witness ZAV was shot, but survived, and the Chamber has concluded that he suffered serious bodily harm.[3864] Likewise, the Chamber has found that Nizeyimana ordered ESO soldiers to kill Beata Uwambaye, a Tutsi, at the same barrier around 5 May. The soldiers carried out Nizeyimana's instructions and killed Uwambaye.[3865] In all instances, the victims were in civilian clothing and unarmed.

1520. Through his presence and orders at the roadblock, Nizeyimana substantially and significantly contributed to the killings of Remy Rwekaza and Beata Uwambaye, as well as the shooting of Witness ZAV. His position of authority among the relatively young ESO soldiers and his instructions to execute these Tutsis played a decisive role in these crimes. Indeed, as it relates to the incident of 21 April 1994, Nizeyimana's contribution of stopping Rwekaza and Witness ZAV after they were allowed through the roadblock, returning them to the barrier and then ordering their execution was a necessary condition to the ensuing murder and assault committed by the ESO soldiers.

[3862] The Chamber has previously determined that Second Lieutenant Jean Pierre Bizimana was not punished for this crime. II.6.2.
[3863] *See, e.g.*, *Setako* Appeal Judgement, para. 266; *Renzaho* Appeal Judgement, para. 564.
[3864] II.7.1.
[3865] II.7.2.

1521. While these attacks only resulted in the deaths of two Tutsis and the serious bodily harm of a third, the Chamber has no doubt that the perpetrators acted with the intent to destroy at least a substantial part of the Tutsi group. These attacks were emblematic of the systematic nature in which Tutsi civilians were identified and killed on an ongoing basis at this roadblock and others manned by ESO soldiers in Butare town.[3866] Notably, a prominent Tutsi lecturer, Pierre Claver Karenzi, was killed in the vicinity of a nearby roadblock manned by ESO soldiers on the same day that Rwekaza was killed and Witness ZAV was shot.[3867]

1522. Indeed, these attacks followed President Sindikubwabo's 19 April 1994 speech, which marked a significant increase in violence and the targeting of Tutsi civilians within Butare town. Around 20 April, ESO soldiers killed Rosalie Gicanda, the former Tutsi Queen of Rwanda, and others taken from her home.[3868] Around 21 April, ESO soldiers participated in the separation and killing of Tutsis at the Butare University.[3869] Around 29 April, ESO soldiers participated in the separation and removal of Tutsis at the *Groupe Scolaire*, which led to their subsequent slaughter.[3870] There is additional evidence that, starting in the last third of April, soldiers used lists to identify and kill Tutsis at the Butare University Hospital.[3871]

1523. In this context, the fact that only two Tutsis were killed and one injured on these occasions reflects the rudimentary and inefficient means employed by ESO soldiers to commit these crimes.[3872] It raises no doubt that the soldiers possessed genocidal intent at the moment of their commission.[3873] Based on Nizeyimana's conduct during the killing of Rwekaza and attack of Witness ZAV, as well as his actions during Uwambaye's murder, the record demonstrates that he shared this genocidal intent. This conclusion is further supported by the Chamber's findings relating to Nizeyimana's participation in other proven criminal conduct.

1524. The Chamber concludes that Nizeyimana is responsible, pursuant to Article 6 (1) of the Statute, for ordering the killing of Remy Rwekaza and Beata Uwambaye and causing serious bodily and mental harm to Witness ZAV. The facts equally support the conclusion that Nizeyimana participated in a basic joint criminal enterprise to kill Tutsis at this roadblock. However, the Chamber considers that "ordering", which is also a direct form a responsibility, most appropriately captures Nizeyimana's criminal participation in these specific events.[3874]

[3866] II.7.3.
[3867] II.6.5.
[3868] II.6.2.
[3869] II.5.1.
[3870] II.10.
[3871] *See* II.8.1.
[3872] *Cf. Krstić* Appeal Judgement, para. 32 ("In determining that genocide occurred ... the cardinal question is whether the intent to commit genocide existed. ... the offence of genocide does not require proof that the perpetrator chose the most efficient method to accomplish his objective of destroying the targeted part. Even where the method selected will not implement the perpetrator's intent to the fullest, leaving that destruction incomplete, this ineffectiveness alone does not preclude a finding of genocidal intent.").
[3873] *See Hategekimana* Appeal Judgement, para. 133-135 (affirming the Trial Chamber's conclusion that the killers of three Tutsi women possessed genocidal intent when viewed in context of the specific killings and other violence targeting Tutsis).
[3874] The legal characterisation of Nizeyimana's actions as ordering instead of committing pursuant to a joint criminal enterprise does not impact sentencing considerations.

(b) Article 6 (3)

1525. The record demonstrates that Nizeyimana could also bear superior responsibility for the killings of Remy Rwekaza and Beata Uwambaye at the Gikongoro / Cyangugu and Kigali roads junction roadblock, as well as the serious bodily harm caused to Witness ZAV. The killings and assault were committed by ESO soldiers who were acting on the orders of Nizeyimana. The Chamber is mindful that a superior's authority to issue orders is one indicator of effective control, but that it does not automatically establish such control.[3875] However, given the Chamber's findings regarding Nizeyimana's position within the ESO hierarchy, the considerable authority he possessed as well as the relative inexperience of ESO soldiers, the evidence firmly reflects that he exercised effective control over the ESO soldiers who perpetrated these crimes.

1526. As noted above, it is significant that the young ESO soldiers at the barrier initially allowed Witness ZAV and Remy Rwekaza, two Tutsis, to pass on the explanation that they intended to see ESO Captain Twagiramungu. However, they were returned to the roadblock by Nizeyimana who then ordered the soldiers to kill them. In describing the soldiers' reaction, Witness ZAV stated that they "couldn't challenge [their] superior".[3876] Notably, when Rwekaza later offered to pay the soldiers in exchange for his life, they responded that Nizeyimana would kill them unless they complied with his order.[3877] Nizeyimana's actions, which were a necessary condition to the ensuing attack, fully reflect his material ability to prevent and punish this criminal conduct of these ESO soldiers at that moment.[3878]

1527. Likewise, the killing of Beata Uwambaye at the same roadblock weeks later further reflects Nizeyimana's continuing ability to exercise effective control over the young ESO soldiers that manned this barrier. Like the killing of Rwekaza and the attack on Witness ZAV, Uwambaye was led away to be shot and stabbed after Nizeyimana's orders to ESO soldiers to execute her. Notably, the verbal response to Nizeyimana's command was from the ESO cadets was "Yes sir, Captain".[3879] In the Chamber's view, this evidence further demonstrates the clear deference Nizeyimana demanded given his superior rank and authority over these young and impressionable soldiers. These facts necessarily demonstrate a material ability to prevent and punish criminal conduct at that moment. Nizeyimana's conduct, in both instances, reflect that he was aware of the commission of these crimes and did nothing to prevent or punish them.

1528. These findings consider the reasonable possibility that ESO Commander Lieutenant Colonel Tharcisse Muvunyi, Nizeyimana's *de jure* superior, may have also ordered and authorised killings at this roadblock. However, this possible parallel authority does not reasonably eliminate Nizeyimana's effective control over the perpetrators of these crimes. As discussed above, Nizeyimana's actions were a necessary condition for the killing of Remy Rwekaza and the shooting of Witness ZAV. Similarly, his conduct was decisive as it related to the killing of Beata Uwambaye. The Chamber shall consider how these conclusions impact

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[3875] *See Setako* Appeal Judgement, para. 272.
[3876] Witness ZAV, T. 23 February 2011, p. 28.
[3877] Witness ZAV, T. 23 February 2011, pp. 28, 30-31.
[3878] *Cf. Halilović* Appeal Judgement, para. 206 (affirming a Trial Chamber's conclusion that the Defendant's effective control was not established where the record reflected that he could issue orders but the addressees requested confirmation from another authority before following them).
[3879] Witness ZAK, T. 24 January 2011, p. 62.

sentencing as Nizeyimana may not be convicted pursuant to Articles 6 (1) and 6 (3) of the Statute.[3880]

(v) Professor Pierre Claver Karenzi

(a) Article 6 (1)

1529. The Chamber has concluded that an ESO soldier killed Pierre Claver Karenzi at the Hotel Faucon roadblock around 21 April 1994, after Karenzi had been taken from his home. The record reflects that Karenzi, a Tutsi lecturer at the Butare University, was a prominent figure in Butare town.

1530. Similar to the killings at the Gikongoro / Cyangugu and Kigali roads junction roadblock, the Chamber is convinced that Karenzi's murder is also emblematic of the systematic nature in which Tutsi civilians were identified and killed on an ongoing basis at roadblocks manned by ESO soldiers in Butare town.[3881] Consequently, while this incident only resulted in the killing of one Tutsi, the Chamber has no doubt that the physical perpetrator acted with the specific intent to destroy at least a substantial part of the Tutsi group.

1531. Indeed, this killing followed President Sindikubwabo's 19 April 1994 speech, which marked a significant increase in violence and the targeting of Tutsi civilians within Butare town. Around 20 April, ESO soldiers killed Rosalie Gicanda, the former Tutsi Queen of Rwanda, and others taken from her home.[3882] Around 21 April, ESO soldiers participated in the separation and killing of Tutsis at the Butare University.[3883] Around 29 April, ESO soldiers participated in the separation and removal of Tutsis at the *Groupe Scolaire*, which led to their subsequent slaughter.[3884] There is additional credible evidence that, starting in the last third of April, soldiers used lists to identify and kill Tutsis at the Butare University Hospital.[3885] When viewing this killing in context, the only reasonable conclusion is that the physical perpetrator possessed genocidal intent.

1532. The Chamber observes that there is no direct evidence demonstrating that Nizeyimana ordered or authorised this particular killing. Notwithstanding, the Chamber considers it significant that it occurred on the same day when Nizeyimana ordered ESO soldiers manning a roadblock just down the road to kill two Tutsis. Indeed, the Chamber has no doubt that the Hotel Faucon roadblock was among a network of geographically proximate roadblocks manned by ESO soldiers – including those at the Gikongoro / Cyangugu and Kigali roads junction and at *Chez* Bihira – that were turned towards the task of identifying and eliminating Tutsis, at least by the last third of April 1994.

1533. In the Chamber's view, the open and notorious manner in which Tutsis were being targeted at these roadblocks, which were only a short distance apart, cannot reasonably be understood as coincidence. The only reasonable inference is that the instructions Nizeyimana issued at Gikongoro / Cyangugu and Kigali roads junction were necessarily transmitted and

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[3880] *See, e.g.*, *Setako* Appeal Judgement, para. 266; *Renzaho* Appeal Judgement, para. 564.
[3881] II.7.3.
[3882] II.6.2.
[3883] II.5.1.
[3884] II.10.
[3885] *See* II.8.1.

consistent with those issued to the Hotel Faucon roadblock down the road. Nizeyimana's proven conduct in relation to killings and attack at the Gikongoro / Cyangugu and Kigali roads junction barrier is sufficient to establish that he similarly approved of and authorised the killings of Tutsi at the Hotel Faucon roadblock as well, which, by implication, included Pierre Claver Karenzi. The Chamber has no doubt that the ESO soldier who killed Karenzi did so knowing he had the full support of Nizeyimana. Given his considerable authority and high rank within the ESO's hierarchy, such approval and authorisation significantly and substantially contributed to this killing. The Chamber also considers that this conduct establishes that Nizeyimana possessed genocidal intent and was aware of the physical perpetrator's genocidal intent as well.

1534. Given the findings above, the Chamber considers that Nizeyimana could bear responsibility pursuant to Article 6 (1) for having aided and abetted the killing of Pierre Claver Karenzi in the vicinity of the Hotel Faucon roadblock. However, this attack involved a plurality of persons, sharing a common purpose and acting in concert to commit a crime provided for in the Statute. The Chamber has concluded that Nizeyimana's contribution to the crime was both significant and substantial. The record further demonstrates that Nizeyimana agreed to the common purpose and also possessed genocidal intent. Under the circumstances, Nizeyimana's liability is most appropriately characterised by his participation in a joint criminal enterprise.

(b) Article 6 (3)

1535. The Chamber is not satisfied that the facts establish that Nizeyimana could bear superior responsibility pursuant to Article 6 (3) of the Statute for the murder of Pierre Claver Karenzi around 21 April 1994 at the Hotel Faucon roadblock.

1536. In reaching this conclusion, the Chamber is mindful of Nizeyimana's position within the ESO hierarchy, the considerable authority he possessed, as well as the relative youth and inexperience of ESO soldiers generally. Indeed, it has elsewhere found that Nizeyimana exercised effective control over soldiers at the Gikongoro / Cyangugu and Kigali roads junction roadblock in the context of killing of Remy Rwekaza and attack of Witness ZAV, as well as the killing of Beata Uwambaye. Distinctly, however, he was at that roadblock and ordered those crimes.

1537. Conversely, the Chamber is not convinced that Nizeyimana necessarily continued to exercise effective control of ESO soldiers at roadblocks while absent from them. This conclusion is based in part on the fact that soldiers from other camps, including the elite units of the Presidential Guard, were circulating in Butare town and committing crimes. This concern is particularly relevant as it relates to the killing of Karenzi because the facts fail to establish that ESO soldiers were the ones who took him from his home. The reasonable possibility that ESO soldiers acted in coordination with other soldiers or were at times re-subordinated raise doubts that Nizeyimana's exercised general effective control.

(vi) Matabaro and Nyirinkwaya

1538. The Chamber recalls its findings that persons taken from the Matabaro and Nyirinkwaya homes were killed around 22 April 1994 in Nizeyimana's presence based on his instructions and express approval. However, the Chamber recalls that evidence regarding the ethnicity of the victims reflects that some were at least perceived to be Hutu. There is general ambiguity as to the ethnic identities of the victims. Moreover, while killed in the context of

ethnically based attacks, genocidal intent has not been established in this instance. This event cannot support a conviction for genocide pursuant to Article 2 (3)(a) of the Statute.

3.4 Conclusion

1539. The Chamber finds Nizeyimana guilty of genocide (Count 1) under Article 6 (1) of the Statute for the killing of members of the Ruhutinyanya family, for the attack on Cyahinda Parish, for the killing of Rosalie Gicanda and others taken from her home based on his participation in basic joint criminal enterprises. The Chamber also finds Nizeyimana guilty of genocide for ordering the killings of Remy Rwekaza and Beata Uwambaye at the Gikongoro / Cyangugu and Kigali roads junction roadblock as well as the serious bodily harm caused to Witness ZAV at the same barrier. Finally, Nizeyimana is guilty of genocide for the killing of Pierre Claver Karenzi at the Hotel Faucon roadblock through his participation in a basic joint criminal enterprise.

1540. The Chamber has also concluded that Nizeyimana could bear superior responsibility pursuant to Article 6 (3) of the Statute for the killing of members of the Ruhutinyanya family, for the killing of Rosalie Gicanda and others taken from her home and for the killings of Remy Rwekaza and Beata Uwambaye at the Gikongoro / Cyangugu and Kigali roads junction roadblock, as well as the serious bodily harm caused to Witness ZAV at the same barrier. However, as it is impermissible to enter convictions pursuant to Articles 6 (1) and 6 (3) of the Statute, these conclusions shall only be considered in relation to sentencing.

4. CRIMES AGAINST HUMANITY

4.1 Introduction

1541. Counts 2 and 3 of the Indictment charge Nizeyimana with extermination and murder as crimes against humanity under Article 3 (a) and (b) of the Statute. As discussed previously, none of the factual allegations in support of Count 4, rape as a crime against humanity pursuant to Article 3 (g) of the Statute, demonstrate Nizeyimana's involvement sufficient to establish his liability. Count 4 of the Indictment is dismissed.

4.2 Widespread and Systematic Attack

1542. An enumerated crime under Article 3 of the Statute constitutes a crime against humanity if it is proven to have been committed as part of a widespread or systematic attack against a civilian population on national, political, ethnic, racial or religious grounds.[3886] The term "widespread" refers to the large scale nature of the attack and the number of victims, whereas the term "systematic" refers to "the organised nature of the acts of violence and the improbability of their random occurrence".[3887] With respect to the *mens rea*, the perpetrator must have acted with knowledge of the broader context of the attack, and with knowledge that his acts (or omissions) formed part of the widespread or systematic attack against the civilian population.[3888]

1543. Having reviewed the record before it, the Chamber concludes that persons targeted during the relevant period were killed largely on ethnic grounds. This is reflected in the proven criminal conduct discussed in relation to Count 1 for genocide. It is also reflected in the evidence demonstrating that Tutsi women were singled out for rapes throughout Butare town and that Tutsis were separated from Hutus at various Butare institutions and killed at roadblocks.

1544. Similarly, the record demonstrates that prominent Hutus were also singled out for elimination, demonstrating that persons were also being targeted on political grounds. This is reflected in the targeted killings of Jean Baptiste Matabaro and Sub Prefect Zéphanie Nyirinkwaya as well as the killing of Jean Marie Vianney Maniraho. The Chamber is therefore convinced that there was a widespread and systematic attack against the civilian population in Butare and in Rwanda generally on ethnic and political grounds.[3889] Bearing in mind Nizeyimana's and the other perpetrators' contributions thereto and the specific nature of the crimes at issue, it is inconceivable that they did not know that their actions formed part of this attack. This is further reinforced for Nizeyimana in light of his position and rank in the military.

[3886] Article 3 of the Statute. *See also Bagosora and Nsengiyumva* Appeal Judgement, para. 389 (citations omitted).
[3887] *Bagosora and Nsengiyumva* Appeal Judgement, para. 389 (citations omitted).
[3888] *Bagosora and Nsengiyumva* Appeal Judgement, para. 389 (citations omitted).
[3889] *See also* Decision on Prosecutor's Motion for Judicial Notice of Facts of Common Knowledge (TC), 3 March 2010, paras. 2, 5 (taking judicial notice of a widespread and systematic attacks against a civilian population based on Tutsi ethnic identification).

4.3 Extermination

4.3.1 Introduction

1545. Count 2 of the Indictment charges Nizeyimana with extermination as a crime against humanity under Article 3 (b) of the Statute.

4.3.2 Law

1546. The crime of extermination is the act of killing on a large scale.[3890] The expression "on a large scale" does not, however, suggest a numerical minimum.[3891] In addition to the threshold *mens rea* requirements for all crimes against humanity (discussed above), the *mens rea* of extermination requires that the accused intend to kill persons on a massive scale or to subject a large number of people to conditions of living that would lead to their deaths in a widespread or systematic manner.[3892]

4.3.3 Deliberations

(i) Cyahinda Parish

1547. The Prosecution has charged Nizeyimana with the attack on Cyahinda Parish (II.4.2) as extermination as a crime against humanity under Article 6 (1) and 6 (3) of the Statute.[3893] The Chamber has already concluded that the attack on Cyahinda Parish amounts to genocide. Given the high concentration of Tutsis within the parish facilities and the fact that the concluding attack resulted in the deaths of thousands who had sought refuge there, the Chamber has no doubt that this attack amounted to killings on a large scale. The evidence firmly establishes that the principal perpetrators, as well as Nizeyimana, participated with the intent to kill on a mass scale based on ethnic grounds. The Chamber has already determined that Nizeyimana bears responsibility pursuant to Article 6 (1) for his participation in a basic joint criminal enterprise. It has not found that he could also bear responsibility as a superior pursuant to Article 6 (3).

(ii) Remaining Proven Criminal Conduct

1548. The Prosecution has also charged Nizeyimana with extermination as a crime against humanity for the killing of the Ruhutinyanya family (II.4.1), the killing of Rosalie Gicanda and others taken from her home (II.6.2), the killing of Remy Rwekaza and Beata Uwambaye as well as the attack on Witness ZAV at the Gikongoro / Cyangugu and Kigali roads junction roadblock (II.7.1; II.7.2), the killing of Pierre Claver Karenzi at the Hotel Faucon roadblock (II.6.5) as well as the killing of persons taken from the Matabaro and Nyirinkwaya residences (II.6.6).[3894]

[3890] *Bagosora and Nsengiyumva* Appeal Judgement, para. 394; *Rukundo* Appeal Judgement, para. 185, *citing Ntakirutimana* Appeal Judgement, para. 516.
[3891] *Bagosora and Nsengiyumva* Appeal Judgement, para. 394; *Rukundo* Appeal Judgement, para. 185, *citing Ntakirutimana* Appeal Judgement, para. 516.
[3892] *Brđanin* Appeal Judgement, para. 476; *Stakić* Appeal Judgement, paras. 259-260; *Gacumbitsi* Appeal Judgement, para. 86; *Ntakirutimana* Appeal Judgement, para. 522.
[3893] *See* Indictment, paras. 38, 42 (incorporating by reference paragraph 13).
[3894] *See* Indictment, para. 38 (incorporating by reference paragraphs 19, 22-25, 29, 40).

1549. While there is no numerical threshold in establishing extermination, case law emphasises that the killings must occur on a large or mass scale.[3895] The Chamber is not satisfied that the killing of the Ruhutinyanya family, the killing of Rosalie Gicanda and others taken from her home, the killing of Remy Rwekaza and Beata Uwambaye as well as the attack on Witness ZAV at the Gikongoro / Cyangugu and Kigali roads junction roadblock, the killing of Pierre Claver Karenzi at the Hotel Faucon roadblock as well as the killing of persons taken from the Matabaro and Nyirinkwaya residences amount to extermination. The evidence related to the number of deaths in each instance is too ambiguous and or too low to establish killing on a large scale.[3896]

4.3.4 Conclusion

1550. The Chamber finds Nizeyimana guilty of extermination as a crime against humanity (Count 2) as it relates to the attack on Cyahinda Parish based on Article 6 (1) of the Statute for participating in a basic joint criminal enterprise. As discussed above, the Chamber has no doubt that Nizeyimana, along with the physical assailants, were aware that this attack formed part of widespread and systematic attacks against the civilian population on ethnic and political grounds. The Chamber has not found that he could also bear responsibility as a superior pursuant to Article 6 (3).

4.4 Murder

4.4.1 Introduction

1551. Count 3 of the Indictment charges Nizeyimana with murder as a crime against humanity under Article 3 (a) of the Statute.

4.4.2 Law

1552. For the crime of murder to be established, it must be shown that a victim died and that the victim's death was caused by an act or omission. To satisfy the *mens rea* for murder, it is required that there was an act or omission, with the intention to kill or to inflict grievous bodily harm, in the reasonable knowledge that it might lead to death.[3897]

[3895] *See, e.g.*, *Bagosora and Nsengiyumva* Appeal Judgement, para. 398 (killing of nine persons by one group while "several other groups" were perpetrating killings throughout a town supports a conclusion of large scale killings); *Rukundo* Appeal Judgement, paras. 189 (removal and killing of a large number of refugees who filled a seminary's facilities was sufficient to satisfy killing on a large scale); *Ntakirutimana* Appeal Judgement, para. 521 (the killings of hundreds or thousands satisfies the large scale requirement); *Brđanin* Appeal Judgement, para. 472 (killing of between 68 and 300 people establishes the large scale requirement); *Gatete* Trial Judgement, paras. 639 (killing between 26 and 31 persons establishes large scale), 642 and 645 (killing of "hundreds and possibly thousands" establishes large scale).

[3896] The only numerical estimate given for the number of persons among the Ruhutinyanya family was 15 although others described a minibus filled with persons. The number of persons removed and killed from the Gicanda home appears to be less than 7. As discussed elsewhere, while numerous people appear to have been removed from the Matabaro and Nyirinkwaya homes and attacked, the record is ambiguous as to the total number of deaths. Likewise, proven killings pleaded in the Indictment with respect to killings at roadblocks total three individuals.

[3897] *Dragomir Milošević* Appeal Judgement, para. 108. *See also Bagosora et al.*, Trial Judgement, para. 2169, fn. 2351.

4.4.3 Deliberations

(i) Cyahinda Parish

1553. The Prosecution charges Nizeyimana with murder as a crime against humanity in relation to the attack on Cyahinda Parish (II.4.2) pursuant Article 6 (1) and 6 (3) of the Statute.[3898] The Chamber has already entered a conviction on this attack as extermination as a crime against humanity (III.4.3.4). Cumulative convictions for extermination and murder as crimes against humanity based on the same set of facts are not permissible as murder does not contain a materially distinct element from extermination.[3899]

(ii) Matabaro and Nyirinkwaya

(a) Article 6 (1)

1554. The Prosecution charges Nizeyimana with murder as a crime against humanity in relation to the killing of persons removed from the Matabaro and Nyirinkwaya residences pursuant to Article 6 (1) and 6 (3) of the Statute.[3900] The Chamber has found that, around 22 April 1994, Nizeyimana accompanied a number of ESO soldiers who forcibly removed members of the Matabaro family and persons staying in their home. Some of the civilians fled to the nearby home of Sub Prefect Zéphanie Nyirinkwaya. However, soldiers quickly followed and removed these individuals as well as others staying at the Nyirinkwaya residence. They were taken a short distance away.

1555. Once outside the residences, male heads of households, including Deputy Prosecutor Jean Baptiste Matabaro and Sub Prefect Zéphanie Nyirinkwaya, who had been previously separated from the others, were shot and killed. Subsequently, the soldiers shot the remainder of the Matabaro and Nyirinkwaya families as well as other persons taken from their residences. A number of people were killed, although some survived.

1556. The Chamber is satisfied that these killings reflect a methodical and organised approach. The immediate proximity in time and space of the removal of the persons from the two residences with the ensuing executions demonstrates that these killings were intentional. Furthermore, there is no doubt that the assailants attacked the Matabaro and Nyirinkwaya residences knowing that this was part of a widespread and systematic attack on political and ethnic grounds.

1557. In particular, the record reflects that Jean Baptiste Matabaro, Butare's deputy prosecutor, had opened his house to several persons fleeing Kigali and Butare, many of whom feared persecution in light of the ongoing violence.[3901] Evidence from witnesses close to Matabaro reflects that ethnicity was a fluid concept in that household.[3902] Likewise, the testimony of one ICRC representative reflects that Nyirinkwaya spoke candidly about the nature of targeted violence occurring in Butare town.[3903] The Chamber has no doubt that

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[3898] Indictment, paras. 44, 46 (incorporating by reference paragraph 13).
[3899] *Bagosora and Nsengiyumva* Appeal Judgement, para. 416; *Ntakirutimana* Appeal Judgement para. 542.
[3900] Indictment, paras. 44, 46 (incorporating by reference paragraphs 22 and 40).
[3901] *See* II.6.6. *See, e.g.*, Defence Witness MOL08, T. 10 May 2011, p. 11. *Cf.* Prosecution Witness BZC, T. 22 February 2011, pp. 76-77.
[3902] *See, e.g.*, Witness BXF, T. 22 February 2011, pp. 9, 24, 28; Witness ZBJ, T. 25 February 2011, p. 17.
[3903] *See* Witness Zachariah, T. 14 February 2011, p. 10.

Nyirinkwaya, a sub prefect who was similarly housing more than just family members once killings commenced in Butare, was also singled out on political and ethnic grounds. When viewed in light of the attacks that preceded and followed this murder operation, the Chamber has no doubt that the perpetrators who committed these killings did so knowing that they were part of a widespread and systematic attack.

1558. The Chamber recalls its findings that the killings occurred based on Nizeyimana's instructions and were committed with his express approval. His position as a high ranking officer within the ESO's hierarchy and his experience in the S2/S3 office charged with intelligence and training / operations are essential to understanding his role. These factors, along with his intimate knowledge of the neighborhood demonstrate that he held a supervisory role in this operation and was present to ensure its satisfactory completion. In this regard, his presence, in addition to the instructions he issued, amounted to significant and substantial tacit approval to the removal and subsequent murder operation. Finally, Nizeyimana's position within the military and participation in similar attacks around this time demonstrate that he knew this attack was part of a widespread and systematic attack on political and ethnic grounds.

1559. Given the findings above, the Chamber considers that Nizeyimana could bear responsibility pursuant to Article 6 (1) for having aided and abetted the murders of those taken from the Matabaro and Nyirinkwaya households. However, the findings above reflect that this attack involved a plurality of persons, sharing a common purpose and acting in concert to commit a crime provided for in the Statute. The Chamber has concluded that Nizeyimana's contribution to the crime was both significant and substantial. The record further demonstrates that Nizeyimana agreed to common purpose, sharing the *mens rea* of the principal perpetrators. Under the circumstances, Nizeyimana's liability is most appropriately characterised by his participation in a basic joint criminal enterprise.

(b) Article 6 (3)

1560. In light of the findings above, the record demonstrates that Nizeyimana could also bear superior responsibility pursuant to Article 6 (3) of the Statute for the killings of those removed from the Matabaro and Nyirinkwaya households. The Chamber notes Nizeyimana's physical presence during the operation. Recalling the identification of the ESO soldiers provided by the Prosecution witnesses, as well as Nizeyimana's direct involvement in the attack, the Chamber has no doubt that he exercised effective control over the assailants as it occurred.

1561. These findings consider the reasonable possibility that ESO Commander Lieutenant Colonel Tharcisse Muvunyi, Nizeyimana's *de jure* superior, may have also excercised effective control over the assailants. However, this possible parallel authority does not reasonably eliminate Nizeyimana's effective control over the perpetrators of these crimes. The Chamber shall consider how these conclusions impact sentencing as Nizeyimana may not be convicted pursuant to Articles 6 (1) and 6 (3) of the Statute.[3904]

[3904] *See, e.g.*, *Setako* Appeal Judgement, para. 266; *Renzaho* Appeal Judgement, para. 564.

(ii) Remaining Proven Criminal Conduct

1562. The Prosecution has also charged Nizeyimana with murder as a crime against humanity for the killing of the Ruhutinyanya family (II.4.1), the killing of Rosalie Gicanda and others taken from her home (II.6.2), the killing of Remy Rwekaza and Beata Uwambaye as well as the attack on Witness ZAV at the Gikongoro / Cyangugu and Kigali roads junction roadblock (II.7.1; II.7.2) and the killing of Pierre Claver Karenzi at the Hotel Faucon roadblock (II.6.5).[3905]

1563. The Chamber has determined that these killings and one instance of serious bodily harm constituted genocide. The Chamber has no doubt that they were intentional murders and were conducted on ethnic grounds. Indeed, while it is possible that some Hutus were killed during the execution of the Ruhutinyanya family and the killing of persons taken from Rosalie Gicanda's home, these attacks were motivated by actual and or perceived the Tutsi ethnicity. The Chamber is also satisfied that the killing of Rosalie Gicanda, the former Queen of Rwanda, and others taken from her home were on political grounds as well.

1564. Given its findings above, the Chamber is also satisfied that the assailants, as well as Nizeyimana, participated in these crimes knowing that they formed a widespread and systematic attack on ethnic grounds.

4.4.4 Conclusion

1565. The Chamber has determined that Nizeyimana bears responsibility for the killing of the Ruhutinyanya family, the killing of Rosalie Gicanda and others taken from her home and the killing of Pierre Claver Karenzi at the Hotel Faucon roadblock pursuant to Article 6 (1) of Statute for his participation in basic joint criminal enterprises (III.3.4). It has also concluded that he is responsible for ordering the killings of Remy Rwekaza and Beata Uwambaye at the Gikongoro / Cyangugu and Kigali roads junction roadblock (III.3.4). In addition, the Chamber concludes that Nizeyimana also bears responsibility for the killings of those taken from the Matabaro and Nyirinkwaya homes pursuant to Article 6 (1) of the Statute for his participation in a basic joint criminal enterprise.

1566. As discussed above, the Chamber has no doubt that Nizeyimana, along with the physical assailants, were aware that these events formed part of widespread and systematic attacks against the civilian population on ethnic and political grounds. The Chamber finds Nizeyimana guilty of murder as a crime against humanity (Count 3) for these killings on the basis described above.

1567. The Chamber has also found that Nizeyimana could be held liable as a superior pursuant to Article 6 (3) for all of these crimes with the exception of the killing of Professor Karenzi at the Hotel Faucon roadblock. However, as it is impermissible to enter convictions pursuant to Articles 6 (1) and 6 (3) of the Statute, these conclusions shall only be considered in relation to sentencing.

[3905] *See* Indictment, paras. 44, 46 (incorporating by reference paragraphs 19, 23-25, 29).

5. SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND ADDITIONAL PROTOCOL II

5.1 Introduction

1568. Counts 5 and 6 of the Indictment charge Nizeyimana with serious violations of Article 3 Common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims and of Additional Protocol II thereto of 8 June 1977 under Articles 4 (a) and 4 (e) of the Statute for murder and rape. As discussed previously, none of the factual allegations in support of Count 6, rape as a war crime pursuant to Article 4 (e) of the Statute, demonstrate Nizeyimana's involvement sufficient to establish his liability. Count 6 of the Indictment is dismissed.

5.2 Threshold Elements

5.2.1 Law

1569. In connection with crimes within the scope of Article 4 of the Statute, the Prosecution must prove, as a threshold matter, the following elements: (i) the existence of a non-international armed conflict; (ii) the existence of a nexus between the alleged violation and the armed conflict; and (iii) the fact that the victims were not directly taking part in the hostilities at the time of the alleged crime.[3906]

5.2.2 Non-International Armed Conflict

1570. There is no dispute that there was an armed conflict of a non-international character between the Rwandan government and the military forces of the RPF.[3907]

5.2.3 Nexus

1571. A nexus exists between the alleged offence and the non-international armed conflict when the offence is closely related to the hostilities. The existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit the crime, his decision to commit it, the manner in which it was committed, or the purpose for which it was committed. If it can be established that the perpetrator acted in furtherance of or under the guise of the armed conflict, it would be sufficient to conclude that his acts were closely related to the armed conflict.[3908]

1572. The evidence reflects that the ongoing armed conflict between the Rwandan government forces and the RPF, which was largely identified as the Tutsi ethnic minority and members of the political opposition, created a situation and provided a pretext for extensive killings and other abuses of members of the civilian population in Rwanda.

1573. The Chamber has described the use of ESO soldiers to target the Ruhutinyanya family as well as the participation of ESO soldiers in a crushing military assault on the Cyahinda

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[3906] *Setako* Appeal Judgement, para. 246.
[3907] *See* Decision on Prosecutor's Motion for Judicial Notice of Facts of Common Knowledge (TC), 3 March 2010, paras. 2, 5. *See also Semanza* Appeal Judgement para. 192 ("the Chamber took notice only of general notorious facts not subject to reasonable dispute, including, *inter alia*: ... that there was an armed conflict not of an international character in Rwanda between 1 January 1994 and 17 July 1994 ...").
[3908] *Setako* Appeal Judgement, para. 249.

Parish, which led to the killing of thousands of primarily Tutsi refugees. Likewise, ESO soldiers participated in the killing of Rosalie Gicanda, the former Queen of Rwanda, and persons taken from her home as well as the attack on persons removed from the Matabaro and Nyirinkwaya residences. Finally, ESO soldiers manned roadblocks throughout Butare town and were responsible for the killings of Remy Rwekaza, Beata Uwambaye and Pierre Claver Karenzi, all Tutsis, at two barriers.

1574. Soldiers were the exclusive or primary participants in these attacks, sometimes working in coordination with civilian militia or others. There is no question that these assailants targeted their victims in furtherance or under the guise of the existing armed conflict.

5.2.4 Victims

1575. At the time of the alleged violations, most of the victims included civilians who had sought assistance from authorities (II.4.1), were extracted from their homes and killed (II.6.2, II.6.6, II.6.5) or killed while in transit in Butare town (II.7.1, II.7.2).

1576. It is significant that those who described members of the Ruhutinyanya family, spoke of women and children being among them.[3909] Notably, Gicanda, the former Tutsi Queen of Rwanda was referred to as the "old lady".[3910] The record demonstrates that children were among those who were killed in the attack on the Matabaro and Nyirinkwaya residences. Remy Rwekaza, Witness ZAV and Beata Uwambaye were unarmed and wore civilian clothing when Nizeyimana ordered that they be killed by ESO soldiers.[3911] None of these victims were actively taking part in hostilities.

1577. The evidence reflects that the displaced persons at Cyahinda Parish resisted initial attacks. In the process, they killed at least two gendarmes and wounded the Nyakizu commune *bourgmestre*. Notwithstanding, the record reflects that the masses who gathered there were civilians who had fled attacks on Tutsis in neighbouring communes. The Chamber does not consider that the defensive efforts against attacks on the primarily displaced Tutsis at the parish turned them into combatants. To the extent that some could be considered as such, this would not have deprived the thousands of non-combatants who had also sought refuge there of their protected status.[3912]

5.2.5 Application

1578. The Chamber has already determined that the killings of members of the Ruhutinyanya family, the attack on Cyahinda Parish, Rosalie Gicanda and others taken from her home, Remy Rwekaza, Beata Uwambaye and Pierre Claver Karenzi amount to genocide. The Chamber has further found that Nizeyimana ordered these killings or participated in joint

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[3909] Prosecution Witness BDE, T. 28 January 2011, p. 22, T. 31 January 2011, pp. 34-36; Prosecution Witness ZY, T. 26 January 2011, pp. 55-57, T. 27 January 2011, p. 63.
[3910] Witness AZD, T. 31 January 2011, p. 78.
[3911] Witness ZAV, T. 23 February 2011, pp. 27, 30; Witness ZAK, T. 24 January 2011, pp. 58-59.
[3912] *Cf. Bagosora et al.* Trial Judgement, para. 2238 ("There is evidence that the refugees at Nyundo Parish used traditional weapons to defend themselves against the repeated attacks by militiamen. The Chamber is not satisfied that the use of rudimentary defensive weapons changes the status of the victims. Even if those with weapons for self-defence could be characterised as combatants, their possible presence within groups of refugees does not deprive those who are non-combatants of their protected status."), *citing Semanza* Trial Judgement, para. 515.

criminal enterprises to commit them. Furthermore, the Chamber has also determined that the killings of Jean Baptiste Matabaro and Zéphanie Nyirinkwaya, and members of their families, amount to crimes against humanity. On the same basis, these killings also amount to intentional murder.

5.2.6 Conclusion

1579. The Chamber finds Nizeyimana guilty of murder as a serious violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II (Count 5) for the killing of the Ruhutinyanya family, the attack on Cyahinda Parish, the killing of Rosalie Gicanda and others taken from her home and the killing of Pierre Claver Karenzi at the Hotel Faucon roadblock pursuant to Article 6 (1) of Statute for his participation in basic joint criminal enterprises. It has also concluded that he is responsible for ordering the killings of Remy Rwekaza and Beata Uwambaye at the Gikongoro / Cyangugu and Kigali roads junction roadblock.

1580. The Chamber has also found that Nizeyimana could be held liable as a superior pursuant to Article 6 (3) for all of these crimes with the exception of the attack on Cyahinda Parish and the killing of Professor Karenzi at the Hotel Faucon roadblock.

CHAPTER IV: VERDICT

1581. For the reasons set forth in this Judgement, having considered all the evidence and arguments, the Trial Chamber unanimously finds Ildéphonse Nizeyimana:

Count 1:	GUILTY of Genocide
Count 2:	GUILTY of Extermination as a Crime Against Humanity
Count 3:	GUILTY of Murder as a Crime Against Humanity
Count 4:	NOT GUILTY of Rape as a Crime Against Humanity
Count 5:	GUILTY of Murder as a Serious Violation of Article 3 Common to the Geneva Conventions and Additional Protocol II
Count 6:	NOT GUILTY of Rape as a Serious Violation of Article 3 Common to the Geneva Conventions and Additional Protocol II

CHAPTER V: SENTENCING

(i) Introduction

1582. Having found Nizeyimana guilty of genocide, extermination and murder as crimes against humanity and murder as a serious violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, the Chamber must determine an appropriate sentence.

(ii) Law

1583. All crimes under the Tribunal's Statute are serious violations of international humanitarian law.[3913] When determining a sentence, a Trial Chamber has considerable, though not unlimited, discretion on account of its obligation to determine penalties to fit the individual circumstances of an accused and to reflect the gravity of the crimes for which the accused has been convicted.[3914]

1584. The gravity of the offences committed is the deciding factor in the determination of the sentence.[3915] Gravity entails the particular circumstances of the case, the form and degree of the participation of the accused in the crimes, and the number of victims.[3916] The consequences of the crime upon any victims who were directly injured are also relevant.[3917]

1585. The Appeals Chamber has stated that "sentences of like individuals in like cases should be comparable".[3918] However, similar cases do not provide a legally binding benchmark for sentences. Although assistance can be drawn from previous decisions, such assistance is often limited, as each case contains a multitude of variables.[3919] In light of this, the Appeals Chamber has recognised that "[d]ifferences between cases are often more significant than similarities and different mitigating and aggravating circumstances might dictate different results".[3920]

1586. Pursuant to Article 23 of the Statute, and Rule 101 (B) of the Rules, the Chamber shall take into account the general practice regarding prison sentences in the courts of Rwanda.[3921] The Chamber shall also account for any aggravating circumstances, any mitigating circumstances, and the extent to which the convicted person has already served

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[3913] *Kayishema and Ruzindana* Appeal Judgement, para. 367 (quoting Article 1 of the Statute). *See also Nyiramasuhuko et al.* Trial Judgement, paras. 6188-6199.
[3914] *Nahimana et al.* Appeal Judgement, para. 1037; *Kajelijeli* Appeal Judgement, para. 291.
[3915] *Nshogoza* Appeal Judgement, para. 98; *Nahimana et al.* Appeal Judgement, para. 1060.
[3916] *Hategekimana* Appeal Judgement, para. 292; *Munyakazi* Appeal Judgement, para. 185; *Rukundo* Appeal Judgement, para. 243.
[3917] *See Blaškić* Appeal Judgement, para. 683 (addressing this issue in a subsection labeled "[t]he gravity of the offence").
[3918] *Dragomir Milošević* Appeal Judgement, para. 326; *Strugar* Appeal Judgement, para. 348; *Kvočka et al.* Appeal Judgement, para. 681.
[3919] *Dragomir Milošević* Appeal Judgement, para. 326; *Kvočka et al.* Appeal Judgement, para. 681.
[3920] *Dragomir Milošević* Appeal Judgement, para. 326, *citing Limaj et al.* Appeal Judgement, para. 135; *Dragan Nikolić* Appeal Judgement, para. 19.
[3921] *Semanza* Appeal Judgement, para. 377 ("The command for Trial Chambers to 'have recourse to the general practice regarding prison sentences in the courts of Rwanda does not oblige the Trial Chambers to conform to that practice; it only obliges the Trial Chambers to take account of that practice.'"), *quoting Serushago* Appeal Judgement, para. 30; *Dragan Nikolić* Appeal Judgement, para. 69.

any penalty imposed by a court of any State for the same act. These factors are not exhaustive.[3922]

1587. Aggravating circumstances need to be proven beyond reasonable doubt.[3923] The Chamber may only consider aggravating circumstances that are pleaded in the indictment,[3924] and any circumstance that is included as an element of the crime for which an individual is convicted will not be considered as an aggravating factor.[3925]

1588. Aggravating circumstances may include the position of the accused, the length of time during which the crime continued, premeditation and motive, and the circumstances of the offences generally.[3926] While a position of authority does not automatically warrant a harsher sentence, the abuse of such a position may constitute an aggravating factor.[3927]

1589. Mitigating circumstances need only be established by the balance of probabilities.[3928] Such circumstances include an expression of remorse, good character with no prior criminal convictions, personal and family circumstances, the character of the accused subsequent to the conflict, duress, indirect participation, age and assistance to victims.[3929] Selective assistance of Tutsis may be given only limited weight as a mitigating factor.[3930]

(iii) Submissions

1590. The Prosecution submits that Nizeyimana should be sentenced to concurrent life sentences for each crime upon which he is convicted. Such a conclusion is based, in part, on the scale of the criminal conduct, the nature of Nizeyimana's participation as well as his abuse of his authority. Attacks were committed upon those seeking refuge and sanctuary. Pursuant to Rwandan law, Nizeyimana would be considered a category 1 offender, subject to life imprisonment.[3931]

1591. The Defence submits that Nizeyimana, the youngest to stand trial before this Tribunal, is a father to several children. He was a respected soldier and a moderate, who never showed prejudice to Tutsis. He provided refuge to Tutsis during the genocide and consoled a soldier during the war. He investigated grievances raised by the ICRC during the genocide. Finally, he has maintained good conduct while incarcerated at the United Nations Detention Facility. Any sentence imposed should be less than that given to Tharcisse Muvunyi, his superior during the genocide.[3932]

[3922] *Seromba* Appeal Judgement, para. 228; *Nahimana et al.* Appeal Judgement, para. 1038; *Kajelijeli* Appeal Judgement, para. 290.
[3923] *Nahimana et al.* Appeal Judgement, para. 1038; *Kajelijeli* Appeal Judgement, paras. 82, 294.
[3924] *Renzaho* Appeal Judgement, para. 615; *Simba* Appeal Judgement, para. 82.
[3925] *Ndindabahizi* Appeal Judgement, para. 137.
[3926] *Blaškić* Appeal Judgement, para. 686.
[3927] *Hategekimana* Appeal Judgement, para. 298; *Munyakazi* Appeal Judgement, para. 170; *Simba* Appeal Judgement, para. 284; *Dragomir Milošević* Appeal Judgement, para. 302.
[3928] *Nahimana et al.* Appeal Judgement, para. 1038; *Kajelijeli* Appeal Judgement, para. 294.
[3929] *Blaškić* Appeal Judgement, para. 696.
[3930] *Nchamihigo* Appeal Judgement, para. 389. *See also Rukundo* Appeal Judgement, para. 256; *Kajelijeli* Appeal Judgement, paras. 309-311.
[3931] Prosecution Closing Brief, paras. 532-539; T. 7 December 2011, p. 34 (Prosecution Closing Arguments).
[3932] Defence Closing Brief, paras. 623-630.

(iv) Gravity of the Offences

1592. The Chamber has concluded that Nizeyimana directly participated in a number of crimes, either through his participation in basic joint criminal enterprises or ordering them. His conduct amounted to genocide, crimes against humanity and war crimes. The events reflect repeated criminal conduct. With the case of the killing of Rosalie Gicanda, the Chamber's findings reflect that this killing sought to have a profound impact aimed at catalysing the genocide in Butare.

1593. Moreover, Nizeyimana participated in an operation that led to the death of thousands of primarily Tutsi refugees who had sought safe harbour at Cyahinda Parish. In this Tribunal, conduct of similar gravity has resulted in the highest of penalties.[3933] The Chamber observes that under Rwandan law, similar crimes carry possible penalties of life imprisonment, depending on the nature of the accused's participation.[3934]

(v) Individual, Aggravating and Mitigating Circumstances

1594. The Chamber observes that Nizeyimana, a captain from the S2/S3 office at ESO, undoubtedly held a position of authority during the relevant period. In several instances, the Chamber determined that Nizeyimana could also bear superior responsibility for a number of the crimes for which he was convicted under Article 6 (1) of the Statute. Rather than use his position to stem the tide of violence in Butare, Nizeyimana abused his authority and actively furthered the crimes. The Chamber considers this to be an aggravating circumstance. In addition, the number of victims at Cyahinda Parish is an aggravating circumstance in relation to his convictions for genocide and murder as a war crime, for which there is no minimum numerical threshold.

1595. The Chamber notes Nizeyimana's age[3935] and that he is married and has several children.[3936] The Chamber is also mindful of his lengthy public service to his country. He was generally respected amongst his subordinates and served as a liaison between ESO Camp and the public, including non-governmental organisations during the genocide.[3937] Moreover,

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[3933] *See Seromba* Appeal Judgement, paras. 238-239 (sentencing the defendant to life imprisonment based on his direct participation in an attack on approximately 1,500 refugees inside a church). *Cf. Hategekimana* Appeal Judgement, paras. 7, 128, 129, 157-158, 204-205, 249-250, 286-287, 306 (affirming life sentence of the Defendant, whose convictions for rape, individual killings as well as attacks on about 25 and 500 Tutsi refugees were upheld on appeal); *Renzaho* Appeal Judgement, para. 410, 491, 492, 561, 620 (affirming the Defendant's life sentence for aiding and abetting killings at Kigali roadblocks, the killing of approximately 40 refugees taken from CELA and an attack on Sainte Famille).

[3934] *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-2002-78-R11*bis*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 6 June 2008, paras. 22-25 (assessing Rwanda's penalty structure); *The Prosecutor v. Jean-Baptiste Gatete*, Case No. ICTR-2000-61-R11*bis*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 17 November 2008, paras. 22-25. *See also Semanza* Appeal Judgement, para. 377 ("The command for Trial Chambers to 'have recourse to the general practice regarding prison sentences in the courts of Rwanda does not oblige the Trial Chambers to conform to that practice; it only obliges the Trial Chambers to take account of that practice.'"), *quoting Serushago* Appeal Judgement, para. 30; *Dragan Nikolić* Appeal Judgement, para. 69.

[3935] Indictment, para. 1 (Nizeyimana was born on 5 October 1963).

[3936] Witness Nyirasafari, T. 16 June 2011, pp. 40, 48-49, 51.

[3937] The Chamber does not consider as a mitigating circumstance evidence that Nizeyimana expressed surprise when learning about killings at the Butare University Hospital. Likewise, his later act of stating that he could not control the killings is irrelevant as a mitigating factor. Defence Closing Brief, para. 627.

Nizeyimana is known to have harbored at least one Tutsi during the genocide who, as a result, survived the war.[3938] The Chamber considers his conduct during incarceration relevant. The Chamber accords these mitigating and individual circumstances some limited weight.[3939]

1596. There is no merit, however, to Nizeyimana's suggestion that he should be given a lower sentence than his commander at the time, Tharcisse Muvunyi. This contention fails to appreciate that Muvunyi's conviction was based on a single incident of incitement,[3940] which stands in stark contrast to the extensive proven criminal conduct in this case.

1597. Although these circumstances will be taken into account in determining an appropriate sentence, the Chamber considers that the gravity of the Nizeyimana's offences should be the primary consideration in sentencing.[3941]

(vi) Conclusion

1598. The Chamber has the discretion to impose a single sentence. This practice is appropriate where the offences may be characterised as belonging to a single criminal transaction.[3942] The convictions for genocide, crimes against humanity and serious violations of common Article 3 to the Geneva Conventions and Additional Protocol II are based largely on the same underlying criminal acts.

1599. Considering all the relevant circumstances discussed above, the Chamber **SENTENCES** Ildéphonse Nizeyimana to:

LIFE IMPRISONMENT

(vii) Consequential Orders

1600. Nizeyimana shall serve his sentence 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.

1601. Until their transfer to his designated places of imprisonment, Nizeyimana shall be kept in detention under the present conditions. Pursuant to Rule 102 (A) of the Rules, on notice of appeal, if any, enforcement of the above sentence shall be stayed until a decision has been rendered on the appeal, with Ildéphonse Nizeyimana remaining in detention.

[3938] Witness Bizimenyera, T. 7 September 2011, pp. 42-43. The Chamber observes that her husband, Jean Baptiste Mukimbili was imprisoned after the genocide. T. 8 September 2011, p. 35; *see also* Exhibit P40B (Witness ZAE's *Pro Justitia* Statement), p. 2 (Jean-Baptiste Mukimbili was detained on 22 June 1995). The Defence points to no evidence indicating that he, his brother or his children were Tutsis.

[3939] The Chamber considers the evidence the Defence argues reflects that Nizeyimana was a moderate, inconclusive. Likewise, evidence relating to the absence of ethnic tension at ESO Camp is too remote to demonstrate that this was a result of Nizeyimana's efforts.

[3940] *Muvunyi II* Trial Judgement, para. 133.

[3941] *See, e.g.*, *Nahimana et al.* Appeal Judgement, para. 1038. *See also Bagosora et al.* Trial Judgement, para. 2276.

[3942] *Renzaho* Trial Judgement, para. 825, *citing Nahimana et al.* Appeal Judgement, paras. 1042-1043, *Simba* Trial Judgement, para. 445, *Ndindabahizi* Trial Judgement, para. 497.

Arusha, 19 June 2012

Lee Gacuiga Muthoga	Seon Ki Park	Robert Fremr
Presiding Judge	Judge	Judge

[Seal of the Tribunal]

SEPARATE, CONCURRING OPINION OF JUDGE SEON KI PARK

1602. For many of the reasons set forth in the Judgement, I agree with my colleagues' conclusion that Witness AJP's evidence alone is insufficient to support findings beyond reasonable doubt.

1603. Notwithstanding, I take this opportunity to reiterate that much of Witness AJP's evidence, particularly as it related to his relationship with Nizeyimana, is undisputed and even confirmed by Defence evidence. In this regard, central aspects of his testimony are highly credible. In my view, the circumstances existed for Nizeyimana to issue criminal orders to Witness AJP. This alone, however, is not enough to demonstrate that he did.

1604. I would like to highlight a particular disagreement I have as it relates to my colleagues' assessment of Witness AJP's involvement in the killing of a woman at Vincent Ntezimana's home in April or May 1994. My colleagues interpret the evidence to allow the reasonable possibility that Witness AJP killed her for personal reasons, in light of their pre-existing relationship.

1605. In my view, Witness AJP's testimony is ambiguous as to the extent and nature of his relationship with this woman. Nonetheless, Witness BEJ01's evidence reflects that the girl and Witness AJP "had good relations", that they "went out from time to time" or "went out often".[3943] This record, in my view, does not reflect evidence supporting a reasonable inference that personal animus motivated the killing.

1606. Indeed, the finding of the Belgium court, which convicted Vincent Ntezimana for his participation, in my view reflects that this was a targeted killing.[3944] Specifically, that judgement indicates that the killing of this woman could have been a result of an order.[3945]

1607. Findings of separate judges, reviewing separate records frequently differ. Nonetheless, I consider that this Belgian judgement and the testimonies of Witnesses AJP and BEJ01 do not allow for the inference made by my colleagues as to why Witness AJP might have killed the young woman. Nonetheless, the evidence on the record does not establish that Nizeyimana ordered Witness AJP to murder her.

Arusha, 19 June 2012

Seon Ki Park

Judge

[3943] Witness BEJ01, T. 9 June 2011, pp. 12, 14.

[3944] *See* Witness BEJ01, T. 9 June 2007, pp. 11, 33; Exhibit P52 (Multiple Accused Judgement).

[3945] *See* Exhibit P52 (Multiple Accused Judgement), p. 43 ("In Butare prefecture, Rwanda, between 6 April 1994 and 27 May 1994, [Vincent Ntezimana] failed to act within the limits of his possibility, *whereas he was aware of orders given for the commission of the crime described above*, or *facts that sparked off the commission* and that he could have prevented the commission or put an end to it, namely the intentional homicide on the person of an unidentified wounded girl.").

ANNEX A: PROCEDURAL HISTORY

1. PRE-TRIAL PROCEEDINGS

1. On 21 January 2000, the Prosecution filed its Original Indictment against Ildéphonse Nizeyimana ("the Accused" or "Nizeyimana"), Tharcisse Muvunyi and Ildéphonse Hategekimana which was confirmed by Judge Yakov Ostrovsky on 2 February 2000.[3946] Nizeyimana was initially indicted on charges of genocide, complicity in genocide, rape as a crime against humanity and other inhumane acts as a crime against humanity.[3947] An arrest warrant against Nizeyimana was issued on 2 February 2000 under seal.[3948] The non-disclosure order was rescinded on 6 February 2001 following a motion by the Prosecution.[3949]

2. Nizeyimana was arrested in Kampala, Uganda on 5 October 2009 and transferred to the United Nations Detention Facility on 6 October 2009. At his initial appearance before Judge Khalida Rachid Khan on 14 October 2009, Nizeyimana pleaded not guilty to all four counts against him in the Original Indictment.[3950]

3. On 3 March 2010, the Chamber granted the Prosecution's request to take judicial notice of six facts of common knowledge.[3951] The Defence moved for suspension of the proceedings pending the release of Peter Erlinder and the withdrawal of the charges against him. The Chamber denied these motions on 9 June 2010 and 29 June 2010 because it did not find any reason to be concerned that Nizeyimana's defence team would be hampered due to the arrest and detainment of Mr. Erlinder in its investigation while in Rwanda.[3952] In a further decision on 9 June 2010, the Chamber denied the Defence request for an order from the Chamber to require cooperation from the United Nations Mission in the Democratic Republic of the Congo ("MONUC").[3953]

4. On the same day, the Chamber also denied the Prosecution's motion requesting protective measures for witnesses on the basis that the measures sought were too broad and imprecise.[3954] The Chamber granted the Prosecution's third motion for protective measures

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[3946] Original Indictment, 7 November 2000 ("Original Indictment").
[3947] Original Indictment, paras. 2.4-2.7.
[3948] Warrant of Arrest and Order for Transfer and Detention, 2 February 2000. The Warrant of Arrest was issued under seal so as not to disclose the name of the other accused still at large to the public prior to being served on the Accused.
[3949] Decision on the Prosecutor's Motion to Rescind Non-Disclosure Order of 2 February 2000 (TC), 6 February 2001.
[3950] T. 14 October 2009, pp. 12-13 (Initial Appearance).
[3951] Decision on Prosecutor's Motion for Judicial Notice of Facts of Common Knowledge (TC), 3 March 2010.
[3952] Decision on Ildéphonse Nizeyimana's Motion to Suspend Trial Proceedings (TC), 9 June 2010. On 29 June 2010, the Chamber also denied a second motion filed by the Defence, requesting a suspension of the trial due to the arrest and detention of Defence counsel Erlinder in Rwanda. Decision on Ildéphonse Nizeyimana's Second Motion to Suspend Trial Proceedings (TC), 29 June 2010.
[3953] Decision on Ildéphonse Nizeyimana's *Ex Parte* Motion for Request for Cooperation to the United Nations Organization Mission in Democratic Republic of the Congo (TC), 9 June 2010.
[3954] Decision on Prosecutor's Motion for Protective Measures for the Victims and Witnesses to Crimes Alleged in the Indictment (TC), 9 June 2010. The Chamber thereafter denied a similar motion on 3 September 2010 and a subsequent motion to stay this decision, and it ordered the Prosecution to disclose to the Defence all un-redacted statements of potential prosecution witnesses. Decision on Prosecutor's Second Motion for Protective Measures (TC), 3 September 2010; Decision on Prosecutor's Extremely Urgent Motion to Stay the Execution of the 3 September 2010 Order (TC), 14 September 2010.

for forty-five Prosecution witnesses on 4 November 2010.[3955] On 31 August 2010, the Chamber ordered the Registry to translate the Pre-Trial Brief and the witness list filed on 2 August 2010 into French.[3956]

5. Three decisions were issued by the Chamber on 6 October 2010. First, the Chamber dismissed a Prosecution motion which requested that a Prosecution witness be able to testify by video-link.[3957] Second, the Chamber declined to admit into evidence a written statement of General Marcel Gatsinzi.[3958] Third, the Chamber declined to admit into evidence a taped transcript of Tharcisse Muvunyi.[3959] On 2 December 2010, the Chamber granted the Prosecution certification to appeal the decision denying the admission of General Gatsinzi's statement.[3960]

6. The Chamber partially granted the Prosecution's motion to admit into evidence the statements of six deceased witnesses on 20 October 2010.[3961] The Chamber also admitted into evidence a report by Dr. Binaifer Nowrojee on 1 November 2010 on the condition that Dr. Nowrojee appear for cross-examination.[3962]

7. On 25 November 2010, the Chamber denied a Defence motion requesting subpoenas to be issued for immigration documents relating to Prosecution Witnesses BXF, BZC and ZBJ.[3963] On 2 December 2010 a Defence motion requesting disclosure of a prior statement by a Prosecution witness was denied.[3964]

[3955] Decision on Prosecutor's Third Motion for Protective Measures for the Victims and Witnesses to Crimes Alleged in the Indictment (TC), 4 November 2010.

[3956] Decision on Ildéphonse Nizeyimana's Motion Concerning Translation of Amended Indictment, Pre-Trial Brief and 2 August 2010 List of Witnesses (TC), 31 August 2010. Indeed, the Chamber issued a Scheduling Order on 12 July 2010, ordering the Prosecution to file a motion for protective measures, its intended witness list, the exhibits it intends to use and the statement of non-contested matters of facts and law. Scheduling Order (TC), 12 July 2010.

[3957] Decision on Prosecutor's Motion to for (sic) Testimony Via Video-Link (TC), 6 October 2010.

[3958] Decision on Prosecutor's Motion to Admit into Evidence the Statement of General Marcel Gatsinzi (TC), 6 October 2010.

[3959] Decision on Prosecutor's Motion to Admit into Evidence the Tape Transcript of Lt. Col. Tharcisse Muvunyi (TC), 6 October 2010.

[3960] Decision on Prosecution's Motion for Certification to Appeal Decision on Prosecutor's Motion to Admit into Evidence the Statement of General Marcel Gatsinzi (TC), 2 December 2010. The Appeals Chamber denied the Prosecution's interlocutory appeal of the decision not to admit Marcel Gatsinzi's statement into evidence pursuant to Rule 92*bis* on 8 March 2011. Decision on Prosecutor's Interlocutory Appeal of Decision Not to Admit Marcel Gatsinzi's Statement into Evidence Pursuant to Rule 92*bis* (AC), 8 March 2011. The Appeals Chamber found that the Chamber erred in considering a lack of justification for Gatsinzi's supposed inability to testify as a factor against admitting Gatsinzi's statement. However, the Chamber did not err in denying admission due to an overriding public interest to hear Gatsinzi's statement *viva voce* and finding that it would be highly prejudicial to the Accused to admit evidence without allowing for cross-examination. The Chamber subsequently denied a Prosecution's motion to reconsider its decision of 6 October 2010. *See* Decision on Prosecutor's Motion to Reconsider the Decision on Prosecutor's Motion to Admit into Evidence the Statement of General Marcel Gatsinzi Pursuant to Rules 89(C) and 92*bis* (TC), 21 June 2011.

[3961] Decision on Prosecution's Motion to Admit into Evidence the Statements of Six Deceased Witnesses (TC), 20 October 2010. The Chamber declared admissible four witness statements, subject to redactions.

[3962] Decision on Prosecutor's Motion to Admit into Evidence the Report of Binaifer Nowrojee (TC), 1 November 2010. Dr. Nowrojee did not subsequently appear for cross-examination, and the report was thus not admitted into evidence.

[3963] Decision on Defence Extremely Urgent Pre-Trial Motion for Issuance of Three Subpoenas (TC), 25 November 2010. The Chamber ordered the Witnesses & Victims Support Section ("WVSS") to contact Witnesses BXF, ZBJ, BZC and AJP to see if they would consent to meeting with counsel for the Defence, 30

8. The Chamber dismissed a Defence request for the disclosure of material in the Prosecution's possession from the *Prosecutor v. Ntaganzwa* case on 3 December 2010.[3965] On 13 December 2010, the Chamber denied a Defence motion to strike, or have declared irrelevant, parts of the Pre-Trial Brief.[3966] The Chamber ordered the transfer of several detained Prosecution witnesses to the United Nations Detention Facilities in Arusha on 31 December 2010.[3967]

9. On 6 January 2011, the Chamber denied a Defence motion for the disclosure of Prosecution witness statements, including interview notes and reconfirmation statements.[3968] On the same day, the Chamber granted a Defence request for the cooperation of the Government of Rwanda in obtaining certain Gacaca records.[3969]

10. On 7 January 2011, the Chamber dismissed a Defence motion requesting that the Prosecution witness list be reduced to only those witnesses it intended to call.[3970] Second, the Chamber denied a Defence motion for the Accused to be given Internet access, including Internet-based access to all documents disclosed by the Office of the Prosecutor.[3971]

11. The Chamber issued three decisions on 11 January 2011. First, the Chamber granted the Defence motion for protective measures for seven Defence witnesses.[3972] Second, the Chamber granted, in part, a Defence motion requesting access to a number of statements concerning rapes, which formed a significant basis to Dr. Binaifer Nowrojee's analysis in her report.[3973] Third, the Chamber denied a Prosecution motion for the Defence to provide notice of the Accused's special defence or alibi.[3974]

12. On 12 January 2011, the Chamber granted a Prosecution motion to partially waive the protective measures in place for Witnesses ZAV and BXF, allowing these witnesses to

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November 2010. Decision on Defence Motion Requesting an Order to the Prosecution and WVSS to Contact Prosecution Witnesses (TC), 30 November 2010. On 2 December 2010, the Chamber issued a Corrigendum to its decisions of 25 November 2010, 30 November 2010 and 2 December 2010, correcting the date referred to in paragraph 1 of the Decisions. Corrigendum to: Decision on Defence Extremely Urgent Pre-Trial Motion for Issuance of Three Subpoenas; Decision on Defence Motion Requesting an Order to the Prosecution and WVSS to Contact Prosecution Witnesses; and Decision on Defence Motion for Disclosure of Prior Statements (TC), 2 December 2010.

[3964] Decision on Defence Motion for Disclosure of Prior Statements (TC), 2 December 2010.

[3965] Decision on Defence Motion for Disclosure of Exculpatory Evidence (TC), 3 December 2010.

[3966] Decision on Defence Motion to Strike or Have Declared Irrelevant Parts of the Pre-Trial Brief (TC), 13 December 2010.

[3967] Order for Transfer of Detained Witnesses AZM, BYE, QCE, YAL, YAM and ZBH (TC), 31 December 2010.

[3968] Decision on Defence Urgent Pre-Trial Motion for Disclosure Under Rule 66(A)(ii) of the Rules of Procedure and Evidence (TC), 6 January 2011.

[3969] Decision on Confidential, *Ex Parte* Defence Motion for Judicial Cooperation of the Government of the Republic of Rwanda (TC), 6 January 2011.

[3970] Decision on Urgent Defence Motion for a Fair Trial Remedy (TC), 7 January 2011. The Chamber dismissed the motion on the basis that the Defence had notice that the Prosecution intended to call 51 witnesses as early as 29 September 2010. Moreover, the Chamber ordered the Prosecution to file a final order of appearance for the witnesses it intended to call in the first two weeks of trial.

[3971] Decision on Defence Urgent Pre-Trial Motion for Disclosure (TC), 7 January 2011.

[3972] Decision on Defence Motion Requesting Protective Measures for Defence Witnesses RWV07, RWV08, OUV06, CKN10, OUV01, RWV02 and OUV03 (TC), 11 January 2011.

[3973] Decision on Urgent Pre-Trial Motion for Disclosure re: Binaifer Nowrojee (TC), 11 January 2011.

[3974] Decision on Prosecution Motion for Disclosure of the Particulars of a Defence Pursuant to Rule 67(A)(ii) (TC), 11 January 2011.

choose their own accommodation in Arusha.[3975] On the same day, the Defence filed the Accused's notice of alibi.[3976] In a further decision on 12 January 2011, the Chamber granted the Prosecution's request for Witness TQ to give evidence via video-link from the Hague.[3977] On 14 January 2011, the Chamber denied the Defence motion to issue subpoenas requiring three Prosecution witnesses to provide the Defence with certain immigration documents.[3978]

2. AMENDMENTS TO THE INDICTMENT

13. On 25 February 2010, the Chamber partially granted the Prosecution's request to amend the Indictment.[3979] The Prosecution filed the Amended Indictment, on 1 March 2010, charging the Accused with genocide, extermination as a crime against humanity, murder as a crime against humanity, rape as a crime against humanity, murder as a violation of Article 3 common to the Geneva Conventions of 12 August 1949 ("Article 3 common") and Additional Protocol II of 8 June 1977 relating to Protection of Victim's of Non-International Conflicts ("Protocol II") and rape as a violation of Article 3 common and Protocol II.[3980] The Accused appeared before the Chamber on 5 March 2010, pleading not guilty to all six counts contained in the Amended Indictment.[3981]

14. The Prosecution was granted an extension to file its Pre-Trial Brief on 25 May 2010.[3982] On 9 June 2010, the Chamber granted in part two Defence motions alleging defects in the Amended Indictment and non-compliance on the part of the Prosecution with regards to the 25 February 2010 Decision.[3983] The Chamber ordered the Prosecution to make specific revisions and file a corrected Amended Indictment within 10 days.[3984] Following the 9 June 2010 Decision, the Chamber ordered the Prosecution to comply with the Defence preliminary motion on defects in the Amended Indictment and to file a corrected Indictment by 14 July 2010.[3985]

[3975] Decision on Prosecutor's Extremely Urgent Motion for Partial Waiver of Protection of Witnesses ZAV and BXF While in Arusha (TC), 12 January 2011.
[3976] Ildéphonse Nizeyimana's Notice of Alibi, 12 January 2011.
[3977] Decision on Prosecutor's Extremely Urgent Motion for Testimony via Video-Link (TC), 12 January 2011.
[3978] Decision on Defence Urgent Pre-Trial Motion for Issuance of Three Subpoenas (TC), 14 January 2011.
[3979] Decision on Prosecutor's Request for Leave to File an Amended Indictment (TC), 25 February 2010. The Chamber ordered the Prosecution to file the Amended Indictment in English by 2 March 2010 and in French by 3 March 2010. The Chamber also ordered the Prosecution to provide further details for identification purposes. The Defence application for certification to appeal the 25 February 2010 Decision was denied on 1 April 2010. Decision on Nizeyimana's Motion for Certification (TC), 1 April 2010.
[3980] [Amended] Indictment, 1 March 2010, para. 1; *see also* Corrections to Amended Indictment, 1 March 2010; Corrections to Amended Indictment, 12 March 2010.
[3981] Scheduling Order (TC), 1 March 2010; T. 5 March 2010, p. 9 (Further Initial Appearance).
[3982] Decision on Prosecutor's Motion for Extension of Time to File the Pre-Trial Brief (TC), 25 May 2010. The Prosecution subsequently filed the Pre-Trial Brief on 15 July 2010, annexing the list of witnesses and exhibits it intended to produce during the trial. Prosecutor's Pre-Trial Brief, 15 July 2010.
[3983] Decision on Nizeyimana's Preliminary Motion on Defects in the Amended Indictment (TC), 9 June 2010. *See also* Defence Preliminary Motion on Defects in the Indictment Pursuant to Rule 72, 19 March 2010; Defence Motion to Order Prosecution to Comply with a Trial Chamber Decision, 19 March 2010.
[3984] Decision on Nizeyimana's Preliminary Motion on Defects in the Amended Indictment (TC), 9 June 2010. The Prosecution filed a revised version of the Amended Indictment on 18 June 2010 in compliance with the 9 June 2010 Decision.
[3985] Decision on Nizeyimana's Motion to Order the Prosecutor to Conform with a Trial Chamber Decision and Strike Parts of the June 18 Amended Indictment (TC), 12 July 2010. Amended Indictment, 14 July 2010.

15. The Chamber granted the Defence motion for certification of the 12 July 2010 decision addressing various amendments to the Amended Indictment, which was dismissed as moot by the Appeals Chamber.[3986] However, the Defence was denied an extension of time until the Amended Indictment was translated into French.[3987] The Chamber granted a second Prosecution motion for leave to amend the Indictment on 22 September 2010.[3988] The Prosecution was then ordered to file a corrected Second Amended Indictment, which the Prosecution complied with on 17 December 2010.[3989]

3. PROSECUTION CASE

16. The Prosecution commenced its case-in-chief on 17 January 2011.[3990] Over the course of 26 trial days, the Prosecution presented 38 witnesses and tendered 60 exhibits.[3991]

17. On 26 January 2011, the Chamber denied a Defence motion challenging the admissibility of Witness TQ's testimony due to alleged affiliations with the Belgian Red Cross Society ("BRCS") and the International Committee of the Red Cross ("ICRC").[3992] The Chamber granted a Prosecution motion to waive the protective measures of Witness AUR on 28 January 2011.[3993] At the same time, the Chamber directed that the protective measures for Witness KAL remain in place as ordered.[3994]

18. A Defence motion requesting the Prosecution to disclose any written records of interviews between members of the Prosecution team and Prosecution witnesses on 31

[3986] Decision on Ildéphonse Nizeyimana's Motion for Certification (TC), 12 August 2010. The Prosecution filed a corrected version of the Amended Indictment on that date. Decision on Nizeyimana's Interlocutory Appeal from the Decision on Nizeyimana's Motion to Order the Prosecutor to Conform with a Trial Chamber Decision and Strike Parts of the June 18 Amended Indictment (AC), 14 October 2010. The appeal was dismissed by the Appeals Chamber as moot on 14 October 2010 on the ground that the version of the Indictment that was the subject of the appeal had been superseded by the Second Amended Indictment, filed by the Prosecution on 29 September 2010.

[3987] Decision on Ildéphonse Nizeyimana's Motion Concerning Translation of Amended Indictment, Pre-Trial Brief and 2 August 2010 List of Witnesses (TC), 31 August 2010.

[3988] Decision on Prosecutor's Request for Leave to File an Amended Indictment (TC), 22 September 2010. The Chamber further ordered the Prosecution to clarify the position held by Fulgence Niyibizi, and to file the corrected Amended Indictment and Pre-Trial Brief by 28 September 2010. On 29 September 2010, the Chamber granted the Prosecution's request for a one day extension of time. Decision on Prosecutor's Motion for Extension of Time (TC), 29 September 2010. On the same day, the Prosecution filed the Second Amended Indictment.[3988] Additionally, the Prosecution submitted a revised Pre-Trial Brief conforming to the Second Amended Indictment. Prosecutor's Pre-Trial Brief, 29 September 2010.

[3989] Decision on Defence Preliminary Motion on Defects in the Indictment (TC), 15 December 2010. The Defence filed a preliminary motion on 28 October 2010 regarding defects in the Second Amended Indictment. *See* Defence Preliminary Motion on Defects in the Indictment, 28 October 2010. On 13 January 2011, the Chamber issued a corrigendum to its decision of 28 October 2010, removing one sentence from paragraph 80. Corrigendum to Decision on Defence Motion on Defects in the Indictment (TC), 13 January 2011.

[3990] T. 17 January 2011, p. 5; Scheduling Order (TC), 3 November 2010; T. 7 October 2010, p. 13 (Status Conference).

[3991] On 18 January 2011, the Chamber orally directed the WVSS to allocate pseudonyms to two Prosecution witnesses. T. 18 January 2011, p. 2.

[3992] Decision on Nizeyimana's Extremely Urgent and Confidential Motion Challenging the Admissibility of Witness TQ's Testimony (TC), 26 January 2011. The Chamber found no indication that Witness TQ was an employee of the ICRC and that the limited cooperation and interaction with the ICRC by Witness TQ did not trigger the ICRC's non-disclosure rights.

[3993] T. 28 January 2011, pp. 4-6.

[3994] T. 28 January 2011, pp. 2-4.

January 2011 was denied.[3995] In an oral ruling on 1 February 2011, the Chamber partially waived the protective measures for Witnesses ZBJ and BZC, allowing them to choose their own accommodation while in Arusha, Tanzania.[3996] The Chamber also orally granted a Defence motion requesting protective measures for Witness ZML13.[3997] The Chamber denied the Prosecution's request for the Defence to disclose further details of the Accused's alibi defence on 7 February 2011.[3998]

19. On 14 February 2011, the Chamber granted the Prosecution motion to hear Witness QCQ's evidence via video-link, while denying the same measure for Witness YAP.[3999] On 15 February 2011, the Chamber denied a Defence motion to strike Dr. Binaifer Nowrojee's report.[4000] Additionally, the Prosecution's motion seeking an order pursuant to Rule 66(B) was denied.[4001]

20. On 5 October 2010, the Chamber declared admissible a portion of the Dr. Alison des Forges transcript in the *Butare* trial on the condition that it be redacted to remove references to the acts or conduct of the Accused.[4002] The transcript of Dr. des Forges was admitted on 15 March 2011 with the redactions proposed by the Prosecution and a number of other exhibits from the *Butare* trial that were referenced in the transcript.[4003]

21. The Prosecution closed its case-in-chief on 25 February 2011.[4004]

4. DEFENCE CASE

22. The Defence commenced its case on 9 May 2011.[4005] Over the course of 26 trial days, the Defence called 38 witnesses with an additional witness heard on 6 September 2011,[4006] and tendered 76 exhibits into evidence.

[3995] Decision on Urgent Defence Motion for Disclosure of Prior Statements (TC), 31 January 2011.
[3996] Prosecutor's Urgent Motion for Partial Waiver of Protection for Witnesses ZBJ and BZC While in Arusha, 31 January 2011.
[3997] T. 1 February 2011, p. 56.
[3998] Decision on Prosecutor's Urgent Second Motion for Disclosure of the Particulars of a Defence of Alibi Pursuant to Rules 54 and 67(A)(ii) (TC), 7 February 2011.
[3999] Decision on Prosecutor's Extremely Urgent Motion for Testimony via Video-Link (TC), 14 February 2011.
[4000] Decision on Motion to Strike the Evidence of Dr. Binaifer Nowrojee (TC), 15 February 2011. The Chamber ordered the Prosecution to make available to the Defence un-redacted versions of the statements concerning rapes upon which the report was based.
[4001] Decision on Prosecutor's Motion for Reciprocal Inspection (TC), 21 February 2011. The Prosecution requested the Chamber to order the Defence to disclose the complete copy of a recording of an oral statement given by Witness AUR to Defence Counsel Mylène Dimitri on 21 February 2011. In an oral request on 25 February 2011, the Chamber again directed the Defence to contact Defence Counsel Dimitri regarding the availability of the full recording of the meeting between her and Witness AUR. T. 25 February 2011, pp. 35-36.
[4002] Decision on Prosecutor's Motion to Admit into Evidence the Report of Dr. Alison Des Forges (TC), 5 October 2010. In the same decision, the Chamber denied the Prosecution's request to alternatively have Dr. des Forges's report and treatise admitted into evidence.
[4003] Further Decision on Admission of Evidence of Dr. Alison Des Forges (TC), 15 March 2011. On 25 February 2011, the Chamber orally directed the parties to reach an agreement regarding the admittance of the redactions of the transcript of Dr. Alison des Forges pursuant to the Chamber's decision of 5 October 2010. T. 25 February 2011, pp. 33-34. The parties were unable to come to any agreement.
[4004] T. 25 February 2011.
[4005] T. 9 May 2011; Scheduling Order (TC), 3 November 2010; Scheduling Order Following Status Conference Held During Prosecution Case on 9 February 2011 (TC), 10 February, 2011; Scheduling Order (TC), 18 April 2011. The Defence filed its Pre-Defence Brief on 28 March 2011. Nizeyimana Pre-Defense Brief, 28 March 2011.

23. On 9 March 2011, the Chamber granted protective measures for a number of Defence witnesses.[4007] On the same day, the Chamber ordered the Defence to provide a complete list of the documents from the relevant witnesses' immigration files that the Defence requested from Canada within six days.[4008] The Chamber also ordered the Defence to release to the Prosecution the list of Defence witnesses it intended to call.[4009]

24. The Chamber denied the Defence motion seeking a judgement of acquittal of the Accused with respect to certain paragraphs of the Indictment on 16 March 2011.[4010] Following a Prosecution motion, the Chamber ordered the Defence to correct a number of defects in the Pre-Defence Brief on 12 April 2011, which it complied with that day.[4011]

25. On 4 April 2011, the Chamber ordered the Defence to provide the Prosecution with the recording of the interview between Defence Counsel Dimitri and Witness Jules Kayibanda.[4012]

26. The Prosecution's motion to compel the Defence to reduce its witness list and to indicate to the Prosecution whether the Accused will be testifying was denied on 18 April 2011.[4013] On the same day, the Chamber also granted protective measures for two additional Defence witnesses.[4014] In a further decision on 18 April 2011, the Chamber denied a Defence request that Witness BEJ01 be allowed to give evidence via video-link.[4015] On 6 June 2011, the Chamber issued a confidential decision granting the Defence motion for reconsideration to hear Defence Witness BEJ01's testimony via video-link from Belgium.[4016]

27. The Chamber issued a decision on 3 March 2011 extending the Prosecution's deadline to respond to a Defence motion for the exclusion of evidence.[4017] On the same day, the Chamber issued a confidential *ex parte* decision granting a Defence motion requesting the Kingdom of Belgium to indicate whether it would assist in facilitating the testimony of a

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[4006] Witness BNN7, T. 6 September 2011.
[4007] Decision on Defence Urgent Motion for Protective Measures for Defence Witnesses (TC), 9 March 2011.
[4008] Order Regarding Confidential and Extremely Urgent *Ex Parte* Defence Motion for Judicial Cooperation with Canada (TC), 9 March 2011.
[4009] Order Regarding Urgent Nizeyimana Defence Motion for Clarification (TC), 15 March 2011.
[4010] Decision on Defence Motion for Judgement of Acquittal Pursuant to Rule 98*bis* of the Rules (TC), 16 March 2011.
[4011] Decision on Prosecutor's Urgent Motion Concerning Deficiencies of the Pre-Trial Defence Brief (TC), 12 April 2011. *See also* Nizeyimana Amended Pre-Defense Brief, 20 April 2011.
[4012] Decision on Prosecutor's Motion for Compliance with the Trial Chamber's Order of 25 February 2011 Pursuant to Rule 54 (TC), 4 April 2011.
[4013] Decision on Prosecutor's Urgent Motion to Restrict the Defence Witness List Pursuant to Rules 54, 73 & 73*ter* (TC), 18 April 2011.
[4014] Decision on Defence Urgent Motion for Protective Measures for Defence Witnesses (TC), 18 April 2011.
[4015] Decision on Defence Motion for a Hearing by Video-Link for Witness BEJ01 (TC), 18 April 2011. On 6 May 2011, the Chamber rejected a Defence motion to reconsider this decision for failure to have established that any of the non-cumulative requirements for reconsideration had been met. Decision on Defence Motion to Reconsider the Decision on Defence Motion for a Hearing by Video-Link for Witness BEJ01 (TC), 6 May 2011.
[4016] Decision on Extremely Urgent Motion for Reconsideration of the Trial Chamber 18 April 2011 Decision on Defence Motion for a Hearing by Video-Link of Witness BEJ01 and Cooperation Pursuant to Article 28 of the Statute (TC), 6 June 2011. The Chamber also dismissed as moot the Defence motion requesting judicial cooperation from the Kingdom of Belgium and video-link or, alternatively, subpoena of 18 May 2011. T. 2 June 2011, pp. 1-2; Nizeyimana Defence Extremely Urgent Motion for Judicial Cooperation from the Kingdom of Belgium and Video-Link or Alternatively Subpoena, 18 May 2011.
[4017] Decision on Prosecutor's Extremely Urgent Motion for Extension of Time Limit for Filing its Response to Defence Motion for Exclusion of Evidence (TC), 3 May 2011.

Defence witness residing in Belgium.[4018] The Chamber ordered the decision public on 20 May 2011.[4019]

28. On 6 May 2011, the Chamber granted protective measures for Defence Witnesses CKN18, CKN20 and CKN22.[4020] The Chamber also partially granted the Defence motion requesting that the transcript of testimony given by Marcel Gatsinzi in the Appeal Hearing of 30 March 2011 in *The Prosecutor v. Bagosora, et al.*, be admitted into evidence.[4021]

29. On 9 May 2011, the Chamber granted a Defence motion for the admission of a written statement by Defence Counsel Dimitri, under the condition that she would appear before the Chamber for cross-examination.[4022] The Chamber dismissed as moot a Defence motion on 10 May 2011 for the disclosure of immigration materials, Gacaca court records and any other documents in the possession of the Prosecution that could impeach Defence.[4023]

30. Three oral decisions were issued on 11 May 2011. First, the Chamber granted Witness CBN20's request to waive his protective measures, allowing him to testify under his own name, Jean Marie Vianney Mushi.[4024] Second, the Chamber admitted into evidence Exhibit P41, but denied the admittance of a second document on the ground that it could not be authenticated.[4025] Third, the Chamber orally granted the Defence's request to postpone the testimony of Defence Witness Valens Hahirwa.[4026] On 18 May 2011, the Chamber granted Witness CMN08's request to waive his protective measures, allowing him to testify under his own name, Vincent Nsabimana.[4027]

31. A Defence motion was granted on 20 May 2011 allowing Defence Witness Higaniro to give testimony via video-link from Belgium.[4028] Further, the Chamber dismissed a Prosecution motion requesting the disclosure of the confidential *ex parte* Defence motion requiring the Belgian government to clarify their cooperation in regards to Defence Witness Higaniro's testimony before the Tribunal.[4029]

32. On 23, 24 and 26 May 2011, the Chamber issued three oral decisions granting Witnesses CBN19, MAL05 and SAL02's requests to waive their protective measures, after

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[4018] Decision on Confidential, *Ex Parte* Defence Motion for Judicial Cooperation of the Government of Belgium (TC), 3 May 2011.
[4019] Decision on Defence Extremely Urgent Motion for Testimony via Video-Link of Witness Higaniro (TC), 20 May 2011.
[4020] Decision on Defence Extremely Urgent Motion for Protective Measures for Defence Witnesses Re Witnesses CKN18, CKN20 and CKN22 (TC), 6 May 2011.
[4021] Decision on Defence Motion Pursuant to Rule 92 *bis* (A) and (D) for Witness Marcel Gatsinzi (TC), 6 May 2011.
[4022] Decision on Defence Motion Pursuant to Rule 92 *bis* (A) and (B) for Witness Mylène Dimitri (TC), 9 May 2011.
[4023] Decision on Defence Motion for Disclosure of Immigration Documents, Gacaca Documents and Other Statements under Rule 66(B) (TC), 10 May 2011.
[4024] T. 11 May 2011, p. 29.
[4025] T. 11 May 2011, pp. 26-27.
[4026] T. 11 May 2011, pp. 70-71.
[4027] T. 18 May 2011, pp. 60-62.
[4028] Decision on Defence Extremely Urgent Motion for Testimony via Video-Link of Witness Higaniro (TC), 20 May 2011.
[4029] Decision on Prosecutor's Extremely Urgent Motion to Receive Information Communicated *Ex Parte* (TC), 20 May 2011.

which the Witnesses testified under their own names, Melchiade Ndikumana, Joseph Ngezahayo and Désiré Ufitimana, respectively.[4030]

33. The Chamber denied the Defence motion to exclude evidence on 2 June 2011, instead deferring its assessment of the evidence to the final judgement.[4031] On the same day, the Chamber issued an oral decision ordering the Prosecution to file its response to the Defence motion within 24 hours.[4032]

34. Additionally, the Chamber issued four oral decisions. First, it ordered that the video-link testimony by Defence Witness BEJ01 take place on 9 June 2011 at 10:00 a.m.[4033] Second, it ordered the Prosecution to retrieve the confidential document from a prior case that had been distributed to the parties and granted the Defence's objection that the document not be used by the Prosecution.[4034] Third, the Chamber ordered that a further document be admitted as an exhibit, overruling the Defence's objection.[4035]

35. On 8, 9, 10 and 13 June 2011, the Chamber issued three oral decisions granting Witnesses RWV02, RWV08, CBN22, RWV07 and OUV06's requests to waive the protective measures in place for them, allowing the witnesses to testify under their own names as Vincent Ntamagezo, Irénée Hitayezu, Aggripine Nyiranzabonimana, Jean Népomuscène Bunani and Augustin Mushimiyimana, respectively.[4036] The Chamber also directed the language department to translate Exhibit P52 as soon as possible.[4037] The Defence closed its case on 16 June 2011.[4038]

36. The Defence's motion for protective measures for Defence Witness BNN07 was dismissed as premature on 13 July 2011 as the Defence had yet to file an application for leave to present evidence in rejoinder.[4039] On 5 August 2011, the Chamber granted the Defence's motion to amend its witness list to include Witness BNN07, ordering that his testimony be heard on 6 September 2011.[4040] On 23 August 2011, the Chamber granted the Defence motion for protective measures for Defence Witness BNN07.[4041]

5. REBUTTAL AND REJOINDER PROCEEDINGS

37. On 26 May 2011, the Chamber ordered the Defence to respond to the Prosecution's application to submit evidence in rebuttal of the alibi defence by 30 May 2011.[4042] On 7 June 2011, the Chamber granted the Prosecution's motion for leave to present evidence in rebuttal

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[4030] T. 23 May 2011, p. 60; T. 24 May 2011, pp. 42-43; T. 26 May 2011, pp. 2-3.
[4031] Decision on Defence Motion for Exclusion of Evidence (TC), 2 June 2011.
[4032] T. 2 June 2011, pp. 1-2.
[4033] T. 7 June 2011, pp. 2-3.
[4034] T. 7 June 2011, pp. 26-27.
[4035] T. 7 June 2011, p. 49.
[4036] T. 8 June 2011, pp. 53-54; T. 9 June 2011, pp. 50, 70; T. 10 June 2011, p. 44; T. 13 June 2011, p. 51.
[4037] T. 9 June 2011, p. 49.
[4038] T. 16 June 2011.
[4039] Decision on Extremely Urgent Defence Motion for Protective Measures for Defence Witness BNN07 (TC), 13 July 2011.
[4040] Decision on Motion to Hear Witness BNN07 and to Amend Witness List (TC), 5 August 2011.
[4041] Decision on Defence Extremely Urgent Motion for Protective Measures for Defence Witness BNN07 (TC), 23 August 2011.
[4042] T. 26 May 2011, p. 9 (Status Conference).

to the Defence's alibi defence, scheduled to commence immediately following the close of the Defence case, on 21, 22 and 23 June 2011.[4043]

38. On 28 July 2011, the Chamber denied the Prosecution's confidential motion for leave to vary the rebuttal witness list to include Prosecution Witness D, finding that the Prosecution had not provided sufficient justification for the late addition.[4044] The Prosecution completed its rebuttal case on 8 September 2011, having called three witnesses.[4045]

39. On 13 September 2011, the Chamber granted the Defence motion to call rejoinder evidence and ordered that the four rejoinder witnesses be heard on 20 and 21 September 2011.[4046] On the same day, the Chamber granted the Defence's motion for protective measures for Defence Rejoinder Witnesses KEN06 and RWV17.[4047] On 21 September 2011, the Defence completed its rejoinder case, having called four witnesses.[4048]

6. POST-TRIAL PROCEEDINGS

40. On 21 June 2011, the Chamber issued two decisions. First, in a confidential decision, it granted in part the Defence's second urgent and *ex parte* motion for judicial cooperation with the United States.[4049] On 8 September 2011, the Chamber *proprio motu* directed the registry to reclassify the various documents and decisions from *ex parte* to *inter partes*.[4050] In the same decision, the Chamber directed the Defence to file a submission to vary the protective measures for Prosecution Witness ZAV. On 15 September 2011, the Chamber granted the Prosecution request for an extension of time to respond to the Defence motion for variance of the protective measures in place for Witness ZAV.[4051]

[4043] Decision on Prosecutor's Motion for Leave to Present Evidence in Rebuttal to the Alibi Defence (TC), 7 June 2011. On 30 June 2011, the Chamber denied the Defence motion for certification of the Chamber's 7 June 2011 decision on the Prosecution's motion for leave to present evidence in rebuttal to the alibi defence. Decision on Defence Motion for Certification of the Trial Chamber 7 June 2011 Decision on Prosecutor's Motion for Leave to Present Evidence in Rebuttal to the Alibi Evidence (TC), 30 June 2011. On 1 July 2011, the Chamber granted in part the Defence's second motion to reconsider the Chamber's decision of 15 June 2011. Decision on Defence Motion to Reconsider the 15 June Decision on the Extremely Urgent Motion for Reconsideration of Trial Chamber 7 June 2011 Decision on Prosecutor's Motion for Leave to Present Evidence in Rebuttal to the Alibi Defence (TC), 1 July 2011. The Chamber ordered that the presentation of any rejoinder evidence take place within two weeks of the rebuttal case and that the Defence disclose the statements of potential rejoinder witnesses to the Prosecution no later than seven days before their testimony.

[4044] Decision on Prosecutor's Confidential Motion for Leave to Vary the Witness List (TC), 28 July 2011. The Chamber dismissed as moot the Prosecution's confidential motion for protective measures for Witness D Decision on Prosecutor's Confidential Motion for Protective Measures for Witness D (TC), 5 August 2011.

[4045] T. 7 September 2011; T. 8 September 2011.

[4046] Decision on Urgent Defence Motion for Leave to Call Evidence in Rejoinder (TC), 13 September 2011.

[4047] Decision on Extremely Urgent Defence Motion for Protective Measures for Defence Witnesses KEN06 and RWV17 (TC), 13 September 2011.

[4048] T. 21 September 2011.

[4049] Decision on Second Extremely Urgent Confidential Ex Parte Defence Motion for Judicial Cooperation with the United States of America (TC), 21 June 2011. The Chamber advised the Defence to communicate more tailored requests regarding Witness ZAV to the Executive Agent.

[4050] Decision on Reclassification of Confidential and *Ex Parte* Submissions Regarding Judicial Cooperation with the United States of America (TC), 8 September 2011.

[4051] Nizeyimana Defence Motion for Variance of Protective Measures of Witness ZAV (TC), 14 September 2011. The Chamber ordered that the Prosecution's response be filed by close of business on 28 September 2011.

41. A Defence motion for the variance of witness protective measures and for international cooperation by the Government of Canada was granted on 23 June 2011.[4052] The Registry was ordered to transfer all documents and cassettes obtained from the Government of Canada in this matter to the Prosecution on 27 February 2012.[4053] In a further decision on 5 March 2012, the Chamber granted the Defence motion for reconsideration of the Chamber's 27 February 2012 because the Defence had fulfilled its obligation pursuant to Rule 67(C).[4054]

42. On 27 June 2011, the Chamber ordered the Prosecution and Defence to file simultaneous closing briefs of no more than 43,000 words each, inclusive of footnotes, and reminded the parties that the briefs were to be filed no more than 60 days after the close of the evidentiary phase, at a date to be determined by the Chamber.[4055]

43. The Defence motion to recall Prosecution Witness AJP or to admit documentary evidence was denied on 7 July 2011.[4056] On 12 July 2011, the Chamber denied the Defence motion that the Chamber take judicial notice of certain adjudicated facts.[4057]

44. The Chamber also denied the Defence's motion for exclusion of rebuttal witnesses on 13 September 2011 because the Defence failed to demonstrate that it suffered a degree of prejudice justifying the extreme measure of excluding the rebuttal evidence of three Prosecution witnesses.[4058]

45. On 26 May 2011, the Chamber ordered the parties to file a joint itinerary in furtherance of a site-visit by 30 May 2011.[4059] On 6 September 2011, the Chamber issued a decision relating to the conduct of the site visit, annexing thereto a confidential itinerary (Annex A) and the Rules of Procedure and Conduct (Annex B) for the site visit.[4060] The site visit was subsequently conducted from 3 to 7 October 2011.[4061]

[4052] Decision on Defence Motion for Variance of Witness Protective Measures and International Cooperation of the Government of Canada (TC), 23 June 2011. In its decision, the Chamber authorised the Defence to disclose the information requested by the Canadian government.
[4053] *Propio Motu* Confidential Order for the Registry to Transmit Documents Obtained from the Government of Canada to the Prosecution (TC), 27 February 2012.
[4054] Decision on Confidential Nizeyimana Motion for Reconsideration of the *Proprio Motu* Order for the Registry to Transmit Documents Obtained from the Government of Canada to the Prosecution (TC), 5 March 2012.
[4055] Decision on Word Count for Closing Briefs (TC), 27 June 2011.
[4056] Decision on Nizeyimana Defence Motion for Recall of Prosecution Witness AJP or Admission of Documentary Evidence (TC), 7 July 2011. On 5 August 2011, the Chamber denied the Defence motion for reconsideration of the 7 July 2011 decision on the Defence's motion for recall of Prosecution Witness AJP or admission of documentary evidence. Decision on Motion for Reconsideration of the 7 July 2011 Decision on Nizeyimana Defence Motion for Recall of Prosecution Witness AJP or Admission of Documentary Evidence (TC), 5 August 2011.
[4057] Decision on Defence Motion to Take Judicial Notice of Adjudicated Facts (TC), 12 July 2011. On 8 August 2011, the Chamber denied the Defence motion for certification of the Trial Chamber's decision of 12 July 2011. Decision on Defence Motion for Certification of the Trial Chamber 12 July 2011 Decision on Defence Motion to Take Judicial Notice of Adjudicated Facts (TC), 8 August 2011.
[4058] Decision Motion for Exclusion of Rebuttal Witnesses (TC), 13 September 2011.
[4059] T. 26 May 2011, p. 8 (Status Conference).
[4060] Decision on the Conduct of a Site Visit (TC), 6 September 2011. On 6 September 2011, the President authorised the Chamber to conduct a site visit pursuant to the Chamber's letter of 6 September 2011. Decision Authorising a Site Visit, 6 September 2011.
[4061] Confidential Report on Site Visit, 3 to 7 October 2011.

46. The word count was increased by 5,000 words, for a total of 48,000 words, on 21 September 2011 in light of the additional witnesses' testimonies in the rebuttal and rejoinder evidence.[4062] The parties filed their closing briefs on 8 November 2011.[4063] Closing arguments were heard on 7 December 2011.[4064]

47. On 10 February 2012, the Chamber granted the Prosecution's motion to make the trial records conform to the evidence by instructing the Registry to review and re-certify the English and French transcripts with respect to a translation error.[4065]

48. On 15 March 2012, the Chamber dismissed the Defence's arguments of bias, contained in the Defence Closing Brief, with respect to the Presiding Judge and, by implication, the Bench.[4066] The Chamber observed that the Defence did not seek any relief and the motion, if any, should have been brought before the Presiding Judge of Trial Chamber III, namely President Vagn Joensen.

49. The Chamber denied the confidential Defence motion to recall Witness BUR's testimony on 26 March 2012.[4067] The Defence motion for judicial cooperation with Rwanda on 17 April 2012 was dismissed as moot because it had already adjudicated a prior motion in relation to Witness BUR.[4068]

50. In response to an *ex parte* motion by Defence for judicial cooperation with Canada, the Chamber respectfully requested Canada to provide the Defence with the specified immigration files of Witnesses BXF, BZC and ZBJ.[4069] On 6 December 2011, the Chamber denied the Defence's motion for variance of witness protective measures for these three witnesses, but it urgently requested the Government of Canada to assist the Defence in accessing the requested immigration documents.[4070]

[4062] T. 21 September 2011, p. 49.
[4063] Prosecution Closing Brief; Defence Closing Brief.
[4064] Amended Scheduling Order (TC), 26 October 2011; T. 7 December 2011 (Prosecution and Defence Closing Arguments).
[4065] Decision on the Prosecutor's Motion to Make the Trial Records Conform to the Evidence (TC), 10 February 2011.
[4066] *Proprio Motu* Decision on Defence Submission of Bias (TC), 15 March 2012. On 30 March 2012, the Chamber ordered the deletion and correction of specified words from the *Propio Motu* Decision on Defence Submissions of Bias of 15 March 2012. Corrigendum to *Propio Motu* Decision on Defence Submissions of Bias (TC), 30 March 2012.
[4067] Decision on Confidential Nizeyimana Defence Motion to Recall Witness BUR (TC), 26 March 2012. The Chamber found that the Defence had failed to meet its burden of proving that the Accused had suffered a degree of prejudice that would justify excluding Witness BUR's testimony.
[4068] Decision on Confidential and Extremely Urgent Defence Motion for Judicial Cooperation with Rwanda (TC), 17 April 2012.
[4069] Decision on Ildéphonse Nizeyimana's Ex Parte Motion for Judicial Cooperation with Canada (TC), 14 March 2011. On 20 May 2011, the Chamber denied the Defence second confidential and extremely urgent *ex parte* motion for judicial cooperation with Canada and directed the Defence to provide the Canadian government with the requested information. Decision on Second Confidential and Extremely Urgent *Ex Parte* Defence Motion for Judicial Cooperation with Canada (TC), 20 May 2011. On 7 June 2011, the Chamber ordered the Registry to re-classify the Defence motion filed in furtherance of the cooperation with Canada from *ex parte* to *inter partes*. T. 7 June 2011, p. 63.
[4070] Decision on Defence Motion for Variance of Witness Protective Measures and International Cooperation of the Government of Canada (TC), 6 December 2011.

51. The Defence motion to recall Witnesses BXF, BZC and ZBJ was denied on 7 May 2012 because the Defence failed to demonstrate circumstances that warranted the recalling of the witnesses in order to avoid prejudice to the Accused.[4071]

52. The Judgement was rendered on 19 June 2012, with the written Judgement filed on 22 June 2012.

[4071] Confidential Decision on Nizeyimana Defence Motion to Recall Witnesses BXF, BZC and ZBJ (TC), 7 May 2012, paras. 8, 12, 19, 23, 38. Further, the Chamber dismissed as moot the Defence's request to have the audio recordings of Witnesses BXF and ZBJ's immigration hearings transcribed. Lastly, The Chamber further dismissed as moot the Defence request to reconsider its decision on the Defence compliance with Rule 66 (B).

ANNEX B: CITED MATERIALS AND DEFINED TERMS

1. CITED MATERIALS

1.1 ICTR

Akayesu

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

Bagilishema

The Prosecutor v. Ignace Bagilishema, Case No. ICTR-95-1A-A, Judgement (AC), 3 July 2002 ("*Bagilishema* Appeal Judgement")

Bagosora et al.

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR 98-41-T, Judgement and Sentence (TC), 18 December 2008 ("*Bagosora* Trial Judgement")

Prosecutor v. Bagosora, Kabiligi, Ntabakuze and Nsengiyumva, Case No. ICTR-98-41-A, Judgement (AC), 14 December 2011 ("*Bagosora* Appeal Judgement")

Bizimungu

The Prosecutor v. Bizimungu et al., Case No. ICTR-99-50-T, Judgement and Sentence (TC), 30 September 2011 ("*Bizimungu et al.*, Trial Judgement")

Gacumbitsi

Sylvestre Gacumbitsi v. The Prosecutor, Case No. ICTR-2001-64-A, Judgement (AC), 7 July 2006 ("*Gacumbitsi* Appeal Judgement")

Gatete

The Prosecutor v. Jean-Baptiste Gatete, Case No. ICTR-2000-61-R11*bis*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 17 November 2008

Hategekimana

The Prosecutor v. Ildéphonse Hategekimana, Case No. ICTR-00-55B-T, Judgement and Sentence (TC), 6 December 2010 ("*Hategekimana* Trial Judgement")

Ildéphonse Hategekimana v. The Prosecutor, Case No. ICTR-00-55B-A, Judgement (AC), 8 May 2012

Kajelijeli

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

Kalimanzira

Callixte Kalimanzira v. The Prosecutor, Case No. ICTR-05-88-A, Judgement (AC), 20 October 2010 ("*Kalimanzira* Appeal Judgement")

Kamuhanda

The Prosecutor v. Jean de Dieu Kamuhanda, Case No. ICTR-99-54A-A, Judgement (AC), 19 September 2005 ("*Kamuhanda* Appeal Judgement")

Karera

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

Muhimana

Mikaeli Muhimana v. The Prosecutor, Case No. ICTR-95-1B-A, Judgement (AC), 21 May 2007 ("*Muhimana* Appeal Judgement")

Munyakazi

The Prosecutor v. Yussuf Munyakazi, Case No. ICTR-97-36A-A, Judgement (AC), 28 September 2011 ("*Munyakazi* Appeal Judgement")

Muvunyi

Tharcisse Muvunyi v. The Prosecutor, Case No. ICTR-2000-55A-A, Judgement (AC), 29 August 2008 ("*Muvunyi I* Appeal Judgement")

The Prosecutor v. Tharcisse Muvunyi, ICTR-2000-55A-T, Judgement (TC), 11 February 2010 ("*Muvunyi II* Trial Judgement")

Tharcisse Muvunyi v. The Prosecutor, Case No. ICTR-2000-55A-A, Judgement (AC), 1 April 2011 ("*Muvunyi II* Appeal Judgement")

Nahimana et al.

Ferdinand Nahimana et al. v. The Prosecutor, Case No. ICTR-99-52-A, Judgement (AC), 28 November 2007 ("*Nahimana et al.* Appeal Judgement")

Nchamihigo

Siméon Nchamihigo v. The Prosecutor, Case No. ICTR-2001-63-A, Judgement (AC), 18 March 2010 ("*Nchamihigo* Appeal Judgement")

Niyitegeka

The Prosecutor v. Eliézer Niyitegeka, Case No. ICTR-96-14-T, Confidential Decision on Appellant's Extremely Urgent Motion of Delivery of Judgement and for the Admission of Additional Evidence (AC), 5 July 2004

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

Ntabakuze

Aloys Ntabakuze v. The Prosecutor, Case No. ICTR-98-41A-A, Judgement (AC), 8 May 2012 ("Ntabakuze Appeal Judgement")

Ntagerura et al.

The Prosecutor v. André Ntagerura et al., Case No. ICTR-99-46-A, Judgement (AC), 7 July 2006 ("*Ntagerura et al.* Appeal Judgement")

Ntakirutimana

The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana, Cases Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004 ("*Ntakirutimana* Appeal Judgement")

Renzaho

The Prosecutor v. Tharcisse Renzaho, Case No. ICTR-97-31-T, Judgement and Sentence (TC), 14 July 2009

Tharcisse Renzaho v. The Prosecutor, Case No. ICTR-97-31-A, Judgement (AC), 1 April 2011 ("*Renzaho* Appeal Judgement")

Rukundo

Emmanuel Rukundo v. The Prosecutor, Case No. ICTR-2001-70-A, Judgement (AC), 20 October 2010 ("*Rukundo* Appeal Judgement")

Rutaganda

Georges Anderson Nderubumwe Rutaganda v. The Prosecutor, Case No. ICTR-96-3-A, Judgement (AC), 26 May 2003 ("*Rutaganda* Appeal Judgement")

Georges Anderson Nderubumwe Rutaganda v. The Prosecutor, Case No. ICTR-96-3-A, Decision on Requests for Reconsideration, Review, Assignment of Counsel, Disclosure, and Clarification (AC), 8 December 2006

Seromba

The Prosecutor v. Athanase Seromba, Case No. ICTR-2001-66-A, Judgement (AC), 12 March 2008 ("*Seromba* Appeal Judgement")

Setako

Ephrem Setako v. The Prosecutor, Case No. ICTR-04-81-A, Judgement (AC), 28 September 2011 ("*Setako* Appeal Judgement")

Simba

Aloys Simba v. The Prosecutor, Case No. ICTR-01-76-A, Judgement (AC), 27 November 2007 ("*Simba* Appeal Judgement")

1.2 ICTY

Blagojević and Jokić

Prosecutor v. Vidoje Blagojević and Dragan Jokić, Case No. IT-02-60-A, First Decision on Prosecution's Motion for Admission of Witness Statements and Prior Testimony Pursuant to Rule 92*bis* (TC), 12 June 2003

Prosecutor v. Vidoje Blagojević and Dragan Jokić, Case No. IT-02-60-A, Judgement (AC), 9 May 2007 ("*Blagojević and Jokić* Appeal Judgement")

Blaškić

Prosecutor v. Tihomir Blaškić, Case No. IT-95-14-A, Judgement (AC), 29 July 2004 ("*Blaškić* Appeal Judgement")

Brđanin

Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-T, Judgement (TC), 1 September 2004 ("*Brđanin* Trial Judgement")

Delalić et al.

Prosecutor v. Zejnil Delalić et al., Case No. IT-96-21-A, Judgement (AC), 20 February 2001 ("*Delalić et al.* Appeal Judgement")

Kordić and Čerkez

Prosecutor v. Dario Kordić and Mario Čerkez, Case No. IT-95-14/2-A, Judgement (AC), 17 December 2004 ("*Kordić and Čerkez* Appeal Judgement")

Kunarac et al.

Prosecutor v. Dragoljub Kunarac et al., Case No. ICTY IT-96-23/1-A, Judgement (AC), 12 June 2002 ("*Kunarac et al.* Appeal Judgement")

Kupreškić et al.

Prosecutor v. Zoran Kupreškić et al., Case No. IT-95-16-A, Judgement (AC), 23 October 2001 ("*Kupreškić et al.* Appeal Judgement")

Kvočka et al.

Prosecutor v. Miroslav Kvočka et al., Case No. IT-98-30/1-A, Judgement (AC), 28 February 2005 ("*Kvočka et al.* Appeal Judgement")

Naletilić et al.

Prosecutor v. Naletilić and Martinović, Case No. ICTY IT-98-34-A, Chamber (AC), 3 May 2006 ("*Naletilić et al.* Appeal Judgement")

Prlić et al.

Prosecutor v. Jadranko Prlić et al., Case No. ICTY IT-04-74-AR73.6, Decision on Appeals Against Decision Admitting Transcript of Jadranko Prlić's Questioning into Evidence (AC), 23 November 2007

2. DEFINED TERMS

ABASA

A Rwandan support group for victims of rape

Bourgmestre

Mayor of a commune or town

CDR

Coalition pour la Défense de la République

Defence Closing Brief

Prosecutor v. Ildéphonse Nizeyimana, Case No. ICTR-2000-55C-T, Nizeyimana Defence Closing Brief, 8 November 2011

ESM

École Superieure Militaire

ESO

École des Sous-Officiers

Exhibit

Exhibits tendered during the proceedings. All page references to the exhibits correspond to the actual page in order of each exhibit's admission (or .pdf viewer number) rather than any numbering on the exhibit itself.

FAR

Forces Armées Rwandaises

fn. (fns.)

Footnote

Gendarme

An officer of the *Gendarmerie*

Gendarmerie

Replaced the National Police force in 1973, responsible for maintaining public law and order and enforcing the laws in force in Rwanda, members were assigned to public security territorial companies and brigades

ICRC

International Committee of the Red Cross

ICTR or Tribunal

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

ICTY

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Indictment

Prosecutor v. Ildéphonse Nizeyimana, Case No. ICTR-2000-55C-T, Second Amended Indictment, 17 December 2010

Interahamwe

The youth wing of the MRND party

Inkotanyi

RPF soldiers and/or members. Sometimes used to refer to Tutsis or Hutus who were accused of being RPF accomplices

Inyenzi

Kinyarwanda word for "cockroach"; sometimes used to refer to the Rwandan Patriotic Front or Tutsis in general during the events of 1994

Judgement

The Prosecutor v. Ildephonse Nizeyimana, Case No. ICTR-2000-55-T, Judgement and Sentence (TC), 22 June 2012.

MDR

Mouvement Démocratique Républicain

MRND

Mouvement Révolutionnaire National pour la Démocratie et le Développement (prior to 1991) and *Mouvement Républicain National pour la Démocratie et le Développement* (from 1991)

p. (pp.)

page (pages)

para. (paras.)

paragraph (paragraphs)

PSD

Parti Sociale pour la Démocratie

PL

Parti Libéral (Liberal Party)

Presidential Guard

The Presidential Guard Battalion, a specialised unit of the Rwandan Armed Forces, was responsible for ensuring the security of the Rwandan President

Prosecution Closing Brief

Prosecutor v. Ildéphonse Nizeyimana, Case No. ICTR-2000-55C-T, Prosecutor Closing Brief, 8 November 2011

Pre-Trial Brief

Prosecutor v. Ildéphonse Nizeyimana, Case No. ICTR-2000-55C-T, Prosecutor's Pre-Trial Brief, 29 September 2010

RPF

Rwandan (also Rwandese) Patriotic Front

RTLM

Radio Télévision Libre des Mille Collines

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

Ukuri

Committee within the Rwandan prison system that encourages and facilitates confessions by detainees accused of crimes

UN

United Nations

UNAMIR

United Nations Assistance Mission for Rwanda

UNDF

United Nations Detention Facility located in Arusha

International Criminal Tribunal for Rwanda

Tribunal Pénal International pour le Rwanda

UNITED NATIONS
NATIONS UNIES

Arusha International Conference Centre
P.O. Box 6016, Arusha, Tanzania
Tel: 255 27 2504207-11/4367-72 or 1 212 963 2850 — Fax: 255 27 2504000/4373 or 1 212 963 2848

TRIAL CHAMBER III

Before: Judge Lee Muthoga, Presiding Judge
Judge Seon Ki Park
Judge Robert Fremr

Registrar: Adama Dieng

Filed on: 17 December 2010

THE PROSECUTOR

V.

ILDEPHONSE NIZEYIMANA
(CASE No. ICTR-2000-55-PT)

SECOND AMENDED INDICTMENT

(Filed pursuant to Trial Chamber Order dated 15 December 2010)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIEE CONFORME A L'ORIGINAL PAR NOUS

NAME / NOM: NOUHOU DIALLO

SIGNATURE: ..... *DATE:* 22/06/2012

I. The Prosecutor of the United Nations International Criminal Tribunal for Rwanda, pursuant to the authority stipulated in Article 17 of the Statute of the International Criminal Tribunal for Rwanda (the "Statute") charges:

Ildephonse NIZEYIMANA

With:

Count I	-	GENOCIDE, pursuant to Articles 2(3)(a), 6(1) and 6(3) of the Statute;
Count II	-	EXTERMINATION as a CRIME AGAINST HUMANITY, pursuant to Articles 3(b), 6(1) and 6(3) of the Statute;
Count III	-	MURDER as a CRIME AGAINST HUMANITY, pursuant to Articles 3(a), 6(1) and 6(3) of the Statute;
Count IV	-	RAPE as a CRIME AGAINST HUMANITY, pursuant to Articles 3(g), 6(1) and 6(3) of the Statute;
Count V	-	MURDER as a violation of Article 3 common to the Geneva Conventions of 12 August 1949 ("Article 3 Common") and Additional Protocol II of 8 June 1977 relating to the Protection of Victims of Non-International Armed Conflicts ("Protocol II"), a crime stipulated in Article 4(a) of the Statute; and
Count VI	-	RAPE as a violation of Article 3 Common and Protocol II, a crime stipulated in Article 4(e) of the Statute.

II. THE ACCUSED

1. **Ildephonse NIZEYIMANA** was born on 5th October 1963 in Mutura Commune, Gisenyi *préfecture*, Republic of Rwanda.

2. **Ildephonse NIZEYIMANA**:

   (A) was, at all times referred to in this indictment, a Captain in the *Forces Armées Rwandaises* ("FAR");

   (B) held the position of S2/S3, in charge of intelligence and military operations at the *École des Sous Officiers* ("ESO") in Butare *préfecture* during April 1994 and part of May 1994;

   (C) was, at all times referred to in this indictment, a member of a group of persons from Gisenyi *préfecture*, including Theoneste Bagosora, Anatole Nsengiyumva, Aloys Ntabakuze, Augustin Ngirabatware, Vincent Ntezimana, Alphonse Higaniro, Michel Bagaragaza, Leon Mugesera, Omar Serushago, Hassan Ngeze, Mathias Nyagasaza, Wellars Banzi, and others, whose self-interest was in promoting and advancing their regional, familial and clan power and influence as 'Abakiga', who formed an influential corps aligned with the interests of northerners focussed around former President Habyarimana, and

viewed by the soldiers at ESO, as well as the *Interahamwe* and other militia in Butare *préfecture* as being a leader of those who held extremist anti-Tutsi views. As such, he exercised power, authority and influence amongst all soldiers, *Interahamwe*, other militia and armed civilians in the region beyond his *de jure* military rank;

(D) consequently had, at all times referred to in this indictment, not only *de jure* and *de facto* control over all armed forces who were under his immediate command, namely the FAR officers, rank and file at ESO, but also *de facto* control, authority or influence over all armed forces in the region, including the *Interahamwe*, militia and armed civilians in the region, each of whom were under his command, control, authority or influence in that he could order such persons to commit or to refrain from committing unlawful acts and could discipline or punish them for unlawful acts or omissions.

III. CHARGES AND CONCISE STATEMENT OF FACTS

3. At all times referred to in this indictment there existed in Rwanda a minority ethnic group known as the Tutsi, officially identified as such by the government of Rwanda. The majority of the population of Rwanda was comprised of an ethnic group known as the Hutus, also officially identified as such by the government of Rwanda.

4. Between 6 April 1994 and 17 July 1994 inclusive, throughout Rwanda, and in Butare *préfecture* in particular, *Interahamwe*, soldiers of the FAR and armed civilians, targeted and attacked the civilian population based on ethnic identification as Tutsi, or perceived sympathies to the Tutsi. During the attacks some Rwandan citizens killed or caused serious bodily or mental harm to persons perceived to be Tutsi. As a result of these attacks, large numbers of ethnically identified Tutsi were killed.

Count I: GENOCIDE

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Ildephonse NIZEYIMANA** with **GENOCIDE**, a crime stipulated in Article 2(3)(a) of the Statute, in that on or between the dates of 7 April 1994 and 17 July 1994 throughout Rwanda, particularly in Butare *préfecture*, **Ildephonse NIZEYIMANA** was responsible for killing or causing serious bodily or mental harm to members of the Tutsi ethnic group, including acts of sexual violence, with intent to destroy, in whole or in part, an ethnic group, as such, as outlined in paragraphs 5 through 35 herein.

CONCISE STATEMENT OF FACTS FOR COUNT I

Individual Criminal Responsibility

5. Pursuant to Article 6(1) of the Statute, the Accused, **Ildephonse NIZEYIMANA**, is individually responsible for genocide because he planned, instigated, ordered,

committed or otherwise aided and abetted in the planning, preparation or execution of these crimes. With respect to the commission of those crimes, **Ildephonse NIZEYIMANA** ordered those over whom he had authority as a result of his military rank, position and social influence described in paragraph 2 herein. In addition, the Accused committed genocide by wilfully and knowingly participating in a joint criminal enterprise whose object, purpose, and foreseeable outcome was the commission of genocide against the Tutsi ethnic group and persons identified as Tutsi or presumed to support the Tutsi in Butare *préfecture*. To fulfil this criminal purpose, the Accused acted with leaders and members of the FAR, including Colonel Tharcisse Muvunyi, Lieutenant Ildephonse Hategekimana, Lieutenant Cyriaque Habyarabatuma of the Butare *Gendarmerie*, Sous-Lieutenants Jean Pierre Bizimana, Modeste Gatsinzi, Ezechiel Gakwerere, Alphonse Ndayambaje, and Tharcisse Ngendahimana, Chief Warrant Officers Francois Ntibiramira, Damien Ntamuhanga, and Paul Kanyeshyamba, Sergeant Ezechier Rwaza, Sergeant Major Innocent Sibomana, Corporal Fulgence Niyibizi, and a number of other officers, soldiers and recruits from ESO; the *Interahamwe*, including Jean Marie Vianney Ngabonziza; the "Civil Defense Forces"; militias acting as a group in loose organisation, namely militias affiliated with the MRND, MDR, PL, CDR and PSD parties and armed civilians acting as individuals in a common purpose; communal police and local administrative officials from communes in Butare *prefécture*, including Ngoma, Huye, Gishamvu, Nyaruhengeri, Ndora, Shyanda, Mbazi, Nyakizu, Kigembe, Ntyazo, Ruhashya, Mugusa and Kibayi, among others; other known participants, such as Vincent Ntezimana, Innocent Nkuyubwatsi; and other unknown participants, all such actions being taken either directly or through subordinates, for at least the period of 6 April 1994 through 17 July 1994 inclusive. Each of the above-named members of the joint criminal enterprise acted in concert with various other members, often acting on **Ildephonse NIZEYIMANA**'s orders, authorization or instigation. The particulars that give rise to the Accused's individual criminal responsibility pursuant to Article 6(1) of the Statute are set forth in paragraphs 6 through 35 herein.

Roadblocks

6. From 7 April 1994 until mid July 1994, **Ildephonse NIZEYIMANA** ordered and instigated soldiers from the ESO, Ngoma Camp and Butare *Gendarmerie* Camp, militias affiliated with the MRND, MDR, PL, CDR and PSD parties, local citizens and demobilized soldiers who were all members of the joint criminal enterprise referred to in paragraph 5 herein, and in particular Sous-Lieutenants Bizimana and Gatsinzi, who acted in concert with Sergeant Ezechier Rwaza, to construct and man roadblocks throughout Butare *préfecture* including those at:
   (i) Tumba;
   (ii) Rwabuye;
   (iii) Rwasave;
   (iv) in the Arab quarter (aka 'Cyarabu');
   (v) the junction leading to Groupe Scolaire;
   (vi) outside Hotel Faucon in Butare town;
   (vii) near the entrance to Butare University and

(viii) the main roads leading to Butare town from both Kigali and Gikongoro;

used for the purpose of identifying and killing Tutsi civilians in furtherance of the joint criminal enterprise referred to in paragraph 5 herein.

Training and distribution of weapons

7. From 7 April 1994 until mid July 1994, **Ildephonse NIZEYIMANA** distributed weapons to *Interahamwe,* including Bourgmestres and civilians at ESO who were members of the joint criminal enterprise referred to in paragraph 5 herein, and authorised, ordered or instigated ESO soldiers to train civilians such as Burundian refugees and University students at various locations including in a valley below ESO, at Butare Hospital and in a forest near the Butare University. In particular, in accordance with instructions of the Accused, Sous-Lieutenant Jean-Pierre Bizimana trained youths at Butare Hospital and Sous-Lieutenant Ezechiel Gakwerere, commander of the first company in *Nouvelle Formule* at ESO, utilized a number of subordinate FAR soldiers and students from ESO to facilitate the training and cooperation with *Interahamwe*. These acts of training and distributing weapons were done in furtherance of the purposes of such joint criminal enterprise.

The Killing Campaign in Butare

8. On or about 7 April 1994, following the death of President Habyarimana, **Ildephonse NIZEYIMANA** convened a meeting of FAR officers and soldiers at the ESO where he personally spoke and ordered soldiers to kill Tutsi civilians and to rape Tutsi women. Many of the FAR officers and soldiers in attendance were members of the joint criminal enterprise referred to in paragraph 5 herein. It was this same initiating order that was subsequently followed by the Accused's subordinates during the period of 7 April 1994 through mid July 1994, with respect to the crimes committed in Butare *préfecture*. This initiating order was never rescinded and subsequent orders by the Accused were consistent with and flowed from the course set by this order.

9. From 7 April 1994 until mid July 1994, **Ildephonse NIZEYIMANA** regularly met with participants in the joint criminal enterprise referred to in paragraph 5 herein, including soldiers from the ESO, Ngoma Camp and Butare *Gendarmerie* Camp, as well as militiamen affiliated with the MRND, MDR, PL, CDR and PSD parties, at various locations in Butare *préfecture* including the ESO, and roadblocks manned by ESO soldiers and others, and together identified and listed Tutsi civilians to be killed.

10. With respect to the preceding paragraph and in greater particularity, the Accused participated in meetings at various times and dates throughout Butare *prefecture,* including at:
    (i) ESO on 7 April 1994 with FAR officers and ESO soldiers, including Sous-Lieutenants Bizimana, Gakwerere, Ndayambaje, Gatsinzi, and Chief Warrant Officer Ntibiramira, among others;
    (ii) ESO on 8 April 1994, in an assembly with numerous FAR soldiers, including Lt Col Muvunyi, during which the Accused said to fight Tutsi;

(iii) ESO on 20 April 1994, in assembly with numerous FAR soldiers, both outside at approximately 9:00 am at which time the Accused gave orders regarding roadblocks, and inside in a meeting room with Lt Col Muvunyi and approximately one dozen other ESO officers;

(iv) Dr. Theophile Gatsinzi's bar during the second half of April 1994, with FAR officers, soldiers from ESO and Ngoma Camp, local administrative officials, militiamen and *Interahamwe,* and

(v) Gahenerezo in Ngoma commune on 21 or 22 April 1994 with FAR officers, soldiers from ESO and Ngoma Camp, local administrative officials, *Interahamwe* and civilians;

at which meetings the Accused ordered and instigated selected soldiers and militiamen to carry out attacks on Tutsi civilians throughout Butare *préfecture*. As a result, soldiers and militiamen acting on the orders or at the instigation of **Ildephonse NIZEYIMANA** killed many Tutsi civilians throughout Butare *préfecture*, as elaborated elsewhere in this Indictment.

11. On or about 20 April 1994, subsequent to President Sindikubwabo's speech inciting the people in Butare to kill Tutsis, **Ildephonse NIZEYIMANA** and Tharcisse Muvunyi authorized or convened a meeting of unknown FAR soldiers at the ESO who were members of the joint criminal enterprise referred to in paragraph 5 herein and authorized or ordered them to kill Tutsis in Butare, in reference to the speech of President Sindikubwabo.

12. Between 6 April and 17 July 1994, soldiers from the FAR, ESO, Ngoma Camp and Butare *Gendarmerie* Camp, and other participants of the joint criminal enterprise referred to in paragraph 5 herein acting on the authority or orders or at the instigation of **Ildephonse NIZEYIMANA** forcibly removed civilian citizens of Rwanda identified as Tutsi from locations within Butare, including but not limited to the Prefectural offices, Cyahinda parish, Butare University, Butare Hospital, Groupe Scolaire, Buye cellule and the homes of civilian citizens and killed them.

Cyahinda Parish

13. From on or about 15 April 1994 until 20 April 1994, **Ildephonse NIZEYIMANA** authorized, ordered or instigated soldiers from the ESO, Ngoma Camp and Butare *Gendarmerie* Camp, militiamen affiliated with the MRND, MDR, PL, CDR and PSD parties, Burundian refugees and armed civilians from Nyakizu and surrounding communes who were members of the joint criminal enterprise referred to in paragraph 5 herein to kill Tutsi civilians who had taken refuge at Cyahinda Parish. In greater particular:

(i) on or about 17 April 1994, Ildephonse NIZEYIMANA and the prefet Jean-Baptiste Habyalimana went to Cyahinda Parish and met with the Tutsi refugees, after which it was decided that soldiers would be sent to the Parish;

(ii) on or about 18 April 1994, following the instructions of the Accused, a number of subordinate FAR soldiers from ESO platoons and others, led by Warrant Officer Paul Kanyeshyamba and a number of Gendarmes, led by Second Lieutenant Majoro, exercised their command to target the civilian victims;

as a result, soldiers, militiamen and armed civilians all acting on the orders or at the instigation of **Ildephonse NIZEYIMANA** killed thousands of Tutsi civilians who had sought refuge at Cyahinda Parish.

Butare University

14. From on or about 16 April 1994, **Ildephonse NIZEYIMANA** ordered and instigated soldiers from the FAR, ESO, Ngoma Camp and Butare *Gendarmerie* Camp, and *Interahamwe* who were members of the joint criminal enterprise referred to in paragraph 5 herein to kill many Tutsi civilians at Butare University, with words to the effect that no Tutsi should remain. In greater particular:
    (i) under the authorization of the Accused, Chief Warrant Officer Damien Ntamuhanga engaged a number of subordinate FAR soldiers from his platoon, including Sergeant Major Innocent Sibomana and others, and exercised his command to target the civilian victims, using lists and identity cards to assist with that purpose;
    (ii) on or about 19 April 1994, attacks occurred at the University against students identified as Tutsi, during which gunshots were fired and female victims were targeted by soldiers from the FAR, ESO, Ngoma Camp and Butare *Gendarmerie* Camp, and *Interahamwe* militia who were members of the joint criminal enterprise referred to in paragraph 5 herein committing crimes of sexual violence;
    (iii) on or about 22 April 1994, **Ildephonse NIZEYIMANA** led unknown FAR soldiers and *Interahamwe* to the University and personally shot and killed four female civilians identified as Tutsi in a building at the University;
    (iv) during the period of late April and May 1994 civilians identified as Tutsi were taken to the University where many were killed at the site of a large pit near the University laboratory by soldiers from the FAR, ESO, Ngoma Camp and Butare *Gendarmerie* Camp, and *Interahamwe* who were members of the joint criminal enterprise referred to in paragraph 5 herein;

    as a result, soldiers and *Interahamwe* acting on the orders or at the instigation of **Ildephonse NIZEYIMANA** forcibly removed and killed civilians identified as Tutsi at Butare University.

Butare Hospital

15. From on or about 20 April 1994, **Ildephonse NIZEYIMANA** authorized, ordered or instigated soldiers from the FAR, ESO, Ngoma Camp and Butare *Gendarmerie* Camp, and *Interahamwe*, who were members of the joint criminal enterprise referred to in paragraph 5 herein to kill many civilians identified as Tutsi at Butare Hospital. In greater particular:
    (i) following the instructions of the Accused, Corporal Fulgence Niyibizi and a number of other ESO and FAR soldiers, including Theobard Hagenimana, Placide Mbarushimana, "Jean de Dieu", "Mutimura", "Edison", "Said", "Mandela" and "Bola Mungu" targeted civilians in the hospital identified as Tutsi or without an identity card in order to remove them from the sanctity of the hospital and kill them;
    (ii) Corporal Fulgence Niyibizi along with a soldier called Mandela, killed an elderly male civilian by beating him to death with sticks near a place called 'post hospital';

(iii)On or about the late evening of 22 April 1994, approximately 40 bed-ridden patients identified as Tutsi were taken from the hospital by soldiers from the FAR, ESO, Ngoma Camp and Butare *Gendarmerie* Camp, and *Interahamwe* and armed civilians who were members of the joint criminal enterprise referred to in paragraph 5 herein , and killed behind the hospital wards;

(iv)On or about 23 April 1994, medical personnel and bed-ridden patients were selected by soldiers from the FAR, ESO, Ngoma Camp and Butare *Gendarmerie* Camp,with the use of a list, apprehended and killed, including three *Medecins Sans Frontieres* (MSF) hospital nurses Nadine Iradukuze, Rose and Sabine, who was of Hutu ethnicity but married to a Tutsi and was 7 months pregnant;

(v) On or about 24 April 1994, in the same manner, two additional MSF hospital workers were killed, named Alexis Nkundwanimana and Jean Marie Vianney;

(vi) between 20 and 24 April 1994, the Accused performed as a military liason between the FAR and Butare Hospital, and met repeatedly with medical personnel and other authorities with respect to activities at the Hospital. During this period the Accused operated as the FAR officer with responsibility over the hospital. In service to that responsibility the medical personnel reported to the Accused and informed him of violence and killings at the hospital perpetrated against civilian patients by the FAR. On or about 23 April 1994, the Accused informed medical personnel of his intention to conduct some form of investigation into the crimes. On or about 24 April the Accused reported to medical personnel and acknowledged crimes at the hospital by soldiers from the FAR, ESO, Ngoma Camp and Butare *Gendarmerie* Camp, and said that he no longer guaranteed any security or protection for the patients or medical personnel;

in the result, soldiers and *Interahamwe* acting on the orders or at the instigation of **Ildephonse NIZEYIMANA** killed Tutsi civilians at Butare Hospital.

Groupe Scolaire

16. On or about 21 April 1994, **Ildephonse NIZEYIMANA** authorized, ordered or instigated soldiers from the FAR, ESO, Ngoma Camp and Butare *Gendarmerie* Camp, and *Interahamwe* including Jean Marie Vianney Ngabonziza who were members of the joint criminal enterprise referred to in paragraph 5 herein to identify and kill Tutsi civilians who had sought refuge at Groupe Scolaire. In particular, following the instructions of the Accused, Sous-Lieutenants Bizimana, Gatsinzi and Ndayambaje and Corporal Aloys Mazimpaka took with them to the Groupe Scolaire a number of subordinate FAR soldiers from their units and others, and exercised command in concert with armed civilians, separating and targeting civilians identified as Tutsi, most of whom were released after the soldiers extorted money in exchange for the victims lives. As a result, soldiers and *Interahamwe* acting on the orders or at the instigation of **Ildephonse NIZEYIMANA** went to Groupe Scolaire, and forcibly removed approximately 14 (fourteen) civilians identified as Tutsi to kill them, but after further extorting money in exchange for the lives of the 14 victims, all were returned alive but one, a child known as Jean Luc.

17. On or about 29 April 1994, **Ildephonse NIZEYIMANA** authorized, ordered or instigated soldiers from the FAR, ESO, Ngoma Camp and Butare *Gendarmerie* Camp, and *Interahamwe* who were members of the joint criminal enterprise referred

to in paragraph 5 herein to kill Tutsi civilians who had sought refuge at Groupe Scolaire. In particular, **Ildephonse NIZEYIMANA** and Lieutenant Ildephonse Hategekimana led Sous-Lieutenant Modeste Gatsinzi and a number of subordinate FAR soldiers from Ngoma Camp and ESO to Groupe Scolaire. The Accused supervised as these soldiers, following the instructions of the Accused, exercised command, using a written list to separate and target civilians identified as Tutsi, in concert with *Interahamwe* including Jean Marie Vianney Ngabonziza and ZBH, and armed "Civil Defense Forces" including Diogene Dusabe, Faustin Niyonzima, Emmanuel or Faustin Twagirayezu and Callixte Rubaya. As a result, soldiers, *Interahamwe* and armed civilians acting on the orders or at the instigation of **Ildephonse NIZEYIMANA** who attended at Groupe Scolaire, forcibly extracted from the Groupe Scolaire premises approximately 100 or more civilians identified as Tutsi and killed them at the nearby Rwasave valley.

Buye Cellule

18. On or about 20 April 1994, **Ildephonse NIZEYIMANA** ordered soldiers from the ESO, Ngoma Camp and Butare *Gendarmerie* Camp who were members of the joint criminal enterprise referred to in paragraph 5 herein to kill Tutsi civilians living in Buye Cellule in Butare-Ville in Ngoma Commune in Butare *préfecture*. In particular, following the instructions of the Accused, Sous-Lieutenant Bizimana engaged a number of subordinate FAR soldiers from his platoon including 'Jerome', Charles Hakizimana, and 'Savimbi', all from Gisenyi *préfecture*, and others, including Chief Warrant Officer Francois Ntibiramira and exercised their command to target the civilian victims. As a result, soldiers acting on the orders of **Ildephonse NIZEYIMANA** killed many Tutsi civilians.

Murder

19. Between 16 April and 19 April 1994, members of the Ruhutinyanya family were forcibly apprehended by ESO soldiers including First Sergeant Nyirimanzi, who were members of the joint criminal enterprise referred to in paragraph 5 herein.The apprehension took place at a roadblock manned by *Interahamwe* on the way to Burundi, from where the **Ruhutinyanya** family was forced to return to the ESO and then killed on the orders or at the instigation of **Ildephonse NIZEYIMANA.** In particular, following the instructions of the Accused, Sous-Lieutenant Bizimana engaged a number of subordinate FAR soldiers from his platoon and others, including Chief Warrant Officers Paul Kanyeshyamba and Francois Ntibiramira and first Sergeant Nyirimanzi, and exercised their command to target the civilian victims.

20. On or about 20 April 1994, ESO soldiers including Sous-Lieutenant Alphonse Ndayambaje and militiamen affiliated with the MRND, MDR, PL, CDR and PSD parties who were members of the joint criminal enterprise referred to in paragraph 5 herein acting on the orders or at the instigation of **Ildephonse NIZEYIMANA** killed civilian citizens of Rwanda identified as Tutsi, namely Jerome **Ngarambe** and members of his family, near his home.

21. On or about 20 April 1994, **Ildephonse NIZEYIMANA** ordered FAR soldiers including Sous-Lieutenant Alphonse Ndayambaje and armed civilians including

Innocent Nkuyubwatsi who were members of the joint criminal enterprise referred to in paragraph 5 herein to kill Jean-Marie Vianey **Maniraho** and members of his family at their home. As a result soldiers and armed civilians acting on the orders of the Accused killed Jean-Marie Vianey Maniraho and members of his family.

22. On or about 20 April 1994, **Ildephonse NIZEYIMANA** led ESO soldiers who were members of the joint criminal enterprise referred to in paragraph 5 herein to the homes of Jean-Baptiste **Matabaro** and Zephanie **Nyirinkwaya** where the Accused forcibly removed and killed Jean-Baptiste Matabaro and Zephanie Nyirinkwaya. In particular, following the instructions of the accused, these soldiers forcibly removed and killed members of the Matabaro, Nyirinkwaya, Hitimana, Ntakirutinka, Nyandwi families and others in a field near Jean-Baptiste Matabaro's home. As a result of **Ildephonse NIZEYIMANA's** actions, Jean-Baptiste Matabaro, Zephanie Nyirinkwaya and their families were killed.

23. On or about 21 April 1994, **Ildephonse NIZEYIMANA** ordered or authorized soldiers from the ESO, Ngoma Camp and Butare *Gendarmerie* Camp, and armed civilians who were members of the joint criminal enterprise referred to in paragraph 5 herein to kill Rosalie **Gicanda**. In particular, following the instructions of the Accused, Sous-Lieutenant Jean Pierre Bizimana took a number of subordinate FAR soldiers with him including Corporal Aloys Mazimpaka and others, and armed civilians including Dr. Kageruka, to the home of the victim under the auspices of conducting a search. As a result, soldiers acting under the orders or authorization of **Ildephonse NIZEYIMANA** forcibly removed and killed Rosalie Gicanda and other persons who were residing at her home.

24. On or about 21 April 1994, **Ildephonse NIZEYIMANA**, who was physically present at the roadblock, personally ordered unknown FAR soldiers who were members of the joint criminal enterprise referred to in paragraph 5 herein to kill two civilian citizens of Rwanda identified as Tutsi, namely Remy **Rwekaza** and ZAV, near a roadblock leading into Butare town from Kigali, a short distance past the Gikongoro road junction. As a result, soldiers acting on the direct orders of **Ildephonse NIZEYIMANA**, and under his personal supervision, shot and killed Remy Rwekaza and shot and wounded ZAV leaving him for dead.

25. On or about 21 April 1994, **Ildephonse NIZEYIMANA** ordered ESO soldiers who were members of the joint criminal enterprise referred to in paragraph 5 herein to kill a civilian citizen of Rwanda identified as Tutsi, namely Professor Pierre Claver **Karenzi**, at the roadblock outside Hotel Faucon in Butare town. As a result, soldiers acting on the orders or under the authority of **Ildephonse NIZEYIMANA** killed Professor Pierre Claver Karenzi.

26. On or about 21 April 1994, unknown FAR soldiers who were members of the joint criminal enterprise referred to in paragraph 5 herein acting under the authority or on the orders of **Ildephonse NIZEYIMANA** went to home of Professor Pierre Claver Karenzi and killed his wife, Ms. Alphonsine **Mukamusoni**.

27. On or about 30 April 1994, soldiers from the FAR, ESO and Ngoma Camp, including Lieutenant Hategekimana, Sous-Lieutenants Ndayambaje and Ngendahimana and armed civilians including ZBH, who were members of the joint criminal enterprise referred to in paragraph 5 herein acting under the authority or on the orders of **Ildephonse NIZEYIMANA**, went to the *Maison Generalice* of the Benebikira Sisters and forcibly removed and killed approximately 25 children identified as Tutsi, including members of the **Karenzi family**. The victims were taken to a site below the Ineza Motel, where they arrived at the same time as a lorry in which the Accused was a passenger. The lorry was loaded with other civilian victims from a roadblock near the front of Ngoma camp. All of the victims from the convent and the roadblock were killed at the same time, in the presence of the Accused.

28. In late April or early May 1994, **Ildephonse NIZEYIMANA** and Vincent Ntezimana both ordered Innocent Nkuyubwatsi to kill a **female youth** identified as Tutsi at the home of Vincent Ntezimana. Vincent Ntezimana provided Innocent Nkuyubwatsi with the knife that was used to kill the victim. As a result, Innocent Nkuyubwatsi acting on the orders of **Ildephonse NIZEYIMANA** and Vincent Ntezimana killed the female youth identified as Tutsi.

29. On or about 5 May 1994, **Ildephonse NIZEYIMANA** who was physically present at the roadblock, personally ordered unknown FAR soldiers who were members of the joint criminal enterprise referred to in paragraph 5 herein to kill a civilian citizen of Rwanda identified as Tutsi, namely Beata **Uwambaye**, near a roadblock leading into Butare town from Kigali at the Gikongoro road junction. As a result, soldiers acting on the direct orders of **Ildephonse NIZEYIMANA** killed Beata Uwambaye.

Sexual Violence

30. Beginning the night of 6 April 1994, the Accused issued orders to FAR soldiers stationed in Butare prefecture at both Ngoma camp and ESO, to kill Tutsis generally but specifically to rape Tutsi women and then kill them. That same order was repeated the following day near mid-day, on the premises of ESO, directed to an audience of FAR gendarmes, soldiers and officers from Ngoma camp and ESO, including Lieutenant Hategikimana of Ngoma camp, Major Cyriaque Habyarabatuma of the Butare *Gendarmerie*, Sous-Lieutenants Gatsinzi and Bizimana of ESO and many other officers from the region, including Gikongoro and Nyanza.

31. Between 6 April 1994 and 17 July 1994, soldiers from the FAR, ESO, Ngoma Camp and Butare *Gendarmerie* Camp, and other participants of the joint criminal enterprise referred to in paragraph 5 herein acting on the orders or at the instigation of **Ildephonse NIZEYIMANA** raped Tutsi women at Butare Hospital, Butare University and at various other locations in Butare prefecture, including the residence of Rosalie Gicanda, ~~and at the residence of Lieutenant Ildephonse Hategikimana~~. In greater particular:
    (i) in April 1994 at the residence of Rosalie Gicanda more than one dozen FAR soldiers were present during the rape of a female civilian identified as Tutsi of

approximately age 18-20. The soldiers were all from Ngoma camp or ESO and included Sergeant Ngirinshuti;

(ii) Commencing on or about 10 April 1994, FAR soldiers recognized as being stationed locally in barracks at ESO and Ngoma were observed to be occupying the Butare Hospital premises;

(iii) During the period of late April and mid-May 1994, MKA and other women were raped by FAR soldiers at the Hospital on several occasions. On the first occasion five FAR soldiers entered a maternity ward at the Hospital and raped several patients, including MKA. On a second occasion approximately 3 days later MKA was again raped by a FAR soldier. On a third occasion, in early to mid-May after MKA had given birth she was raped by an unknown male in the presence of four other women who were also being raped by unknown men in the same maternity ward.

(iv) Towards the end of May 1994 ZBL was repeatedly raped by two FAR soldiers at the Hospital, in a room where she was kept for three days. ZBL was raped by an *Interahamwe* behind the hospital in the presence of another woman who was also raped by an *Interahamwe* and later killed.

(v) ~~Between 6 April 1994 and 17 July 1994 other women were raped at the hospital and surrounding grounds by FAR soldiers and the victims either informed or were raped in the presence of MKA, ZBL, DCO or other women~~.

all of which was within the *de facto* and *de jure* operational region, command and influence of the Accused.

32. Between 6 April 1994 and 9 April 1994, approximately 14 FAR soldiers from both the ESO and Ngoma Camps acting under the authority or on the orders of **Ildephonse NIZEYIMANA** raped BUQ and two other women multiple times over the course of three days in a house near the ESO camp:

(i) Late on the night of 6 April 1994, approximately 6 soldiers came from the homes of the Accused and Lieutenant Ildephonse Hategikimana, forcibly entered the home where BUQ, ALAB and CEL were present, and told the victims "We have received orders from our superiors to rape all Tutsi women and girls and kill them." One of the perpetrators was named Rubaga and known to be a driver who was stationed at the ESO;

(ii) The following day, four more soldiers forcibly entered the home and committed multiple rapes, ordering the victims not to move from the premises;

(iii) The next day, three more soldiers came to the house and spent many hours committing multiple rapes;

(iv) On the morning of the fourth day, a soldier who identified himself as Innocent Ndererimana, stationed at Ngoma camp as an escort to Lieutenant Hategikimana, took BUQ into his custody and held her in a nearby but different home for approximately two weeks, during which time he repeatedly committed multiple rapes;

all of which was within the *de facto* and *de jure* operational region, command and influence of the Accused.

33. During April 1994, unknown FAR soldiers who were members of the joint criminal enterprise referred to in paragraph 5 herein acting under the authority or on the orders of **Ildephonse NIZEYIMANA** raped BJW. On or about 18 April 1994, BJW was raped in her parent's home in Butare by a FAR soldier who said his name was Alexis Karemera, and who was in command of at least two other FAR soldiers in the operational zone of Rusatira commune, within the *de facto* and *de jure* operational region, command and influence of the Accused.

34. On or about 23 April 1994, at approximately 11 pm, unknown FAR soldiers who were members of the joint criminal enterprise referred to in paragraph 5 herein acting under the authority or on the orders or at the instigation of **Ildephonse NIZEYIMANA** raped two young girls in Butare prefecture, near Butare town, in Ngoma commune, near the Muslim quarter, in the house of a woman whose husband had just been killed. The precise identities of the rape victims and the precise identities of the rape perpetrators are unknown, except that the victims' Rwandan mother had just been killed and their European father lived abroad, and that the perpetrators were FAR soldiers of low rank, in the operational zone of Ngoma commune, and were known by and under the instructions of FAR soldier Ismael Rubayiza, and were thus within the *de facto* and *de jure* operational region, command and influence of the Accused.

35. Between May and July 1994, soldiers from the FAR, ESO and Ngoma Camp who were members of the joint criminal enterprise referred to in paragraph 5 herein acting under the authority or on the orders of **Ildephonse NIZEYIMANA** regularly raped DCO and other women on several occasions in various locations on the Butare Hospital premises:
    (i) From the beginning of May, the FAR soldiers came more frequently to the Hospital, demanding to see identity cards, selecting only Tutsi and killing them just outside the ward, generally after raping the less educated women;
    (ii) Approximately mid-May, three FAR soldiers entered a Hospital ward where care was being given to a sick child, forcibly removed DCO and then one of the soldiers took DCO outside to a nearby mass grave, raping her on the ground;
    (iii) Sometime during the month of June, four FAR soldiers came into the Hospital ward and forcibly removed four women, including DCO, took the victims outside behind the maternity unit and raped them on the ground in the open;
    (iv) In early July, in the belief that RPF troops were nearby, DCO and others were asked to leave the Hospital, and when DCO went just outside the premises she was apprehended by four FAR soldiers, one of whom immediately began to rape her;

    these repetitive crimes occurred within the *de facto* and *de jure* operational region, command and influence of the Accused.

Criminal Responsibility of a Superior for a Subordinate

36. Pursuant to Article 6(3) of the Statute, the Accused, **Ildephonse NIZEYIMANA**, is responsible for genocide because specific criminal acts were committed by

subordinates of the Accused over whom he had *de jure* and *de facto* authority. The Accused knew or had reason to know that such subordinates were about to commit such acts before they were committed and failed to take the necessary and reasonable measures to prevent such acts or knew or had reason to know that such subordinates had committed such acts and failed to punish the perpetrators thereof. These subordinates were FAR soldiers over whom the Accused exercised effective control, including Sous-Lieutenants Jean Pierre Bizimana, Modeste Gatsinzi, Alphonse Ndayambaje, Tharcisse Ngendahimana and Ezechiel Gakwerere, Chief Warrant Officer Francois Ntibiramira, Chief Warrant Officer Damien Ntamuhanga, Chief Warrant Officer Paul Kanyeshyamba, Sergeant Ezechier Rwaza, Sergeant Major Innocent Sibomana, Corporal Fulgence Niyibizi, and a number of other officers, soldiers and recruits from ESO; the *Interahamwe*, including Jean Marie Vianney Ngabonziza; and other militias and armed civilians who were members of the joint criminal enterprise. Each of the above-named members of the joint criminal enterprise acted in concert with various other members, often acting on **Ildephonse NIZEYIMANA**'s orders, authorization or instigation. The particulars that give rise to the Accused's individual criminal responsibility pursuant to Article 6(3) of the Statute are set forth in paragraphs 6 through 35 herein.

Count II

EXTERMINATION as a CRIME AGAINST HUMANITY

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Ildephonse NIZEYIMANA** with **EXTERMINATION as a CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(b) of the Statute, in that between 6 April and 17 July 1994 in Butare *préfecture*, **Ildephonse NIZEYIMANA**, with intent to exterminate members of the Tutsi ethnic group or persons identified as Tutsi or persons presumed to support the Tutsi such as moderate Hutu, was responsible for the killing of such persons as part of a widespread or systematic attack against that civilian population on ethnic and political grounds, as set forth in paragraphs 37 through 42 herein.

CONCISE STATEMENT OF FACTS FOR COUNT II

Individual Criminal Responsibility

37. Pursuant to Article 6(1) of the Statute, the Accused, **Ildephonse NIZEYIMANA**, is individually responsible for extermination as a crime against humanity because he planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of these crimes. With respect to the commission of those crimes, **Ildephonse NIZEYIMANA** ordered those over whom he had authority as a result of his military rank, position and social influence described in paragraph 2 herein. In addition, the Accused wilfully and knowingly participated in a joint criminal enterprise whose object, purpose, and foreseeable outcome was the commission of crimes against humanity against the Tutsi ethnic group and persons identified as Tutsi or presumed to support the Tutsi in Butare *préfecture*. To fulfil this criminal purpose, the Accused acted with leaders and members of the FAR, including Colonel Tharcisse Muvunyi, Lieutenant Ildephonse Hategekimana, Lieutenant Cyriaque Habyarabatuma of the Butare *Gendarmerie*, Sous-Lieutenant Jean Pierre Bizimana, Sous-Lieutenant Modeste Gatsinzi,

Sous-Lieutenant Ezechiel Gakwerere, Sous-Lieutenant Alphonse Ndayambaje, Sous-Lieutenant Tharcisse Ngendahimana, Chief Warrant Officer Francois Ntibiramira, Chief Warrant Officer Damien Ntamuhanga, Chief Warrant Officer Paul Kanyeshyamba, Sergeant Ezechier Rwaza, Sergeant Major Innocent Sibomana, Corporal Fulgence Niyibizi, and a number of other officers, soldiers and recruits from ESO; the *Interahamwe*, including Jean Marie Vianney Ngabonziza; the "Civil Defense Forces"; militias acting as a group in loose organisation, namely militias affiliated with the MRND, MDR, PL, CDR and PSD parties and armed civilians acting as individuals in a common purpose; communal police and local administrative officials from communes in Butare *préfécture*, including Ngoma, Huye, Gishamvu, Nyaruhengeri, Ndora, Shyanda, Mbazi, Nyakizu, Kigembe, Ntyazo, Ruhashya, Mugusa and Kibayi, among others; other known participants, such as Vincent Ntezimana, Innocent Nkuyubwatsi; and other unknown participants, all such actions being taken either directly or through subordinates,, for at least the period of 6 April 1994 through 17 July 1994 inclusive. Each of the above-named members of the joint criminal enterprise acted in concert with various other members, often acting on **Ildephonse NIZEYIMANA**'s orders, authorization or instigation. The particulars that give rise to the Accused's individual criminal responsibility pursuant to Article 6(1) of the Statute are set forth in paragraphs 38 through 40 herein.

38. Paragraphs 6 through 35 above are incorporated by reference herein.

39. On or about 20 April 1994, **Ildephonse NIZEYIMANA** ordered FAR soldiers including Sous-Lieutenant Alphonse Ndayambaje and armed civilians including Innocent Nkuyubwatsi who were members of the joint criminal enterprise referred to in paragraph 5 herein to kill Jean-Marie Vianey Maniraho and members of his family at their home. As a result soldiers and armed civilians acting on the orders of **Ildephonse NIZEYIMANA** killed Jean-Marie Vianey Maniraho and members of his family.

40. On or about 20 April 1994, **Ildephonse NIZEYIMANA** led ESO soldiers who were members of the joint criminal enterprise referred to in paragraph 5 herein to the homes of Jean-Baptiste Matabaro and Zephanie Nyirinkwaya where the Accused forcibly removed and killed Jean-Baptiste Matabaro and Zephanie Nyirinkwaya. In particular, following the instructions of the accused, these soldiers forcibly removed and killed members of the Matabaro, Nyirinkwaya, Hitimana, Ntakirutinka, Nyandwi families and others in a field near Jean-Baptiste Matabaro's home. As a result of **Ildephonse NIZEYIMANA's** actions, Jean-Baptiste Matabaro, Zephanie Nyirinkwaya and their families were killed.

Criminal Responsibility of a Superior for a Subordinate

41. Pursuant to Article 6(3) of the Statute, the Accused, **Ildephonse NIZEYIMANA**, is responsible for extermination as a crime against humanity because specific criminal acts were committed by subordinates of the Accused over whom he had *de jure* and *de facto* authority. The Accused knew or had reason to know that such subordinates were about to commit such acts before they were committed and failed to take the

necessary and reasonable measures to prevent such acts or knew or had reason to know that such subordinates had committed such acts and failed to punish the perpetrators thereof. These subordinates were FAR soldiers over whom the Accused exercised effective control, Sous-Lieutenants Jean Pierre Bizimana, Modeste Gatsinzi, Alphonse Ndayambaje, Ngendahimana and Ezechiel Gakwerere, Chief Warrant Officer Francois Ntibiramira, Chief Warrant Officer Damien Ntamuhanga, Chief Warrant Officer Paul Kanyeshyamba, Sergeant Ezechier Rwaza, Sergeant Major Innocent Sibomana, Corporal Fulgence Niyibizi, and a number of other officers, soldiers and recruits from ESO; the *Interahamwe*, including Jean Marie Vianney Ngabonziza; and other militias and armed civilians who were members of the joint criminal enterprise. Each of the above-named members of the joint criminal enterprise acted in concert with various other members, often acting on **Ildephonse NIZEYIMANA**'s orders, authorization or instigation. The particulars that give rise to the Accused's individual criminal responsibility pursuant to Article 6(3) of the Statute are set forth in paragraph 42 herein.

42. Paragraphs 6 through 35 and 39 through 40 above are incorporated by reference herein.

Count III: MURDER as a CRIME AGAINST HUMANITY

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Ildephonse NIZEYIMANA** with **MURDER as a CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(a) of the Statute, in that between 6 April and 17 July 1994 in Butare *préfecture*, **Ildephonse NIZEYIMANA**, with intent to kill members of the Tutsi ethnic group or persons identified as Tutsi or persons presumed to support the Tutsi such as moderate Hutu, was responsible for the killing of such persons as part of a widespread or systematic attack against that civilian population on ethnic and political grounds, as set forth in paragraphs 43 through 46 herein.

CONCISE STATEMENT OF FACTS FOR COUNT III

Individual Criminal Responsibility

43. Pursuant to Article 6(1) of the Statute, the Accused, **Ildephonse NIZEYIMANA**, is individually responsible for murder as a crime against humanity because he planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of these crimes. With respect to the commission of those crimes, **Ildephonse NIZEYIMANA** ordered those over whom he had authority as a result of his military rank, position and social influence described in paragraph 2 herein. In addition, the Accused wilfully and knowingly participated in a joint criminal enterprise whose object, purpose, and foreseeable outcome was the commission of crimes against humanity against the Tutsi ethnic group and persons identified as Tutsi or presumed to support the Tutsi in Butare *préfecture*. To fulfil this criminal purpose, the Accused acted with leaders and members of the FAR, including Colonel Tharcisse Muvunyi, Lieutenant Ildephonse Hategekimana,

Lieutenant Cyriaque Habyarabatuma of the Butare *Gendarmerie*, Sous-Lieutenant Jean Pierre Bizimana, Sous-Lieutenant Modeste Gatsinzi, Sous-Lieutenant Ezechiel Gakwerere, Sous-Lieutenant Alphonse Ndayambaje, Sous-Lieutenant Ngendahimana, Chief Warrant Officer Francois Ntibiramira, Chief Warrant Officer Damien Ntamuhanga, Chief Warrant Officer Paul Kanyeshyamba, Sergeant Ezechier Rwaza, Sergeant Major Innocent Sibomana, Corporal Fulgence Niyibizi, and a number of other officers, soldiers and recruits from ESO; the *Interahamwe*, including Jean Marie Vianney Ngabonziza; the "Civil Defense Forces"; militias acting as a group in loose organisation, namely militias affiliated with the MRND, MDR, PL, CDR and PSD parties and armed civilians acting as individuals in a common purpose; communal police and local administrative officials from communes in Butare *préfécture*, including Ngoma, Huye, Gishamvu, Nyaruhengeri, Ndora, Shyanda, Mbazi, Nyakizu, Kigembe, Ntyazo, Ruhashya, Mugusa and Kibayi, among others; other known participants, such as Vincent Ntezimana, Innocent Nkuyubwatsi; and other unknown participants, all such actions being taken either directly or through subordinates, for at least the period of 6 April 1994 through 17 July 1994 inclusive. Each of the above-named members of the joint criminal enterprise acted in concert with various other members, often acting on **Ildephonse NIZEYIMANA**'s orders, authorization or instigation. The particulars that give rise to the Accused's individual criminal responsibility pursuant to Article 6(1) of the Statute are set forth in paragraph 44 herein.

44. Paragraphs 6 through 29 and 39 through 40 above are incorporated by reference herein.

Criminal Responsibility of a Superior for a Subordinate

45. Pursuant to Article 6(3) of the Statute, the Accused, **Ildephonse NIZEYIMANA**, is responsible for murder as a crime against humanity because specific criminal acts were committed by subordinates of the Accused over whom he had *de jure* and *de facto* authority. The Accused knew or had reason to know that such subordinates were about to commit such acts before they were committed and failed to take the necessary and reasonable measures to prevent such acts or knew or had reason to know that such subordinates had committed such acts and failed to punish the perpetrators thereof. These subordinates were FAR soldiers over whom the Accused exercised effective control, including Sous-Lieutenants Jean Pierre Bizimana, Modeste Gatsinzi, Alphonse Ndayambaje, Ngendahimana and Ezechiel Gakwerere, Chief Warrant Officer Francois Ntibiramira, Chief Warrant Officer Damien Ntamuhanga, Chief Warrant Officer Paul Kanyeshyamba, Sergeant Ezechier Rwaza, Sergeant Major Innocent Sibomana, Corporal Fulgence Niyibizi, and a number of other officers, soldiers and recruits from ESO; the *Interahamwe*, including Jean Marie Vianney Ngabonziza; and other militias and armed civilians who were members of the joint criminal enterprise. Each of the above-named members of the joint criminal enterprise acted in concert with various other members, often acting on **Ildephonse NIZEYIMANA**'s orders, authorization or instigation. The particulars

that give rise to the Accused's individual criminal responsibility pursuant to Article 6(3) of the Statute are set forth in paragraph 46 herein.

46. Paragraphs 6 through 29 and 39 through 40 above are incorporated by reference herein.

Count IV: RAPE as a CRIME AGAINST HUMANITY

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Ildephonse NIZEYIMANA** with **RAPE as a CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(g) of the Statute, in that between 6 April 1994 and 3 July 1994 in Butare *préfecture*, **Ildephonse NIZEYIMANA**, with the intention that rape of members of the Tutsi ethnic group or persons identified as Tutsi occur, was responsible for the rape of Tutsi as part of a widespread or systemic attack against that civilian population on ethnic grounds, as set forth in paragraphs 47 through 50 herein.

CONCISE STATEMENT OF FACTS FOR COUNT IV
Individual Criminal Responsibility

47. Pursuant to Article 6(1) of the Statute, the Accused, **Ildephonse NIZEYIMANA**, is individually responsible for rape as a crime against humanity because he planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of these crimes. With respect to the commission of those crimes, **Ildephonse NIZEYIMANA** ordered those over whom he had authority as a result of his military rank, position and social influence described in paragraph 2 herein. In addition, the Accused committed rape as a crime against humanity by wilfully and knowingly participating in a joint criminal enterprise whose object, purpose, and foreseeable outcome was the commission of crimes against humanity against the Tutsi ethnic group and persons identified as Tutsi or presumed to support the Tutsi in Butare *préfecture*. To fulfil this criminal purpose, the Accused acted with leaders and members of the FAR, including Colonel Tharcisse Muvunyi, Lieutenant Ildephonse Hategekimana, Lieutenant Cyriaque Habyarabatuma of the Butare *Gendarmerie*, Sous-Lieutenant Jean Pierre Bizimana, Sous-Lieutenant Modeste Gatsinzi, Sous-Lieutenant Ezechiel Gakwerere, Sous-Lieutenant Alphonse Ndayambaje, Sous-Lieutenant Ngendahimana, Chief Warrant Officer Francois Ntibiramira, Chief Warrant Officer Damien Ntamuhanga, Chief Warrant Officer Paul Kanyeshyamba, Sergeant Ezechier Rwaza, Sergeant Major Innocent Sibomana, Corporal Fulgence Niyibizi, and a number of other officers, soldiers and recruits from ESO; the *Interahamwe*, including Jean Marie Vianney Ngabonziza; the "Civil Defense Forces"; militias acting as a group in loose organisation, namely militias affiliated with the MRND, MDR, PL, CDR and PSD parties and armed civilians acting as individuals in a common purpose; communal police and local administrative officials from communes in Butare *préfecture*, including Ngoma, Huye, Gishamvu, Nyaruhengeri, Ndora, Shyanda, Mbazi, Nyakizu, Kigembe, Ntyazo, Ruhashya, Mugusa and Kibayi, among others; other known participants, such as Vincent Ntezimana, Innocent Nkuyubwatsi; and other unknown participants, all such actions

being taken either directly or through subordinates, for at least the period of 6 April 1994 through 17 July 1994 inclusive. Each of the above-named members of the joint criminal enterprise acted in concert with various other members, often acting on **Ildephonse NIZEYIMANA**'s orders, authorization or instigation. The particulars that give rise to the Accused's individual criminal responsibility pursuant to Article 6(1) of the Statute are set forth in paragraph 48 herein.

48. Paragraphs 8 and 30 through 35 above are incorporated by reference herein.

Criminal Responsibility of a Superior for a Subordinate

49. Pursuant to Article 6(3) of the Statute, the Accused, **Ildephonse NIZEYIMANA**, is responsible for rape as a crime against humanity because specific criminal acts were committed by subordinates of the Accused over whom he had *de jure* and *de facto* authority. The Accused knew or had reason to know that such subordinates were about to commit such acts before they were committed and failed to take the necessary and reasonable measures to prevent such acts or knew or had reason to know that such subordinates had committed such acts and failed to punish the perpetrators thereof. These subordinates were FAR soldiers over whom the Accused exercised effective control, including Sous-Lieutenants Jean Pierre Bizimana, Modeste Gatsinzi, Alphonse Ndayambaje, Ngendahimana and Ezechiel Gakwerere, Chief Warrant Officer Francois Ntibiramira, Chief Warrant Officer Damien Ntamuhanga, Chief Warrant Officer Paul Kanyeshyamba, Sergeant Ezechier Rwaza, Sergeant Major Innocent Sibomana, Corporal Fulgence Niyibizi, and a number of other officers, soldiers and recruits from ESO; the *Interahamwe*, including Jean Marie Vianney Ngabonziza; and other militias and armed civilians who were members of the joint criminal enterprise. Each of the above-named members of the joint criminal enterprise acted in concert with various other members, often acting on **Ildephonse NIZEYIMANA**'s orders, authorization or instigation. The particulars that give rise to the Accused's individual criminal responsibility pursuant to Article 6(3) of the Statute are set forth in paragraph 50 herein.

50. Paragraphs 8 and 30 through 35 above are incorporated by reference herein.

COUNT V: MURDER AS A VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS OF 1949 AND ADDITIONAL PROTOCOL II OF 1977

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Ildephonse NIZEYIMANA** with **MURDER as a violation of Article 3 Common and Protocol II**, a crime stipulated in Article 4(a) of the Statute, in that **Ildephonse NIZEYIMANA** was responsible for the killings of non-combatant Tutsi during the period 7 April 1994 through 3 July 1994 when in Butare *préfecture*, there was a non-international armed conflict within the meaning of Articles 1 and 2 of Protocol II Additional to the Geneva Convention of 1949, and the killing of the victims was closely related to the hostilities or committed in conjunction with the armed conflict and the victims were persons taking no part in that conflict, all as is set forth in paragraphs 51 to 54 herein.

CONCISE STATEMENT OF FACTS FOR COUNT V
Individual Criminal Responsibility

51. Pursuant to Article 6(1) of the Statute, the Accused, **Ildephonse NIZEYIMANA**, is individually responsible for murder as a violation of Article 3 Common to the Geneva Conventions of 1949 and Additional Protocol II of 1977 because he planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of these crimes. With respect to the commission of those crimes, **Ildephonse NIZEYIMANA** ordered those over whom he had authority as a result of his military rank, position and social influence described in paragraph 2 herein. In addition, the Accused wilfully and knowingly participated in a joint criminal enterprise whose object, purpose, and foreseeable outcome was the commission of war crimes against the Tutsi ethnic group and persons identified as Tutsi or presumed to support the Tutsi in Butare *préfecture*. To fulfil this criminal purpose, the Accused acted with leaders and members of the FAR, including Colonel Tharcisse Muvunyi, Lieutenant Ildephonse Hategekimana, Lieutenant Cyriaque Habyarabatuma of the Butare *Gendarmerie*, Sous-Lieutenant Jean Pierre Bizimana, Sous-Lieutenant Modeste Gatsinzi, Sous-Lieutenant Ezechiel Gakwerere, Sous-Lieutenant Alphonse Ndayambaje, Sous-Lieutenant Ngendahimana, Chief Warrant Officer Francois Ntibiramira, Chief Warrant Officer Damien Ntamuhanga, Chief Warrant Officer Paul Kanyeshyamba, Sergeant Ezechier Rwaza, Sergeant Major Innocent Sibomana, Corporal Fulgence Niyibizi, and a number of other officers, soldiers and recruits from ESO; the *Interahamwe*, including Jean Marie Vianney Ngabonziza; the "Civil Defense Forces"; militias acting as a group in loose organisation, namely militias affiliated with the MRND, MDR, PL, CDR and PSD parties and armed civilians acting as individuals in a common purpose; communal police and local administrative officials from communes in Butare *prefécture*, including Ngoma, Huye, Gishamvu, Nyaruhengeri, Ndora, Shyanda, Mbazi, Nyakizu, Kigembe, Ntyazo, Ruhashya, Mugusa and Kibayi, among others; other known participants, such as Vincent Ntezimana, Innocent Nkuyubwatsi; and other unknown participants, all such actions being taken either directly or through subordinates, for at least the period of 7 April 1994 through 3 July 1994 inclusive . Each of the above-named members of the joint criminal enterprise acted in concert with various other

members, often acting on **Ildephonse NIZEYIMANA**'s orders, authorization or instigation. The particulars that give rise to the Accused's individual criminal responsibility pursuant to Article 6(1) of the Statute are set forth in paragraph 52 herein.

52. Paragraphs 19 through 29 and 39 through 40 above are incorporated by reference herein.

Criminal Responsibility of a Superior for a Subordinate

53. Pursuant to Article 6(3) of the Statute, the Accused, **Ildephonse NIZEYIMANA**, is responsible for murder as a violation of Article 3 Common and Protocol II because specific criminal acts were committed by subordinates of the Accused over whom he had *de jure* and *de facto* authority. The Accused knew or had reason to know that such subordinates were about to commit such acts before they were committed and failed to take the necessary and reasonable measures to prevent such acts or knew or had reason to know that such subordinates had committed such acts and failed to punish the perpetrators thereof. These subordinates were FAR soldiers over whom the Accused exercised effective control, including Sous-Lieutenants Jean Pierre Bizimana, Modeste Gatsinzi, Alphonse Ndayambaje, Ngendahimana and Ezechiel Gakwerere, Chief Warrant Officer Francois Ntibiramira, Chief Warrant Officer Damien Ntamuhanga, Chief Warrant Officer Paul Kanyeshyamba, Sergeant Ezechier Rwaza, Sergeant Major Innocent Sibomana, Corporal Fulgence Niyibizi, and a number of other officers, soldiers and recruits from ESO; the *Interahamwe*, including Jean Marie Vianney Ngabonziza; and other militias and armed civilians who were members of the joint criminal enterprise. Each of the above-named members of the joint criminal enterprise acted in concert with various other members, often acting on **Ildephonse NIZEYIMANA**'s orders, authorization or instigation. The particulars that give rise to the Accused's individual criminal responsibility pursuant to Article 6(3) of the Statute are set forth in paragraph 54 herein.

54. Paragraphs 19 through 29 and 39 through 40 above are incorporated by reference herein.

COUNT VI: RAPE AS A VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS OF 1949 AND ADDITIONAL PROTOCOL II OF 1977

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Ildephonse NIZEYIMANA** with **RAPE as a violation of Article 3 Common and Protocol II**, a crime stipulated in Article 4(e) of the Statute, in that **Ildephonse NIZEYIMANA** was responsible for the rape of non-combatant Tutsi women during the period 6 April 1994 through 3 July 1994 when in Butare *préfecture*, there was a non-international armed conflict within the meaning of Articles 1 and 2 of Protocol II Additional to the Geneva Convention of 1949, and the rape of the victims was closely related to the hostilities or committed in conjunction with the armed conflict and the victims were persons taking no part in that conflict, all as is set forth in paragraphs 55 through 58 herein.

CONCISE STATEMENT OF FACTS FOR COUNT VI

Individual Criminal Responsibility

55. Pursuant to Article 6(1) of the Statute, the Accused, **Ildephonse NIZEYIMANA**, is individually responsible for rape as a violation of Article 3 Common to the Geneva Conventions of 1949 and Additional Protocol II of 1977 because he planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of these crimes. With respect to the commission of those crimes, **Ildephonse NIZEYIMANA** ordered those over whom he had authority as a result of his military rank, position and social influence described in paragraph 2 herein. In addition, the Accused committed rape as a violation of Article 3 Common to the Geneva Conventions of 1949 and Additional Protocol II of 1977 by wilfully and knowingly participating in a joint criminal enterprise whose object, purpose, and foreseeable outcome was the commission of crimes against humanity against the Tutsi ethnic group and persons identified as Tutsi or presumed to support the Tutsi in Butare *préfecture*. To fulfil this criminal purpose, the Accused acted with leaders and members of the FAR, including Colonel Tharcisse Muvunyi, Lieutenant Ildephonse Hategekimana, Lieutenant Cyriaque Habyarabatuma of the Butare *Gendarmerie*, Sous-Lieutenants Jean Pierre Bizimana, Modeste Gatsinzi, Ezechiel Gakwerere, Alphonse Ndayambaje, and Tharcisse Ngendahimana, Chief Warrant Officers Francois Ntibiramira, Damien Ntamuhanga, and Paul Kanyeshyamba, Sergeant Ezechier Rwaza, Sergeant Major Innocent Sibomana, Corporal Fulgence Niyibizi, and a number of other officers, soldiers and recruits from ESO; the *Interahamwe*, including Jean Marie Vianney Ngabonziza; the "Civil Defense Forces"; militias acting as a group in loose organisation, namely militias affiliated with the MRND, MDR, PL, CDR and PSD parties and armed civilians acting as individuals in a common purpose; communal police and local administrative officials from communes in Butare *préfécture*, including Ngoma, Huye, Gishamvu, Nyaruhengeri, Ndora, Shyanda, Mbazi, Nyakizu, Kigembe, Ntyazo, Ruhashya, Mugusa and Kibayi, among others; other known participants, such as Vincent Ntezimana, Innocent Nkuyubwatsi; and other unknown participants, all such actions being taken either directly or through subordinates, for at least the period of 7 April 1994 through 3 July

1994 inclusive. Each of the above-named members of the joint criminal enterprise acted in concert with various other members, often acting on **Ildephonse NIZEYIMANA**'s orders, authorization or instigation. The particulars that give rise to the Accused's individual criminal responsibility pursuant to Article 6(1) of the Statute are set forth in paragraph 56 herein.

56. Paragraphs 8 and 30 through 35 above are incorporated by reference herein.

Criminal Responsibility of a Superior for a Subordinate

57. Pursuant to Article 6(3) of the Statute, the Accused, **Ildephonse NIZEYIMANA**, is responsible for rape as a violation of Article 3 Common to the Geneva Conventions of 1949 and Additional Protocol II of 1977 because specific criminal acts were committed by subordinates of the Accused over whom he had *de jure* and *de facto* authority. The Accused knew or had reason to know that such subordinates were about to commit such acts before they were committed and failed to take the necessary and reasonable measures to prevent such acts or knew or had reason to know that such subordinates had committed such acts and failed to punish the perpetrators thereof. These subordinates were FAR soldiers over whom the Accused exercised effective control, including Sous-Lieutenants Jean Pierre Bizimana, Modeste Gatsinzi, Alphonse Ndayambaje, Ngendahimana and Ezechiel Gakwerere, Chief Warrant Officer Francois Ntibiramira, Chief Warrant Officer Damien Ntamuhanga, Chief Warrant Officer Paul Kanyeshyamba, Sergeant Ezechier Rwaza, Sergeant Major Innocent Sibomana, Corporal Fulgence Niyibizi, and a number of other officers, soldiers and recruits from ESO; the *Interahamwe,* including Jean Marie Vianney Ngabonziza; and other militias and armed civilians who were members of the joint criminal enterprise. Each of the above-named members of the joint criminal enterprise acted in concert with various other members, often acting on **Ildephonse NIZEYIMANA**'s orders, authorization or instigation. The particulars that give rise to the Accused's individual criminal responsibility pursuant to Article 6(3) of the Statute are set forth in paragraph 58 herein.

58. Paragraphs 8 and 30 through 35 above are incorporated by reference herein.

The acts and omissions of **Ildephonse NIZEYIMANA** detailed in this indictment are punishable pursuant to Articles 22 and 23 of the Statute.

Signed at ARUSHA, Tanzania, this 17th day of December, 2010

HASSAN B. JA[illegible]
PROSECUTOR

United Nations
Nations Unies

TRANSMISSION SHEET
FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

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	☐ Chief, CMS J.-P. Fomété	☐ Appeals Chamber / Arusha Chamber II F. A. Talon		☐ Appeals Chamber / The Hague K. K. A. Afande R. Muzigo-Morrison
From:	☒ Chamber III (names)	☐ Defence (names)	☐ Prosecutor's Office (names)	☐ Other: (names)
Case Name:	The Prosecutor vs. **Nizeyimana**		**Case Number:** ICTR-2000-55C-T	
Dates:	Transmitted: **22 June 2012**		Document's date: **22 June 2012**	
No. of Pages:	**494**	**Original Language:** ☒ English	☐ French	☐ Kinyarwanda
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II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

CMS SHALL take necessary action regarding translation.

☒ Filing Party hereby submits only the original, and **will not submit** any translated version.

☐ Reference material is provided in annex to facilitate translation.

Target Language(s):

☒ English ☐ French ☐ Kinyarwanda

2012 JUN 22 P

CMS SHALL NOT take any action regarding translation.

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Translation	in	☐ English	☐ French	☐ Kinyarwanda

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☐ Normal		☐ Other deadlines: